

## Judicial Remedies for Breach of Custody Agreements (Hadhanah) in Divorce Proceedings: Evidence from Makassar Religious Court

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### Abstract

Divorce often raises legal issues related to custody (child custody), especially when there is a breach of contract or violation of obligations by one of the parties, thereby creating new conflicts between former spouses and impacting the fulfillment of children's rights. This study aims to analyze the role of judges in handling post-divorce custody breaches, both in terms of prevention and enforcement, with a focus on practices in the Makassar Religious Court. This study uses a qualitative method with an empirical juridical approach that combines primary and secondary data. Data was collected through court observations, in-depth interviews with judges and related parties, analysis of court decisions, and a study of Islamic family law literature and national regulations. The results of the study show that the dominant forms of default include neglecting responsibility for the child, abandoning financial support, and attempting to prevent the other party from meeting the child. In terms of prevention, judges consider the principle of the best interests of the child, the age of the child, moral suitability, and the economic capacity of the parents before determining custody rights. Meanwhile, in enforcing the law against breaches that occur, judges provide legal recourse for aggrieved parties to file a lawsuit to revoke custody rights or revise custody decisions, thereby ensuring that the interests of the child are protected. This study shows that judges in the Religious Court do not merely perform formal judicial functions, but also play a protective role towards children by balancing Islamic legal norms, national regulations, and values of public interest. Strengthening the role of judges in addressing hadhanah breaches is important to provide legal certainty while ensuring the protection of children's rights after divorce.

**Keyword: Custody; Breach of Contract; Divorce; Judges' Efforts; Religious Court.**

### Abstrak

Perceraian seringkali menimbulkan persoalan hukum terkait hadhanah (hak asuh anak), khususnya ketika terjadi wanprestasi atau pelanggaran kewajiban oleh salah satu pihak, sehingga menimbulkan konflik baru antara mantan pasangan dan berdampak pada pemenuhan hak anak. Penelitian ini bertujuan untuk menganalisis peran hakim dalam menangani wanprestasi hadhanah pasca perceraian, baik dalam bentuk pencegahan maupun penindakan, dengan fokus pada praktik di Pengadilan Agama Makassar. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis empiris yang memadukan data

primer dan sekunder. Data dikumpulkan melalui observasi persidangan, wawancara mendalam dengan hakim dan pihak terkait, analisis dokumen putusan, serta studi literatur hukum keluarga Islam dan regulasi nasional. Hasil penelitian menunjukkan bahwa bentuk wanprestasi yang dominan meliputi pengabaian tanggung jawab terhadap anak, penelantaran nafkah, serta upaya menghalangi akses pihak lain untuk bertemu anak. Dalam aspek pencegahan, hakim mempertimbangkan prinsip the best interest of the child, faktor usia anak, kelayakan moral, serta kemampuan ekonomi orang tua sebelum menetapkan hak asuh. Sementara dalam penegakan hukum terhadap wanprestasi yang terjadi, hakim memberikan ruang hukum bagi pihak yang dirugikan untuk mengajukan gugatan pencabutan hak asuh atau revisi putusan hadhanah, sehingga memastikan kepentingan anak tetap terjaga. Penelitian ini menunjukkan bahwa hakim di Pengadilan Agama tidak sekadar menjalankan fungsi yudisial formal, tetapi juga memainkan peran protektif terhadap anak dengan menyeimbangkan antara norma hukum Islam, regulasi nasional, dan nilai kemaslahatan. Penguatan peran hakim dalam mengatasi wanprestasi hadhanah penting untuk memberikan kepastian hukum sekaligus menjamin perlindungan hak anak pasca perceraian.

**Kata Kunci:** Hadhanah; Wanprestasi; Perceraian; Upaya Hakim; Pengadilan Agama.

## Introduction

Indonesia is a country governed by law and implements many regulations, including those concerning marriage. Law No. 1 of 1974 explains that "marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Almighty God".<sup>1</sup> In his book, Jalaluddin Al-Mahalli explains that, according to Islamic law, marriage is: "a contract that permits sexual intercourse using the phrase '*inkah*' (to marry) or '*tazwīj*' (to marry)". The bond of marriage carries rights and obligations, both for the husband and the wife.<sup>2</sup> There are differences between the rights and obligations of husband and wife, but as a married couple, husband and wife have the same obligations, namely the obligation to educate and support their children.<sup>3</sup>

A child is a trust given by Allah Swt., which must be protected because children are a test for humans, as explained in Q.S. At-Tagabun/64: 15. In the verse, it is explained that Allah Swt., explains that wealth and children are a test.<sup>4</sup> Not a few people, because of their excessive love for wealth and their children, dare to justify any means, even if it means violating religious rules. A marriage bond basically aims to achieve a peaceful, loving, and

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<sup>1</sup> Mutia Cherawaty Thalib, "Implications of Mixed Marriage in the Perspective of Gorontalo Customary Law and Its Reality Based on International Private Law Principles," *Jambura Law Review* 5, no. 1 (2023): 179–98, <https://doi.org/10.33756/jlr.v5i1.16798>.

<sup>2</sup> Manik Lingkar Katulistiwa, "Pemaknaan Perjanjian Lainnya Dalam Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Tahun 2015" (Universitas Narotama, 2021), <http://repository.narotama.ac.id/1185/>.

<sup>3</sup> Yuliana Safitri and Abdul Syatar, "Peranan Dan Efektivitas Hakim Di Persidangan Dalam Menekan Angka Perceraian," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 3, no. 1 (2022): 439–48, <https://doi.org/10.24252/shautuna.vi.26719>.

<sup>4</sup> Doepina Rahmawati, "Kedudukan Anak Bagi Orangtua Dalam Al-Qur'an" (UIN Sunan Gunung Djati Bandung, 2023), <https://digilib.uinsgd.ac.id/76358/>.

compassionate family<sup>5</sup> and other goals, namely to perfect religion, worship, or avoid sin and immoral acts.<sup>6</sup> The marriage that everyone dreams of is a marriage that contains happiness, peace, and humor, but sometimes desires are the opposite of reality, so that many marriages do not go according to expectations and result in divorce.

Divorce is a legal action permitted by religion in emergency situations that can be taken by a husband and wife if the marital bond (household) cannot be maintained intact and continued.<sup>7</sup> The nature of the emergency in question means that various ways have been taken to seek peace between the two parties, either through mediators or technical steps provided by the al-Quran and Hadith.<sup>8</sup> When a divorce occurs, the husband and wife cannot live in the same place anymore, which gives rise to *hadhanah* or known as Custody rights.<sup>9</sup> In essence, *hadhanah* is the duty of both parents, but due to the separation, one of the two must receive Custody rights for the child, be it the husband or the wife. Compilation of Islamic Law Article 105 states that, in the event of a divorce, the care of a child under the age of 12 becomes the responsibility of the mother, and the costs are borne by the father. In line with the Compilation of Islamic Law (CIL), scholars also agree that in the event of a divorce, the mother is the one entitled to child custody. A mother has the right to child custody due to the strong emotional bond between a child and a mother, and the mother's affection, which generally ensures a child's development is better than that of a child raised by a father. Therefore, as long as no obstacles are preventing the mother from caring for her child, the mother is entitled to child custody.

