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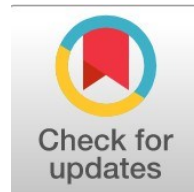
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Hadhanah Reconceptualization in Institutional Child Care Practices

Robi' Alighan Hanantaqi , rahanantaqi@gmail.com (*)

Pascasarjana Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, Indonesia

Wildani Hefni, wildani91@gmail.com

Pascasarjana Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, Indonesia

Moh. Lutfi Nurcahyo, m.lutfinurcahyono@gmail.com

Pascasarjana Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, Indonesia

(*) Corresponding author

Abstract

General Background Hadhanah in Islamic family law traditionally regulates child care based on biological parental responsibility, particularly after divorce, with an emphasis on welfare and protection. **Specific Background** Contemporary social conditions show increasing reliance on child social welfare institutions, such as the Putri 'Aisyiyah Sumbersari Jember institution, which implement structured, value-based child care integrating religious, social, and developmental dimensions. **Knowledge Gap** Classical fiqh and the Compilation of Islamic Law primarily frame hadhanah as an individual parental right, leaving limited conceptual clarity regarding institutional caregiving practices. **Aims** This study aims to reconceptualize hadhanah within institutional child care practices by integrating Islamic law, Kuhn's paradigm shift theory, and modern social welfare perspectives. **Results** The findings indicate a shift from individual to collective guardianship, where institutions function as subjects of hadhanah oriented toward the best interests of the child, encompassing holistic protection including physical, psychological, social, and spiritual needs. Institutional practices demonstrate alignment with maqāṣid syariah and child protection principles, emphasizing structured, professional, and child-centered care. **Novelty** This study introduces hadhanah as a form of collective institutional responsibility (hadhanah jama'iyah), redefining caregiving beyond lineage-based relations into social-professional frameworks. **Implications** There conceptualization bridges classical Islamic jurisprudence, national legal frameworks, and contemporary child welfare practices, providing a more adaptive and contextually relevant model for Islamic family law and institutional child care systems.

Highlights:

- ♦ Institutional caregiving replaces lineage-based custody with collective responsibility frameworks.
- ♦ Holistic protection integrates spiritual, psychological, educational, and social dimensions of care.
- ♦ Child-centered orientation prioritizes long-term development and rights fulfillment.

Keywords: Reconceptualization, Hadhanah, Child Social Welfare Institutions

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Introduction

The concept of hadhanah is one of the key pillars in Islamic family law, closely related to the protection and well-being of children. In Islamic jurisprudence education, hadhanah is defined as the right and responsibility to care for, educate, and protect children until they reach adulthood or become capable of standing independently, both physically and mentally [1]. This understanding positions hadhanah not only as a legal issue but also as a moral and social one, as it directly impacts the continuity of a child's life after divorce or the absence of parents. Within the classical framework, the arrangement of child custody is determined by the closeness of kinship ties and the capacity to offer care, affection, and protection.[2] However, the growing complexity of contemporary family structures, including the increasing number of children who cannot be adequately cared for by their biological families, has prompted the development of social institutions such as the Child Welfare Institute (Lembaga Kesejahteraan Sosial Anak, LKSA), which collectively and institutionally assume the functions of hadhanah. Therefore, it is necessary to reconceptualize hadhanah in order to harmonize the framework of Islamic law with evolving social needs.

Meanwhile, in contemporary social reality, the function of hadhanah has broadened in meaning. Hadhanah is not only understood as child custody post-divorce but also includes efforts to care for orphaned, abandoned children, or those who have lost their parents due to various social factors. In Indonesia, social welfare institutions such as the Lembaga Kesejahteraan Sosial Anak (LKSA) Putri 'Aisyiyah Summersari Jember play an active role in carrying out child-rearing functions that substantively align with the principles of hadhanah. However, a notable conceptual gap emerges between the practice of hadhanah in social institutions and its interpretation in classical fiqh. Classical fiqh emphasizes hadhanah as an individual parental right, whereas social institutions implement it collectively as a form of social responsibility. This tension gives rise to a fundamental question of how the concept of hadhanah can be reinterpreted so that it remains grounded in the sources of Islamic law while also being responsive to contemporary social needs.[3] Within the framework of positive law in Indonesia, the regulation of hadhanah is stipulated in Article 105 of the Compilation of Islamic Law (KHI), which provides that children under the age of 12 are to be placed under the care of their mother, unless she is deemed unqualified. This provision reinforces the perspective of classical fiqh and demonstrates its alignment with the structure of Islamic family law in Indonesia.[4] However, this regulation does not fully address the complexity of children who live outside the scope of biological families, such as children under the care of social institutions.

