

From a Patriarchal Orientation to a Relational Justice Model

Sugeng Aminudin

STAI Nurul Iman Parung, Bogor, Indonesia
Email: sugeng4minudin@stai-nuruliman.ac.id

Taufik Hidayat

STAI Nurul Iman Parung, Bogor, Indonesia
Email: taufik@stai-nuruliman.ac.id

Abdul Aziz

STAI Nurul Iman Parung, Bogor, Indonesia
Email: abdulaziz@stai-nuruliman.ac.id

Afif Faizin

UIN Syarif Hidayatullah Jakarta, Indonesia
Email: afif.faizin@uinjkt.ac.id

Lukman Hakim

University of Tripoli, Lebanon
Email: Luqmanulhamiem22@gmail.com

Abstract

This research aims to reconstruct the concept of *ḥaḍānah* (childcare) by shifting from a patriarchal orientation to a relational justice model from the perspective of *fiqh mubādalāh*. Through the analysis of *maṣlaḥah mursalah* as the basis for the renewal of Islamic family law, this study addresses the practice of *ḥaḍānah* in classical *fiqh*, which tends to be oriented towards a patriarchal structure that hierarchically assigns roles to mother and father. The *fiqh mubādalāh* approach offers a relational paradigm that promotes gender justice by emphasizing the principle of reciprocity (*mubādalāh*) in parenting responsibilities. Through a qualitative method with a normative-philosophical approach, this study examines classical and contemporary *fiqh* texts and reinterprets the concept of *ḥaḍānah* based on the principle of *maṣlaḥah mursalah*, which is contextual and dynamic in Egypt, Morocco, Tunisia, Brunei Darussalam, Malaysia, Saudi Arabia, and Indonesia. The results of the study show that *maṣlaḥah mursalah* functions as an epistemological instrument to shift the paradigm of Islamic family law toward a relational justice model. This reconstruction emphasizes the importance of rearranging *ḥaḍānah* norms to be more in line with *maqāṣid al-syarī'ah* and modern social realities, while strengthening the position of *fiqh* as a social ethical system that is adaptive to changing times.

Keywords: *Ḥaḍānah*, Patriarchal Orientation, Relational Justice Model, *Fiqh Mubādalāh*, *Maṣlaḥah Mursalah*.

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Introduction

The rapid social changes of the modern era have led to a shift in values and structures in the institution of the Muslim family (Yudhantara Syahputra & Zuhdi, 2024). One of the important issues that is in the spotlight is the concept of *hadhanah* or post-divorce child care. (Multazam, 2024) In classical fiqh literature, *hadhanah* is positioned as a right as well as an obligation that hierarchically often prioritizes the mother in childhood, and then passes to the father as the child grows (Rohmah et al., 2023) However, in contemporary family law practice, the concept faces various challenges, especially related to gender equality, child protection, and modern social dynamics that demand a more participatory and equal parenting role (Safii, 2025) Therefore, a new approach is needed that can reconstruct the understanding of fiqh so that it remains rooted in the principles of *maqāṣid al-syarī'ah*, as well as responsive to the values of social justice.

The study of *fiqh mubādalah* developed by Faqihuddin Abdul Kodir offers a new paradigm in interpreting Islamic law based on the principle of reciprocity (*mubadalah*) (Ni'ami et al., 2023) This paradigm rejects patriarchal views that limit the role of women, and instead affirms that all Islamic teachings, including in the context of the family, are built based on equal reciprocal relations between men and women (Rohmah et al., 2023) In the context of *hadhanah*, *fiqh mubādalah* is to open up space for reinterpretation that the responsibility of parenting is not a monopoly of one party, but a shared mandate for the benefit of children and families (Multazam, 2024). *Fiqh mubādalah* can serve as a hermeneutic basis for a more egalitarian reform of Islamic family law.

