



Child Protection in Islamic Law regarding Custody and Guardianship

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ABSTRACT

The main problem in child protection related to guardianship and custody is the frequent occurrence of unclear caregiving status due to parental conflicts, inconsistencies in fulfilling responsibilities, differences in the interpretation of Islamic law, as well as unequal socio-economic conditions, which often result in the best interests of the child are often neglected. This study aims to analyze the concept of child protection in Islamic law through the perspective of custody (hadhanah) and guardianship (wilayah), as well as to examine the relationship between the two in ensuring the best interests of the child in a contemporary social context. This research uses a qualitative method with a library research approach sourced from classical and contemporary literature, such as fiqh books, academic books, and relevant scholarly journal articles. The results of the study show that hadhanah and wilayah are two main instruments in the child protection system in Islamic law that have different but complementary functions. Hadhanah plays a role in meeting the physical, emotional, and psychological needs of the child, while wilayah relates to legal authority in making strategic decisions that impact the child's future. The interconnection between the two reflects a protection system that is holistic and oriented toward the principle of the best interests of the child. In the context of contemporary society, this concept remains relevant because it has the flexibility to respond to the dynamics of modern families, divorce, technological developments, as well as the socio-economic conditions of society. This study also shows that the integration of normative Islamic legal values and a contextual approach is key to optimizing child protection. This study is expected to contribute to the development of Islamic family law that is more responsive to the needs of modern society.

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INTRODUCTION

Child protection in Islamic law is an integral part of the legal system aimed at ensuring the continuity of generations and guaranteeing the fulfillment of children's basic rights (Mohd et al., 2017; Nurjanah et al., 2025). From the perspective of Sharia, children are seen as a trust that must be guarded, nurtured, and educated optimally by parents or guardians. The concept of child protection in Islam not only encompasses physical aspects but also includes psychological, moral, and spiritual aspects (O'Leary et al., 2020; Sukri & Fauzan, 2025). These principles are derived from the Qur'an and Hadith, which emphasize the importance of compassion, justice, and responsibility in child-rearing. In the Islamic

family law, custody (*hadhanah*) and guardianship (*wilayah*) are the main instruments in ensuring child protection (Ngazizah et al., 2025; Ramadhan et al., 2025). These two concepts have clear rules regarding who has the right to and responsibility for children under various conditions. The continuously evolving social dynamics demand a more contextual understanding of the concept. This makes the study of child protection in Islamic law remain relevant in various situations of modern life.

Custody and guardianship in Islamic law have very complex legal and social dimensions (Abro & Munir, 2026). Custody relates to the daily care of the child, including physical and emotional needs, while guardianship focuses more on legal aspects and making important decisions for the child (Azar & Cote, 2002). In practice, these two concepts are often interconnected and cannot be strictly separated. Islamic law gives priority to the party considered most capable of ensuring the child's welfare (Yasin et al., 2024). This consideration is not only based on biological relationships but also on moral ability and responsibility. In various *fiqh* literatures, there are differences of opinion regarding who has the greater right to custody and guardianship (Qozmar et al., 2023). These differences demonstrate the flexibility in Islamic law to adjust to diverse social conditions. Studying this concept is important to understand how Islamic law provides optimal protection for children.

The reality on the ground shows that the practice of child protection in the context of custody and guardianship still faces various problems. Conflicts between parents after divorce often result in unclear child custody status. In some cases, the best interests of the child are not the primary consideration in custody decisions. Issues also arise when one party fails to fulfill their responsibilities as a caregiver or guardian. In addition, differences in the interpretation of Islamic law in judicial practice can create legal uncertainty. Imbalanced socioeconomic conditions between the parents also affect the quality of care provided to the child. In certain contexts, the child may be the most disadvantaged party as a result of these conflicts. The lack of public understanding of the concepts of *hadhanah* and *wilayah* further exacerbates the situation.

