



Judicial Shift in Paternal Child Custody Based on The Best Interests Principle

Pergeseran Yudisial Hak Asuh Anak kepada Ayah Berdasarkan Prinsip Kepentingan Terbaik Anak

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Abstract

This article analyzes the judicial shift in granting child custody to fathers within Indonesian Islamic family law. Although hadhanah doctrine generally prioritizes mothers for children who have not reached mumayyiz age, Decision Number 2/Pdt.G/2025/PA.Tlm shows a different judicial construction. This normative legal research uses statutory and case approaches to examine the tension between maternal presumption under the Compilation of Islamic Law and the best interests of the child principle under Indonesian marriage and child protection laws. The study argues that paternal custody is not a deviation from hadhanah, but a contextual application of child-centered adjudication. The judge considered the father's actual caregiving capacity, the child's welfare, and the mother's absence of objection as relevant legal facts. This decision reflects progressive legal reasoning that moves custody determination from formal parental priority toward evidentiary assessment of protection, stability, and child development in post-divorce family disputes before Indonesian religious courts today more decisively.

Abstrak

Artikel ini menganalisis pergeseran yudisial dalam pemberian hak asuh anak kepada ayah dalam hukum keluarga Islam Indonesia. Meskipun doktrin hadhanah umumnya memprioritaskan ibu bagi anak yang belum mumayyiz, Putusan Nomor 2/Pdt.G/2025/PA.Tlm memperlihatkan konstruksi hukum yang berbeda. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan dan pendekatan kasus untuk menelaah ketegangan antara presumsi maternal dalam Kompilasi Hukum Islam dan prinsip kepentingan terbaik anak dalam hukum perkawinan serta perlindungan anak. Artikel ini berargumen bahwa pengasuhan oleh ayah bukan penyimpangan dari hadhanah, melainkan penerapan kontekstual peradilan yang berpusat pada anak. Hakim mempertimbangkan kemampuan pengasuhan riil ayah, kesejahteraan anak, dan ketiadaan keberatan ibu sebagai fakta hukum yang relevan. Putusan ini mencerminkan penalaran hukum progresif yang menggeser penentuan hak asuh dari prioritas parental formal menuju penilaian berbasis pembuktian atas perlindungan, stabilitas, dan perkembangan anak pascaperceraian di lingkungan peradilan agama Indonesia. Dengan demikian, hak asuh merupakan tanggung jawab perlindungan anak, bukan hak absolut salah satu orang tua.



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A. INTRODUCTION

1. Background

In the Islamic Family Law system in Indonesia, the care of children who have not been mumayyiz is generally placed within the framework of maternal presumption.¹ Article 105 of the compilation of Islamic law gives priority to the care of the mother for children who are not yet 12 years old, while children who have mumayyiz are given space to choose to live with their father or mother. This construction shows that Islamic family law gives recognition to the child's emotional closeness and need for a mother figure in the early stages of growth. However, Decision Number 2 / Rev.G/2025 / PA.Tlm showed a different configuration because the judge assigned custody of the child to the father. The difference between the norm of hadhanah prioritizing mothers and the judgment of judges who provide care to fathers shows an important tension between the normative approach that is parent-centered and the principle of child protection that is child-centered.

The tension is important because child custody cannot be understood solely as a formal right of one of the parents. In divorce cases, parenting is directly related to the continued maintenance, education, protection, emotional stability, and development of the child. The marriage law affirms that divorce does not remove the obligation of the father and mother to maintain and educate their children based on the interests of the child.² Meanwhile, the child protection law places children as legal subjects who have the right to live, grow, develop, and obtain protection from violence and discrimination.³ Thus, it is not enough for the court to assess only who is normatively given more priority, but it must ascertain who is actually better able to guarantee the best interests of the child.

¹ 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>.

² Tiara Ananda Rahman and Wardani Rizkianti, "Penyelesaian Sengketa Hak Asuh Anak Setelah Perceraian: Perbandingan Antara Indonesia Dan Inggris," *Jurnal USM Law Review* 7 7, no. 1 (2024): 248, <https://doi.org/10.26623/julr.v7i1.8801>.

³ Rahman and Rizkianti.

