



Executing *Hadhanah* Decisions in Indonesia's Religious Courts: Islamic Legal Principles, Child Welfare, and Multicultural Challenges

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ABSTRACT

This article examines the execution of *hadhanah* (child custody) decisions in Indonesia's Religious Courts, focusing on the interaction between Islamic legal principles, child welfare considerations, and multicultural social realities. Using a normative-qualitative approach, the study analyzes statutory regulations, judicial decisions, and relevant Islamic legal doctrines to identify challenges in implementing *hadhanah* rulings after divorce. The findings reveal that although Religious Courts consistently prioritize the principle of the best interests of the child, the execution of custody decisions often encounters obstacles, including parental resistance, socio-cultural norms, and limited enforcement mechanisms. Multicultural contexts—such as differing religious interpretations, family structures, and local customs—further complicate the effective realization of judicial decisions. The study argues that the gap between normative legal ideals and practical enforcement undermines child protection and legal certainty. It proposes strengthening judicial discretion, enhancing mediation mechanisms, and integrating child-centered and culturally sensitive approaches into *hadhanah* execution. This article contributes to the discourse on Islamic family law by highlighting the need for a more responsive and welfare-oriented framework in implementing custody decisions within Indonesia's plural legal and social landscape.

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1. INTRODUCTION

In some divorce cases, the dissolution of marital life effectively resolves the individuals' issues. (Putra & Alfari, 2021). Nevertheless, many divorced couples have a new issue, namely child custody (hadhanah) concerning offspring from the marriage (Firdausia, 2020). Children represent the most susceptible segment of society, and safeguarding their rights should be paramount. The enforcement of child custody in Indonesia is a multifaceted subject that needs significant focus, particularly regarding the legal dimensions of state governance and child welfare. Ivana underscored the need of prioritizing the best interests of children in post-divorce parenting (hadhanah). The current normative laws are deemed obsolete for societal advancement, therefore necessitating urgent legal change (Rusmana & Indrapradja, 2024).

The jurisdiction of the Religious Court in executing sharia rulings with definitive legal authority is a crucial factor in achieving justice for those seeking it (Nugroho et al., 2023). The execution of court rulings is required by Law Number 48 of 2009 as an autonomous authority to maintain law and justice (Suwito et al., 2023). Chapter X of the Implementation of the Court Decision of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power explicitly delineates in Article 54, paragraphs (2) and (3), that: "(2) The execution of court decisions in civil cases is conducted by the clerk and bailiff under the direction of the chief judge, and (3) Court decisions are executed with consideration for human values and justice." Subsequently, Article 55, paragraphs (1) and (2), states "(1) The chief judge is obliged to supervise the implementation of court decisions that have obtained permanent legal force. (2) Supervision of the implementation of court decisions as intended in paragraph (1) shall be carried out in accordance with laws and regulations (Yassine et al., 2024)".

The jurisdiction of the Religious Court to execute judgments is grounded on Law Number 50 of 2009 and Law Number 48 of 2009, which assert that judicial power is an autonomous authority dedicated to the enforcement of law and justice (Muhtar et al., 2023). The Religious Court has the jurisdiction to investigate, adjudicate, and resolve issues based on their specific features (Lahilote, 2020). Thus, the Religious Court has the jurisdiction to provide rulings on child custody and to oversee their implementation. In reality, executions under the Religious Court system are often categorised into two types: actual execution and execution for debt repayment. Although child custody (hadhanah) is classified as actual execution, it is not explicitly governed by the HIR–R.Bg or by certain procedural laws. The implementation of hadhanah rulings mostly depends on conventional legal rules, which often prove inadequate for the unique and delicate nature of child custody conflicts.

This regulatory circumstance exposes a distinct doctrinal and procedural deficiency in the execution of child custody rulings. Despite the existence of substantive requirements regarding hadhanah in numerous legal instruments, a standardised procedural framework for the implementation phases is lacking. Current procedural law lacks explicit operational standards concerning the engagement of child psychologists or social workers, methods for evaluating and protecting the child's psychological welfare during implementation, post-decision oversight to ensure adherence, or systematic collaboration among Religious Courts, law enforcement entities, and child protection organisations. The lack of procedural guidance engenders legal ambiguity and undermines the enforcement of custody determinations, notwithstanding their ostensible legal legitimacy.