Research conducted by Ramadhan, Mahendra Utama Cahya, et al. shows that a normative comparison of custody and guardianship of children in Islamic family law in ASEAN and European countries reveals differences in principles and practices that can serve as important lessons for strengthening child protection (Ramadhan et al., 2025). Research conducted by Aziz, Muhammad Adnan, et al. revealed that issues of child custody

in Islamic law and Pakistani law still face various challenges, especially concerning the application of the best interests of the child principle and inconsistencies in legal practice (Aziz et al., 2023). Research conducted by Safii, Nur Muhammad, and Gagandeep Kaur shows that Islamic family law plays an important role in handling modern child custody cases by striving to balance Sharia principles with contemporary needs (Safii & Kaur, 2025). Research conducted by Mera, Nasaruddin, et al. shows that child custody for mothers of different religions can be considered through the perspective of *maqāṣid al-sharī'ah* in Islamic family law in Indonesia, emphasizing the protection and welfare of the child as the main principle (Mera et al., 2024).

A number of previous studies have discussed custody and guardianship in Islamic law, but most of them still focus on the normative aspects without linking them to contemporary social dynamics. Studies that integrate a comprehensive child protection perspective within the context of Islamic law are still relatively limited. Some studies tend to discuss *hadhanah* and guardianship separately without considering the connection between the two. Furthermore, the approaches used in previous research have not extensively explored the socio-legal dimensions that influence practice in the field. This condition indicates a gap between the ideal concepts in *fiqh* literature and the reality occurring in society. This study offers novelty by examining child protection through the integration of custody and guardianship concepts in a single analytical framework. The approach used also seeks to connect normative aspects with evolving social realities.

This study aims to analyze the concept of child protection in Islamic law, focusing on custody and guardianship as the main instruments. The study seeks to identify how Sharia principles are implemented in determining the parties entitled and responsible for the child. In addition, this study aims to examine the relationship between the concepts of *hadhanah* and *wilayah* in providing optimal protection for children. This research is also directed at addressing the shortcomings of previous studies that have not comprehensively integrated these two concepts. The focus of the research lies in the analysis of literature discussing Islamic law and its relevance to contemporary social conditions. This study argues that the integration between custody and guardianship can strengthen the child protection system in Islamic law.

METHOD

This research uses the library research method or literature study, which focuses on collecting and analyzing secondary data from various literature sources relevant to the

theme of child protection in Islamic law, particularly related to custody (hadhanah) and guardianship (wilayah)(Mustofa, 2023). This type of research falls into the category of descriptive-analytical qualitative research, which aims to examine, understand, and interpret Islamic legal concepts in depth. The main data sources in this study include classical fiqh books, contemporary literature, scientific journal articles, reference books, as well as legal documents related to Islamic family law. In addition, this research also utilizes secondary sources such as previous research results and relevant academic publications to enrich the analysis. The research design was systematically arranged by identifying the main concepts related to child protection, which were then analyzed within the framework of Islamic law. Data collection techniques were conducted through documentation studies by tracing, reading, and classifying literature that was relevant to the focus of the research(Majid, 2017). The approach used was normative in nature, emphasizing analysis of sources of Islamic law, both textual and contextual.

The data analysis technique in this study uses the content analysis method to examine and interpret various concepts found in the literature(Cabrera et al., 2023). The analysis is carried out by identifying the main themes, comparing the views of scholars, and connecting these concepts with the context of child protection. A deductive approach is used to examine the general principles of Islamic law, which are then applied to specific cases related to custody and guardianship. In addition, an inductive approach is also used to draw generalizations from various findings in the analyzed literature. This study also adopts a socio-legal approach to understand the relationship between legal norms and the social realities developing in society. Data validity is maintained through source triangulation techniques by comparing various references that have topic relevance. The interpretation process is carried out critically by considering various perspectives found in the literature.

RESULT AND DISCUSSION

A. The concept of child protection in Islamic law viewed from the perspective of custody (hadhanah) and guardianship (wilayah)

Child protection in Islamic law is part of the main objectives of sharia (maqasid al-sharia) which places the safeguarding of lineage (hifz al-nasl) as one of the primary priorities(Hasibuan, 2023). Within this framework, children are seen as a trust that must be protected in terms of their survival, growth, and comprehensive development, both physically, mentally, and spiritually. Islamic law gives significant

attention to the rights of children from the womb until reaching maturity, including the right to receive care, education, protection, and affection. This concept of protection is not only normative but also has practical dimensions regulated in various fiqh provisions. Custody (*hadhanah*) and guardianship (*wilayah*) become two main instruments that regulate responsibility towards children within the family. Both serve as legal mechanisms to ensure that children receive optimal protection. In this regard, child protection is not only seen as an individual responsibility but also as a collective obligation within society.