Child custody is determined based on the explanations and evidence from both parties. When a court decision is issued, it becomes legally binding on both parties, in this case, husband and wife. However, many people often ignore the rights and obligations stipulated in the court's decision.<sup>10</sup> After a judge issues a decision, actions often occur that

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<sup>5</sup> Nandang Ihwanudin, "Pemenuhan Kewajiban Pasca Perceraian Di Pengadilan Agama," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 10, no. 1 (2019): 51–68, <https://doi.org/10.15575/adliya.v10i1.5146>.

<sup>6</sup> Adriana Mustafa and Arwini Bahram, "Relasi Gender Dalam Pernikahan Keturunan Sayyid Di Desa Cikoang Kabupaten Takalar; Studi Kasus Perbandingan Hukum Islam Dan Hukum Adat," *Mazahibuna: Jurnal Perbandingan Mazhab* 2, no. 2 (2020): 241–54, <https://doi.org/10.24252/mh.v2i2.18137>.

<sup>7</sup> Rosmita, Andi Nur Afifah, and Nasaruddin, "The Position of the Guardian in Marriage Perspective of the Hanafi and the Al-Shafi'i Madhhab," *Mazahibuna: Jurnal Perbandingan Mazhab* 4, no. 2 (2022): 152–72, <https://doi.org/10.24252/mh.vi.30969>.

<sup>8</sup> Husnatul Mahmudah, Juhriati Juhriati, and Zuhrah Zuhrah, "Hadhanah Anak Pasca Putusan Perceraian (Studi Komparatif Hukum Islam Dan Hukum Positif Indonesia)," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 2, no. 1 (2019): 57–88, <https://doi.org/10.52266/sangaji.v2i1.263>.

<sup>9</sup> Mohamad Aulia, "Analisis Hukum Terhadap Hak Asuh (Hadhanah) Anak Akibat Perceraian : Analisis Hukum Terhadap Hak Asuh (Hadhanah) Anak Akibat Perceraian," *Jurnal RASI* 4, no. 1 (2024): 23–38, <https://doi.org/10.52496/rasi.v4i1.165>.

<sup>10</sup> Muh Risal Risandi and Muhammad Sabir Maidin, "Perlindungan Hukum Terhadap Anak Jalanan Akibat Perceraian Orang Tua Di Kabupaten Pangkep; Studi Komparatif Hukum Positif Dan Hukum Islam," *Shautuna:*

are detrimental to one of the parties. Many people forget their obligation to provide child support.<sup>11</sup> Neglecting child support after a divorce constitutes a breach of contract. A breach of contract is: "The implementation of an agreement that is not carried out on time, is carried out improperly, or is not carried out at all."<sup>12</sup> Given this breach of contract, the author wants to further examine how a judge makes decisions to minimize or prevent breaches in *hadhanah*.

Previous studies have generally focused on who is most entitled to child custody after divorce, while the aspect of judges' efforts to prevent breach of contract in the implementation of *hadhanah* (legal obligations) remains rarely examined. A study conducted by Umul Khair (2020) explained the implementation of post-divorce custody and the factors causing the failure of court decisions to be implemented.<sup>13</sup> Similarly, Ach. Fauzan and Moh. Hamzah (2024) emphasized who is most deserving of child custody based on Islamic law.<sup>14</sup> A study by Muhammad Holid (2024) analyzed child custody in the context of religious conversion (apostasy) and how positive law and Islamic law respond to this situation.<sup>15</sup> Meanwhile, Ahmad Ziyan Fikri (2023) highlighted the problematic implementation of child custody decisions in religious court practice through a case study at the West Jakarta Religious Court.<sup>16</sup> Randy Septian, et. al. (2022) study provided a comparative study of the transfer of custody rights according to four schools of thought, emphasizing the *fiqh* and historical basis of the principle of *hadhanah*.<sup>17</sup> N. Rodliyah (2021) examined the practice of determining custody rights by judges in certain cases that deviate from the mother's priorities as stipulated

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*Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 2, no. 1 (2021): 293–308, <https://doi.org/10.24252/shautuna.v2i1.16282>.

<sup>11</sup> Faradillah Melani and Abdul Rahman Hi. Abdul Qayyum, "Sanksi Administrasi Terhadap Perkawinan Kedua Pegawai Negeri Sipil Yang Belum Berkekuatan Hukum Tetap Dari Perceraian Pertama Pada Pengadilan Agama Sinjai: Analisis Terhadap KUHPer Dan KHI," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 4, no. 2 (2023): 446–63, <https://doi.org/10.24252/shautuna.vi.32128>.

<sup>12</sup> Muhammad Riandi Nur Ridwan and Yana Sukma Permana, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," *The Juris* 6, no. 2 (2022): 441–51, <https://doi.org/10.56301/juris.v6i2.616>.

<sup>13</sup> Umul Khair, "Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian," *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (2020): 291–306, <https://doi.org/10.33760/jch.v5i2.231>.

<sup>14</sup> Ach. Fauzan and Moh. Hamzah, "Pendekatan Holistik Dalam Hak Asuh Anak Pasca Perceraian: Perspektif Maqasid Syari'ah Al-Tahir Ibnu Asyur," *Al-Rasikh: Jurnal Hukum Islam* 13, no. 1 (2024): 111–26, <https://doi.org/10.38073/rasikh.v13i1.1747>.

<sup>15</sup> Muhammad Holid, "Hak Asuh Anak Pasca Perceraian: Studi Kasus Murtadnya Seorang Ibu Di Lombok Timur Bondowoso," *Jurnal Asa: Jurnal Kajian Hukum Keluarga Islam* 6, no. 2 (2024): 12–29, <https://doi.org/10.58293/asa.v6i2.110>.

<sup>16</sup> Ahmad Ziyan Fikri, "Hak Asuh Anak (Hadhanah) Di Bawah Umur Setelah Terjadinya Putusan Perceraian Di Pengadilan Agama Jakarta Barat Dalam Perspektif Hukum Islam Dan Hukum Positif (Studi Putusan Nomor 679/Pdt. G/2022/PA. JB)" (Universitas Nahdatul Ulama Indonesia, 2023), <https://repository.unusia.ac.id/id/eprint/150/>.