In the context of hadhanah, the priority of caring for mothers does have a historical, psychological, and normative basis. The mother is seen as the one who in general has a stronger emotional closeness with the child, especially at a time when the child is not yet able to take care of himself.⁴ However, the priority cannot be read as an absolute right that excludes the possibility of paternal care. The eligibility of caregivers should still be tested on the basis of a real ability to care for, Educate, protect and provide a safe environment for the child. If the facts of the trial show that the father is better able to ensure the stability and well-being of the child, then the granting of custody to the father cannot necessarily be regarded as a deviation from the hadhanah, but rather as a form of contextual interpretation of the purpose of the upbringing itself.

Decision Number 2 / Rev.G/2025 / PA.Tlm is interesting because it shows how religious court judges read hadhanah norms not rigidly, but in relation to the facts of the trial and the best interests of the child. One of the important facts in the case is the absence of objections on the part of the mother to the establishment of custody to the father. This fact is not only of procedural value, but can also be read as part of the construction of the judge's considerations in assessing the readiness, responsibility and feasibility of parenting. Therefore, the decision is important to be examined not only as an individual legal event, but as a reflection of a paradigm shift in child custody adjudication in the religious court environment.

The study of granting child custody to fathers has been widely discussed in the family law literature.⁵ In general, the academic debate about shifting custody to fathers can be mapped into two main trends.⁶ The first tendency places maternal incompetence, both morally, psychologically, economically, and parenting responsibilities, as the main reason for the transfer of custody to the father.⁷ The second trend emphasizes children's preferences, parenting stability, emotional relationships, and the principle of the best

⁴ Khaizaran Atthallah, Rafardhan Rafardhan, and Firash Qazzafi, "Analysis of Fiqh Review of Child Custody Rights After Divorce (Ḥaḍānah) in Religious Court Decisions," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasaḥ and Muamalah* 1, no. 4 (December 30, 2024): 189–97, <https://doi.org/10.35335/4m7ekc86>.

⁵ Mohamad Salman Podungge and Siah Khosy'ah, "The Portrait of Children Custody Rights in Indonesia: A Study of Mother's Rights in Child Custody from Gender Perspective," *Khazanah Sosial* 4, no. 3 (2022): 545–55, <https://doi.org/10.15575/ks.v4i3.18845>.

⁶ Anisa Zahara et al., "Tinjauan Hukum Terhadap Hak Asuh Anak Pasca Perceraian Berdasarkan Undang-Undang Nomor 35 Tahun 2014 Pada Putusan No. 899/Pdt.G/2023/PA.Tnk," *AURELIA Jurnal Penelitian Dan Pengabdian Masyarakat Indonesia* 5, no. 1 (2026): 490–98, <https://doi.org/10.57235/aurelia.v5i1.7785>.

⁷ Anggit Wasesa Praja, Andy Apriansah, and Burhanuddin Susanto, "Pemberian Hak Asuh Anak Kepada Ayah Antara Positivisme Hukum Dan Hukum Progresif," *FUNDAMENTAL Jurnal Ilmiah Hukum* 12, no. 2 (2024): 527–36, <https://doi.org/10.34304/jf.v12i2.184>.

interests of children as the basis for Judge consideration.⁸ However, most previous studies still tend to discuss the transition of custody within the framework of parental eligibility in general, and have not specifically placed the absence of exceptions or objections on the part of the mother as an important variable in the formation of the ratio decidendi judge.⁹

Based on this blank space, this article specifically examines decision Number 2/Pdt.G/2025 / PA.Tlm by connecting the doctrine of hadhanah, the principle of the best interests of the child, and the construction of the judge's consideration in granting custody to the father. The novelty of this article lies in the reading that the absence of objections on the part of the mother is not just a passive fact in procedural law, it can be a factual element that affects the reasoning of judges in assessing the feasibility of parenting. This article maintains the argument that judgment Number 2 / Rev.G/2025 / PA.Tlm marks a paradigm shift in religious courts from a maternal presumption approach towards applying the best interests of the child principle based on real evidence at trial. The shift is important because it shows that child custody can no longer be understood as an automatic consequence of paternal or maternal status, but rather as a legal responsibility that must be tested through the actual feasibility, stability of parenting and protection of the child's future.

2. Research Questions

Based on this background, the legal issues in this article are formulated into two main dimensions.

First, how does the doctrine of best interests for children deconstruct the rules of hadhanah that normatively prioritize mothers in Indonesia's positive legal system?

Second, whether the ratio decidendi judge in Decision No. 2 / Rev.G/2025 / PA.Tlm has represented a progressive and proportionate legal discovery in response to the absence of parental objection on the part of the mother?