Custody (*hadhanah*) in Islamic law refers to the responsibility to maintain, care for, and educate a child who is not yet able to take care of themselves (Multazam, 2024). This concept includes fulfilling the basic needs of the child, such as food, clothing, shelter, as well as emotional and psychological needs. In many scholars' views, the mother has primary priority in child custody, especially at an early age, because she is considered more capable of providing love and intense attention. However, custody is not absolute and can be transferred to another party if there is a valid reason, such as inability or negligence in fulfilling the responsibility. Determination of custody always considers the best interests of the child as the primary principle. Islamic law provides flexibility in determining the most suitable party to be the caregiver based on certain conditions. This shows that the concept of *hadhanah* has a dynamic dimension that can be adjusted according to the circumstances that exist.

Guardianship (*wilayah*) in Islamic law has a different scope than custody, although the two are related (ullah Al Azhari et al., 2025). *Wilayah* refers to the authority to make legal decisions on behalf of a child, such as in education, marriage, and management of property. In many cases, the father or male relatives from the paternal line have the primary role as guardian. Guardianship reflects a more formal and legal responsibility compared to custody, which is more about everyday caregiving. The concept of *wilayah* emphasizes the protection of a child's rights in legal and social aspects. In practice, a guardian has the obligation to act in the best interest of the child and must not abuse the authority they possess. Guardianship also includes the responsibility to safeguard the honor and future of the child. This indicates that *wilayah* has a strategic role in the child protection system within Islamic law.

The relationship between *hadhanah* and *wilayah* in Islamic law indicates the existence of complementary roles in child protection. *Hadhanah* focuses on the aspect of caregiving and fulfilling daily needs, while *wilayah* is related to decision-making that has long-term impacts (Syahrida et al., 2025). These two concepts cannot be separated because both contribute to the overall well-being of the child. In certain situations, custody and guardianship can be held by different parties, which requires good coordination between them. This division reflects a balance between the emotional aspect and the legal aspect of child protection. Islamic law allows for adjustments in the division of roles based on existing conditions. This shows that child protection in Islam is comprehensive and considers various aspects of the child's life.

In *fiqh* literature, there are differences of opinion among scholars regarding the provisions of *hadhanah* and guardianship, especially concerning the priority of the entitled parties. This difference arises due to variations in the interpretation of the evidences that form the basis of the law. *Fiqh* schools have different views regarding the age limits of children in custody, the order of entitled parties, as well as the conditions that must be met by caregivers and guardians. These differences demonstrate the flexibility of Islamic law in responding to various social and cultural conditions. Although there are variations in opinion, the main goal remains the same, which is to ensure the welfare and protection of children. This diversity of views also provides room for more contextual application of the law. This is one of the strengths of Islamic law in facing the dynamics of a constantly evolving society.

Child protection from the perspective of *hadhanah* and guardianship is also closely related to the principles of justice and responsibility within the family. Every party involved in caregiving and guardianship has moral and legal obligations to safeguard the rights of children. Inability or negligence in fulfilling these responsibilities can have a negative impact on a child's development. Therefore, Islamic law provides mechanisms to transfer custody or guardianship to another party who is more suitable. This principle demonstrates that the child's interests are always the top priority in every decision. In addition, child protection also includes efforts to create a safe and conducive environment for a child's growth. This shows that the concept of child protection in Islam has a broad and comprehensive dimension. The concept of child protection in Islam is also reinforced by the word of Allah in QS. *At-Tahrim* verse 6 which states:

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ
اللَّهُ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

Meaning: O you who believe, protect yourselves and your families from the fire of Hell, whose fuel is people and stones. Its guardians are stern and harsh angels. They do not disobey Allah in what He commands them and always do what they are commanded.

The above verse commands parents to protect themselves and their families from various forms of evil. This verse emphasizes that the responsibility of safeguarding children includes physical, spiritual, moral, and educational protection, so parents or guardians have a religious duty to ensure the growth and development of children in a safe and loving environment. This provision aligns with the principles of hadhanah and wilayah, which place the safety and welfare of children as the primary consideration in every family decision.