The execution of hadhanah rulings reveals practical difficulties stemming from the status of children as legal entities who may encounter emotional opposition or external pressures from their surroundings. In several instances addressed by Religious Courts, the implementation of custody rulings faces considerable challenges even subsequent to a conclusive verdict. The challenges often arise from the child's emotional bond with one parent or extended family members, hence complicating the execution procedure. Consequently, enforcement often relies on expansive discretionary factors instead of explicit procedural criteria, so compromising legal clarity and the legitimacy of court rulings.

These doctrinal and procedural constraints are evident in judicial practice. An exemplary instance is the Decision of the Martapura Religious Court Number 342/Pdt.G/2020/PA.MTP, whereby custody of a ten-year-old kid, Aulia, was granted to the mother, Nuraini. The panel of judges determined their conclusion based on the child's age, which had not yet attained mumayyiz status, and the assessment that maternal care was more suitable for the child's developmental requirements.

Notwithstanding the ruling's clarity, its implementation faced significant challenges. Rudi Hartono, the kid's father, obstinately disregarded the ruling and intentionally obstructed the transfer of the child by transferring Aulia to an unknown place. Moreover, the youngster, who had formed a profound emotional bond with the father's extended family, declined to reside with the mother. The custodial parent had significant legal and emotional challenges in executing the court's ruling. The Religious Court's efforts to engage law enforcement in the execution process were thwarted by bureaucratic limitations and a lack of definitive oversight mechanisms for custodial enforcement.

A similar issue is evident in Decision Number 5719/Pdt.G/2015/PA Kabupaten Malang, when the judicial panel awarded custody to the father upon determining that the mother had engaged in nusyuz and adultery. Despite the ruling acquiring permanent legal authority, it was never effectively implemented. Whenever the bailiff arranged an execution, the mother hid the kid as the responder, and in many occasions, the youngster was sent to an undisclosed place. As a result, the execution procedure was postponed for almost three years, inflicting considerable emotional, psychological, and financial distress on the applicant. This case illustrates that the lack of explicit procedural criteria for implementing hadhanah judgements facilitates ongoing non-compliance, therefore eroding the authority of court verdicts and extending post-divorce disputes.

Implementation challenges are exacerbated by poor cooperation from losing parties, especially when one parent refuses to surrender custody. The lack of effective punishments for non-compliance with civil judgements exacerbates this problem, since impacted parties—predominantly mothers—endure extended legal uncertainty, emotional turmoil, and significant financial strain in seeking enforcement. Efforts to engage law enforcement are often rejected on the basis that custody disputes are categorised as civil family issues rather than criminal offences (Battle, 2018).

The Constitutional Court has examined the interaction of civil custody issues and criminal law in its ruling that denied a material review of Article 330 paragraph (1) of the Criminal Code, presented by several mothers with custody rights established by court judgements. The Court elucidated that the rule is applicable to all persons, including biological parents, and that the illegal abduction of a child without legal rights or permission may constitute a criminal offence provided the requisite elements of the crime are satisfied (Aryani & Hermanto, 2021). This clarification offers significant information;

nonetheless, criminal law should be regarded as a last resort, applicable only after all civil enforcement options have been fully used.

The insufficient implementation of child custody rulings by Religious Courts heightens the likelihood of extended parental disputes, thereby jeopardising family stability and infringing upon children's rights. In the absence of clear and efficient execution processes, custody conflicts are more prone to grow into criminal charges, so subjecting children to psychological injury and protracted suffering (Christia et al., 2024). Children embroiled in such disagreements can endure prolonged emotional repercussions, especially when they are consistently engaged in acrimonious legal proceedings between their parents (Ramadanni & Somawijaya, 2023).

Accordingly, comprehensive and effective regulatory arrangements for the enforcement of *hadhanah* decisions are urgently needed. Such arrangements should aim to ensure compliance with court decisions, protect the best interests of the child, and prevent the unnecessary criminalization of family disputes. This study therefore examines the legal framework governing child custody enforcement in Indonesia, evaluates the adequacy of existing regulations in safeguarding children's rights, and identifies procedural gaps that require reform. By highlighting these deficiencies, this research seeks to propose the development of clearer, more humane, and child-oriented standards for the execution of *hadhanah* decisions.