This condition indicates the need to reconstruct the hadhanah paradigm to be more adaptive to social developments. In the theory of scientific change, Thomas S. Kuhn explains that every science undergoes a paradigm shift when the old paradigm can no longer address the issues arising in reality [4]. In this context, classical hadhanah faces the challenge of its inability to accommodate collective child-rearing practices in social institutions such as the LKSA Putri 'Aisyiyah Summersari Jember. The accumulated factors include high divorce rates, structural poverty, and the lack of support from the nuclear family, which trigger a crisis in conventional hadhanah, thereby prompting the role of child welfare institutions like LKSA Putri 'Aisyiyah Summersari Jember to adopt a more progressive institutional paradigm. This paradigm shift in hadhanah can be observed in the perspective of fiqh (KHI) and in the field practices at LKSA Putri 'Aisyiyah Summersari Jember, as shown in the following table [5]:

Table 1. Paradigm Shift in the Re-conceptualization of Hadhanah from Fiqh (KHI) to Field Practices

Aspect Analysis of	Fiqh Paradigm (KHI)	KHI Article	Field Practice	Paradigm Shift
Subject Custody of	Mother as the main custodian of the child before maturity	Article 105	Institution becomes the custodian through professional care	From individual mother's right to institutional responsibility
Age Limit of the Child in Custody	Child under the age of maturity (<12 years) is cared for by the mother	Article 105	Children of various age ranges are cared for continuously	From biological age limit to child development needs
Obligation of Maintenance	Maintenance is the father's responsibility	Article 105	Meeting the child's needs is based on institutional, social, and systemic support	From personal maintenance to collective social financing
If the Mother Dies/Is Disqualified	Custody right shifts to female relatives (up to the mother's line)	Article 156	Custody rights shift to competent social institutions	From lineage-based to professional-based custodianship

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If No Suitable Relatives Exist	The judge may assign custody to other parties	Article 156	Alternative child-rearing is based on institutional care	From judicial decision to sustainable systemic care
Child's Status	Child as an object of custody dispute	Implicit in Article 105 and 156	Child as the main subject of protection	From legal object to protection subject
Orientation of Custody	Based on parental rights	Article 105	Based on the best interest of the child	From parent-centered to child-centered
Nature of Childcare	Natural family caregiving	Articles 98-99 (parental responsibility)	Programmed, structured, and professional caregiving	From instinctive to systemic care
Dimension of Protection	Physical and financial needs	Article 105	Physical, psychological, social, spiritual, and educational needs	From partial to holistic protection
Scope of Custody	Private – nuclear family	Article 105	Social/public domain based on institutional care	From private to public domain
Basic Custody Relationship	Blood relation (lineage)	Article 156	Social and professional dedication relationship	From biological to sociological relationships
Purpose of Custody	To ensure custody post-divorce	Articles 105 and 156	To ensure the child's growth, education, and future	From family conflict resolution to generational development

The re-conceptualization of *hadhanah* in this study is an effort to establish a new paradigm that not only relies on traditional texts but also adjusts to the socio-humanitarian context. This new paradigm positions *hadhanah* not only as a parental right but also as a social responsibility involving the extended family, society, and Islamic social institutions [6].

The phenomenon of child-rearing at the Putri 'Aisyiyah Summersari Jember Child Welfare Institution (LKSA) serves as a concrete representation of the need for the re-conceptualization of *hadhanah*. This institution strives to implement child-rearing functions based on Islamic values, moral education, and the formation of children's character through an organized system [7]. In practice, LKSA not only assumes the role of parental substitution but also creates an environment conducive to the spiritual, psychological, and social growth of the child. In this regard, the emphasis placed by the Putri 'Aisyiyah Summersari Jember Child Welfare Institution is on the well-being of the child, which is the primary reason and motivation for the researcher's interest in conducting research at this institution. The strategic programs implemented by LKSA Putri 'Aisyiyah Summersari Jember include [7]:

Table 2. Strategic Programs (Child Welfare)

No.	Program LKSA Putri 'Aisyiyah	Activity Form	Target Audience
1.	Enhancing children's needs fulfillment: a. Food b. Clothing c. Monthly needs d. Education fees (Junior High, Senior High)	a. Providing nutritious meals every day (morning, noon, evening) b. Purchasing clothes twice a year and LKSA uniforms for activities (studies, invitations, etc.) c. Meeting monthly needs (bath items, feminine hygiene products) d. Covering monthly school fees, school uniforms, school supplies (bags, shoes, stationery), pocket money for school, tutoring for general subjects	Children in care

2.	Providing informal religious education	Providing knowledge of religious understanding: a. Quran memorization b. Tamyiz c. Hijaz, Tajwid d. Hadith e. Quran translation and interpretation f. Public speaking, Arabic language	Children in care (Monday-Saturday)
3.	Providing skills training	Offering training needed by children in care, such as: a. Entrepreneurship (bazaar in 'Aisiyyah events) b. Makeup Artist (MUA)	Children in care
4.	Providing family care services for children in care	a. Providing education fees (school fees, accidental needs) b. Providing monthly pocket money	Children in family care