Theoretically, this study also integrates the concept of *maslahah mursalah* as a normative analysis framework (Asman et al., 2022). *Maslahah mursalah* is understood as a benefit that is not explicitly mentioned in the nash but is in harmony with the purpose of the shari'a (*maqāṣid al-syarī'ah*). In the context of family law, *maslahah mursalah* plays an important role in formulating policies or legal norms that are relevant to contemporary social needs, such as child protection, gender justice, and family welfare (Mera et al., 2024). The integration between *fiqh mubadalah* and *maslahah mursalah* provides a strong epistemological basis for reinterpreting the concept of *hadhanah* progressively and contextually.

Several previous studies have touched on the theme of *hadhanah* from the perspective of classical jurisprudence, for example, Ibn Qudāmah (Utsany et al., 2022), al-Kāsānī (Alfani et al., 2025; Rahmawati, 2020), and al-Nawawī (Qadri, 2023), which tend to place women in subordinate positions. Contemporary studies such as those by Musdah Mulia (Nuraeni & Ariyanto, 2025), Quraish Shihab (Muda'i et al., 2023) and Jasser Auda (Utsany et al., 2022) show the urgency of reformulating family law to be

more adaptive to gender equality. On the other hand, Faqihuddin Abdul Kodir, through the *fiqh mub approach*, expands the interpretive horizon of fiqh towards complementary relationships (Nurmila, 2025). However, studies that specifically relate *fiqh mubādalah* to *maslahah mursalah* as an epistemological basis for reconstructing *hadhanah* are still very limited. This research gap is the starting point of this research, so that it can make a new conceptual contribution to the study of Islamic law, especially in the renewal of family fiqh.

The significance of this research lies in its efforts to present a paradigm of Islamic law that is more relevant to the values of social justice and universal humanity. The *maslahah mursalah approach* allows Islamic law to move from a textual-normative pattern to a contextual orientation that takes into account the social and moral conditions of modern society. Meanwhile, *fiqh mubadalah* emphasizes the need for the interpretation of equality in the family structure, so that Islamic law not only regulates power relations but also builds relationships of affection and mutual responsibility. By combining these two approaches, this study seeks to produce a new formulation of *hadhanah* that is in harmony with *maqāṣid al-syarī'ah* and the spirit of relational justice.

This research departs from three main focuses. First, it examines how the construction of *ḥaḍānah* in classical *fiqh* is formed and identifies its weaknesses when faced with modern social realities that demand equality and child protection. Serve as the analytical foundation for this study by highlighting the rigid gender-based hierarchies often found in traditional texts (Mustaqim et al., 2025). Second, provide a framework for this study to analyze how the principle of *fiqh mubādalah* can serve as the basis for a more just and equal reconstruction of the *ḥaḍānah* concept, while simultaneously connecting it to contemporary family law research that advocates for shared parental responsibility (Multazam et al., 2024). Third, reinforce the position of this research in placing *maṣlahah mursalah* as the epistemological basis for Islamic family law reform (Azni et al., 2025). Finally, this approach is supported by the latest scholarship from (Nazmi et al., 2025), which demonstrates the efficacy of *maṣlahah mursalah* as a rational instrument for legal adaptation across various Muslim jurisdictions, including Egypt, Morocco, Tunisia, Brunei Darussalam, Malaysia, Saudi Arabia, and Indonesia.

This research uses a qualitative approach with a normative-philosophical method. Data were obtained from primary sources in the form of classical and contemporary fiqh books, as well as secondary literature in the form of journals, books, and relevant current research results. This research employs a hermeneutic and *maqāṣid al-syarī'ah* approach to explore the philosophical foundations of relational justice in parenting law. The study is driven by three key research questions: (1) What are the limitations of classical *ḥaḍānah* in modern contexts? (2) How can *mubādalah* reconstruct *ḥaḍānah* into an egalitarian framework? (3) How does *maṣlahah mursalah* validate these reforms as an epistemological basis? Ultimately, this study aims to transform Islamic law into a more humanistic and responsive system for modern Muslim families.