<sup>17</sup> Randy Septian, Meitri Widya Pangestika, and Inri Ravis, "Studi Kasus Terhadap Hak Asuh Anak Dalam Putusan Nomor 1365/Pdt. G/2021/PA. BPP Di Pengadilan Agama Balikpapan," *Lex Suprema: Jurnal Ilmu Hukum* 4, no. 1 (2022): 839–54, <https://doi.org/10.12345/lexsuprema.v4i1.584>.

in the Compilation of Islamic Law (CIL).<sup>18</sup> From these overall studies, it can be concluded that the research direction is still predominantly normative and textual, while the practical dimension, namely judges' strategies in anticipating breach of contract after the decision, has not received adequate attention. Thus, this study aims to fill this gap by examining in depth how judges at the Makassar Religious Court consider and enforce child custody rights through a juridical approach and *maqāṣid al-syarī'ah*, as well as assessing the extent to which judicial steps are able to prevent violations of the verdict and ensure the best protection for children.

This study aims to identify the forms of breach of contract in the implementation of *hadhanah* that occur in society, analyze the role and efforts of judges in minimizing the occurrence of such breaches, and examine the judges' legal considerations regarding the steps that can be taken by the injured party. Furthermore, this study also aims to provide legal understanding to the public regarding the consequences of breach of contract in *hadhanah* cases as an effort to increase awareness and compliance with court decisions.

## Research Methods

This study employed a qualitative descriptive method, a type of applied research that aimed to generate knowledge that can be directly applied to solving practical problems or improving real-life conditions. The qualitative descriptive approach focused on a detailed description of observed phenomena without modifying variables or hypotheses. This method emphasized an in-depth understanding of the context, behavior, and perceptions of individuals or groups. The approach of this study was normative-sociological, namely a research method that analyzed the principles and norms of religion that form the basis for rules, behavior, and practices in a Region. The data sources in this study were primary data sources and secondary data sources. Primary data sources were generated from interviews with judges and clerks, and secondary data sources were supporting data obtained from books, journals, and judges' decisions. The instruments used in this study were interview guides and tools for recording interview results. The process of processing and analyzing data was carried out through several stages, namely: data reduction, data presentation (data display), and drawing and verifying conclusions (conclusion drawing/verification).

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<sup>18</sup> Nunung Rodliyah et al., "Pemberian Hak Asuh Anak (Hadhanah) Dalam Perkara Perceraian Di Pengadilan Agama Pesawaran (Studi Putusan: No. 0007/Pdt.G/2019/PA.Gdt.)," *Jurnal Hukum Malahayati* 2, no. 2 (2021): 1–12, <https://ejournalmalahayati.ac.id/index.php/hukummalahayati/article/view/4141>.

## Results and Discussion

### 1. Forms of Breach of Contract in *Hadhanah*

Breach of contract is an act of breach committed by one party to an agreement, contract, or other obligation. Breach of contract can occur when two parties are involved in a dispute.<sup>19</sup> In practice, breach of contract is often encountered in company-employee agreements, whether through breached employment contracts or non-compliance with company regulations. Breach of contract can also be seen in *hadhanah* cases. Actions committed by a husband or wife who has been given the responsibility to provide for and care for a child after being granted custody, but fails to fulfill their obligations, also constitute an act of breach of contract. After conducting an interview with one of the judges, he stated that:

*"There is negligence in providing child support, negligence in caring for and educating the child, and also a breach of the hadhanah obligation, namely prohibiting one party from seeing their child or obstructing their access to the child."*<sup>20</sup>

Continuing the interview with one of the court clerks, the court clerk stated:

*"A breach of contract committed by one of the parties, whether husband or wife, involves failing to fulfill their obligations after receiving the hadhanah, such as failing to care for the child, educate the child, and meet the child's physical and spiritual needs. Furthermore, obstructing one party from seeing their child is also a breach of contract."*<sup>21</sup>

Based on the interview results, it can be seen that there are two types of breach of contract in *hadhanah*:

#### a. Neglecting Obligations in Raising Children After Divorce

Parents are not free from the responsibility of caring for and nurturing children, even after a divorce, which results in both parties no longer living together. Parents' responsibilities to their children in providing for, educating, and caring for them after a divorce are stipulated in the divorce decree. A father is obligated to provide for his or her child until the child is able to support himself or herself. As long as a child is unable to support himself or herself, the parents remain obligated to provide for him or her. Parents' obligations to their children include caring for them, educating them, providing adequate food, and providing a comfortable home. All matters relating to children are the parents' responsibility, of course, even after a divorce. Divorce merely severs the bond between husband and wife, but not the relationship between children and their parents.

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<sup>19</sup> Cathleen Lie et al., "Pengenalan Hukum Kontrak Dalam Hukum Perdata Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 918–24, <https://doi.org/10.31316/jk.v7i1.4831>.

<sup>20</sup> Drs. Makka. A (56 years old), Judge at the Makassar Religious Court, *Interview*, June 16, 2025.

<sup>21</sup> Hariyati (45 years old), Registrar at the Makassar Religious Court, *Interview*, April 25, 2025.



Based on the division of obligations in raising children, there are two things, namely:

- 1) The obligation to provide spiritual support for the husband.

The provision of child support is often found in this decision based on an agreement between the two parties, so when the husband is given the responsibility to provide support and neglects this, this can be said to be a breach of contract. If the ex-husband fails to fulfill his obligation to provide child support, the mother will typically file a lawsuit in court, which may then decide that the child will be cared for by the mother and the ex-husband will remain obligated to cover the child's educational expenses.<sup>22</sup> A wife typically sets the child support amount based on the child's needs and the husband's ability.

- 2) The obligation to care for and educate the child is borne by the holder of custody.

As the holder of child custody, the parent who is granted *hadhanah* has the responsibility to care for and provide a proper education for their child. Based on the decision, the right to custody is fully granted to the holder of custody, which creates the obligation for the child's care and education.

#### b. Obstructing One Party's Access to Meet Their Children

The prohibition of child visitation with the other parent is also a breach of contract under *hadhanah*. Visitation rights after divorce are a crucial element in ensuring the fulfillment of children's rights. Although custody rests with one parent, the child's bond with both parents must still be maintained harmoniously and continuously. Divorce undoubtedly has a significant impact on children, as a child's acceptance of both parents' affection is significantly affected when both parents are no longer together. Divorce can affect a child's mental and psychological well-being, which is why parents are prohibited from denying one party access to their child. A child's mental health needs to be considered after a divorce; parents must prioritize their child's care to ensure it remains healthy. The rationale for granting custody to the parent is that the parent has never prevented the mother from seeing and providing affection to her children.<sup>23</sup> Similarly, the father is not prohibited from accessing the child.