In contemporary times, the concepts of hadhanah and guardianship need to be understood more contextually in order to address modern challenges in child protection. Changes in family structure, increasing divorce rates, as well as social and economic developments affect parenting and guardianship practices. Islamic law is required to be able to adapt to these conditions without neglecting the basic principles of sharia. A more integrative approach between normative aspects and social reality becomes important in understanding the concept of child protection. Studies on hadhanah and guardianship in a modern context can contribute to the development of Islamic family law that is more responsive. This shows that the concept of child protection in Islamic law remains relevant in facing various challenges of the times.

B. the relationship between custody and guardianship in ensuring protection and the best interests of the child in Islamic law

The relationship between custody (hadhanah) and guardianship (wilayah) in Islamic law demonstrates the existence of a comprehensive and integrated child protection system in safeguarding the survival and optimal development of children (Sarfitri et al., 2024). Hadhanah focuses on the daily care aspects, including fulfilling the child's physical, emotional, and psychological needs, while wilayah is related to the legal authority to make strategic decisions that affect the child's future. This division of roles reflects a balance between the affective dimension and the legal dimension in child protection. From the perspective of Islamic law, these two concepts

do not stand alone but are interconnected and support each other in ensuring the fulfillment of children's rights in a comprehensive manner. This interconnection shows that child protection cannot be carried out partially, but requires a comprehensive and layered approach. The integration between hadhanah and territory becomes important in creating a caregiving system that is not only oriented towards short-term needs but also considers long-term aspects. This indicates that Islamic law has a holistic and sustainable child protection framework.

In practice, custody and guardianship often lie with different parties, especially in situations of divorce or family conflict involving the child's interests as a vulnerable party. This condition requires coordination between the caregiver and the guardian to avoid overlap or even conflict in decision-making (Hendriks & Lee, 2020). The caregiver has direct responsibility for the child's daily life, while the guardian has authority in making important decisions such as education, health, and the child's future. Disharmony between the two parties can affect the child's psychological stability and well-being. Therefore, Islamic law provides flexibility in determining the division of roles based on the conditions that are most beneficial for the child. The relationship between hadhanah and guardianship is dynamic and contextual. This relationship requires good communication as well as awareness of shared responsibility in safeguarding the child's interests.

The principle of the best interest of the child becomes the main basis for understanding the relationship between custody and guardianship in Islamic law (Harid & Ashufa, 2025). Every decision made by the caregiver or guardian must be oriented towards the welfare of the child without being influenced by personal interests or conflicts between parties. Hadhanah plays a role in providing the sense of security, affection, and attention that a child needs during their growth period. Meanwhile, guardianship ensures that the child's rights in legal and social aspects remain optimally protected. These two roles complement each other in creating a conducive environment for the comprehensive development of the child. The balance between emotional needs and legal needs is an important factor in ensuring the protection of the child. This shows that the relationship between hadhanah and guardianship is not only administrative but also substantive in maintaining the quality of the child's life.

The interrelation between hadhanah and guardianship is also reflected in the responsibilities inherent to each party carrying out these roles (Al Fazari et al., 2024). The caregiver is responsible for ensuring that the child receives proper care, adequate education, and character development in accordance with Islamic values. On the other hand, the guardian has the responsibility to protect the child's legal rights, including managing assets and making other important decisions. These two forms of responsibility cannot be separated because they have mutually influencing effects on the child's life. An imbalance in the execution of either role can cause instability in child protection. Therefore, the integration between hadhanah and guardianship becomes very important in creating an effective protection system.

In the social field, the connection between custody and guardianship is also influenced by various external factors such as economic conditions, educational level, and the social environment in which the child is raised. These factors can affect the quality of caregiving and the effectiveness of decision-making by the guardian. Islamic law provides room to consider these conditions in determining the party most suitable to carry out the roles of hadhanah and wilaya. This approach shows that Islamic law is not rigid, but rather adaptive to developing social dynamics. The connection between these two concepts becomes increasingly complex in situations involving various interests. This requires a deeper understanding of the principles of Islamic law in the context of child protection.

The role of the judiciary in regulating the relationship between custody and guardianship also becomes an important element in ensuring child protection. The court has the authority to determine the most appropriate party based on objective considerations that prioritize the best interests of the child. The decisions made must take into account various aspects, including the psychological, social, and economic conditions of each party. In this regard, the relationship between hadhanah and guardianship becomes the basis for a fair decision-making process. The court also functions as a mediator in resolving conflicts that may harm the child. This shows that child protection is not only the responsibility of the family but also involves the role of legal institutions.