Method

This study uses a qualitative approach with a normative-philosophical design (Matta, 2022) because the main focus is to examine and reconstruct the concept of *hadhanah* from the perspective of *fiqh mubadalah* and *maslahah mursalah*. The unit of

analysis in this study is classical and contemporary *fiqh* texts related to *ḥadānah*, *fiqh mubādalah*, *maṣlahah mursalah*, and *maqāṣid al-syarī'ah*. Research data were obtained through literature studies by examining primary literature such as the works of Ibn Qudāmah, al-Kāsānī, al-Nawawī, Faqihuddin Abdul Kodir, al-Ghazālī, al-Syāṭibī, and Yusuf al-Qaradawī, as well as secondary literature in the form of journals, books, and the results of contemporary research on Islamic family law. The data collection technique is carried out through document analysis with stages of selection, categorization, and text interpretation (Paradis et al., 2016; Schlunegger et al., 2024). The analysis is executed using hermeneutic methods and content analysis, where hermeneutics is applied to uncover the deep philosophical meaning and context behind normative texts, while content analysis is used to systematically categorize and compare legal formulations within the selected literature. The main instrument of the research is the researcher himself as a qualitative instrument that interprets the text using the framework of *maqāṣid al-syarī'ah*. To ensure scientific rigor, the validity of the findings is maintained through criteria of credibility, dependability, transferability, and confirmability, achieved via rigorous source triangulation and literature verification, in order to interpret the explicit and implicit meanings in *fiqh* texts (Erlingsson & Brysiewicz, 2017; Schlunegger et al., 2024).

Result

The Construction of the Concept of *Hadhanah* in Classical Fiqh

The construction of *hadhanah law* in the classical *fiqh* tradition predominantly places the right to care for children as an area that is strongly influenced by rigid gender roles and patriarchal social structures (Santoso & Sari, 2024). Scholars of various sects tend to agree that mothers have a top priority in raising children at an early age (before *mumayyiz*) because of the nature of women, who are considered more loving and patient, and have a unique biological closeness (Said et al., 2024). However, this priority is not absolute but conditional, where the right to *hadhanah* is often limited by very strict criteria of morality and social status, such as the prohibition for a mother to remarry a man who is not the child's mahram. If this condition is violated, the right automatically passes to the paternal lineage or female relatives from the mother's side, which shows that child protection is still very much tied to the control of the nasab and the dominance of traditional family structures that prioritize male rights in the lineage (Rahmawati, 2020).

Within the framework of *ushul al-fiqh*, this classical provision is based on a combination of nash evidence and rational considerations (*ta'līl al-ahkām*). The main nash that is used as a foothold among them is the words of Allah SWT. in QS. al-Baqarah [2]: 233 on the obligation to breastfeed a child, and the hadith of the Prophet on the right of a mother in parenting as narrated by Abu Dawud (Abu Dawud, 2009): "*You have more right to it as long as you are not married.*" This hadith is the main foundation held by the jurists in determining the order of parenting rights. The scholars of the four Hanafi, Maliki, Shafi'i, and Hanbali schools have different *ijtihad* regarding the order of custody, the age of the child, and the criteria for loss of *hadhanah rights*.

The classical discourse on *hadhanah* also places great emphasis on the aspect of physical protection (*al-hifz*) and the maintenance of the morality of the child's religion over the fulfillment of psychological rights and broader mental development (Ibn

Qudāmah, 1997). In the standard literature, the main focus is to ensure that children are not materially abandoned and remain protected under "appropriate" supervision according to the sociological standards of the time. The division of roles between fathers and mothers in classical fiqh is very dichotomous: mothers perform functions as physical caregivers (*hadhinah*) while fathers act as providers of living expenses and guardianship authority holders (*wali*) (Putri Maja Mulia Anisa et al., 2024). This legal structure creates an unequal dependency, where the mother performs heavy domestic functions without having strong legal authority to determine the child's future education or residence independently, without the consent of the guardian (father).

The classical *hadhanah* paradigm also tends to ignore the principle of reciprocity or cooperation between the two parents after the occurrence of divorce in the private realm (Alfani et al., 2025). Parenting is considered a task that is carried out by one party in turn, based on the child's age stage, and is not a *harmonious* joint custody responsibility (Farid, Syukri, et al., 2025). When a child reaches *the age of mumayyiz* (usually 7 years old), the fiqh tradition often gives the child the option of choice (*takhyir*) to follow the father or mother, but this option remains in the shadow of male dominance as the holder of power over living expenses and maintenance (Matta, 2022). This reflects that although *hadhanah* is recognized as a right for the child, its operationalization in the field is highly dependent on the legal status of the parents, so that justice in this context is more procedural in formal law than substantial relational justice (Multazam et al., 2024).