Thus, from the fiqh perspective, the extension of the *hadhanah* subject to social institutions does not contradict the principles of Sharia, as long as the goal of *hadhanah*, which is to safeguard the well-being of the child, remains assured. As seen in the table above, LKSA, as the executor of social *hadhanah*, bears a fundamental responsibility not only in fulfilling the physical needs of the child but also in shaping their character, instilling moral values, fostering spirituality, and providing continuous psychosocial protection. In this regard, the ideality of LKSA Putri 'Aisiyyah Summersari Jember, from a fiqh perspective, cannot solely be measured by material and educational aspects, but must also be assessed based on how far the institution can realize the objectives of Sharia in child-rearing. The ideal form of child-rearing ensures the safety of the child's faith, mental health, intellectual development, and moral integrity.

Furthermore, the re-contextualization of *hadhanah* at LKSA demonstrates the integration of religious values and modern child protection principles. This institution places the best interests of the child as the moral and legal foundation for every child-rearing practice. This principle aligns with the provisions of the Convention on the Rights of the Child (CRC), which has been ratified by the Indonesian government through Presidential Decree No. 36 of 1990 [8]. Within this framework, reconceptualizing *hadhanah* does not entail discarding classical fiqh, but rather broadening its interpretation to ensure its relevance to contemporary contexts. This perspective aligns with the view of Fazlur Rahman, who highlights the importance of reformulating Islamic law based on the universal moral principles of the Qur'an and the objectives of Sharia (*maqashid al-sharia*). [9]. Therefore, the reconceptualization of *hadhanah* represents a form of social *ijtihad* intended to actualize Islamic values in child-rearing practices that are more humane and contextually relevant. From a legal standpoint, this reconceptualization remains grounded in the primary sources of Islamic law, namely the Qur'an and the hadith. The Qur'an underscores the responsibility of adults toward children, as reflected in Surah At-Tahrim [66]: 6. [10], which commands every family to protect themselves and their families from destruction. This verse indicates that child-rearing is not only an individual responsibility but also a social trust.

Additionally, the hadith of Prophet Muhammad (PBUH) emphasizes the importance of love and responsibility towards children. In a hadith narrated by Abu Dawud [11], the Prophet said: "He is not one of us who does not show mercy to the young and does not honor the elderly." This hadith highlights that the value of compassion is a fundamental principle in child-rearing, which forms the moral foundation of *hadhanah*. In a sociological context, social institutions like LKSA Putri 'Aisiyyah Summersari Jember play a crucial role in addressing the issues of children who have lost their biological caregivers. The role of such institutions is not only charitable but also educational, in that they aim to shape children to grow into individuals who are moral, educated, and independent [12]. Thus, LKSA represents the realization of *hadhanah* in a modern institutional form. The following is the data of children under care at LKSA Putri 'Aisiyyah Summersari Jember [7]:

Table 3. Data of Children in Care at LKSA Putri 'Aisiyyah Summersari Jember

No.	Name	Gender	Age	In LKSA	Outside LKSA
1.	Siti Hoirum Munasila	Female	17 years	✓	
2.	Diana Rahmawati	Female	17 years	✓	
3.	Ufiyatus Soleha	Female	19 years	✓	
4.	Enggi Nur Asyifa	Female	15 years	✓	
5.	Anisa Wasilatul Ailah	Female	14 years	✓	

6.	Rifkiah Umairoh	Female	13 years	✓	
7.	Afifah Syahrini	Female	14 years	✓	
8.	Fairus Aulia Kamilah	Female	14 years	✓	
9.	Yasmine Putri	Female	13 years	✓	
10.	Muhammad Azriel R.	Male	12 years		✓
11.	Azfar Rabbani At-Thahir A.	Male	6 years		✓
12.	Muhammad Adnan A.	Male	6 years		✓
13.	Zakaria AkramAl-Ghani P.	Male	5 years		✓
14.	Muhammad Azka Raffasya	Male	6 years		✓
15.	Alesha Zahra Putri A.R.	Female	5 years		✓
16.	Salva Abyasa Khairiyah	Female	5 years		✓
17.	Alifeah Mega Agustin	Female	16 years		✓
18.	Kanya Zahra Anindia	Female	15 years		✓
19.	Findra Panca Ramaharya	Male	11 years		✓

However, despite the growing importance of social institutions, their legal status within the framework of *hadhanah* in Islamic law has not yet been clearly established. Classical *fiqh* still regards *hadhanah* as a personal matter involving the father, mother, and child. Therefore, this study is significant in offering an academic contribution through the reconceptualization of *hadhanah* that can accommodate child-rearing practices in social welfare institutions while remaining grounded in Islamic values.[13] This reconceptualization is intended to bridge the conceptual divide between classical *fiqh* principles, national legal frameworks, and contemporary social realities. Accordingly, the study not only contributes theoretically to the advancement of Islamic family law but also offers practical implications for enhancing child-rearing systems within religious social institutions. Such an approach assumes an integration between text and context, as well as between law and humanity.[14].

