

Juridical Analysis of Inkracht Decision on Hadhanah Rights in Kepahiang Religious Court

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Abstract

This study aims to analyse the inkracht decision related to hadhanah rights at the Kepahiang Religious Court and assess the legal certainty provided in the case. The focus of this study is how judges consider aspects of Islamic law and positive law in deciding post-divorce hadhanah cases. The research method used is normative juridical research with a case study approach. Data was obtained through interviews with judges, review of court decision documents, and analysis of relevant laws and regulations. The results showed that the judge's decision in the case of hadhanah rights at the Kepahiang Religious Court emphasised the aspects of the benefit of the child, but there were still challenges in the implementation of the decision, especially regarding the implementation of the father's maintenance obligations. In addition, although Islamic law and positive law have clearly regulated hadhanah, social and economic factors often affect the effectiveness of the implementation of decisions in the community. The conclusion of this study is that although the hadhanah decision in the Kepahiang Religious Court has provided legal certainty for the disputing parties, its implementation still requires supervision and a stronger law enforcement mechanism so that children's rights are protected. Therefore, an active role is needed from the legal apparatus and related institutions in ensuring the implementation of fair and equitable decisions.

Keywords: *Hadhanah, Inkracht Decision, Legal Certainty, Religious Court.*

Abstrak

Penelitian ini bertujuan untuk menganalisis putusan inkracht terkait hak hadhanah di Pengadilan Agama Kepahiang serta menilai kepastian hukum yang diberikan dalam kasus tersebut. Fokus kajian ini adalah bagaimana hakim mempertimbangkan aspek hukum Islam dan hukum positif dalam memutuskan perkara hadhanah pasca perceraian. Metode penelitian yang digunakan adalah penelitian yuridis normatif dengan pendekatan studi kasus. Data diperoleh melalui wawancara dengan hakim, kajian dokumen putusan pengadilan, serta analisis peraturan perundang-undangan yang relevan. Hasil penelitian menunjukkan bahwa putusan hakim dalam kasus hak hadhanah di Pengadilan Agama Kepahiang menekankan aspek kemaslahatan anak, namun masih terdapat tantangan dalam implementasi putusan, terutama terkait

pelaksanaan kewajiban nafkah oleh ayah. Selain itu, meskipun hukum Islam dan hukum positif telah mengatur hadhanah dengan jelas, faktor sosial dan ekonomi sering mempengaruhi efektivitas penerapan putusan di masyarakat. Kesimpulan dari penelitian ini adalah bahwa meskipun putusan hadhanah di Pengadilan Agama Kepahiang telah memberikan kepastian hukum bagi pihak yang bersengketa, pelaksanaannya masih memerlukan pengawasan dan mekanisme penegakan hukum yang lebih kuat agar hak anak tetap terlindungi. Oleh karena itu, diperlukan peran aktif dari aparat hukum dan lembaga terkait dalam memastikan implementasi putusan yang adil dan berkeadilan.

Keywords: *Hadhanah, Putusan Inkracht, Kepastian Hukum, Pengadilan Agama.*

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Introduction

The legal system in Indonesia regulates various aspects of people's lives, including family issues that include marriage, divorce, and child custody or hadhanah. Hadhanah is a right and obligation for parents in nurturing and maintaining children, especially after a divorce. In Islamic law, the main principle used in determining hadhanah is the benefit of the child, where the mother is prioritized in raising children who have not yet mumayyiz.¹ However, in some cases, religious courts have an important role in determining who is most entitled to custody, especially when there is a dispute between the two parents. Thus, the study of the inkracht decision related to the right of hadhanah in the Religious Court is important to assess the extent to which legal certainty and protection for children after divorce can be realized.

¹ Fahmi Tiara Rahma Andrea and Zakiah Nurul Awaliyah, "Fulfillment of The Rights of Wife and Children Post Divorce," *MILRev: Metro Islamic Law Review* 1, no. 2 (2022): 231, <https://doi.org/10.32332/milrev.v1i2.6211>.

In Indonesia, the regulation of hadhanah is regulated in several regulations, including Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and other regulations related to child protection.² In article 105 of the KHI, it is stated that the right of hadhanah of a child who has not yet mumayyiz is generally given to the mother, unless there are certain considerations that make the mother unfit to take care of the child. Meanwhile, fathers still have the obligation to provide for their children even though custody falls to the mother. However, in practice, many problems arise related to the implementation of court decisions regarding hadhanah and the fulfillment of maintenance obligations by fathers. Some cases show that fathers often neglect their obligations in providing support to their children, thus creating legal uncertainty in the implementation of court decisions.