Furthermore, the requirements for caregivers in classical texts, such as being Muslim, independent, and unwicked, indicate an attempt to crystallize certain moral values that are strongly influenced by past political and social contexts (Nasution et al., 2022). Although the primary goal is to safeguard the welfare of the child (*maslahat al-mahdun*), these criteria are often rigidly applied without considering the dynamics of the unique inner relationship between the child and his or her parents (Farid, Albani, et al., 2025). For example, a mother who converts or remarries often loses custody immediately without a thorough evaluation of whether the change in status is really harmful to the child's development objectively. This highly legalistic-textual approach often leaves room for deeper psychological considerations, which are actually very important for children's growth and development in a modern environment (Safii, 2025).

Epistemologically, the concept of *classical hadhanah* is rooted in the social reality of premodern societies that place *nasab* as the center of legal identity and social sovereignty of the extended family (Firdaus & Iwan, 2024). Protection of children is interpreted as an effort to maintain the continuity of the male lineage, so that the role of women's parenting is seen as a temporary support function and can be transferred at any time (Yudhantara Syahputra & Zuhdi, 2024). This condition creates a large gap between classical normative texts and modern family dynamics that are more egalitarian and demand a more real equality of roles in the household (Nuraeni & Ariyanto, 2025). Without a thorough reinterpretation, this classical construction risks becoming an instrument of injustice for mothers who have to bear the burden of parenting alone or for children who lose access to affection from one of their parents simply because of administrative rules.

Table 1: Mapping the Classical Construction of Hadhanah

| Analysis Aspect | Characteristics of Classical Hadhanah | Legal Implications |
|--------------------|--|--|
| Caregiving Subject | Maternal dominance during early childhood (biological). | Conditional rights; forfeited if the mother remarries. |
| Legal Authority | Father is the sole holder of guardianship (<i>wilayah</i>). | Mother's role is limited to domestic physical functions. |
| Protection Focus | Preservation of lineage (<i>nasab</i>) and formal faith (<i>aqidah</i>). | Children's psychological rights are often overlooked. |
| Relational Pattern | Segregative (strictly separated roles between parents). | Lack of a "joint responsibility" concept. |

The classical construction of *hadhanah* reflects a rigid gender-based dichotomy, separating the mother's domestic-biological care from the father's formal legal authority. This segregative model renders maternal custody conditional and fragile, as rights are often forfeited upon remarriage. By prioritizing patriarchal guardianship (*wilayah*) and the preservation of lineage (*nasab*), this framework emphasizes formal administrative protections over the child's psychological well-being. Consequently, it lacks a comprehensive "shared parenting" approach, focusing instead on strictly divided roles rather than collaborative responsibility.

Modern Social Challenges

Changes in the social structure in modern society have brought significant new challenges to the effectiveness of the application of traditional *hadhanah* law in the contemporary era (Utsany et al., 2022). The phenomenon of increasing women's participation in public spaces, higher education, and the labor force has drastically changed the parenting style in the nuclear family compared to the static past (Qadri, 2023). Today's mothers are no longer confined to the domestic realm entirely, so the classical fiqh assumption that mothers are full-time caregivers without career barriers becomes irrelevant to today's sociological reality (Presumption & Law, 2024). On the other hand, the demands of the global economy require both parties to work, which means that parenting responsibilities should no longer be segregated, but rather collaborative from the beginning of marriage to the post-divorce in the courts.

The emergence of global awareness of Human Rights (HAM) and children's rights underscores the failure of the patriarchal paradigm in the rigid parenting system. International standards such as *the Convention on the Rights of the Child* (CRC) emphasize "*The Best Interests of the Child*" as the primary and highest consideration in any legal decision concerning the future of the child (Utsany et al., 2022). The main challenge is how to reconcile established religious texts with modern human values that demand gender equality and justice for all parties in an inclusive manner. Many court cases show that the use of the classic rule on the prohibition of mothers from remarrying often collides with women's right to privacy (Azis et al., 2024). This paradigm crisis arises because law often protects the formal procedure of the text more than it protects the legal subject.