3. Research Methods

This study is a normative legal research formulated through legislation and case approach. The statutory approach is used not merely to inventory norms, but to dissect the coherence between the hadhanah arrangements in the compilation of Islamic law, the obligations of parents in the Marriage Law, and the principle of the best interests of the

⁸ Podungge and Khosyi'ah, "The Portrait of Children Custody Rights in Indonesia: A Study of Mother's Rights in Child Custody from Gender Perspective."

⁹ Praja, Apriansah, and Susanto, "Pemberian Hak Asuh Anak Kepada Ayah Antara Positivisme Hukum Dan Hukum Progresif."

child in the Child Protection Law. Meanwhile, the case approach is used to evaluate the ratio decidendi judge in Decision No. 2 / Pdt.G/2025 / PA.Tlm, especially in assessing the juridical and factual basis for the determination of custody to the father.

Legal materials used consist of primary legal materials in the form of legislation, compilation of Islamic law, and court decisions, as well as secondary legal materials in the form of books and journal articles relevant to the issue of child custody. All legal materials are collected through library studies by searching, inventorying, and classifying legal documents according to the focus of the research. The analysis was carried out by deductive syllogism method and systematic and teleological interpretation to read the relationship between hadhanah norms, child protection principles, and legal facts in the decision, resulting in prescriptive conclusions.

B. DISCUSSION

1. Deconstruction of Maternal presumption in the arrangement of Hadhanah through the principle of the best interests of the child

In Islamic Family Law in Indonesia, the arrangement of hadhanah for children who have not been mumayyiz is often understood as a norm that gives priority to the mother.¹⁰ Article 105 of the compilation of Islamic law places the mother as the holder of the right to the maintenance of children who are not yet 12 years old, while children who have mumayyiz are given the right to choose to be in the care of their father or mother.¹¹

The construction shows the maternal presumption, which is the normative assumption that the mother is the closest and most feasible party to carry out care in the early stages of Child Development. This assumption has a social and psychological basis because the child at an early age generally has a strong emotional dependence on the mother. In the context of resolving custody disputes, however, the presumption cannot be read in absolute terms because childcare concerns not only biological proximity, but also feasibility, responsibility, stability and the actual ability to guarantee the protection of the child.¹²

¹⁰ Annisa Fitria and Nisa Kamila Azzahra, "Analisa Yuridis Hak Asuh Anak Dalam Putusan Pengadilan Agama Tigaraksa (Studi Kasus Putusan Nomor 6110/Pdt.G/2022/PA.Tgrs)," *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (August 1, 2025): 1565–76, <https://doi.org/10.57250/ajsh.v5i2.1376>.

¹¹ "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam," 1991.

¹² Saraswati Rika, "Accommodating the 'Best Interests of the Child' in Custody Disputes in the Indonesian System/s of Family Law," *International Journal of Law, Policy and the Family* 35, no. 1 (March 18, 2021): 1–20, <https://doi.org/10.1093/lawfam/ebab011>.

The rigidity of hadhanah norms in KHI needs to be systematically read together with the Marriage Law and the Child Protection Law. Article 41 of the Marriage Law confirms that the consequences of Divorce Do not remove the obligation of the father and mother to maintain and educate children based on the interests of the child.¹³ This norm does not give absolute priority to one of the parents, but leaves the resolution of disputes over the control of the child to the court. Meanwhile, the child protection law places the child's right to live, grow, develop and obtain protection as the main orientation in any action that concerns the child.¹⁴ Thus, if the KHI shows a more parent-centered approach because it initiates the regulation of who is entitled to care, then the Marriage Law and the Child Protection Law show a more child-centered approach because they place the interests of the child as the main measure.¹⁵

The tension between maternal presumption and the child's best interest principle shows that Indonesian positive law does not fully stand in one rigid regulatory line.¹⁶ On the one hand, KHI provides an important normative structure to maintain certainty regarding who is prioritized in the care of children yet mumayyiz.¹⁷ On the other hand, however, the principle of child protection demands that every parenting decision be tested on the basis of the concrete circumstances of the child and the actual capacities of the parents. Therefore, the priority to the mother should be understood as the starting point of the assessment, not as a final result that cannot be shifted. If, in the examination of the case, circumstances are found that indicate that the care by the mother is no longer in the best interests of the child, the judge has room to interpret the norm of hadhanah contextually.¹⁸

¹³ "Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan," 1974.

¹⁴ "Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," 2014.