Methodologically, this study adopts a qualitative approach with a case study conducted at the Putri 'Aisyiyah Summersari Jember Child Welfare Institution. This approach enables the researcher to gain an in-depth understanding of child-rearing practices from legal, social, and spiritual dimensions. By applying the paradigm shift theory of Thomas Kuhn, the study aims to show that the reconceptualization of *hadhanah* represents a paradigmatic transformation in Islamic family law driven by empirical needs.[15]. Thus, the study entitled "The Re-conceptualization of *Hadhanah* in Child-Rearing Practices at the Putri 'Aisyiyah Summersari Jember Child Welfare Institution" is based on the recognition that Islamic law must remain dynamic and responsive to context. The reconceptualization of *hadhanah* goes beyond simple reinterpretation, representing a renewal of paradigm that connects the ideals of Sharia-based education with the social realities of Indonesian Muslim society. This study is expected to provide an academic contribution to the development of Islamic family law that is more adaptive, educational, and humanistic.

The pilgrimage to Mecca constitutes one of the fundamental religious duties that carries significant religious, social, and political dimensions for Muslims in Indonesia.[16] As the nation with the largest Muslim population globally, Indonesia holds a significant national interest in the administration of the Hajj, including the management of quotas, the provision of services for pilgrims, and the protection of the rights of prospective pilgrims. To ensure that the Hajj is carried out in a fair, transparent, and accountable manner, the government has established Law Number 8 of 2019 on the Implementation of Hajj and Umrah as the primary legal framework.[17] In 2024, the Saudi Arabian government granted Indonesia additional Hajj

quotas as a response to the long waiting list of pilgrims. However, in the practical distribution of these additional quotas, various controversies and public criticisms emerged, with some arguing that the Indonesian government did not fully comply with the provisions set out in the Hajj and Umrah Management Law.[18] This non-compliance is mainly evident in the aspect of distributing additional Hajj quotas, which is considered not to reflect the principles of fairness, proportionality, and priority as mandated by law.[19]

The allocation of the additional 2024 Hajj quota has generated controversy, as a portion of it has been designated for special pilgrims and particular groups, while millions of regular applicants continue to face prolonged waiting periods.[20] This condition gives rise to the perception of a mismatch between government policy and the fundamental aim of the law, namely to ensure fairness and safeguard pilgrims' rights. Failure to adhere to these national regulations may weaken public confidence in the management of Hajj administration.[21] From an International Relations perspective, the issue of Hajj quotas extends beyond domestic policy and is also shaped by the bilateral relationship between Indonesia and Saudi Arabia.[22] The determination of quotas results from negotiation and diplomatic processes between states; therefore, distribution policies reflect how the Indonesian government manages its national interests after securing additional quotas through diplomacy. The inconsistency between national legal commitments and the implementation of such policies highlights the challenges of translating international diplomatic outcomes into lawful and coherent domestic policies.[20]

Based on this background, this research becomes important to examine the non-compliance of the Indonesian government with the Hajj and Umrah Administration Law in the distribution of the additional 2024 Hajj quota provided by Saudi Arabia, as well as its implications for Hajj governance and Indonesia's national interests. This study is expected to provide a more comprehensive understanding of the relationship between national law, public policy, and the dynamics of international relations in the administration of the Hajj pilgrimage.[23] In addition, non-compliance with Law Number 8 of 2019 in the distribution of additional Hajj quotas also raises issues of governance and public policy accountability. The law explicitly emphasizes the principles of fairness, transparency, and the protection of pilgrims' rights, especially for regular Hajj pilgrims who have been waiting for a very long time. When quota distribution policies are not aligned with these principles, the implementation of the Hajj has the potential to deviate from the legal mandate established by the state.[24]

Furthermore, the controversy over the additional 2024 Hajj quota highlights tensions between political interests, economic considerations, and the country's legal obligations. In this context, the government is not only expected to succeed in diplomacy with Saudi Arabia but also responsible for ensuring that the results of that diplomacy are implemented consistently with national law. Failure to maintain this consistency can impact policy legitimacy, public trust, and Indonesia's image as a nation governed by law in managing religious affairs at the international level. [25]. Thus, the study of the Indonesian government's non-compliance in the distribution of the additional 2024 Hajj quota is relevant not only from a legal and public policy perspective, but also from the perspective of International Relations, particularly in examining how a country manages the outcomes of bilateral diplomacy to remain in line with national interests and the principles of a legal state.