Technological transformation and digitalization have also created a new dimension in parenting that was never imagined in classical literature centuries ago.

Challenges such as *long-distance parenting*, the massive influence of social media on children's behavior, and the need for access to high-quality education require the simultaneous active involvement of both parents (Hashem, 2023). The law of *hadhanah* that only focuses on "who holds the physical" of the child becomes less meaningful if it is not accompanied by an intense obligation of coordination between father and mother (Furhan Zubairi et al., 2024). Failure to respond to these technological developments causes many children to become victims of emotional segregation or "*parental alienation*," where one party deliberately cuts off children's access to communication with other parents for purely administrative legal reasons (Yuliharti et al., 2025).

In addition, the environmental crisis and global economic instability add to the burden of vulnerability for post-divorce family units in many developing countries, including Indonesia. The resilience of nature and man, which is a central issue today, shows that the family must be the smallest unit that is able to survive independently in the face of various multidimensional crises (Mera et al., 2024). In the context of *hadhanah*, this means that the law must be able to ensure the financial stability and emotional support of children in a sustainable manner without being interrupted by parental conflicts. However, empirical reality shows that many fathers are negligent in providing for maintenance after custody falls into the hands of mothers, while the law is often weak in enforcing such material obligations. This economic inequality creates a new phenomenon of poverty for women and children after

Furthermore, the weaknesses of classical fiqh can also be seen from its methodological aspect. Many *hadhanah* decisions are made based on *qiyās* and *'urf*, not solely on *nash yang qath'ī*. This means that the law is basically open to reinterpretation. The rule of *ushul mā lā naṣṣa fīhi fa al-amru fīhi ilā al-ijtihād* (for things that do not have a firm *nash*, then the decision is left to *ijtihad*) gives epistemological legitimacy to reinterpret *hadhanah* according to the current context. This is where it is important to connect classical jurisprudence with *the fiqh muḥadḍalah* approach, so that the law of childcare is no longer trapped in power relations, but emphasizes shared responsibility based on benefits (Elahi, 2025).

The sociological challenge of shifting values from the *extended family* to the nuclear family model in urban areas has made the traditional parenting support system slowly disappear (Noor, 2024). In classical fiqh, if the mother is considered incapable, there are many other female relatives in the extended family who are ready to take on the role of caretaker. However, in an individualistic urban society, a single mother often has to struggle alone without the support of an adequate community of relatives (Leghari et al., 2024). If the custody rights are taken away from the mother only for trivial administrative reasons, there is no guarantee that the other relatives have the capacity to provide an equal quality of care. These systemic challenges demand a legal reorientation that is no longer based on the social assumptions of the past that are no longer relevant.

Table 2: Analysis of Modern Social Challenges.

| Factor of Change | Impact on Hadhanah Law | Urgency of Response |
|----------------------|---|--|
| Career Participation | The assumption of the mother as a purely domestic caregiver is collapsing | Need for flexible custody and caregiving schedules |

| | | |
|------------------------------------|--|---|
| Globalization of Children's Rights | Clashes between classical texts and international human rights | Adoption of the "Best Interests of the Child" standard |
| Digitalization | Emergence of long-distance or hybrid parenting patterns | Legality of virtual communication between parents and children |
| Economy & Resilience | Financial vulnerability of single mothers | Strengthening the enforcement of child maintenance (<i>nafaqah</i>) |

The modern landscape necessitates a paradigm shift in *hadhanah* from a rigid, gender-role framework to one centered on the "Best Interests of the Child" standard. As women's workforce participation increases and digitalization enables hybrid parenting, the classical assumption of the mother as an exclusively domestic figure is no longer sustainable. These shifts demand a legal evolution that prioritizes financial resilience through stricter alimony enforcement and recognizes psychological well-being over formalistic guardianship. Ultimately, contemporary *hadhanah* must transition toward a shared responsibility model that harmonizes traditional values with the complex socio-economic realities of the 21st century.