In the Kepahiang Religious Court, several divorce cases involving hadhanah rights show challenges in the implementation of court decisions. One of the main problems is the difficulty in enforcing decisions related to the granting of custody to the mother and the fulfillment of maintenance obligations by the father. In some cases, even though the mother obtains the right of hadhanah through an *inkracht* ruling, the father still does not fulfill his obligations in terms of child support. This raises wider problems related to child protection and the effectiveness of the law in providing certainty and justice for children victims of divorce. Therefore, this study will highlight how legal certainty in the decision of *inkracht* hadhanah at the Kepahiang Religious Court, as well as the extent of the effectiveness of the decision in providing protection for children and mothers after divorce.

The role of judges in deciding hadhanah cases greatly determines justice for the parties to the dispute. Judges are not only tasked with enforcing the law, but must also consider the social, economic, and psychological aspects of children in making decisions. Therefore, this study will further examine how judges consider aspects of Islamic law and positive law in determining the right of hadhanah in the Kepahiang Religious Court. This study will also look at how judges balance the interests of mothers and fathers in custody

² Dirjen Bimas Islam Kemenag RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Direktorat Bina KUA, 2018).

cases, as well as the extent to which decisions that already have legal force can still be effectively implemented in society.

The problem of hadhanah in Indonesia is not only related to legal certainty, but also reflects the social and cultural dynamics that develop in society.³ Some cases show that even though the court decision has established the right of hadhanah for mothers, there are still challenges in the implementation of the decision, either due to economic factors, social pressure, or lack of legal awareness from related parties. For example, in some cases, fathers who are dissatisfied with court decisions tend to neglect their responsibilities in providing alimony or even unilaterally taking the child without going through legal channels. This situation causes prolonged conflict between ex-husbands and wives and has a negative impact on the psychology of the child who is the object of the dispute. Therefore, this study will also explore how legal solutions can be applied to overcome these problems, including the role of legal institutions in effectively enforcing hadhanah rulings.

In the context of legal certainty, it is important to assess whether the court decision that has been *inkracht* really provides guarantees for children and mothers who get the right to hadhanah. If there is an inconsistency in the implementation of the decision, it can cause legal uncertainty and weaken the authority of the court in upholding justice. Therefore, this study will discuss how the religious justice system in Indonesia, especially in Kepahiang, can ensure that decisions that have had legal force are still truly implemented by the parties to the dispute. This study will also look at how the current law enforcement mechanism can be strengthened so that court decisions regarding hadhanah rights can be implemented more effectively.

This study will also examine the legal implications of non-compliance with the hadhanah rulings that have been *inkracht*. In some cases, fathers who do not fulfill their child support obligations after divorce often do not receive strict sanctions, so this can set a bad precedent for other cases. Therefore, there is a need for a stricter law enforcement mechanism to ensure that every court decision regarding hadhanah is actually implemented as it should. Some countries have implemented sanctions systems for those

³ Nabila Hasna Putri, Palmawati Tahir, and Muhamad Muslih, "Konsistensi Hukum Hadhanah Di Indonesia : Studi Yuridis Normatif Terhadap Putusan Pengadilan," *Hukum Keluarga Islam* 1, no. 2 (2023): 117.

who ignore court rulings related to child custody, such as direct salary deductions or asset freezes to guarantee child support payments. This study will look at the possibility of applying a similar mechanism in the context of family law in Indonesia, especially in cases handled by the Kepahiang Religious Court.

This research departs from the problem of legal uncertainty in the implementation of hadhanah decisions at the Kepahiang Religious Court. Although Islamic law and positive law have provided clear guidelines regarding the right to hadhanah, there are still various challenges in its implementation. Therefore, an in-depth study is needed to understand how inkraht rulings on hadhanah can be implemented effectively and how legal mechanisms can be improved to ensure legal certainty for children victims of divorce. Thus, this research is expected to make an academic and practical contribution in efforts to improve the family legal system in Indonesia and improve legal protection for children in hadhanah disputes.