2. METHODS

This study employs normative legal research, concentrating on the investigation of legal regulations pertinent to child custody enforcement post-divorce in Indonesia (Ishaq, 2017). This research is normative since it examines relevant legal norms and law enforcement activities within the sector (Suratman, 2015). The study focuses on rules governing child custody execution in Indonesia, particularly within the context of the Religious Court, along with instances of its implementation, including challenges encountered in enforcing rulings that possess permanent legal force. The methodologies used are philosophical and analytical in nature. The philosophical approach seeks to examine the notions of fairness, the welfare of children, and the legal safeguards for children entangled in parental disputes, particularly with custody enforcement. The analytical method will rigorously assess current legal restrictions and evaluate their effectiveness in addressing issues encountered in the implementation of child custody.

The study's data collecting included the investigation of legal papers. Legal document analysis is a data collecting technique that concentrates on scrutinizing diverse official documents, including statutes, regulations, judicial rulings, and other pertinent legal materials (Marzuki, 2016). This encompasses an examination of statutes and regulations, including Law No. 1 of 1974 on Marriage and SEMA No. 5 of 2022 – Legal Formulation of the Religious Chamber - 5.b. about the enforcement of child custody and judicial determinations pertaining to post-divorce custody. This info is used to comprehend the legal structure regulating child custody enforcement. The research further examined court opinions to assess the practical execution of legislation, particularly in resolving problems that may occur between parents. The used data analysis approach is descriptive analytics. This study delineates current legislation and jurisprudence while also doing a comprehensive examination of the efficacy and shortcomings in the enforcement of these laws. This analysis will juxtapose the current rules with their practical application, particularly with custody execution that may incite criminal disputes.

3. RESULTS AND DISCUSSION

3.1 Legal Regulations for Execution of Child Custody in Indonesia

This paper examines the legal framework governing the execution of post-divorce child custody (*hadhanah*) in Indonesia, with particular emphasis on the adequacy of existing regulations in safeguarding the best interests of the child and ensuring compliance with Religious Court decisions. The execution of *hadhanah* functions as a legal mechanism to enforce judicial rulings concerning the transfer of physical custody when such rulings are not voluntarily complied with by the obligated party. Within Indonesian civil procedural law, execution is generally classified into two categories: actual execution and monetary execution. Actual execution involves the enforcement of judgments requiring concrete actions—such as the transfer, division, or physical control of an object—without recourse to auction mechanisms, whereas monetary execution is carried out through auction due to its economic nature. The execution of child custody falls under the category of actual execution, as it entails the physical transfer of a child to the legally designated custodian.

The fundamental requirements for execution under Indonesian procedural law include: (1) the existence of a decision with permanent legal force, with limited exceptions such as immediate or provisional judgments (Article 180 HIR/Article 191 RBg and Article 224 HIR/Article 250 RBg); (2) the absence of voluntary compliance; (3) the presence of condemnatory elements in the judgment; and (4) supervision by the Chief Judge of the Religious Court and execution by the court clerk (Hartati & Syafrida, 2021). In practice, several factors are known to inhibit execution, including deliberate non-compliance by the losing party, objections raised by third parties that may escalate to cassation proceedings, high execution costs, the inability of applicants to provide required collateral in immediate judgments, and non-condemnatory formulations in the *petitum* (Rusli & Apriyandi, 2021). These constraints apply generally to civil execution and are not specifically designed to address the distinctive nature of child custody dispute (Hartati & Syafrida, 2021);

The implementation of *hadhanah* rulings in Religious Courts mostly depends on ordinary civil execution laws as specified in the HIR and RBg, owing to the lack of distinct procedural guidelines for child custody enforcement. Consequently, the execution of custody is often regarded similarly to the execution of tangible assets, despite the fact that the subject of custody is a kid with intrinsic psychological and emotional vulnerabilities. This regulatory method has a formalistic perspective that emphasises procedural adherence, with less direction on safeguarding the child's psychological well during enforcement.