Method

The research methodology used in this study is a comprehensive descriptive qualitative approach. This involves the exploration of behaviors, objectives, motivations, and actions, explaining these aspects through the careful use of language and words in specific contexts. The foundation of this research is the application of various scientific methods to ensure a nuanced understanding of the main topic [15]. The data used in this study consist of both primary and secondary sources. Primary data are collected through interviews and documentation, which function as the main tools for obtaining in-depth empirical insights. Meanwhile, secondary data comprise a range of academic materials, including scholarly books, research journals, articles, legal regulations, fatwas, and institutional documents relevant to the research topic.

Data collection is conducted using a comprehensive approach that integrates interviews and documentation. The interviews are carried out in a semi-structured manner with purposively selected informants to obtain authentic and contextual information reflecting participants' subjective experiences of the phenomenon under study. Documentation is employed to support and validate interview findings by examining archives, official records, photographs, and other institutional materials.

The gathered data are then analyzed through stages of data reduction, data presentation, and conclusion drawing. Data reduction involves identifying key themes and patterns aligned with the research objectives. Data presentation aims to organize and display information clearly, facilitating deeper understanding and interpretation. Finally, conclusion drawing provides a comprehensive synthesis of the identified themes, supported by interview data and documentation, thereby forming a strong basis for the overall findings of the study.

Results and Discussion

A. General Overview of Child-Rearing Practices at LKSA Putri 'Aisyiyah Summersari Jember

LKSA Putri 'Aisyiyah Summersari Jember is a religious social institution focused on the care and protection of children, particularly girls who are in vulnerable social, economic, and familial conditions. The child-rearing practices at this institution do not exist in a vacuum; rather, they are influenced by Islamic values, the ideology of the 'Aisyiyah movement, state regulations, and the evolving needs of the children in care [26]. The findings of this study indicate that the child-rearing practices at LKSA are no longer understood narrowly as merely the act of caring for and fulfilling basic needs. Instead, child-rearing is positioned as a long-term guidance process that encompasses physical, psychological, social,

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educational, and spiritual dimensions. This reality serves as an entry point for understanding the paradigm shift in hadhanah from a private, lineage-based concept to a more adaptive, social-institutional concept that aligns with contemporary contexts.

B. Child-Rearing Model: Integration of Natural and Professional Approaches

The findings of the research show that the child-rearing model at LKSA Putri 'Aisyiyah Summersari Jember integrates both natural and professional approaches. The natural approach is evident in the emotional relationships established between caregivers and children, where caregivers serve as attachment figures who provide a sense of security, affection, and attention, much like parents. Meanwhile, the professional approach is realized through the application of Standard Operating Procedures (SOPs), the delegation of caregiving duties, and the mechanisms for evaluating the children's development [27]. The integration of these two approaches arises as a response to the conditions of children in care, many of whom come from troubled family backgrounds, lack parental support, or experience social vulnerability. From the standpoint of the *Kompilasi Hukum Islam* (KHI), *hadhanah* is normatively defined as the right and obligation of parents, particularly the mother. However, empirical findings indicate that when family functions are not effectively fulfilled, institutions assume the role as social substitutes to ensure the continuity of *hadhanah*. This reflects a shift in the subject of *hadhanah* from the individual to the institutional level.

Within the framework of *maqashid syariah* as articulated by Jasser Auda, this practice can be interpreted as an effort to protect *hifz al-nafs* (preservation of life), *hifz al-aql* (preservation of intellect), and *hifz al-din* (preservation of religion) for children through a structured yet humane caregiving system. Auda's systemic approach is particularly relevant here, as child-rearing is not viewed in a linear manner but as part of an interconnected social ecosystem.

C. Holistic Child Protection in Child-Rearing Practices

The research findings indicate that LKSA applies the concept of holistic child protection, encompassing physical, psychological, social, and spiritual aspects. The fulfillment of physical needs, such as food, health, and clothing, is carried out in a planned and sustainable manner. Psychological support is provided through intensive caregiver-child relationships and professional referrals when necessary. Social and spiritual development is fostered through formal education, non-formal programs, and the instilling of religious values [28].

This phenomenon arises because the management of LKSA understands that a child's vulnerability extends beyond material needs to include emotional and social dimensions. From a *fiqh* perspective on child protection, proper child-rearing should guarantee the comprehensive fulfillment of a child's fundamental rights. Accordingly, the caregiving practices at LKSA may be viewed as an expression of the principle of *maslahahmursalah*, generating real benefits for children even though it is not explicitly articulated in classical *fiqh* literature. When related to the *Kompilasi Hukum Islam* (KHI), this holistic model of protection goes beyond the normative scope of *hadhanah*, which primarily focuses on determining custodial rights. The findings of this study emphasize that the essence of *hadhanah* lies not in identifying the caregiver, but in ensuring the best interests of the child. This reflects a convergence between Islamic law, national legal frameworks, and contemporary perspectives on child protection.