Several previous studies have discussed hadhanah in the perspective of Islamic law and Indonesian positive law, providing an overview of how post-divorce child custody is regulated in both legal systems. The research conducted by Sangaji, the author analyzes the comparison between the concept of hadhanah in Islamic law and Indonesian positive law, as well as how applicable regulations ensure protection for children after divorce.⁴ The study highlights that although normatively Islamic law and positive law have similarities in placing the best interests of the child as the top priority, their implementation still faces obstacles, especially in terms of compliance with court decisions.

Another study published in the *Journal of Law and Legislation (JIHP)* examines child custody from the perspective of Islamic law and Indonesian legislation. This article highlights the problems of the implementation of hadhanah after divorce, including factors that affect the granting of custody to one of the parties. The study also discusses the legal impact for parties who do not comply with court decisions related to child custody, as well as the need for a stricter legal mechanism to ensure legal certainty in

⁴ Husnatul Mahmudah, Juhriati Juhriati, and Zuhrah Zuhrah, "Hadhanah Anak Pasca Putusan Perceraian (Studi Komparatif Hukum Islam Dan Hukum Positif Indonesia)," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 2, no. 1 (2019): 57–88, <https://doi.org/10.52266/sangaji.v2i1.263>.

hadhanah cases.⁵ Meanwhile, research published in the *Arrisalah Journal* examines how Islamic law establishes the right to hadhanah for children in divorce cases involving parents with religious differences. This study is relevant in the context of the plurality of Indonesian society, where religious differences in the family are often a source of conflict in child custody cases. The study found that in some cases, the best interests of the child can be the basis for judges to consider granting the right of hadhanah, regardless of religious differences between parents.⁶

From these three studies, it can be seen that although the regulations regarding hadhanah are clear, challenges in the implementation of court decisions and compliance with the law are still major issues. The novelty of this study lies in an in-depth analysis of the effectiveness of the *inkracht* decision in the hadhanah case at the *Kepahiang Religious Court*, by highlighting the factors that affect the implementation of the decision as well as legal strategies that can be applied to ensure that children's rights are optimally protected.

Research Methodology

This study uses a normative juridical approach with a case study method. The normative juridical approach was chosen because this study aims to analyze the legal aspects related to the *inkracht* decision regarding the right of hadhanah in the *Kepahiang Religious Court*. This approach focuses on the study of applicable legal norms, including Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and other laws and regulations that regulate child custody after divorce. In addition, this approach also considers Islamic legal doctrine and judicial practice in resolving disputes over hadhanah rights.

The case study method is applied in this study to deeply understand how the *Kepahiang Religious Court* decides hadhanah cases that have been *inkracht* and how the implementation of the decision is in practice. This case study will explore various aspects that affect the implementation of the decision, including the parties' compliance with the

⁵ Tarmizi, Yulia Pradiba, and Karmila Usman, "Hak Asuh Anak (Hadhanah) Pasca Perceraian Serta Akibat Hukumnya," *Jurnal Ilmu Hukum Pengayoman* 1, no. 1 (2023): 1–15, <https://journal.uniasman.ac.id/index.php/JIHP/article/view/38>.

⁶ Hafilah Ramadani, "PERTIMBANGAN HUKUM ISLAM DALAM MENETAPKAN HADHANAH ANAK PASCA PERCERAIAN PADA ORANG TUA BEDA AGAMA," *JURNAL ARRISALAH* 2, no. 1 (2022): 84–98.

court decision, challenges in implementation, and the impact on the child who is the object of the dispute. The research data was obtained from two main sources, namely primary data and secondary data. Primary data was obtained through a study of the decision of the Kepahiang Religious Court which has permanent legal force and interviews with judges, advocates, and related parties involved in hadhanah cases. This interview aims to get a direct perspective on the factors that affect the judge's decision and the obstacles faced in enforcing the verdict.