The aforementioned limits are clearly articulated in the Legal Formulation of the Religious Chamber of the Supreme Court as outlined in SEMA Number 5 of 2022, section 5(b). The rule stipulates that if a kid declines to engage in the execution process, the decision is considered non-executable; likewise, if the child is untraceable, the execution may be deferred twice before being rendered non-executable. This strategy is fundamentally an attempt to avoid forceful enforcement that might inflict psychological damage on the youngster. Nonetheless, it concurrently generates substantial legal and policy ramifications.

Designating a custody ruling as non-enforceable has significant moral implications. Although it may shield the kid from immediate psychological trauma linked

to coercive removal, it concurrently suspends the enforcement of a final court ruling, so diminishing legal certainty and possibly jeopardising the long-term fulfilment of the child's best interests. This approach may unintentionally encourage strategic non-compliance by the losing side, especially when the youngster is intentionally persuaded or hidden to hinder enforcement. The lack of corrective or follow-up measures after a non-executable declaration indicates a fundamental policy deficiency in the existing regulatory system.

The lack of an alternate procedural route after a non-executable declaration exposes a significant policy deficiency. Existing rules lack a graded or remedial framework to handle a child's rejection or unavailability, other than delay and termination of enforcement measures. This paper suggests a phased execution approach that incorporates legal and psychological factors to rectify this deficit.

To rectify this deficiency, it is essential to use psychological theory as a design instrument for implementation processes, rather than only as a demonstration of psychological effects. In this context, two interconnected frameworks are especially pertinent: attachment theory and child development-oriented best interest assessment. Attachment theory underscores the significance of a child's emotional connections and stability, indicating that sudden or coerced transitions may undermine psychological security. Child development models emphasise that children's ability to adjust to custody transfers differs according to age, emotional maturity, and environmental influences.

When articulated in procedural terms, these frameworks facilitate the creation of a phased execution model for hadhanah judgements. This model would comprise: (1) a pre-execution screening phase, entailing psychological evaluation to discern attachment patterns and the child's preparedness for transition; (2) a preparatory phase, integrating counselling and child-centric interviews conducted by trained professionals to gradually acclimatise the child to the custody arrangement; (3) a conditional execution phase, wherein physical transfer occurs only after minimum psychological readiness indicators are satisfied; and (4) a post-Explicit temporal requirements, defined institutional responsibilities, and quantifiable measures of preparedness are essential to guarantee that implementation is both legally binding and authentically focused on the kid.

However, the existing procedural framework regulating hadhanah implementation still demonstrates structural limitations. The efficacy of enforcement is dependent on the child's stated desire and existing factual conditions, absent the aid of psychological processes that may progressively improve preparedness or promote parental reconciliation. Under these circumstances, formalistic execution models threaten to undermine the substantive significance of the child's best interests by favouring procedural finality over protective involvement.

The growing intricacy of hadhanah implementation underscores its role at the convergence of civil law enforcement and child safeguarding. Opposition from parties, coupled with a lack of comprehensive technical instruction, often leads to inadequate execution of judicial rulings. Legal professionals and academics have underscored the need for more explicit child protection requirements in execution processes, especially with psychological support, phased implementation, and post-decision oversight. Enhancing these elements is crucial to convert hadhanah implementation from a merely procedural civil procedure into a child-focused enforcement system aligned with the fundamental goals of family law.

The implementation of hadhanah rulings in Religious Courts cannot be comprehended only via civil procedural law, since it is fundamentally grounded in Islamic

family law concepts and integrated within Indonesia's multicultural Muslim community. In Islamic legal thought, hadhanah is not only a parental right but also a moral and legal obligation focused on ensuring the wellbeing (maslahah) of the child. Classical Islamic jurisprudence consistently asserts that custody arrangements should prioritise the child's welfare over the interests of conflicting parents, aligning with the overarching goals of Islamic law (maqāsid al-sharī'ah), especially the safeguarding of life, intellect, and dignity.

Within this normative framework, the premise of the child's best interests is not a foreign or imported concept, but is fundamentally connected with Islamic legal norms. The avoidance of damage (dar' al-mafāsīd) and the promotion of benefit (jalb al-maṣāliḥ) necessitate that custody choices be executed in a way that mitigates psychological pain and maintains the child's emotional stability. Consequently, execution methods that depend only on formalistic or coercive civil processes may undermine the fundamental aims of Islamic family law, although being technically legitimate.