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<sup>22</sup> Indah Umami, Annisa Indira Hondhe Hudsaha, and Leli Joko Suryono, "Kekuasaan Orang Tua Terhadap Anak Setelah Perceraian," *Borneo Law Review* 6, no. 2 (2023): 254–70, <https://doi.org/10.35334/bolrev.v6i2.3247>.

<sup>23</sup> Adinda Alifia Ambarwati, "Analisis Terhadap Putusan Pengadilan Tinggi Palu Nomor 4/Pdt/2021/Pt Pal Tentang Penetapan Hak Asuh Anak Pasca Perceraian Kepada Predana Ditinjau Dari Hukum Adat Bali," *Jurnal Humaniora Dan Sosial Sains* 1, no. 1 (2024): 73–83, <https://humaniorasains.id/jhss/article/view/30>.

## 2. Judge's Efforts Against Potential Breach of Contract in *Hadhanah*

Before making a decision to impose *hadhanah* on one of the parties, a judge must consider all aspects of the parties' lives.<sup>24</sup> Granting child custody rights to one of the parties is crucial based on the best interests of the child. Considerations in granting child custody rights focus on the child's living needs so they can live a decent life.<sup>25</sup> The things that the Judge considers in determining Custody Rights are greatly influenced by witness testimony. In an interview with Mr. Makka, Judge A said that:

*"Judges naturally consider the best interests of the child when making decisions. Their considerations are based on the rules, so judges strive to comply with existing regulations."*<sup>26</sup>

The next interview was conducted with one of the clerks, Ms. Hariyati. In the interview, Ms. Hariyati stated that:

*"Judges naturally have their own considerations when making decisions. Because a child's psychological well-being can be affected when their parents separate, judges are heavily influenced by witness testimony in their decisions. Through witness testimony, judges can learn about the child's life while living with their parents."*<sup>27</sup>

Judges in considering the granting of a *hadhanah* are also based on the applicable rules and regulations, both Islamic religious rules and laws governing divorce.<sup>28</sup> The considerations included in the decision are the judge's efforts to prevent breach of contract in *hadhanah*. Negligence in childcare after divorce can have serious legal and social consequences. Parents who fail to fulfill their obligations may be subject to sanctions and risk losing custody of their children. It is crucial for parents to understand and fulfill their obligations for the well-being and development of their children. Judges consider several factors in ensuring that a breach of contract in *hadhanah* (legally arbitrated marriage) occurs, including:

a. Judge's considerations regarding children who are still *Mumayyiz*

A child's age is taken into consideration by the judge. When parents divorce, the child still has the right to receive care (*hadhanah*). If the child is a minor, custody is generally given to the mother, while the father is responsible for financing the care. Even if the parents are

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<sup>24</sup> Levi Winanda Putri et al., "Hak Hadhanah Anak Yang Belum Mumayyiz Kepada Ayah Kandung Perspektif Huku Islam (Studi Desa Kincang Wetan Madiun)," *Jurnal Antologi Hukum* 1, no. 2 (2021): 132–44, <https://doi.org/10.21154/antologihukum.v1i2.305>.

<sup>25</sup> Ummu Kalsum, "Pertimbangan Hakim Terhadap Nafkah Istri Dalam Kasus Cerai Talak Di Pengadilan Agama Watampone Kelas 1A," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 6, no. 2 (2019): 57, <https://doi.org/10.24252/jurisprudentie.v6i2.9766>.

<sup>26</sup> Drs. Makka. A (56 years old), Judge at the Makassar Religious Court, *Interview*, June 16, 2025.

<sup>27</sup> Hariyati (45 years old), Registrar at the Makassar Religious Court, *Interview*, April 25, 2025.

<sup>28</sup> Rizqa Febry Ayu and Kasmi, "Protection of Children as a Philosophical and Sociological Base for the Age Limit: Maqasid Shari'a Version of Jasser Auda," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 22, no. 1 (2022): 20–41, <https://doi.org/10.24252/al-risalah.vi.25489>.



separated, the father remains obligated to provide for all of the child's needs until the child reaches adulthood. This obligation includes meeting all of the child's needs, which must be met to the best of the father's ability, as this is a responsibility entrusted to him. In a hadith, the Prophet Muhammad (Peace Be Upon Him) said:

*"Mahmud bin Khalid As-Sulami narrated to us, from Al-Walid, from Abu 'Amr—namely Al-Auza'i—who said that 'Amr bin Shu'aib narrated from his father, from his grandfather, Abdullah bin 'Amr. It is said that a woman came to the Messenger of Allah and said, "O Messenger of Allah, this child was in my womb, suckled from my breast, and lived on my lap. Now his father has divorced me and wants to take him from me." So, the Messenger of Allah Swt. said: "You have more right to raise him as long as you do not remarry." (Narrated by Abu Dawud)*

Based on the hadith above, it can be understood that a child should remain cared for by his mother, as long as a mother is still alone and has not remarried, a child who is *Mumayyiz* and has not yet reached puberty still needs love from a mother.<sup>29</sup>

A mother who is given *hadhanah* is given the opportunity by the Judge to ask her husband for monthly money, of course, according to the needs of a child and the husband's ability, as in decision 1259/Pdt.G/2018/PA.Mks., there is a Reconvention:

- 1) Considering that the mention of the parties in this counterclaim should be counterclaim plaintiff/conventional respondent for the plaintiff, and counterclaim defendant/conventional applicant for the defendant, however, to simplify the mention of the parties in further considerations in this decision, it is sufficient to mention "plaintiff" for the counterclaim plaintiff/conventional respondent, and "defendant" for the counterclaim plaintiff/convention applicant.
- 2) Considering that the plaintiff in his lawsuit essentially demands that the defendant pay the plaintiff in the form of;
  - a) Madiyah's *income*/past 13 months × Rp. 2,000,000, - = Rp. 26,000,000, -
  - b) Child support/ *Hadhanah* owed for 13 months × Rp. 2,000,000, - = Rp. 26,000,000, -
  - c) *Iddah* support for 3 months × Rp. 1,500,000, - = Rp. 4,500,000, -
  - d) *Mut'ah* Rp. 10,000,000, -

A mother has the right to take precedence in *hadhanah*, but the granting of custody is not always given to a mother if the child is still in *Mumayyiz* or has not yet reached puberty. The judge also considers the conditions that must be fulfilled by a mother as a form of the judge's efforts to prevent the mother's inability to care for and educate the child. Child care in Islam is not only a right, but also a big responsibility that must be carried out seriously,

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<sup>29</sup> Dudung Maulana, "Telaah Pasal 105 Kompilasi Hukum Islam Tentang *Hadhanah*," *Posita: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 1–9, <https://doi.org/10.52029/pjhki.v1i01.133>.

taking into account the interests and good of the child as a whole. *Fiqh* scholars have paid serious attention to this issue, discussing in depth who has the right to care for children and the criteria that must be met for someone to be worthy of carrying out this task. One of the important works in the *Shafi'i* school, which contains this discussion in a comprehensive manner, is *Kifayatul Akhyar*, the work of Imam Taqiyuddin Abu Bakr bin Muhammad Al-Hishni.