In contemporary development, the relationship between custody and guardianship faces various challenges that require a more contextual and adaptive approach. Changes in family structure, rising divorce rates, as well as technological

developments, affect parenting patterns and decision-making regarding children. Islamic law is expected to be able to address these challenges without abandoning the basic principles of Sharia. An integrative approach between normative aspects and social realities becomes important in understanding the relationship between hadhanah and guardianship. In-depth studies of the interconnection of these two concepts can contribute to the development of a child protection system that is more responsive to the needs of the times. This indicates that the link between custody and guardianship has a strategic role in ensuring the welfare of children in various life conditions.

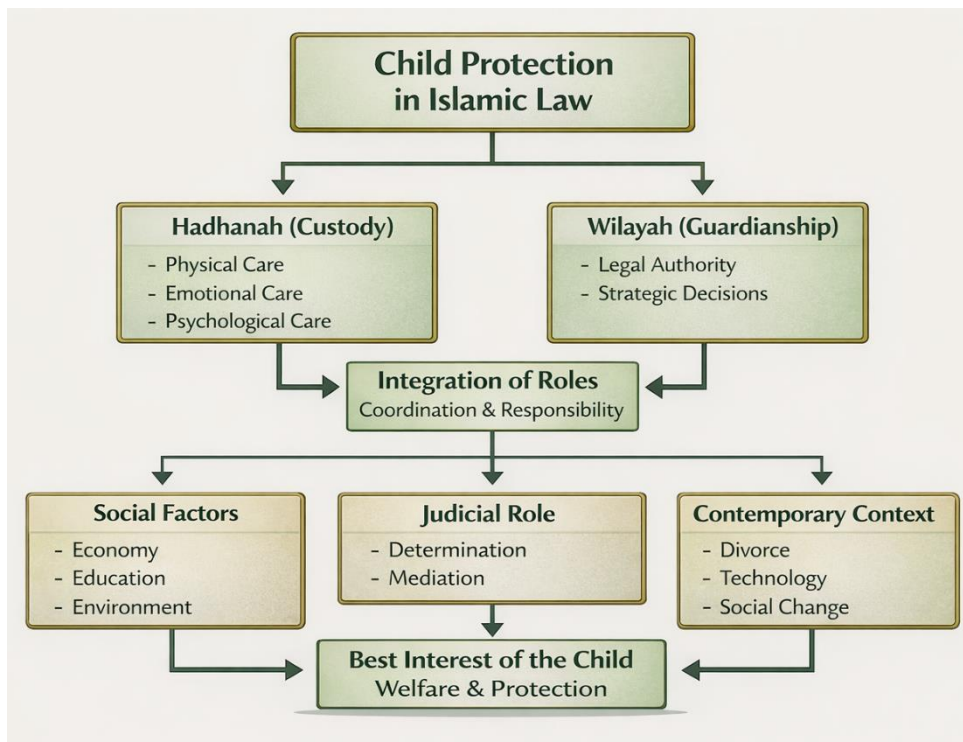


Figure 1 child Protection in Islamic Law

C. The relevance of the concept of custody and guardianship in Islamic law to the dynamics of child protection in the contemporary social

The relevance of the concepts of custody (hadhanah) and guardianship (wilayah) in Islamic law is increasingly strengthened along with the development of social dynamics that affect family structure and child-rearing patterns. Social changes occurring in modern society, such as increased urbanization, social mobility, and shifts in family values, require adjustments in child protection practices(Haq, 2024). In this context, Islamic law still holds a strategic position because it provides a normative

framework that regulates the responsibilities of parents and guardians towards children. The concepts of *hadhanah* and *wilayah* are not only historically relevant but also have the flexibility to be adapted to various social conditions. The basic principles contained in both concepts can still serve as guidelines in facing contemporary challenges. This shows that Islamic law has the ability to respond to social changes without losing the essence of its values.