Direction of Reconstruction of the Law of Hadhanah

The direction of the reconstruction of *the law of hadhanah* in the future must be based on a strong integration between the principle of *maslahah mursalah* and *the paradigm of mublah* (reciprocity) (Rohmah et al., 2023). This reconstruction shifts the main focus from the "right of ownership" of children to a "shared responsibility" that is fair and humane for all parties. In this model, childcare is no longer seen as a unilateral burden or a right that can be lost discriminatorily, but rather as a humanitarian obligation that must be carried out synergistically by fathers and mothers (Santi et al., 2024). These values of equality ensure that every legal decision is based on the child's real need to get the affection of both parents in a balanced manner, to build the child's mental resilience.

Epistemologically, this reconstruction requires a reinterpretation of the texts of the Qur'an and Sunnah using the lens of *maqasid al-sharia*, which is transformative and inclusive. Universal principles such as justice (*'is*), balance (*mizan*), and benefit (*maslahah*) should be the foundation for formulating detailed rules for *hadhanah* operations (Mughni et al., 2025). For example, the rule on the prohibition of remarrying mothers should not be understood as a death doctrine that automatically aborts custody, but must be tested through *a case-by-case assessment* to objectively see its impact on the child (Mustaqim et al., 2025). If the new marriage actually provides a more stable environment for the child, then the *right to hadhanah* must be maintained. This approach ensures that Islamic law remains authentic yet progressive.

This reconstruction model also encourages the adoption of the concept of "*Joint Custody*" or legal co-custody in the Islamic family law system in Indonesia. The law should provide legal guarantees for fathers and mothers to remain actively involved in every aspect of the child's education, health, and social development after divorce without any hindrance from either party (Najib, 2025). This is in line with the principle of human resilience, which requires systemic support from their immediate environment

to grow psychologically healthy. The Religious Court must play the role not only as a dispute settler, but also as a mediation facilitator who emphasizes a mutually agreed "parenting plan". Thus, *hadhanah* is transformed into an instrument of reconciliation that prioritizes the future of future generations.

In addition to the aspect of emotional parenting, this reconstruction direction includes strengthening economic protection for children through strict law enforcement mechanisms for maintenance obligations (Multazam, 2024). Ecological and social consciousness teaches that human well-being depends on the equitable distribution of resources in the smallest unit, the family. In this context, a father should not be considered to have relieved responsibility just because physical custody is in the mother's hands. Legal reconstruction should include a system that allows for administrative sanctions for guardians who willfully neglect their financial obligations to children. This material protection is an integral part of inclusive *hadhanah*, because without adequate financial support, quality parenting is impossible in the midst of a crisis (Mughni et al., 2025).

Visionarily, the reconstruction of *hadhanah* law aims to create a transformative and inclusive social ethical system within the framework of national family law (Rohmah et al., 2023). The law should no longer be seen as a mere collection of static prohibitions but rather as a dynamic guide to create peace, resilience, and justice for all family members without exception. By adopting the relational resilience model, Islamic family law will be able to stand tall in the midst of modernity without having to lose its prophetic identity as the bearer of grace. Children who grow up in this just legal system are expected to have strong ecological and social intelligence to contribute to the nation. This is the essence of the desired reform of Islamic law: a legal system that truly becomes a blessing to the universe.

Table 3: Model of Relational Justice-Based Hadhanah Reconstruction

| Model Component | Form of Reconstruction | Target Achievement |
|----------------------|---|---|
| Methodological Basis | <i>Maqasidiyyah-Mubadalah</i> (Reciprocal-Purposeful) | Adaptive and inclusive legal framework |
| Custody Status | Shared Parenting | Child's psychological equilibrium |
| Juridical Instrument | Parenting Plan & Transformative Mediation | Minimization of post-divorce conflict |
| Economic Protection | Integrated maintenance execution (payroll system) | Financial resilience for children and mothers |

The proposed reconstruction of *hadhanah* moves beyond classical individualistic rights toward a relational justice model that integrates the *Maqasidiyyah* (purposeful) and *Mubadalah* (reciprocity) approaches. By implementing Shared Parenting and structured Parenting Plans, this model shifts the legal focus from a "winner-takes-all" custody battle to a collaborative arrangement that safeguards the child's psychological stability. Furthermore, the introduction of an integrated payroll system for child support ensures economic resilience, transforming *hadhanah* into a holistic legal protection

system that balances gender equality with the primary principle of the child's best interests.