The practice of hadhanah in Indonesia is influenced not just by its Islamic normative basis but also by a particularly heterogeneous social milieu. Indonesian Muslim groups exhibit varied family structures, kinship systems, and local traditions that profoundly affect adherence to judicial rulings. Custody problems are often seen not just as legal disagreements between parents but also as familial issues affecting extended relatives. Opposition to execution may also arise from cultural traditions prioritising household peace, societal shame linked to coercive enforcement, or community views on official involvement in private family matters.

The multicultural dynamics elucidate the frequent resistance, non-compliance, or strategic obstruction faced by formal execution methods, as seen by instances when children reject execution or are intentionally hidden. From this viewpoint, the designation of a custody ruling as non-executable under SEMA Number 5 of 2022 may provide as a safeguard for the kid, while also highlighting the conflict between legal certainty and social credibility across diverse Muslim communities.

Therefore, the establishment of child-friendly execution mechanisms must adhere to procedural legality while also aligning with Islamic ethical standards and multicultural contexts. This research proposes a phased and psychologically informed execution model that serves as a normative link between state law enforcement and the social realities of Muslim households. This strategy strengthens the legitimacy of Religious Court rulings, upholds Islamic child protection principles, and embraces cultural diversity, hence improving legal efficacy and societal acceptability.

3.2 Preventive Efforts Through Reform of Child Custody Execution Regulations

The implementation of child custody rulings (hadhanah) often encounters several problems and exerts a psychological influence on the kid. While these executions must adhere to relevant legal protocols to be deemed valid, the process often engenders profound emotional turmoil for the parties involved, particularly for the kid at the center of the dispute (Rohmah et al., 2023). Execution of hadhanah This can only occur if the religious court's ruling has attained permanent legal force, meaning all legal procedures, including appeals or cassation, have been exhausted. The execution of judgment hadhanah must adhere to the relevant legal processes to be deemed legitimate under the law. The following is a chronological method often adhered to in the implementation of hadhanah (GUSHAIR, 2022):

1. The ruling has enduring legal authority.

The implementation of hadhanah may only proceed if the religious court's ruling on child custody has permanent legal authority, indicating that all legal recourse, including appeals or cassations, is no longer permissible.

2. Non-compliance by the losing side

The execution procedure begins when the losing party in the case is unwilling to willingly comply with the hadhanah ruling. If the losing party is unwilling to relinquish custody of the kid to the victorious party as determined by the court, enforcement steps must be implemented.

3. Request for execution by the prevailing party

The winning side (the plaintiff) then filed a motion for execution with the Religious Court that adjudicated the hadhanah case. This application formally requests the court to enforce a judgment that has permanent legal authority.

4. Judicial Determination of the Trial

The Religious Court thereafter schedules an aanmaning hearing, a formal session in which the losing party is brought to court and issued a warning to promptly comply with the ruling willingly. This hearing serves as the last opportunity for the unsuccessful party to adhere to the judgment.

5. Grace period or admonition

Following the aanmaning hearing, a grace time is given to the losing party to execute the ruling. If the losing party fails to execute the judgment within this grace period, the execution procedure will advance to the subsequent step.

6. Execution Warrant

Upon the expiration of the grace period without response from the losing side, the Chief Justice of the Religious Court thereafter issues an execution warrant. This letter is an official court order to execute the forcible transfer of hadhanah, if required, to relinquish custody of the kid to the prevailing party.

7. The execution at the designated location of the respondent condemned to relinquish custody of the child;

8. The execution was facilitated by two witnesses.

9. The bailiff retrieves the kid in a courteous way, according to established norms; if the child is not willingly surrendered, force may be used. 10. The bailiff prepares an execution report, which is signed by the bailiff. 11. The bailiff and two witnesses were present on five occasions.

Execution pertaining to child custody (hadhanah) in religious courts frequently encounters numerous impediments, despite the existence of an execution mechanism that adheres to established protocols (Bakung et al., 2023). The execution occurs at the location of the respondent, specifically the parents, who are obligated to surrender the kid to the prevailing custody party. The execution process entails a bailiff tasked with retrieving the child courteously and in accordance with local norms, with the expectation of a voluntary surrender by the child. Nevertheless, should the respondent persist in refusal, enforcement shall be executed forcibly, while upholding the dignity and integrity of legal protocols.