In this book, it is emphasized that the right to custody of children after divorce does not only depend on kinship or status as parents, but is also greatly influenced by the suitability in terms of morals, religion, and the social environment of the caregiver. Islam places great emphasis on ensuring that children are cared for by those capable of ensuring their safety, education, and the development of good morals. Then, a wife who is given the authority to care for the child will be given *iddah* maintenance. *Iddah* is a waiting period that a woman must undergo after being divorced, which aims to ensure that her womb is empty.<sup>30</sup>

Specifically, in *Kifayatul Akhyar Juz II* Page 94, the author states that there are a number of conditions that must be fulfilled by a person in order to be considered worthy of carrying out the mandate of caregiving. This provision is an important reference in considering the sustainability of *hadhanah* rights, as well as a form of protection for children from potential injustice or negative impacts during their growth and development. In a Decision with No. 98/Pdt.G/2022/PA.Mks, in consideration of giving *hadhanah*, the husband requested that he still be given the right to care for the child even though the child is still *Mumayyiz* and has not yet reached puberty. In his decision, the Judge considered the condition of his wife, who did not fulfill the requirements of *hadhanah* because she had abandoned her children and husband, which was considered an act of disobedience to her husband or *Nusyuz*. Based on this, the applicant's request to continue to be granted custody rights was granted by the judge based on the mother not fulfilling the requirements to be a *hadhanah* holder.

b. Judge's consideration of the suitability of parents

The efforts made by the Judge, apart from considering the age of a child, also provide considerations regarding whether or not the recipient of custody is worthy of being given responsibility for educating and raising the child well.<sup>31</sup> A parent's eligibility can be determined based on witness testimony and available evidence. For example, when a father is asked to provide child support after a divorce at the wife's request, the judge still gives the

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<sup>30</sup> Nur Abdillah, "Analisis Pendapat Madzhab Syafi'i Terhadap Perkara Cerai Talak Pada Putusan Nomor 271/Pdt.G/2022/PA.Prob," *Sakina: Journal of Family Studies* 7, no. 1 (2023): 153–62, <https://doi.org/10.18860/jfs.v7i1.3183>.

<sup>31</sup> Ramdan Fawzi, "Hak Hadhanah Dalam Perceraian Karena Pindah Agama Perspektif Hukum Islam," *Tahkim: Jurnal Peradaban Dan Hukum Islam* 1, no. 2 (2018): 94–105, <https://doi.org/10.29313/tahkim.v1i2.4106>.

husband the opportunity to explain his ability to provide support. This can be determined by the husband's income during the marriage. If the wife's request for child support does not align with his income, the judge may grant the husband leniency based on his ability to provide for his child. As stated in Decision No. 1259/Pdt.G/2018/PA.Mks, it is clear that the wife requested to be given child support of IDR2,000,000 per month, but the wife's request was not granted by the Judge due to the following considerations:

- 1) Considering that regarding the plaintiff's claim, the defendant, in his conclusion, stated that he refused to provide *madiyah* and *iddah* maintenance and child maintenance owed because the defendant did not neglect to provide said maintenance, and the plaintiff is a *nuzus* wife. The defendant is only able to provide *mut'ah* money of IDR500,000 (five hundred thousand rupiah) and child maintenance of IDR500,000 (five hundred thousand rupiah) every month.
- 2) Considering that regarding the plaintiff's demand that the defendant pay child support of IDR2,500,000 (two million five hundred thousand rupiah) per month, the defendant, in his conclusion, was only able to provide child maintenance costs of IDR500,000 (five hundred thousand rupiah) per month.

The judge's considerations above are one of the efforts to prevent breach of contract in *hadhanah*.

The eligibility of parents to provide *hadhanah* is not only assessed financially but can also be assessed from the past, meaning the period before the divorce, all the activities of parents towards their children can be seen while the child was still in the care of both parents. The past of the child's parents is also a consideration for the Judge, because by looking at the previous circumstances, the Judge can assess what kind of life a child deserves. The affection and treatment given to the child can be seen before the parents separated.

c. The judge's consideration of the principle of the interests of the child

The best interests of the child are the primary reason why judges consider the first and second points above. A child must have a decent life so they can fulfill their own obligations and assume their own responsibilities. In addition to a decent life, the child must also be provided with a good education.<sup>32</sup> Childcare is a crucial responsibility that must be fulfilled by both mothers and fathers. However, in reality, childcare and education are often neglected or prioritized below work, which is considered more important to meet the family's needs. As a result, children are often neglected due to unfavorable circumstances or even

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<sup>32</sup> Irfan Islami, "Legalitas Penguasaan Hak Asuh Anak Dibawah Umur (Hadhanah) Kepada Bapak Pasca Perceraian," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 2 (2019): 181–94, <https://doi.org/10.24252/al-qadau.v6i2.10715>.

because parents deliberately neglect these obligations.<sup>33</sup> Parental neglect of children is a mistake that can have fatal consequences. Lack of education and affection from parents can encourage children to do things that are inappropriate and unsuitable for them.<sup>34</sup> Therefore, in an effort to prevent such things from happening, judges prioritize the child's life aspects, or more precisely, the best interests of the child, in making decisions.

The Panel of Judges needs to emphasize that in cases of *hadlanah* rights (child custody rights), the main principle that must be put forward is not solely about who has the most rights, but solely for the best interests of the child.<sup>35</sup> Determination of child custody after divorce based on Law Number 1 of 1974 concerning Marriage prioritizes the principle of the best interests of the child, which means that the judge must assess various factors such as the child's physical, mental, and emotional condition, as well as the importance of maintaining the child's relationship with both parents.<sup>36</sup> This means that what is considered is who is factually more capable of providing benefits and not causing harm to the child's development.