In modern families, the role of parents in child-rearing has undergone significant transformation, especially with the increasing participation of women in the workforce (Bhaumik & Sahu, 2025). This condition affects the implementation of *hadhanah*, which was previously more associated with the mother's role in child-rearing. In this situation, the division of parenting roles becomes more flexible and requires cooperation between both parents. The concept of *wilaya* also experiences adjustments in terms of decision-making, increasingly involving both parents together. Islamic law provides room for such adjustments as long as the best interests of the child are prioritized. This change shows that *hadhanah* and *wilaya* are not static, but can develop according to societal needs. This serves as evidence that the concept remains relevant in the context of contemporary families.

The increasing dynamics of divorce in modern society also present particular challenges in the implementation of the concepts of custody and guardianship. Divorce often causes conflicts between parents, which directly affect the psychological condition of the child. In this situation, the application of *hadhanah* and *wilaya* becomes very important to ensure that the rights of the child remain protected. Islamic law provides guidelines for determining the party most appropriate to care for and be the guardian of the child. However, in practice, a more contextual approach is needed so that the decisions made truly reflect the best interests of the child. Prolonged conflicts between parents can hinder the optimal implementation of *hadhanah* and *wilaya* responsibilities. This condition highlights the importance of integrating legal norms and social approaches in handling divorce cases.

The development of digital technology also has a significant impact on parenting patterns and child protection in contemporary society (Lafton et al., 2022). The increasingly widespread access to information brings both positive impacts and challenges in the process of education and character formation of children. In this context, the role of caregivers and guardians becomes increasingly complex because

they must be able to supervise and guide children's use of technology. The concept of hadhanah can be expanded to include the responsibility of controlling the child's digital environment. Meanwhile, wilayah plays a role in establishing limits and policies related to the use of technology. Islamic law needs to be interpreted contextually in order to address the challenges arising from technological developments. This shows that the relevance of hadhanah and wilayah is not only limited to traditional aspects but also encompasses modern dimensions.

Socio-economic factors are also one of the important aspects that influence the relevance of the concepts of custody and guardianship in child protection. Economic inequality can affect the quality of parenting and the ability of parents to meet the needs of their children (Stahl et al., 2018). In certain conditions, the party that is economically more capable may be considered more suitable to carry out the role of hadhanah or guardianship. Islamic law provides room to consider these factors in determining the best decision for the child. This approach shows that the concept of child protection in Islam is realistic and contextual. The relevance of hadhanah and guardianship in this context lies in their ability to accommodate various differing socio-economic conditions. This becomes important in creating a child protection system that is fair and inclusive.

The role of judicial institutions and state regulations also helps strengthen the relevance of the concepts of hadhanah and wilayah in a contemporary context (Saraswati, 2024). Courts play an important role in interpreting and applying Islamic law in cases related to child protection. In many cases, court decisions are not only based on legal texts but also take into account the social and psychological conditions of the child. The integration of Islamic law and positive law becomes important in creating a more comprehensive child protection system. This role shows that hadhanah and wilayah are not only theoretical concepts but also have practical implications in the modern legal system. The involvement of legal institutions strengthens the implementation of these concepts in societal life.

From a broader perspective, the relevance of the concept of custody and guardianship in Islamic law lies in its ability to address various challenges of child protection in a constantly changing society. An integrative approach between normative values and social realities becomes key in maintaining the sustainability of this concept. In-depth studies of hadhanah and wilayah in a contemporary context can

contribute to the development of a more responsive Islamic family law. This concept not only functions as a legal rule but also as a moral guideline in building a quality caregiving system. This relevance demonstrates that Islamic law continues to play an important role in safeguarding the welfare of children amid modern social dynamics.

CONCLUSION

The concepts of custody (hadhanah) and guardianship (wilayah) in Islamic law indicate a very important role in building a comprehensive, integrative, and adaptive child protection system to contemporary social dynamics. These two concepts not only regulate the division of responsibilities between caregiving and legal authority, but also emphasize the importance of synergy in ensuring that the best interests of the child are met. In the modern context, characterized by changes in family structure, increasing divorce rates, as well as technological developments and socio-economic conditions, hadhanah and wilayah remain relevant as normative instruments capable of adapting to various situations. The flexibility of Islamic law in accommodating social realities makes this concept not static, but rather dynamic and contextual. The integration between sharia values and a socio-legal approach becomes key in optimizing the implementation of child protection. Therefore, strengthening the understanding of the concepts of hadhanah and wilayah becomes important in creating a child protection system that is just, sustainable, and responsive to the development of the times.

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