Discussion

Reconstruction of *Hadhanah* Based on the Principle of *Fiqh Mubadalah* as a Model of Gender Justice

The reconstruction of the concept of *hadhanah* through the lens of *fiqh mub* is to shift the parenting paradigm from a gender-subordinated pattern to a pattern of reciprocal relations that are fair (Nikmatullah, 2024). In the perspective of *fiqh mublah*, the right to nurture is no longer seen as an absolute authority inherent in a particular gender (the mother as the physical caregiver and the father as the breadwinner), but as an equal human responsibility (Ibn Qudāmah, t.t.). This paradigm emphasizes that men and women are equal subjects of law (*mubadalah*) (Tasbih et al., 2024), where both have the same moral and spiritual capacity in ensuring the growth and development of children. By standardizing the term *fiqh mubà* throughout the analysis, this paper emphasizes that gender justice in the family is not just a division of technical tasks, but a transformation of awareness that children's happiness depends on harmony and cooperation between fathers and mothers after divorce, without any party feeling exploited or ignored in their rights (Kodir et al., 2024).

The practical implications of the application of *fiqh mublah* in the reconstruction of *hadhanah* law require flexibility in religious court decisions. Judges should no longer be fixated on textual-classical rules that often punish mothers by revoking custody just for the reason of remarriage (Yuliharti et al., 2025). On the other hand, the *fiqh mub* paradigm encourages a more in-depth evaluation of the quality of the relationship between children and their parents in a balanced manner. Practically, this model offers the concept of *joint custody* as an ideal solution, where both parents still have complementary rights and obligations. This implementation ensures that the involvement of the father in the aspect of affection and the involvement of the mother in the aspect of authority can go hand in hand (Khotimah, 2025). This model of relational justice has become a new standard in Islamic family law that is more responsive to modern social dynamics, while remaining grounded in the principle of human equality before God, which is the main spirit of every family law reform (Lestari, 2024).

Maslahah Mursalah as an Epistemological Basis for Islamic Family Law Reform

Maslahah mursalah serves as an epistemological foundation that provides vitality for Islamic family law to remain relevant in the midst of the rapidly changing times (Muqtada et al., 2024). In the context of *hadhanah reconstruction*, *maslahah mursalah* acts as a rational bridge that connects classical normative texts with complex contemporary sociological realities. The use of this instrument does not mean ignoring the text, but rather an effort to find God's most essential will, namely the realization of justice and human welfare (Asman et al., 2022). This epistemology allows legal thinkers to go beyond the outward meaning of the text in order to achieve *maqāṣid al-syarī'ah* (the goals of sharia). By putting welfare as the spirit of law, family law reform in Indonesia can move out of legalistic-formal confusion and move towards a more

humanist law, where the protection of children's future is positioned above the procedural interests of the parents' nasab or sectoral ego (Ruslie et al., 2024).

The novelty of this study lies in the integration of *fiqh mubadalah* and *maslahah mursalah* as an epistemological basis for reconstructing the concept of *hadhanah*. Unlike previous studies that generally discuss *hadhanah* from the perspectives of classical *fiqh*, positive law, or gender equality separately, this study offers a reconstruction model that places the best interests of the child, relational justice, and family welfare at the center of legal consideration. Thus, *hadhanah* is no longer understood merely as the formal right of either the father or the mother, but as a shared responsibility that is dynamic, contextual, and aligned with *maqāṣid al-syarī'ah*. This novelty is very crucial because it succeeded in synthesizing the classical *ijtihad* method (*maslahah mursalah*) with the value of modern equality (*fiqh mubadalah*). A comparison with previous studies shows that most of the literature is still stuck in the dichotomy between a dry positive legal approach and a rigid classical jurisprudence approach, while this study provides a methodologically strong middle ground that is highly relevant for legal practitioners in Religious Courts.