¹⁵ Rika Saraswati, Emanuel Boputra, and Yuni Kusniati, "Pemenuhan Hak Anak Di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal Dan Pengasuhan Bersama," *Veritas et Justitia* 7, no. 1 (June 28, 2021): 188–210, <https://doi.org/10.25123/vej.v7i1.4066>.

¹⁶ Farohah Atul Asyuro and Ahmad Sayehu, "Analisis Komparatif Hak Asuh Anak Dalam Kompilasi Hukum Islam Dan Undang-Undang Di Indonesia," *Arus Jurnal Sosial Dan Humaniora* 5, no. 3 (2025): 3749–54, <https://doi.org/10.57250/ajsh.v5i3.1747>.

¹⁷ Ananda Sabina Zahira, "Optimalisasi Prinsip Kepentingan Terbaik Anak Dalam Penetapan Hak Asuh Pasca Perceraian : Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Federalisme*. 2, no. 3 (2025): 163–74, <https://doi.org/10.62383/federalisme.v2i3.1021>.

¹⁸ "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam."

The principle of the best interests of the child serves as the basis for deconstruction of the overly formalistic understanding of hadhanah.¹⁹ Deconstruction in this context does not mean negating the position of the mother in the care, but rather rejecting the reading that child custody is automatically attached to the mother without testing against factual conditions. Child custody should be placed as a legal responsibility, not as the exclusive right of the father or mother. Therefore, the main question in the case of hadhanah is no longer “who is more entitled normatively”, but “who is better able to ensure the safety, stability, education, affection and development of children”. This shift in orientation is what allows the father to be designated as the holder of custody if it factually better meets the needs of the child.²⁰

Within the framework, the father cannot be positioned only as the party who is obliged to bear the costs of maintaining the child. Although the KHI differentiates between direct care by the mother and financing by the father,²¹ the development of child protection laws demands a broader reading of the role of the father.²² Fathers can be primary caregivers as long as they are able to prove their worthiness, responsibility, emotional closeness, and capacity to provide a safe environment for the child. Thus, the granting of custody to the father is not a deviation from Islamic family law, but rather a consequence of a systematic interpretation of the norms of hadhanah, parental obligations and principles of child protection.²³

Such reading also prevents the child from being placed as an object of struggle for rights between father and mother. In post-divorce disputes, children are often in a vulnerable position because parenting decisions can determine their life stability, access to education, social environment, and psychological development. Therefore, the law must move from the logic of parental ownership to the logic of child protection. If the mother meets the conditions of upbringing and is able to ensure the interests of the child, then maternal priorities remain relevant for implementation. However, if the legal facts

¹⁹ Handika Fuji Sunu, Pagar, and M. Amar Adly, “Reconstruction of Hadanah With The Concept of Shared Parenting in Religious Courts,” *Al-Ulum* 23, no. 2 (December 5, 2023): 371–90, <https://doi.org/10.30603/au.v23i2.4303>.

²⁰ Rika, “Accommodating the ‘Best Interests of the Child’ in Custody Disputes in the Indonesian System/s of Family Law.”

²¹ Gushairi Gushairi, “Pelaksanaan Pemenuhan Nafkah Anak Pasca Perceraian Di Provinsi Riau,” *Hukum Islam* 22, no. 1 (June 6, 2022): 23, <https://doi.org/10.24014/jhi.v22i1.17198>.

²² Ervina Ervina and Yusup Hidayat, “Studi Komparatif Hak Asuh Anak Dibawah Umur Kepada Ayah Kandung Pasca Perceraian (Putusan Perkara Pengadilan Agama),” *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (March 25, 2025): 3199–3209, <https://doi.org/10.38035/jihhp.v5i4.4361>.

²³ “Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan.”

show that the father is better able to provide protection and stability, then the principle of the best interests of the child should be given greater weight than simply normative priorities.²⁴

Thus, the doctrine of the best interests of the child deconstructs the rigid hadhanah rule by changing the function of Article 105 KHI from a norm understood as an automatic determination to a norm that must be tested through concrete conditions. Upbringing by the father becomes possible not because the position of the mother is neglected, but because the interests of the child are placed as the highest orientation in legal reasoning. In this context, Indonesia's positive law opens space for judges to make a proportional assessment of parental eligibility, so that the determination of child custody does not stop at the maternal presumption, but rather moves towards more substantive child protection.²⁵