In this regard, even though the husband holds the right of *hadlanah*, he may not hinder or reduce the rights and obligations of the wife as the child's biological mother, to continue to play a role in the child's life, such as visiting, educating, and providing affection. Likewise, the rights and obligations of a father must be respected. This principle is in line with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 110 K/AG/2007 dated December 7, 2007, which emphasizes that the interests of the child must be the primary consideration in determining custody rights. With these considerations, we can see that there are differences in the decisions. Some decisions prioritize children who have not yet reached puberty to remain with the mother, of course, for the sake of the child's interests. Some decisions allow the father to take over the child's custody even though the child's status has not yet reached puberty. In a decision No. 98/Pdt.G/2022/PA.Mks, the Judge prioritized granting Custody Rights to a Husband/Father because the Wife/Mother was deemed unable to fulfill the interests of her child, this was based on the words of the husband and witnesses

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<sup>33</sup> Dicky Patadjenu, Marzuki Marzuki, and Nasaruddin Nasaruddin, "Hadhanah Dan Perwalian/Anak Angkat Dan Solusi Hukum," in *Prosiding Kajian Islam Dan Integrasi Ilmu Di Era Society 5.0*, vol. 3, 2024, 510–16, <https://jurnal.uindatokarama.ac.id/index.php/kiiies50/article/view/3305>.

<sup>34</sup> Arifin Abdullah and Siti Nursyafiqah Binti Ismail, "Faktor-Faktor Gugurnya Hak Hadhanah Kepada Ibu (Analisis Enakmen Keluarga Islam Pulau Pinang No. 5 Tahun 2004 Ditinjau Menurut Kajian Fiqh)," *El-Usrah: Jurnal Hukum Keluarga* 1, no. 1 (2018): 75–91, <https://doi.org/10.22373/ujhk.v1i1.5565>.

<sup>35</sup> Babur Rahman and Nanik Paripati Qomaria, "Hak Asuh Anak Pasca Perceraian Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Al-Muqaranah: Jurnal Perbandingan Mazhab Dan Hukum* 2, no. 1 (2024): 20–28, <https://doi.org/10.55210/jpmh.v2i1.341>.

<sup>36</sup> Cherly Melvia Joeng Hans, Jessica Chua, and Nadiaintanceria, "Analisis Perlindungan Hukum Atas Hak Asuh Anak Dalam Perceraian Menurut Hukum Perdata," *Jurnal Kewarganegaraan* 8, no. 1 (2024): 970–76, <https://doi.org/10.31316/jk.v8i1.6450>.

who said that the Wife had left her child before the divorce and this action was considered as disobedience to the husband or *Nusyuz*. There is one doctrine in the *Fiqh* book that is often included by Judges in their considerations, namely: Bajuri Book, Juz II page 195, which states:

وإذا فارق الرجل زوجته وله منها ولد فهي أحق بحضائته

"If a man divorces his wife, and he has a child from that marriage, then his wife has the right to care for the child."<sup>37</sup>

The above doctrine is often used under the pretext of the judge's opinion regarding *hadhanah*. If it is based on the words above, it is clear that a wife has more rights in caring for children, but the above considerations can be put aside if the children's interests must take priority. All considerations given by the judge will be in the interests of the child. A child is prioritized in the judge's considerations.<sup>38</sup> As in the judge's considerations in Decision No. 2081/Pdt.G/2020/PA.Mks, considering, that based on the description of the considerations above, and the fact that the Plaintiff has no evidence of bad behavior as referred to in Article 49 paragraph (1) of Law Number 1 of 1974, in order to maintain the welfare and support the growth and development of the child physically and psychologically, the right of *hadhanah* over the child is appropriate to be given to the Plaintiff (his biological father), at least until the child reaches the age of *mumayyiz* or 12 years, as regulated in Article 105 letter a of the Compilation of Islamic Law.

In addition, the Court also considered the jurisprudence of the Supreme Court of the Republic of Indonesia, including:

- a. Decision No. 239 K/SIP/1968 on March 15, 1969;
- b. Decision No. 102 K/SIP/1973 on April 24, 1975;
- c. Decision No. 27 K/AG/1982 on August 31, 1983;

which essentially states that the biological mother is the party with the greatest right to care for a young child, unless there is a reason that waives this right. However, in Jurisprudence No. 110 K/AG/2007 on November 13, 2007, it is emphasized that the main consideration in determining the right to *hadhanah* is the welfare and best interests of the child, not merely who normatively has the right.<sup>39</sup>

### 3. Judge's Efforts Towards Acts of Breach of Contract in the *Hadhanah*

In the practice of implementing *hadhanah* rights or child care after divorce, it is not uncommon for there to be violations of agreements or court decisions regarding the rights

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<sup>37</sup>Putusan No. 98/Pdt.G/2022/PA/Mks.

<sup>38</sup> Fauzi Ardian, "Sengketa Hadhanah (Hak Asuh) Anak Perspektif Hukum Islam Dan Psikologi," *Al-Furqan: Jurnal Agama, Sosial Dan Budaya* 4, no. 3 (2025): 823–33, <https://publisherqu.com/index.php/Al-Furqan/article/view/2596>.

<sup>39</sup>Putusan No. 2081/Pdt.G/2020/PA.Mks.

and obligations of each party, both by the holder of *hadhanah* rights and by other parties. The judge's decision is often indifferent to one or the other party involved in the case. With the decision of the holder of *hadhanah* or child custody, it often happens that one party does not allow their child to meet with the other party. This action is a breach of contract because there is a prohibition carried out by one party to meet with their child.<sup>40</sup> In an interview, the judge said that:

*"An action prohibiting access to meetings carried out by one of the parties can be sued in court to revoke custody rights based on the provisions stipulated in the decision."*<sup>41</sup>

There are several decisions we can use as references to understand judges' actions regarding breaches of custody. In decision No. 98/Pdt.G/2022/PA.Mks.

Considering that, therefore, the Panel of Judges *ex officio* determines the obligation for the Applicant as the holder of *hadhanah* rights over his children, namely XXXXXXXXXXXXX (aged 6 years), XXXXXXXXXXXXX (aged 4 years), and XXXXXXXXXXXXX (aged 3 years), to provide access to the Respondent as the parent who does not hold *hadhanah* rights to meet or visit the children. If these obligations are not carried out or ignored by the Petitioner, then the Respondent, as the aggrieved party, has the right to submit a request for revocation of the Petitioner's *hadhanah* rights through the available legal mechanisms.

A breach of contract by one of the parties to a dispute can result in a lawsuit for revocation of custody rights. This consideration is certainly an effort by the judge to prevent the revocation of *Hadhanah* or child custody rights. A lawsuit for revocation of child custody rights provides parents with the opportunity to become *Hadhanah* holders. If there is an act of breach of contract, then, based on what has been considered by the judge, the injured party can file a lawsuit regarding child custody rights. In decision No. 1898/Pdt.G/2017/PA.Mks, there are also judge's considerations included in order to provide efforts to take action against acts of breach of contract, the judge's consideration is that parents who have been given custody (*hadhanah*) of their children, if proven to have neglected these responsibilities to the point of hampering the child's growth and development, then this custody rights can be revoked. This provision is in line with Article 30 paragraph (1) of Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 35 of 2014, which emphasizes that parents who do not carry out their obligations to care for, nurture, and protect their children may be subject to restrictions or revocation of custody rights through a court decision.