D. Caregiver-Child Relationship : Transformation of the Meaning of Hadhanah

The relationship between caregivers and children at LKSA shows a transformation in the meaning of hadhanah from a lineage-based relationship to a social-professional relationship. The children in care view the caregivers as social parental figures, while the caregivers perform their roles with professional awareness and institutional responsibility [27]. This transformation takes place because a child's need for an attachment figure cannot be postponed while waiting for an ideal family structure to materialize. Within the framework of *maqashid syariah*, this relationship illustrates the adaptability of Islamic law in addressing social realities. Jasser Auda highlights the significance of a multidimensional approach and the openness of Islamic legal systems to social change. These findings reinforce the view that *hadhanah* should not be interpreted in a rigid or exclusive manner. From a *fiqh* perspective on child protection, this form of social-professional relationship offers a more structured and accountable model of care, as it is supported by institutional systems, evaluation mechanisms, and oversight. Consequently, institutionalized child-rearing does not imply the absence of affection, but rather represents a redefinition of how care and emotional bonds are expressed within a broader social framework.

E. Orientation of Child-Rearing: From Care to Shaping the Child's Future

The research findings indicate that the orientation of child-rearing at LKSA Putri 'Aisyiyah Summersari Jember goes beyond mere care and is directed towards shaping the child's future. Education, moral development, and skill enhancement are positioned as long-term investments for the child's independence [28]. This orientation arises from the awareness that children in care should not be trapped in a cycle of social dependency. From the perspective of the *Kompilasi Hukum Islam* (KHI), although the goal of hadhanah is not explicitly formulated as shaping the future, the values of *maslahah* (public benefit) and responsibility remain its core spirit. Meanwhile, the framework of *Maqashid Syariah* as articulated by Jasser Auda presents the goal of Islamic law as being future-oriented, aiming to create individuals who are dignified and empowered.

F. Reconceptualization of Hadhanah in the Context of LKSA

Based on the overall research findings, it can be concluded that the child-rearing practices at LKSA Putri 'Aisyiyah Summersari Jember represent a form of reconceptualized hadhanah. Hadhanah is no longer understood solely as the right of

the mother or the immediate family but as a social-institutional responsibility oriented towards the welfare and protection of the child. This reconceptualization occurs as a response to the limitations of the classical concept of *hadhanah* in addressing contemporary social problems, particularly concerning children who have lost or do not receive adequate family care. By integrating the values of the Kompilasi Hukum Islam (KHI), Maqashid Syariah as presented by Jasser Auda, and *fiqh* on child protection, the child-rearing practices at LKSA demonstrate that Islamic law has the adaptive capacity to address the challenges of modern times without losing its core values. This chapter emphasizes that institutional-based child-rearing is not a deviation from the concept of *hadhanah*, but rather a new form of *hadhanah jama'iyah* (collective *hadhanah*) that focuses on the best interests of the child as its primary goal.

G. The Concept of Hadhanah in the Perspective of Fiqh, Kompilasi Hukum Islam, and Fiqh on Child Protection

1. Fiqh and Kompilasi Hukum Islam (KHI)

In Islamic law, there is a legal regulation regarding child-rearing known in the *fiqh* literature as *hadhanah*. In terms of terminology, *hadhanah* is understood as the effort to care for and educate a child who has not yet reached the age of discernment (*tamyiz*) or can be defined as an individual who has lost their mental faculties, as both are unable to meet their life needs independently. In the *fiqh* perspective, *hadhanah* is comprehensively interpreted as the responsibility of nurturing a child, whether male or female, or even an adult who is unable to protect themselves from potential harm. This care is not limited to physical care but also includes psychological and spiritual care, so that the individual is capable of fulfilling their duties and responsibilities in the future. The essence of protection in *hadhanah* covers three interconnected dimensions: providing necessary assistance, protecting from deviations and harm, and meeting the needs to create well-being in life [29]. Wahbah az-Zuhaili, in his literature, explains that *hadhanah* is a form of care right that is generally more deserved by women. This consideration is based on the advantages of women, such as their nurturing qualities, understanding of the needs of caregiving, high patience, and strong consistency in maintaining the interests and well-being of the child [30]. *Hadhanah* under Islamic law is not limited to children, but extends to the weak or mentally disabled individuals who also require protection from someone who is of legal age and sound mind.