2. Ratio Decidendi judges and progressive legal discoveries in the establishment of custody to the father

Decision Number 2 / Rev.G/2025 / PA.Tlm shows an important space for judges to make legal findings on post-divorce child custody disputes. In this matter, the main question lies not only in who is normatively given priority as a caregiver, but in how the judge assesses the feasibility of parenting based on the facts revealed at the hearing. Formally, Article 105 of the compilation of Islamic law does give priority to mothers in the maintenance of children who have not mumayyiz. However, these priorities cannot be separated from the main goal of hadhanah, which is to ensure the safety, maintenance, education, and development of children. Therefore, when the judge establishes custody to the father, the ruling needs to be read as the result of legal reasoning that tests the norm of hadhanah through the principle of the best interests of the child.²⁶

Factually, the determination of custody to the father in decision Number 2 / Rev.G/2025 / PA.The Tlm is not born from the abstract application of the norm, but rather from the configuration of the facts of the trial that show that the mother does not raise objections to the application for custody of the child by the father. This fact is important because the parenting dispute in the case did not develop into a counterclaim between

²⁴ Saraswati, Boputra, and Kusniati, "Pemenuhan Hak Anak Di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal Dan Pengasuhan Bersama."

²⁵ Rika, "Accommodating the 'Best Interests of the Child' in Custody Disputes in the Indonesian System/s of Family Law."

²⁶ "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam."

father and mother over who has the most right to take care of the child. In other words, the judge is not dealing with two parenting claims facing each other equally, but is assessing the parenting application by the father in the absence of objections on the part of the mother. Therefore, the absence of such objections becomes both a procedural fact and a material fact that the judge can take into account in assessing the readiness, seriousness and feasibility of upbringing.²⁷

In addition to the absence of objections on the part of the mother, the construction of the judge's consideration also needs to be read from the assessment of the father's ability to perform the parenting function. In this case, the father is not only positioned as the party who is obliged to bear the costs of maintaining the child, but also as the party who is considered to be able to carry out direct maintenance. Such an assessment shows that judges do not separate rigidly between the financing function and the parenting function, but rather read both as part of the parental responsibilities that should be directed towards the protection of the child. Thus, if the father is considered capable of providing maintenance, protection, and stability for the child, the determination of custody to the father can be understood as a concrete application of the principle of the best interests of the child, not just a deviation from the priority of the mother in Article 105 KHI.²⁸

Ratio decidendi judge in this case rests on the relationship between legal norms and the facts of the trial. One of the important facts that has arisen is the absence of objections on the part of the mother to the establishment of custody of the child to the father. The fact cannot be understood solely as a passive attitude in civil procedural law, but rather as a factual circumstance that can affect the judge's assessment of the readiness and seriousness of the upbringing. In the case of hadhanah, the parenting claim is assessed not only from the biological relationship, but also from the real willingness, ability and responsibility to care for the child. Thus, the absence of objection on the part of the mother leaves room for the judge to judge that the care by the father is not contrary to the interests of the child, as long as the father is shown to be able to properly exercise the parental function.

²⁷ "Putusan Pengadilan Agama Tilamuta Nomor 2/Pdt.G/2025/PA.Tlm," 2025.

²⁸ "Putusan Pengadilan Agama Tilamuta Nomor 2/Pdt.G/2025/PA.Tlm."

The consideration showed that the judge did not apply Article 105 of the KHI mechanically. The norm of maternal priority remains recognized, but it is not positioned as a rule that closes the possibility of another assessment. Within the framework of systematic interpretation, Article 105 of the KHI should be read together with Article 41 of the Marriage Law and the provisions in the Child Protection Law. Article 41 of the Marriage Law places the interests of the child as the basis for the maintenance and education obligations by both parents, while the child protection law affirms that the child has the right to live, grow, develop and obtain protection. By systematically reading the norms, the judge has a basis for shifting the orientation of the assessment from the priorities of the parents towards the protection of the child.²⁹

The legal discovery in this ruling is also apparent from the way the judge reads the absence of the mother's objection as part of the overall context of parenting. If in a particular case the mother does not object, does not demand custody, or does not show readiness to carry out the care, then the judge cannot impose a rigid application of the maternal presumption. Rather, the judge must assess whether upbringing by the father guarantees the child more stability in life. Such stability includes the sustainability of the place of residence, the fulfillment of daily needs, access to education, the social environment and emotional relationships that support the development of the child. Thus, what is tested is not only the position of the father or mother as parents, but the actual capacity to ensure that the child is in a safe and proper environment.