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<sup>40</sup> Ardian, "Sengketa Hadhanah (Hak Asuh) Anak Perspektif Hukum Islam Dan Psikologi."

<sup>41</sup> Drs. Makka. A (56 years old), Judge at the Makassar Religious Court, *Interview*, June 16, 2025.



## Conclusion

This study shows that breaches of contract in *hadhanah* (child custody) cases involve two main aspects: failure to fulfill the custodial rights holder's obligations to the child and actions that prevent one party—either the father or the mother—from seeing their child. Both forms of breach have the potential to negatively impact the child's emotional, psychological, and social development. Therefore, the judges at the Makassar Religious Court place this issue as the main focus in efforts to uphold substantive justice, not just formal justice, while remaining based on the principle of *maqāṣid al-syarī'ah* and the principle of the best interests of the child. In determining custody, the judges consider three fundamental interrelated aspects, namely: (1) the age of the child, where children who have not yet reached puberty or are still *mumayyiz* are prioritized to be cared for by the mother; (2) the moral, spiritual, and economic suitability of the parents; and (3) the interests and suitability of the child's life, including guarantees of affection, security, and adequate education. However, the judge does not immediately grant custody to the mother solely based on the child's age, but still assesses the eligibility of each party comprehensively through objective evidence and legal considerations.

Prohibiting or restricting access for one party to see their child is categorized as a form of breach of contract, as it hinders the fulfillment of the child's right to affection and balanced care. To anticipate this, judges provide legal space for the aggrieved party to file a lawsuit to revoke custody rights. This step demonstrates judicial responsibility to ensure child protection and prevent breaches in the implementation of *hadhanah*, while also reflecting the integration of legal, moral, and social justice values.

## References

- Abdillah, Nur. "Analisis Pendapat Madzhab Syafi'i Terhadap Perkara Cerai Talak Pada Putusan Nomor 271/Pdt.G/2022/PA.Prob." *Sakina: Journal of Family Studies* 7, no. 1 (2023): 153–62. <https://doi.org/10.18860/jfs.v7i1.3183>.
- Abdullah, Arifin, and Siti Nursyafiqah Binti Ismail. "Faktor-Faktor Gugurnya Hak Hadhanah Kepada Ibu (Analisis Enakmen Keluarga Islam Pulau Pinang No. 5 Tahun 2004 Ditinjau Menurut Kajian Fiqh)." *El-Usrah: Jurnal Hukum Keluarga* 1, no. 1 (2018): 75–91. <https://doi.org/10.22373/ujhk.v1i1.5565>.
- Ambarwati, Adinda Alifia. "Analisis Terhadap Putusan Pengadilan Tinggi Palu Nomor 4/Pdt/2021/Pt Pal Tentang Penetapan Hak Asuh Anak Pasca Perceraian Kepada Predana Ditinjau Dari Hukum Adat Bali." *Jurnal Humaniora Dan Sosial Sains* 1, no. 1 (2024): 73–83. <https://humaniorasains.id/jhss/article/view/30>.
- Ardian, Fauzi. "Sengketa Hadhanah (Hak Asuh) Anak Perspektif Hukum Islam Dan Psikologi." *Al-Furqan: Jurnal Agama, Sosial Dan Budaya* 4, no. 3 (2025): 823–33.

<https://publisherqu.com/index.php/Al-Furqan/article/view/2596>.

- Aulia, Mohamad. "Analisis Hukum Terhadap Hak Asuh (Hadhanah) Anak Akibat Perceraian : Analisis Hukum Terhadap Hak Asuh (Hadhanah) Anak Akibat Perceraian." *Jurnal RASI* 4, no. 1 (2024): 23–38. <https://doi.org/10.52496/rasi.v4i1.165>.
- Ayu, Rizqa Febry, and Kasmi. "Protection of Children as a Philosophical and Sociological Base for the Age Limit: Maqasid Shari'a Version of Jasser Auda." *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 22, no. 1 (2022): 20–41. <https://doi.org/10.24252/al-risalah.vi.25489>.
- Fauzan, Ach., and Moh. Hamzah. "Pendekatan Holistik Dalam Hak Asuh Anak Pasca Perceraian: Perspektif Maqasid Syari'ah Al-Tahir Ibnu Asyur." *Al-Rasikh: Jurnal Hukum Islam* 13, no. 1 (2024): 111–26. <https://doi.org/10.38073/rasikh.v13i1.1747>.
- Fawzi, Ramdan. "Hak Hadhanah Dalam Perceraian Karena Pindah Agama Perspektif Hukum Islam." *Tahkim: Jurnal Peradaban Dan Hukum Islam* 1, no. 2 (2018): 94–105. <https://doi.org/10.29313/tahkim.v1i2.4106>.
- Fikri, Ahmad Ziyen. "Hak Asuh Anak (Hadhanah) Di Bawah Umur Setelah Terjadinya Putusan Perceraian Di Pengadilan Agama Jakarta Barat Dalam Perspektif Hukum Islam Dan Hukum Positif (Studi Putusan Nomor 679/Pdt. G/2022/PA. JB)." Universitas Nahdlatul Ulama Indonesia, 2023. <https://repository.unusia.ac.id/id/eprint/150/>.
- Hans, Cherly Melvia Joeng, Jessica Chua, and Nadiaintanceria. "Analisis Perlindungan Hukum Atas Hak Asuh Anak Dalam Perceraian Menurut Hukum Perdata." *Jurnal Kewarganegaraan* 8, no. 1 (2024): 970–76. <https://doi.org/10.31316/jk.v8i1.6450>.
- Holid, Muhammad. "Hak Asuh Anak Pasca Perceraian: Studi Kasus Murtadnya Seorang Ibu Di Lombok Timur Bondowoso." *Jurnal Asa: Jurnal Kajian Hukum Keluarga Islam* 6, no. 2 (2024): 12–29. <https://doi.org/10.58293/asa.v6i2.110>.
- Ihwanudin, Nandang. "Pemenuhan Kewajiban Pasca Perceraian Di Pengadilan Agama." *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 10, no. 1 (2019): 51–68. <https://doi.org/10.15575/adliya.v10i1.5146>.
- Islami, Irfan. "Legalitas Penguasaan Hak Asuh Anak Dibawah Umur (Hadhanah) Kepada Bapak Pasca Perceraian." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 2 (2019): 181–94. <https://doi.org/10.24252/al-qadau.v6i2.10715>.
- Kalsum, Ummu. "Pertimbangan Hakim Terhadap Nafkah Istri Dalam Kasus Cerai Talak Di Pengadilan Agama Watampone Kelas 1A." *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 6, no. 2 (2019): 57. <https://doi.org/10.24252/jurisprudentie.v6i2.9766>.
- Katulistiwa, Manik Lingkar. "Pemaknaan Perjanjian Lainnya Dalam Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Tahun 2015." Universitas Narotama, 2021. <http://repository.narotama.ac.id/1185/>.
- Khair, Umul. "Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian." *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (2020): 291–306. <https://doi.org/10.33760/jch.v5i2.231>.
- Lie, Cathleen, Vivian Clarosa, Yohanes Andrew Yonatan, and Mia Hadiati. "Pengenalan Hukum Kontrak Dalam Hukum Perdata Indonesia." *Jurnal Kewarganegaraan* 7, no. 1 (2023): 918–24. <https://doi.org/10.31316/jk.v7i1.4831>.