The bailiff was aided by two witnesses responsible for accompanying and observing the execution process. All actions, including the request for the child's surrender and, if required, the forced removal, are meticulously documented in the execution minutes. The minutes were endorsed by the bailiff and two witnesses, thereafter produced in five copies as valid evidence of the execution to be presented to

the pertinent parties. Child custody executions, however infrequent, must be conducted in accordance with established protocols to uphold the court's authority and legitimacy. This is crucial to guarantee equitable and efficient law enforcement. Commonly encountered obstacles include (Muchlis, 2021) :

1. The judge's decision gives the right to *hadhanah* to the mother, but the child remains in the physical control of the mother
In this instance, while the court ruling unequivocally grants custody to the mother, there are no explicit impediments about the physical care of the kid, facilitating a more seamless execution.
2. The judge's decision gives the right to *hadhanah* to the father, but the child remains in the physical control of the father
In this situation, the execution is facilitated as the child is already under the custody of the designated party, specifically the father.
3. The judge's decision gives the right to *hadhanah* to the mother, but physically the child is controlled by the father

This is a significant impediment in the implementation of child rearing. Despite the judge's order granting the mother child custody, the current situation indicates that the child remains under the father's authority. When dads are unwilling to relinquish their children voluntarily, the execution process becomes more intricate and may incite conflict. In this scenario, the bailiff must retrieve the child courteously and compassionately; nevertheless, if the respondent persists in refusal, the execution must be conducted forcibly.

These hurdles suggest that despite the existence of legal procedures, their practical application frequently encounters emotional, social, and cultural obstacles. This underscores the necessity for a more compassionate and adaptable methodology in child custody implementation, while being anchored in the idea of the child's best interests. The execution process not only seeks to enforce the court's ruling but must also take into account the psychological and emotional effects on the kid who is the subject of the execution.

The child custody enforcement process seeks to guarantee that the court's ruling is implemented justly and lawfully, regardless of the unwillingness of the non-compliant party to adhere voluntarily. The execution of *hadhanah* represents a definitive type of legal safeguarding for children's rights and for those designated by the court as entitled to child custody.

The Constitutional Court (MK) dismissed the petition for the examination of Article 330 paragraph (1) of the Criminal Code filed by five mothers: Aelyn Halim, Shelvia, Nur, Angelia Susanto, and Roshan Kaish Sadarangani. The application examines the word "whose goods" in the article, which is deemed to generate legal ambiguity. The applicant contends that the phrase may be construed as an exception for the biological father or mother of the child regarding the allegation of kidnapping their own biological offspring.

The police rejected the applicant's claim alleging that the ex-husband abducted the child, citing that the culprit was the biological father. The applicant requested the Constitutional Court to amend the phrase "who's who's who" to "everyone without exception, the biological father or mother of the child." The Constitutional Court clarified that the term "who's who" inherently encompasses all individuals, including biological parents, thus necessitating no further interpretation. The Constitutional Court asserts that Article 330, paragraph (1) of the Criminal Code is unequivocal and resolute, and the

activities of biological parents who unlawfully abduct children may be subject to criminal prosecution if they fulfill the criteria outlined in the article.

The authors contend that the criminal law method in child custody disputes should be employed only as a last resort, in accordance with the principle of *ultimum remedium*. This idea asserts that criminal law serves as a final recourse when alternative legal remedies have proven ineffective in addressing the matter. In Indonesian legal literature, this phrase is interpreted as the ultimate endeavor, as translated by Wirjono Projodikoro, to attain justice in a proportional and non-excessive manner. He stated:

"Norms or rules in constitutional law and administrative law must be responded to solely by administrative sanctions, as well as norms in civil law must first be responded to by civil sanctions. Only if these administrative sanctions and civil sanctions are not enough, to achieve the goal of straightening the social balance, then criminal sanctions will also be held as the final (last) or *ultimum remedium*." (Projodikoro, 2011)

The concept of *ultimum remedium* underscores the necessity of prioritizing preventive measures and mediated or rehabilitative dispute settlement, particularly in matters of child custody. In child custody conflicts within religious courts, the implementation of court rulings should initially adopt a non-criminal approach (Subiarti, 2017). This encompasses mediation, therapy, or other administrative measures to uphold the rights of the authorities, namely the kid, without necessitating criminal proceedings.