In this context, the ruling can be understood as a progressive and proportionate form of *rechtsvinding*. Progressive because the judge does not stop at the textual reading of Article 105 KHI, but rather interprets the norm of *hadhanah* based on the purpose of child protection. Proportionate because the transfer of custody to the father is not done by nullifying the mother's position as a parent, but by taking into account the fact that the mother does not raise objections and the father is considered capable of carrying out the care. This kind of ruling affirms that custody is not an instrument to win over one of the parents, but rather a legal mechanism to determine the party best able to guarantee the best interests of the child.

²⁹ "Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak."

When compared with the trend of previous studies, this verdict shows a different accentuation. A number of studies on the transfer of custody to the father generally place the mother's incompetence, economic conditions, moral behavior, or preferences of the child as the main reasons for the transfer of custody. In Decision Number 2 / Rev.G/2025 / PA.Tlm, the prominent aspect is not merely the proof that the mother is not worthy, but the absence of parental objections from the mother which is then read together with the father's ability to provide care. Thus, this ruling expands the basis for the analysis of the transfer of custody to the father, since the absence of claims or objections from the mother can serve as a factual variable that contributes to shaping the *ratio decidendi* judge.³⁰

Nevertheless, the absence of objections on the part of the mother should not be understood as the sole reason that automatically justifies granting custody to the father. In the perspective of child protection, this fact must still be tested together with the child's condition and the father's eligibility as a caregiver. The judge still needs to ensure that the father has the ability to meet the physical, psychological, educational, and social needs of the child. If the ability is not proven, then the absence of objections from the mother is not enough to justify the establishment of custody to the father. Therefore, the essential value of this ruling lies in the way the judge relates procedural facts, parenting capacity and the principle of the best interests of the child as a whole.

The assignment of custody to the father also cannot be interpreted as the termination of the child's relationship with the mother. Divorce only ends the legal relationship between husband and wife, but does not erase the legal and emotional relationship between the child and both parents. Therefore, even though the father is established as the main custody holder, the mother still has space to establish communication, provide affection, and maintain family relationships with the child as long as it is not contrary to the interests of the child. This reading is important so that the custody decision does not turn into an instrument of exclusion towards one of the parents, but remains oriented towards the balance of the child's relationship with both parents.

Thus, the *ratio decidendi* established by the judge in Decision Number 2/Pdt.G/2025/PA.Tlm represents a remarkably progressive approach to legal discovery, as it successfully shifts the core judicial consideration away from the traditional maternal presumption and firmly toward the paramount principle of the best interests of the child.

³⁰ Saraswati, Boputra, and Kusniati, "Pemenuhan Hak Anak Di Indonesia Melalui Perencanaan Pengasuhan, Pengasuhan Tunggal Dan Pengasuhan Bersama."

In delivering this verdict, the judge did not dismiss the authority or applicability of the Compilation of Islamic Law (KHI); rather, they employed a systematic and teleological interpretation of the *hadhanah* (child custody) norms to ensure they genuinely align with the ultimate goal of comprehensive child protection. By meticulously evaluating the specific circumstances of the case such as the notable absence of any objection from the mother, the demonstrated parenting capability of the father, and the child's fundamental need for a stable, secure, and nurturing environment the court integrated these crucial elements into a robust legal construction.

Consequently, this landmark decision compellingly demonstrates that awarding custody rights to a father is entirely justifiable and legally sound, provided it is anchored in concrete, empirical evidence regarding the actual suitability of care and the overarching welfare of the minor, rather than relying merely on rigid gender roles or the formal status of the father as a parent. Ultimately, this nuanced ruling not only serves the immediate well-being of the child involved but also sets a vital precedent in modern family law jurisprudence, emphasizing factual welfare and emotional stability over dogmatic assumptions.

C. CONCLUSION

This study shows that the principle of best interests for the child deconstructs the rigidity of the *hadhanah* rule that normatively prioritizes the mother, so that child custody cannot be understood as an automatic right of one of the parents. In Decision Number 2 / Rev.G/2025 / PA.Tlm, the judge puts the fact of the trial, the actual capabilities of the father, as well as the absence of objections on the part of the mother as the basis for assessing the feasibility of parenting. The ratio decidendi represents a progressive form of legal discovery because judges do not stop at maternal presumptions in the compilation of Islamic law, but interpret parenting norms in a systematic and teleological way based on the protection of the child. Thus, the establishment of custody to the father can be justified as long as it proves to better guarantee the stability, safety and development of the child.

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