- Mahmudah, Husnatul, Juhriati Juhriati, and Zuhrah Zuhrah. "Hadhanah Anak Pasca Putusan Perceraian (Studi Komparatif Hukum Islam Dan Hukum Positif Indonesia)." *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 2, no. 1 (2019): 57–88. <https://doi.org/10.52266/sangaji.v2i1.263>.
- Maulana, Dudung. "Telaah Pasal 105 Kompilasi Hukum Islam Tentang Hadhanah." *Posita: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 1–9. <https://doi.org/10.52029/pjhki.v1i01.133>.
- Melani, Faradillah, and Abdul Rahman Hi. Abdul Qayyum. "Sanksi Administrasi Terhadap Perkawinan Kedua Pegawai Negeri Sipil Yang Belum Berkekuatan Hukum Tetap Dari Perceraian Pertama Pada Pengadilan Agama Sinjai: Analisis Terhadap KUHPer Dan KHI." *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 4, no. 2 (2023): 446–63. <https://doi.org/10.24252/shautuna.vi.32128>.
- Muhammad Riandi Nur Ridwan, and Yana Sukma Permana. "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian." *The Juris* 6, no. 2 (2022): 441–51. <https://doi.org/10.56301/juris.v6i2.616>.
- Mustafa, Adriana, and Arwini Bahram. "Relasi Gender Dalam Pernikahan Keturunan Sayyid Di Desa Cikoang Kabupaten Takalar; Studi Kasus Perbandingan Hukum Islam Dan Hukum Adat." *Mazahibuna: Jurnal Perbandingan Mazhab* 2, no. 2 (2020): 241–54. <https://doi.org/10.24252/mh.v2i2.18137>.
- Patadjenu, Dicky, Marzuki Marzuki, and Nasaruddin Nasaruddin. "Hadhanah Dan Perwalian/Anak Angkat Dan Solusi Hukum." In *Prosiding Kajian Islam Dan Integrasi Ilmu Di Era Society 5.0*, 3:510–16, 2024. <https://jurnal.uindatokarama.ac.id/index.php/kiiies50/article/view/3305>.
- Putri, Levi Winanda, Anis Hidayatul Imtihanah, Fakultas Syariah, and Iain Ponorogo. "Hak Hadhanah Anak Yang Belum Mumayyiz Kepada Ayah Kandung Perspektif Huku Islam (Studi Desa Kincang Wetan Madiun )." *Jurnal Antologi Hukum* 1, no. 2 (2021): 132–44. <https://doi.org/10.21154/antologihukum.v1i2.305>.
- Rahman, Babur, and Nanik Paripati Qomaria. "Hak Asuh Anak Pasca Perceraian Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia." *Al-Muqaranah: Jurnal Perbandingan Mazhab Dan Hukum* 2, no. 1 (2024): 20–28. <https://doi.org/10.55210/jpmh.v2i1.341>.
- Rahmawati, Doepina. "Kedudukan Anak Bagi Orangtua Dalam Al-Qur'an." UIN Sunan Gunung Djati Bandung, 2023. <https://digilib.uinsgd.ac.id/76358/>.
- Risandi, Muh Risal, and Muhammad Sabir Maidin. "Perlindungan Hukum Terhadap Anak Jalanan Akibat Perceraian Orang Tua Di Kabupaten Pangkep; Studi Komparatif Hukum Positif Dan Hukum Islam." *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 2, no. 1 (2021): 293–308. <https://doi.org/10.24252/shautuna.v2i1.16282>.
- Rodliyah, Nunung, Delvi Liana, Chandra Muliawan, and Rissa Afni Martinouva. "Pemberian Hak Asuh Anak (Hadhanah) Dalam Perkara Perceraian Di Pengadilan Agama Pesawaran (Studi Putusan: No. 0007/Pdt.G/2019/PA.Gdt.)." *Jurnal Hukum Malahayati* 2, no. 2 (2021): 1–12. <https://ejournalmalahayati.ac.id/index.php/hukummalahayati/article/view/4141>.
- Rosmita, Andi Nur Afifah, and Nasaruddin. "The Position of the Guardian in Marriage

Perspective of the Hanafi and the Al-Shafi'i Madhhab." *Mazahibuna: Jurnal Perbandingan Mazhab* 4, no. 2 (2022): 152–72.  
<https://doi.org/10.24252/mh.vi.30969>.

Safitri, Yuliana, and Abdul Syatar. "Peranan Dan Efektivitas Hakim Di Persidangan Dalam Menekan Angka Perceraian." *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 3, no. 1 (2022): 439–48. <https://doi.org/10.24252/shautuna.vi.26719>.

Septian, Randy, Meitri Widya Pangestika, and Inri Ravis. "Studi Kasus Terhadap Hak Asuh Anak Dalam Putusan Nomor 1365/Pdt. G/2021/PA. BPP Di Pengadilan Agama Balikpapan." *Lex Suprema: Jurnal Ilmu Hukum* 4, no. 1 (2022): 839–54.  
<https://doi.org/10.12345/lexsuprema.v4i1.584>.

Thalib, Mutia Cherawaty. "Implications of Mixed Marriage in the Perspective of Gorontalo Customary Law and Its Reality Based on International Private Law Principles." *Jambura Law Review* 5, no. 1 (2023): 179–98. <https://doi.org/10.33756/jlr.v5i1.16798>.

Umami, Indah, Annisa Indira Hondhe Hudsaha, and Leli Joko Suryono. "Kekuasaan Orang Tua Terhadap Anak Setelah Perceraian." *Borneo Law Review* 6, no. 2 (2023): 254–70.  
<https://doi.org/10.35334/bolrev.v6i2.3247>.

#### Interview

Drs. Makka. A (56 years old). Judge at the Makassar Religious Court. *Interview*. June 16, 2025

Hariyati (45 years old). Registrar at the Makassar Religious Court. *Interview*. April 25, 2025