A comparison between this reconstruction model and existing legal practice shows that there are significant differences in the way we view family resilience. The model proposed through the epistemological basis of *maslahah mursalah* offers more comprehensive legal protection, covering the psychological, economic, and spiritual aspects of children in an integrated manner. This study proves that family law reform must dare to re-evaluate norms that are considered established but empirically no longer support the welfare of their legal subjects. As a further implication, strengthening the *maqasid* approach in the regulation of family law in Muslim countries will create an inclusive and transformative system of social ethics. Thus, *hadhanah* within the framework of *maslahah mursalah* is no longer static, but rather a dynamic protection system that is able to answer the challenges of global social uncertainty, while affirming the position of Islamic law as an instrument of substantive justice that is in line with universal human values.

Table 4: Comparison of Novelty and Legal Epistemology

| Aspect | Previous Studies (General) | Current Study (Novelty) |
|-----------------------|---|--|
| Epistemological Basis | Legal-Formal/Classical Textualism | Integrative (<i>Maslahah Mursalah & Mubadalah</i>) |
| Methodology | Partial (Fiqh-only or Positive Law-only) | Holistic (Maqasidi-Transformative) |
| Hadhanah Model | Formal Rights of Father/Mother (Individual) | Shared & Dynamic Responsibility (Family) |
| Main Contribution | Normative explanation of KHI/Fiqh | Reconstruction of the Relational Resilience Model |

The novelty of this study lies in its shift from a fragmented, legal-formalist approach to an integrative epistemological framework that harmonizes classical Islamic principles with contemporary social needs. While previous scholarship often analyzed *hadhanah* through a narrow lens of either traditional *Fiqh* or state law (KHI), this research adopts a holistic-transformative methodology. It moves the discourse beyond

individual rights-based disputes toward a Relational Resilience Model, prioritizing shared parental responsibility. By synthesizing *Maslahah Mursalah* (public interest) and *Mubadalah* (reciprocity), this study offers a dynamic legal reconstruction designed to ensure family stability and the child's long-term well-being in a modern context.

Conclusion

This study confirms that *maslahah mursalah* holds a strategic epistemological position in the reform of Islamic family law, particularly in the reconstruction of the concept of *hadhanah*. Within the framework of *ushul fiqh*, *maslahah mursalah* functions as a rational instrument that bridges the gap between normative texts and contemporary social needs. This approach allows Islamic law to move dynamically in accordance with *maqāṣid al-syarī'ah* to safeguard religion, life, intellect, lineage, and property without losing its authenticity. The integration of *maslahah mursalah* with the *mubadalah* paradigm produces a more humanistic and gender-equitable model of family law, in which the responsibility of childcare is placed within a framework of reciprocity, welfare, and the protection of children's rights as the paramount priority. However, as this study is limited to a normative-conceptual analysis based on classical and contemporary *fiqh* literature, it has not yet examined how this proposed reconstruction is applied in judicial practice.

Conceptually, these findings confirm that *maslahah mursalah* transcends its status as an auxiliary tool, serving instead as an epistemological foundation that validates the adaptive power of Islamic law within modern social realities. The broader implication highlights the necessity of strengthening the *maqasid* and *maslahah* approaches when formulating family law in Muslim nations, including Indonesia, to ensure alignment with substantive justice and human rights. However, addressing the current scarcity of empirical data regarding Religious Court decisions and concrete policy implementation is crucial. Consequently, future research must pivot toward socio-legal studies to rigorously test the applicability of the *maqasidiyyah-mubadalah* model. By developing a more practical methodology for religious justice and public policy, Islamic family law can effectively function as a transformative, inclusive, and socially responsive ethical system. This shift ensures that legal frameworks do not remain static but evolve alongside the complex, relational needs of contemporary families, ultimately securing long-term resilience and ethical integrity in the 21st century.

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