Secondary data includes legal literature, scientific journals, and various relevant legal documents. This research also uses a conceptual approach to understand the concept of hadhanah in Islamic law and how the concept is adopted in the Indonesian national legal system. Analysis of jurisprudence and various previous studies is also carried out to enrich the discussion and provide a more comprehensive understanding of the issues being studied. The data analysis technique used in this study is a qualitative method with a descriptive-analytical approach. This method allows the research to describe and analyze the legal phenomena that occur in the hadhanah case at the Kepahiang Religious Court in a systematic and detailed manner. The data obtained was analyzed by identifying patterns and trends in judges' decisions and evaluating the effectiveness of the implementation of decisions in practice. By using this method, the research is expected to make an academic and practical contribution in understanding the legal certainty of the right to hadhanah after divorce and how the religious justice system in Indonesia can improve the mechanism for the implementation of decisions in the best interests of children. In addition, this study also aims to provide recommendations for policy makers in increasing the effectiveness of law enforcement related to hadhanah rights in Indonesia.

Discussion

Hadhanah is a term in Islamic law that refers to the rights and obligations to nurture and nurture children who have not reached the age of mumayyiz or have not been able to be independent in living their lives.⁷ In the perspective of Islamic law, hadhanah aims to ensure the physical, mental, and spiritual well-being of children so that they can grow up in a good environment in accordance with sharia principles. In general, the right

⁷ Putri, Tahir, and Muslih, "Konsistensi Hukum Hadhanah Di Indonesia : Studi Yuridis Normatif Terhadap Putusan Pengadilan."

of hadhanah is given to the mother after a divorce, unless there are certain conditions that make her unsuitable, such as apostasy, remarrying a man who does not have a good relationship with the child, or not being able to take good care of the child. Evidence regarding hadhanah can be found in the Qur'an, Hadith, and the opinions of scholars, which affirm that the right of custody must be given to the party that best meets the interests of the child.

In Indonesia's positive law, hadhanah is regulated in several regulations, such as Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and the Child Protection Law Number 23 of 2002.⁸ Article 105 of the KHI states that the custody of a child who has not yet reached the age of mumayyiz is given to the mother, while a child who has reached the age of mumayyiz can choose whether he wants to be cared for by his father or mother. Even though custody is given to the mother, the father is still obliged to bear the child's maintenance according to his ability. In addition, the Child Protection Law underlines the importance of a child's right to proper parenting from their parents, even if a divorce has occurred. If there is a dispute in the implementation of hadhanah, the Religious Court has the authority to determine who has the most right to custody based on legal considerations and the best interests of the child.

A comparison between the concept of hadhanah in Islamic law and positive law in Indonesia shows similarities in the principle of child protection, where the best interests of the child are the top priority. However, in practice, there are various challenges in the implementation of hadhanah decisions, such as parental non-compliance in carrying out maintenance obligations or protracted struggles for child custody. Therefore, the role of the court is very important in ensuring that hadhanah rulings can be effectively enforced, so that children's rights are still protected in accordance with the principles of justice in Islamic law and positive law in Indonesia.

The Principle of Legal Certainty in the Hadhanah Case

Legal certainty is one of the fundamental principles in the legal system that aims to provide clarity, order, and protection for individuals in society. In the context of hadhanah cases, legal certainty is very important to ensure that child custody after divorce

⁸ Rizqi Suprayogi, "Reformasi Hukum Perkawinan Islam Di Indonesia," *Indonesia Journal of Business Law* 2, no. 1 (2023): 29–37, <https://doi.org/10.47709/ijbl.v2i1.1962>.

can be enforced fairly and sustainably. This principle emphasizes that every court decision related to child custody must be based on a clear, consistent, and effectively enforceable law, so as not to cause uncertainty for the parties involved, especially for the child who is the object of hadhanah.

In Islamic law, legal certainty in hadhanah cases is reflected in the principle of child welfare (*mashlahah al-mursalah*), which puts the best interests of children above the interests of parents. This is supported by the postulates in the Qur'an and hadith that emphasize the importance of children's welfare. For example, in a hadith narrated by Abu Dawud, the Prophet PBUH decided that mothers have more rights to take care of their children as long as they are not remarried and are still able to provide good care. This principle is also adopted in Indonesia's positive law through the Compilation of Islamic Law (KHI) Article 105, which states that custody of a child who has not yet been *mumayyiz* is given to the mother, while a child who has been *mumayyiz* is given the right to choose her caregiver.⁹

In judicial practice, legal certainty in hadhanah cases is realized through *inkracht* decisions or rulings that have permanent legal force. This decision becomes a binding legal basis for the parties, so it cannot be changed except through certain legal remedies, such as appeals or reviews. However, although normatively legal certainty has been guaranteed through regulations and court decisions, challenges in implementation remain, such as non-compliance of the losing party, manipulation of the law to avoid alimony obligations, or obstacles in the execution of judgments by law enforcement officials.