In the book *Fiqh Munakahat*, Slamet Abidin and Aminuddin quote Imam Hanafi's explanation that *hadhanah* is the effort to educate a child by someone who has the right to custody. *Hadhanah* involves the activities of caregiving, nurturing, and educating a child until adulthood, when the child becomes independent [31]. From this definition, it can be understood that the period or age limit for *hadhanah* begins at birth, when a child needs care, maintenance, and education, and ends when the child reaches adulthood and is capable of standing on their own and managing their physical and spiritual needs. "The Kompilasi Hukum Islam [4] (KHI) adopts the concept of *hadhanah* with a more contextual normative approach. Article 105 of the KHI emphasizes the priority of the mother as the caregiver for children who have not yet reached the age of discernment (*mumayyiz*), but it still places the best interests of the child as the primary consideration. The KHI implicitly acknowledges the flexibility of transferring *hadhanah* when the parents are unable or unfit to fulfill the responsibilities of caregiving. In this context, the existence of Lembaga Kesejahteraan Sosial Anak (LKSA) can be understood as a form of expanded *hadhanah* subjects, where the institution acts as a guardian of collective caregiving to ensure the protection and fulfillment of children's rights. This indicates that, although the KHI does not explicitly regulate institutional-based caregiving, it is still aligned with institutional *hadhanah* practices as long as they are oriented toward the welfare of the child.

2. Fiqh on Child Protection

Fiqh on child protection views *hadhanah* as an instrument for fulfilling the fundamental rights of children, grounded in the principles of human dignity (*al-karāmah al-insāniyyah*), equality (*al-musāwāh*), and compassion (*al-mawaddah wa al-rahmah*) [32]. From this perspective, the child is positioned as a legal subject with the right to dignified and sustainable caregiving. The fulfillment of *hadhanah* is not limited to physical aspects, but extends to meeting the child's life needs (*taufir al-hājāt*), which include their spiritual, physical, intellectual, and vicegerential potential. Thus, *hadhanah* is understood as a holistic caregiving process aimed at shaping the child into a complete and empowered human being. This perspective provides normative justification for institutional-based child-rearing practices that integrate Islamic values with the principles of modern child protection.

H. Reconceptualization of Hadhanah at LKSA Putri 'Aisyiyah Summersari Jember

Analysis of the Reconceptualization of *Hadhanah* in the Perspective of Maqāsid Syariah by Jasser Auda and *Fiqh* on Child Protection The reconceptualization of *hadhanah* as a model for child-rearing at Lembaga Kesejahteraan Sosial Anak Putri 'Aisyiyah Summersari Jember cannot be understood solely through the normative approach of classical *fiqh*. This reconceptualization demands a more comprehensive and systemic analytical framework, as proposed by Jasser Auda's theory of *Maqāsid Syariah* combined with the principles of *Fiqh on Child Protection*. The integration of these two perspectives allows for an analysis of *hadhanah* that goes beyond legality, focusing on protection, the fulfillment of rights, and the empowerment of children[33].

1. Cognitive Nature (Watak Kognitif) and the Principle of Human Dignity (al- Karāmah al- Insāniyyah)

The reconceptualization of *hadhanah* at LKSA Putri 'Aisyiyah signifies a shift in perspective from treating *hadhanah* as an adult entitlement to recognizing it as a right of the child. This transition reflects the cognitive dimension of *maqāsid*, which calls for the reinterpretation of Islamic law in light of evolving social realities. The children under the care of LKSA often come from orphaned, impoverished, and vulnerable backgrounds, rendering approaches based solely on biological family care less applicable. From the standpoint of *fiqh* on child protection, this approach is consistent with the principle of human dignity (*al-karāmah al-insāniyyah*), whereby every child is regarded as a dignified individual entitled to proper care and

protection. Consequently, the institution does not treat children as objects of compassion, but as a trust that necessitates the systematic fulfillment of their rights[34].

2. Wholeness (Keseluruhan) and the Principle of Fulfilling Life's Needs (Taufir al-Ḥājāt)

Jasser Auda's maqāṣid approach rejects a partial understanding of the objectives of sharī'ah. The reconceptualization of hadhanah at LKSA Putri 'Aisyiyah is holistic, addressing the spiritual, physical, intellectual, and social needs of children. This model of caregiving ensures not only the survival of the child but also the quality of their life. In Fiqh on Child Protection, fulfilling the basic needs of life (taufir al-ḥājāt) is a fundamental prerequisite for child protection. The caregiving practices at LKSA show that hadhanah is carried out as a continuous process, integrating religious education, formal education, character development, and health care. This integration occurs because the institution views the child as a whole person, not merely as an individual in need of physical care[35].

3. Openness (Keterbukaan) and the Principle of Equality (al-Musāwah)

The reconceptualization of hadhanah at LKSA Putri 'Aisyiyah is open to non-fiqh approaches, such as child development psychology, the national education system, and child protection regulations. This openness aligns with the principle of openness in Jasser Auda's maqāṣid, which emphasizes flexibility and dialogue between religious values and social realities. From the perspective of Fiqh on Child Protection, this openness reinforces the principle of equality (al-musāwah), where every child is treated equally, regardless of their social, economic, or familial background[36]. This outcome arises because the institution adopts a child-rights-based caregiving paradigm, rather than a mere charitable or hierarchical approach.