Criminality, as a repressive type of punishment, results in severe consequences for individuals, including social shame, limitations on freedom, and corporal punishment. Consequently, it is imperative to ascertain that all alternative measures have been exhausted prior to the imposition of criminal action. This principle underscores the notion that criminal law exists to safeguard the public interest and must be shielded from excessive application, which could lead to infringements of individual rights or exacerbate circumstances that ought to be addressed more peacefully and humanely.

The participation of a parent in a criminal crime, such as forced child abduction, profoundly affects the child's psychological state. Parental conflicts, particularly those necessitating criminal law action, impose significant emotional distress on children. Legal actions against parents, such as imprisonment or other measures, may induce trauma, instability, and a sense of loss, which can adversely impact a child's psychological development over time. Such experiences can also influence a child's adverse perspective of familial ties and the social milieu.

Numerous ideas in child psychology elucidate the detrimental impacts of this type of conflict. Erik Erikson's theory of psychosocial development posits that children enter a stage characterized by the formation of trust, autonomy, and initiative (Mokalu & Bongma, 2021). Familial disputes, particularly those entailing criminal legal processes, can hinder this developmental phase. Children may experience the loss of significant figures in their life, both physically and emotionally, when parents engage in illegal activities or are separated due to legal processes. In such circumstances, children may experience insecurity, guilt, or humiliation, so impeding the development of their personality and social skills. The inability to establish a sense of security and trust may adversely affect a child's future social and emotional interactions.

Attachment theory, proposed by John Bowlby, presents a comparable perspective. Bowlby posits that children require a solid and secure relationship with their parents or primary caregivers to cultivate emotional security (Bowlby, 1979). The child's attachment to a parent may be disturbed when that parent undergoes criminal legal proceedings.

Consequently, children may have attachment disorders, leading to challenges in trust formation, heightened anxiety, and difficulties in establishing future social interactions (Garofalo & Bogaerts, 2019). It demonstrates how legal actions against parents can disrupt the essential relationships necessary for children's healthy emotional development (Dhiba & Juwita, 2024).

The hypothesis of child traumatic stress posits that children subjected to extended familial conflict or violence, such as in instances of law enforcement actions against parents, are at risk of experiencing a form of trauma referred to as toxic trauma (Pynoos et al., 1995). This trauma can directly affect a child's brain development, particularly regarding their emotional and cognitive capacities. Chronic stress resulting from this trauma frequently leads to behavioral issues, anxiety, depression, and challenges in academic performance or social interactions with peers. Children subjected to persistent trauma are at elevated risk of having more intricate behavioral and mental issues in adulthood (Nugraha, 2020).

Cognitive-behavioral theory posits that children acquire knowledge from their surrounding environment, chiefly through the behaviors demonstrated by their parents (Asrori & Hasanat, 2015). When children observe a disagreement or criminal behavior perpetrated by one spouse during a custody battle, they may internalize the notion that violence or illegal actions are an acceptable means of resolution. This may foster a misguided mentality and potentially result in the replication of such detrimental habits in the future. This cycle illustrates how conflicts inside the criminal domain can adversely affect children's moral and behavioral development.

Introducing a criminal element in familial disputes, such as those about child custody, exacerbates the existing tension in a kid's life. Criminal law, characterized by its stringent penalties, can lead to children's estrangement from their parents and create profound rifts in familial connections. This bond is crucial for the emotional well-being of youngsters. Consequently, in matters of child custody, it is imperative to advocate for a more compassionate and mediation-oriented legal framework. This approach will focus the child's best interests and mitigate the detrimental psychological effects of their involvement in conflicts that result in criminal behavior.