To ensure legal certainty in hadhanah cases, the court must play an active role in supervising the implementation of the decision and providing sanctions for parties who ignore legal decisions. In addition, strengthening more specific regulations regarding the mechanism for the execution of hadhanah, including administrative sanctions for parents who are negligent in carrying out the ruling, is an important step in strengthening legal certainty in this field. With strong legal certainty in hadhanah cases, it is hoped that the right of children to receive proper care and protection can be truly guaranteed in accordance with the principles of justice in Islamic law and national law.

⁹ Mahkamah Agung Republik Indonesia, *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Direktorat Jendral Badan Peradilan Agama, 2011).

Based on the analysis of the principle of legal certainty in hadhanah cases, it can be concluded that legal certainty has a crucial role in ensuring child custody after divorce so that it can be carried out fairly and effectively. In Islamic law, the principle of hadhanah is based on the welfare of children, which puts their best interests above all else. This concept is also adopted in Indonesia's positive law through various regulations, such as the Marriage Law, the Compilation of Islamic Law, and the Child Protection Law, which regulate the custody of children by taking into account their welfare and protection in law.¹⁰ However, in practice, the implementation of hadhanah rulings still faces various challenges, such as non-compliance of the losing party in the case, indecisiveness in law enforcement, and economic obstacles that affect the fulfillment of child support obligations. Although court decisions that have been *inkracht* provide normative legal certainty, challenges in the execution of judgments are still the main obstacles that need further attention.

The *inkracht* decision in the hadhanah case is a court decision that has permanent legal force and cannot be challenged by the disputing parties.¹¹ In the context of family law, this decision is the basis for determining child custody after divorce and determining the obligations of the party responsible for the maintenance and welfare of the child. The main implication of the *inkracht* decision on the right to hadhanah is to provide legal certainty for the party who has the right to child custody, so that there are no prolonged disputes that can harm the child psychologically and socially. This decision also functions as a binding legal instrument, so that the party who has been designated as the holder of the right to hadhanah has legitimacy in carrying out childcare duties in accordance with the applicable law.

However, in practice, the implementation of *inkracht* judgments often faces various challenges, especially in the aspects of implementation and compliance of the losing party in the case. One of the problems that often occurs is the father's non-compliance in fulfilling the obligation to support the child even though the right of

¹⁰ Niken Sylvia Puspitasari et al., "Tinjauan Yuridis Normatif Perlindungan Anak Dalam Perspektif Konsep Hadhanah Dan Undang-Undang Nomor 35 Tahun 2014," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 5, no. 2 (2024): 309–21, <https://doi.org/10.36701/bustanul.v5i2.1377>.

¹¹ Anggreany Arief and Azwad Rachmat Hambali, "Upaya Hukum Perlawanan Pihak Ketiga (Derden Verzet) Terhadap Putusan Hakim Yang Telah Berkekuatan Hukum Tetap (in Kracht Van Gewisjde)," *Indonesian Journal of Legality of Law* 6, no. 1 (2023): 07–12, <https://doi.org/10.35965/ijlf.v6i1.3853>.

hadhanah has been given to the mother. In addition, there are cases where one of the parties continues to try to illegally seize custody of the child, thus causing instability in the child's life after divorce. Another factor affecting the implementation of *inkracht* rulings is the lack of a firm enforcement mechanism, where there are no effective sanctions for parties who ignore their obligations after a court ruling. This creates legal uncertainty and worsens the condition of the child who is the object of the dispute.

To ensure the effectiveness of *inkracht* decisions in hadhanah cases, it is necessary to strengthen regulations and the active role of courts and law enforcement officials in ensuring that decisions that have legal force are still carried out. In addition, there needs to be a stricter control mechanism in enforcing children's rights after divorce, including the imposition of sanctions for parties who do not fulfill their obligations. With a stronger and more structured legal system, it is hoped that the *inkracht* decision can provide maximum protection for children and ensure the implementation of the right to hadhanah in accordance with the principles of justice in Islamic law and Indonesian positive law.