4. Interrelated Hierarchy (Hierarki yang Saling Terhubung) and the Principle of Compassion (al-Mawaddah wa al-Raḥmah)

The reconceptualization of hadhanah at LKSA reflects the interconnection of maqāṣid objectives, such as the protection of life (ḥifz al-nafs), intellect (ḥifz al-'aql), religion (ḥifz al-dīn), and lineage (ḥifz al-nasl). These objectives are not positioned in a rigid hierarchical order but rather support each other in the daily practice of caregiving. The principle of compassion (al-mawaddah wa al-raḥmah) in Fiqh on Child Protection serves as the ethical foundation that binds all these objectives. The caregiving approach at LKSA does not focus on control or repressive discipline, but on accompaniment based on empathy and role modeling. This occurs because the institution places compassion as the primary instrument for achieving sharī'ah objectives in a sustainable manner[37].

5. Multidimensionality and Child Potential Development

The reconceptualization of hadhanah at LKSA Putri 'Aisyiyah involves multiple dimensions: legal, educational, social, psychological, and spiritual. This multidimensional approach aligns with Jasser Auda's maqāṣid, which rejects reducing Islamic law to a single normative aspect. In the Fiqh of Child Protection, this multidimensional approach is realized through the development of the child's potential, which includes: [38]

- a. Spiritual Potential, through the cultivation of faith and worship.
- b. Khalifah Potential, through the formation of social responsibility and leadership.
- c. Physical Potential, through the provision of nutrition and health.
- d. Intellectual Potential, through formal education and life skills.

This outcome occurs because the institution adopts a child-centered caregiving paradigm focused on the child's future, rather than merely fulfilling short-term needs.

6. Purposefulness and the Best Interest of the Child Orientation

The ultimate goal (purposefulness) of the reconceptualization of hadhanah at LKSA Putri 'Aisyiyah is to realize the best interest of the child within the framework of Islamic values. Hadhanah is not limited to protection but is directed toward empowering children to become independent, moral individuals with social competitiveness[39].

In the Fiqh of Child Protection, this orientation reflects the goal of preserving the dignity and future of the child as a mandate of syariah. Thus, the reconceptualization of hadhanah applied at LKSA Putri 'Aisyiyah can be understood as a model of hadhanah based on maqāṣid and child protection that is relevant to the socio-cultural context of Indonesia.

Conclusion

The concept of ḥaḍānah in fiqh, the Compilation of Islamic Law (KHI), and fiqh of child protection emphasizes that caregiving is a legal and moral responsibility aimed at ensuring the fulfillment of children's basic rights in a comprehensive manner, including physical, psychological, and spiritual aspects. Classical fiqh views ḥaḍānah as a duty of care for children and individuals who are not yet capable of independence, prioritizing the child's welfare. Meanwhile, the Compilation of Islamic Law adopts this principle contextually, placing the best interests of the child as a primary consideration and allowing for the transfer of guardianship when parents are unable to fulfill their responsibilities. The fiqh of child protection further expands the meaning of ḥaḍānah as an instrument to fulfill children's rights based on human dignity, equality, and compassion. Therefore, institutional child care practices are normatively justified as long as they are focused on the well-

being and sustainable benefit of the child.

Based on the analysis of Maqāsid Syariah Jasser Auda combined with the perspective of fiqh of child protection, the reconceptualization of ḥaḍānah implemented at the Putri 'Aisyiyah Social Welfare Institution in Sumbersari Jember demonstrates a paradigm shift from ḥaḍānah as an individual right of adults to ḥaḍānah as a child-centered care system based on the rights and best interests of the child. This reconceptualization is cognitive and contextual (cognitive nature), positioning the child as a dignified subject (al-karāmah al-insāniyyah), holistic (wholeness) through the fulfillment of spiritual, physical, intellectual, and social needs (taufir al-hājāt), open (openness) to multidisciplinary approaches, and based on the principle of equality (al-musāwah). It also embodies an interrelated hierarchy in safeguarding the soul, intellect, religion, and lineage, grounded in compassion (al-mawaddah wa al-raḥmah). Furthermore, the multidimensional approach (multidimensionality) enables the development of the child's full potential—spiritual, khalifah, physical, and intellectual—while the orientation towards purposefulness emphasizes that ḥaḍānah goes beyond protection, guiding the empowerment of children into independent and socially capable individuals. Thus, the reconceptualization of ḥaḍānah at LKSA Putri 'Aisyiyah can be understood as a child care model based on Maqāsid and the fiqh of child protection, relevant to the complexities of contemporary social realities and in alignment with the fundamental goals of Islamic law.

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