The implementation of child custody (*hadhanah*) in custody disputes is of paramount urgency within the family law framework, particularly in Indonesia, where numerous divorce cases have issues concerning child custody (Rahmatullah et al., 2022). Although the execution case of *hadhanah* may be somewhat uncommon in relation to material issues, the significance of executing this case cannot be overlooked. This is predicated on numerous fundamental factors that underscore the significance of this child custody enforcement for law enforcement and the safeguarding of children's rights.

Primarily, maintain the court's authority. Religious courts possess the jurisdiction to adjudicate child custody matters in divorce proceedings (Wasiati et al., 2023). Once the judgment has been rendered and possesses permanent legal authority, all parties are obligated to comply with it. Failure to comply with court rulings will erode the court's authority and may generate legal ambiguity. Consequently, the execution of *hadhanah* is of paramount importance to guarantee the enforcement of court rulings and the adherence of each party to due process.

Secondly, safeguarding the rights of children. The paramount principle in custody determination is the best interests of the kid. Children possess the right to receive care from parents deemed most competent in fostering a stable environment and promoting their physical and psychological development (Nasution, 2017). When a party fails to

comply with the custody judgment voluntarily, enforcement becomes crucial to prevent the child from becoming a casualty of parental strife. The implementation of this ruling guarantees that custody of the kid is assigned to the appropriate partner, whose the court deems capable of providing superior conditions for the child.

Third, avert exacerbation of tensions between the disputing parties. Child custody issues can include heightened emotions between parents. Noncompliance with a court order by one party may exacerbate the conflict and potentially result in drastic measures, including the abduction of children by the losing party. The imperative of executing hadhanah in this setting is to alleviate dispute by delivering prompt legal clarity to the prevailing party, while averting extrajudicial measures that could jeopardize all parties, particularly minors.

Fourth, mitigating the psychological effects on youngsters. Extended disputes between parents, particularly those over custody, have a profoundly detrimental effect on the child's emotional and psychological well-being (Nisa & Fahmi, 2023). Children ensnared in perpetual custody conflicts may endure stress, worry, and trauma that can impede their mental development. The urgency of executing hadhanah is to establish certainty and stability for the child by promptly resolving custody disputes and ensuring the youngster resides in a more favorable environment as per the court's ruling.

Fifth, prevent the misuse of authority or rights by any party involved. A non-custodial parent frequently employs various methods to exert physical control over the kid, notwithstanding a court judgment granting custody to the other party. This form of non-compliance suggests a possible misuse of authority or rights by the losing party, which may adversely affect the opposing party and the child involved. The implementation of hadhanah is a crucial mechanism to avert unilateral actions that exacerbate conflicts or disregard the entitlements of the legitimate parties.

4. CONCLUSION

This study suggests that the legislative framework for post-divorce child custody execution in Indonesia does not furnish a suitable practical foundation for Religious Courts to implement rulings effectively. Despite the existence of norms concerning child custody in various laws and regulations, the lack of a standardized framework for the execution of hadhanah renders the enforcement of court decisions largely reliant on the voluntary compliance of the parties involved and the discretion of the judiciary. This state adversely affects compliance with the decision and heightens the likelihood of additional confrontations between parents.

This study demonstrates that the insufficiency of child custody enforcement legislation creates opportunities for coerced child abduction, frequently resulting in criminal disputes. The intensification of the war renders children the most disadvantaged, both psychologically and socially. Consequently, the application of criminal law should be regarded as the final recourse, employed solely when civil mechanisms fail to offer enough protection for children's rights.

This study underscores the necessity of changing child custody enforcement legislation to enhance preventive and non-criminal procedures. The reform must encompass the formulation of explicit and organized protocols for the implementation of hadhanah within the Religious Court, the enhancement of mediation and post-verdict counseling roles, and improved collaboration among the Religious Court, law enforcement agencies, and child protection organizations. The regulation of hadhanah

execution must specifically account for the child's psychological impact by offering sufficient support during the decision implementation process.

This research identifies deficiencies and shortcomings in the regulation of child custody enforcement in Indonesia and proposes a framework for regulatory reform that prioritizes humanitarian considerations and the best interests of children. The formulation of comprehensive hadhanah execution guidelines is anticipated to enhance the certainty and authority of the Religious Court's rulings, while also mitigating the escalation of familial conflicts into the criminal sphere and safeguarding children from trauma resulting from parental legal disputes.

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