Inkracht's Decision in the Hadhanah Case at the Kepahiang Religious Court

The *inkracht* decision in the hadhanah case at the Kepahiang Religious Court is an important aspect in ensuring legal certainty for children after their parents' divorce. As a judicial institution that handles family cases, the Kepahiang Religious Court plays a role in determining the party who has the most right to child care by considering aspects of Islamic law, positive law, and the best interests of the child. In many cases, the right of hadhanah is given to the mother, especially if the child is still at the age of *mumayyiz*, in accordance with the provisions stipulated in the Compilation of Islamic Law (KHI) and applicable laws and regulations.¹² However, the court decision not only stipulates custody, but also obliges the party who does not get the right to hadhanah, generally the father, to remain responsible for meeting the needs of the child, especially in the form of alimony.

Although the *inkracht* ruling is final and binding, its implementation in the field often faces obstacles, such as non-compliance of the losing party, difficulty in executing the judgment, and economic obstacles that hinder the fulfillment of child support

¹² Faridaziah Syahrain, "PENETAPAN HAK ASUH ANAK DI BAWAH UMUR AKIBAT PERCERAIAN PERSPEKTIF HUKUM ISLAM," *Lex et Societatis* 11, no. 1 (2017): 92–105.

obligations. Some cases show that even though the mother has been designated as the holder of the right to hadhanah, the father often neglects the obligation of maintenance, thus making it difficult for the mother to raise her economic condition in raising her child. In addition, there are cases where the father tries to unilaterally take over the right of hadhanah, even though the verdict has been determined by law. This shows that even though the court has established a valid decision, the challenge in the implementation of the decision is still a problem that requires further attention.

To ensure that the inkraht verdict in the hadhanah case at the Kepahiang Religious Court can be carried out effectively, a stricter supervision and enforcement mechanism is needed. The court must be more proactive in supervising the implementation of the judgment and providing sanctions for parties who do not comply with the obligations that have been set. In addition, coordination between courts, law enforcement officials, and child protection agencies must also be strengthened to ensure that children's rights remain protected. With a better system in enforcing inkraht decisions, it is hoped that the right of hadhanah can run in accordance with the principles of justice in Islamic law and national law, as well as provide a guarantee of protection for children of divorce victims in Kepahiang.

A case study on the decision on hadhanah rights at the Kepahiang Religious Court illustrates how judicial institutions enforce the law in resolving child custody disputes after divorce. In some cases handled, generally the right of hadhanah is given to the mother, especially if the child is still under the age of mumayyiz, as stipulated in Article 105 of the Compilation of Islamic Law (KHI).¹³ However, in practice, several factors are considered by the judge in determining custody, such as economic ability, psychological condition, and environment that can provide the best benefits for the child's development. In addition, there are cases where the right of hadhanah is given to the father if the mother is considered unqualified as a proper caregiver, for example due to economic or social instability factors that can adversely affect the child.

In some of the rulings that have been inkraht, it has been found that although custody has been granted to the mother or father, the implementation does not always go

¹³ 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>.

smoothly. An obstacle that often arises is the non-compliance of parties who do not obtain the right to hadhanah, for example in terms of handing over children or fulfilling maintenance obligations. There are also cases where the losing party tries to re-file a lawsuit or refuses to comply with the court's decision, causing prolonged conflicts that have an impact on the emotional state and well-being of children. Therefore, it is important to further examine how the effectiveness of hadhanah decisions that have still had legal force can be truly enforced in the best interests of children.

The juridical analysis of the *inkracht* decision in the hadhanah case aims to understand the legal basis used by the judge in determining the decision and assess the extent to which the principles of legal certainty and justice are applied in the decision. In the Islamic legal system, hadhanah is an inherent right of children and must be given to the party who is most able to ensure the welfare and optimal growth of children. This principle is also adopted in Indonesia's positive law through various regulations, such as the Marriage Law and the Child Protection Law. The *inkracht* decision in the hadhanah case aims to provide legal certainty, so that disputes regarding child custody do not continue and can provide stability for the child who is the object of the dispute.

Normatively, the *inkracht* decision is final and binding, the challenge in its implementation is still a significant problem. Some cases show that the losing party in the case often ignores or even refuses to comply with the court's decision. In this context, the juridical analysis also highlights the importance of effective law enforcement mechanisms, including the imposition of sanctions for parties who do not comply with the judgment. In addition, more concrete policies are needed in supervising the implementation of hadhanah rights, such as supervision from social institutions or the active role of the court in ensuring that children really get the legally stipulated custody rights. Thus, the juridical analysis of the *inkracht* decision in the hadhanah case not only focuses on the normative aspect, but also on the implementation challenges and legal solutions that can strengthen legal certainty for children of divorce victims.

Enforcement of Legal Certainty in the Hadhanah Case at the Kepahiang Religious Court

The enforcement of legal certainty in hadhanah cases at the Kepahiang Religious Court is an important part of ensuring the rights of children after divorce. As the

competent judicial institution in resolving family disputes, the Kepahiang Religious Court seeks to ensure that every decision that has been inkraht can be implemented effectively and provide legal certainty for the parties to the dispute. Legal certainty in hadhanah cases is not only related to the determination of child custody, but also includes the implementation of the obligations of parties who do not get hadhanah rights, especially in terms of providing alimony and access to visits to children.

Although normatively the hadhanah decision has a strong legal basis, its implementation in the field still faces various obstacles. One of the main challenges in enforcing legal certainty is the non-compliance of the losing party in the case, both in handing over the child to the party who gets the right to hadhanah and in fulfilling the obligation of maintenance. Several cases in the Kepahiang Religious Court show that fathers who are required to pay child support often ignore this obligation, thus having an impact on the welfare of the child and the mother who takes care of him. In addition, there are cases where parties who are dissatisfied with the verdict attempt to forcibly take the child or file a re-lawsuit to avoid the implementation of the verdict.

To overcome this problem, the Kepahiang Religious Court has implemented various legal mechanisms to strengthen the implementation of hadhanah decisions. One of them is by issuing a determination of execution for parties who do not comply with the court decision. In addition, the court also works with law enforcement officials and child protection agencies to ensure that children's rights are maintained. Another effort made is to increase legal awareness for the public through education about the importance of complying with court decisions in hadhanah cases.

However, in order for the enforcement of legal certainty in hadhanah cases to run more effectively, it is necessary to strengthen regulations and sanctions mechanisms for parties who ignore the ruling. In addition, there is a need for a stricter monitoring system for the implementation of hadhanah rights, including a direct supervision mechanism for the fulfillment of child support obligations. With more concrete steps in enforcing the hadhanah ruling, it is hoped that legal certainty in this case can be truly realized, so that children's rights are still protected and do not become victims of legal conflicts between parents.

Juridical Analysis of the Inkracht Decision on the Right to Hadhanah at the Kepahiang Religious Court

The inkracht decision in the hadhanah case at the Kepahiang Religious Court has a very important role in ensuring legal certainty for children after divorce. Hadhanah, which in Islamic law is interpreted as the right and obligation to take care of and maintain children who have not reached adulthood, is an issue that is often disputed in divorce cases. In Islamic law, hadhanah is given to the party who is considered the most capable of guaranteeing the benefit of the child, usually the mother for the child who has not yet been mumayyiz. However, in Indonesia's positive law, the determination of hadhanah rights also considers various legal aspects regulated in Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and the Child Protection Law.¹⁴

In the juridical analysis of the decision on the inkracht of hadhanah rights in the Kepahiang Religious Court, several important aspects need to be studied, including the legal basis used in determining the right of hadhanah, the judge's consideration in making decisions, and the effectiveness of the implementation of the decision in practice. Normatively, judges in deciding hadhanah cases must be guided by the principles of legal certainty, utility, and justice. The principle of legal certainty is manifested in the form of the application of clear rules regarding who is entitled to hadhanah, how the mechanism for resolving hadhanah disputes, and how the maintenance obligation must be fulfilled by the party who does not get child custody.

In the Kepahiang Religious Court, the decision of hadhanah that has been inkracht generally stipulates that the right of hadhanah of minors is given to the mother, unless there is a strong reason that shows that the mother is not able to provide good care. In this case, the judge considers various factors such as economic conditions, social environment, and psychological well-being of the child. Meanwhile, even though the right of hadhanah is given to the mother, the father is still obliged to provide maintenance to his child. However, in practice, the implementation of this decision does not always run smoothly. Many cases show that fathers who have been required to pay alimony often

¹⁴ MA Dr.sakban Lubis, S.Hi. S.Pd.I, M.Pd.I Muhammad Yunan Harahap, and M.Pd.I Dr. Rustam Ependi, *Fiqih Munakahat, Hukum Pernikahan Dalam Islam*, ed. Efitra, Pertama (Jambi: PT. Sonpedia Publishing Indonesia, 2023).

ignore their obligations, thus having an impact on the welfare of children cared for by mothers.

From the juridical side, the *inkracht* decision in the *hadhanah* case should be final and binding, which means that no other legal remedy can be made to change the decision. However, in reality, there are still many parties who try to re-file lawsuits or avoid obligations that have been set by the court. This is a challenge for law enforcement at the *Kepahiang Religious Court*, especially in ensuring that the *inkracht* verdict can really be properly implemented by the parties to the dispute. Therefore, in this juridical analysis, it is important to review how the supervision mechanism for the implementation of judgments can be strengthened so that there are no violations of children's rights after divorce.

One of the factors that is of concern in the juridical analysis of the *inkracht hadhanah* decision is the extent to which the decision can provide legal protection for children. In the Islamic legal system, the protection of children is a top priority, as mentioned in various postulates of the *Qur'an* and *Hadith* that emphasize the importance of parental responsibility in raising their children.¹⁵ This principle is also adopted in the national legal system through various regulations that regulate the rights and obligations of parents towards children after divorce. However, in its implementation, there are various obstacles that cause children's rights not to be fully fulfilled, especially in cases where the father does not fulfill his maintenance obligations or there is a unilateral struggle for child custody.

From the perspective of law enforcement, the *Kepahiang Religious Court* has an important role in ensuring that *inkracht* decisions can be implemented effectively. In some cases, the court has issued execution decrees for parties who do not comply with the *hadhanah* ruling. However, the effectiveness of the execution of this decision is still influenced by various factors, including public legal awareness and support from law enforcement officials in ensuring compliance with the decision that has been set. Therefore, in this juridical analysis, it is necessary to consider how legal strategies and

¹⁵ CHATRYEN M. DJU BIRE and Melinda Ratu Radja, "Perlindungan Hak Perempuan Berdasarkan Convention on Elimination of All Forms of Discrimination Against Women (Cedaw) Dalam Tradisi Kawin Tangkap Di Sumba," *Jurnal Hukum Samudra Keadilan* 18, no. 1 (2023): 131–41, <https://doi.org/10.33059/jhsk.v18i1.7473>.

mechanisms can be improved to increase the effectiveness of the enforcement of hadhanah judgments.

In addition, the role of child protection institutions and related agencies also needs to be strengthened to ensure that the best interests of children are really the top priority in every hadhanah decision. In some cases, children fall victim to prolonged conflicts between parents over custody.¹⁶ This can negatively impact the child's psychological development and cause prolonged trauma. Therefore, in the juridical analysis of the Inkracht hadhanah decision, there needs to be further study on how child protection institutions can contribute to ensuring that every decision taken is truly oriented towards the interests of the child, not just the interests of the parents in dispute.

In terms of regulations, although the law that regulates hadhanah in Indonesia is quite clear, it still needs to be strengthened in terms of implementation and supervision. One of the recommendations in this juridical analysis is the need for a stricter law enforcement mechanism for parties who do not comply with court rulings. For example, in some other countries, there are administrative sanctions that can be imposed on parents who do not meet child support obligations, such as salary deductions or asset freezes. A mechanism like this can be a solution to problems that often occur in the implementation of hadhanah rulings in Indonesia, including in the Kepahiang Religious Court

Conclusion

A juridical analysis of the decision on the inkracht of hadhanah rights at the Kepahiang Religious Court shows that although Islamic law and positive law have provided clear guidelines regarding child custody after divorce, challenges in implementation are still a major obstacle. Therefore, concrete steps are needed to increase the effectiveness of law enforcement, including strengthening the judgment execution mechanism, increasing the role of child protection institutions, and applying stricter sanctions for parties who do not fulfill their obligations. With efforts to improve the legal system and law enforcement mechanisms, it is hoped that children's rights in hadhanah cases can be more guaranteed and legal certainty can really be realized in practice.

¹⁶ Feni Arifiani, "Ketahanan Keluarga Perspektif Masalah Mursalah Dan Hukum Perkawinan Di Indonesia," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 8, no. 2 (2021): 533–54, <https://doi.org/10.15408/sjsbs.v8i2.20213>.

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