

ABSTRACT

Nofia Hanifa, 230211050142, Analysis of Judges' Considerations in Determining Hadhānah to the Father from the Perspective of Maqāṣid al-Syarī'ah, Dr. Rahmat Sholihin, S.Ag., M.Ag., and Dr. H. Anwar Hafidzi, Lc., M.A. Hk., Islamic Family Law, Postgraduate Programme, Universitas Negeri Antasari

In both Islamic law and the positive law of Indonesia, hadhānah generally prioritises the mother in childcare. However, in judicial practice before the Religious Courts, there are rulings that grant hadhānah to the father, particularly in divorce cases. This phenomenon reflects the dynamics of law enforcement, which are not solely based on the normative provisions of classical fiqh or written law, but also consider the social context and the principles of maqāṣid al-syarī'ah, especially to ensure the best interests of the child.

This study is a normative legal research that aims to analyse judges' considerations in awarding hadhānah to the father from the perspective of maqāṣid al-syarī'ah. The approaches employed include the statute approach and the case approach. Secondary data were derived from primary legal materials such as court decisions and relevant laws and regulations. Additional sources included jurisprudence literature, legal textbooks, scholarly articles, and interviews with judges.

The findings indicate that judicial decisions granting hadhānah to the father do not necessarily contradict classical jurisprudence or the Compilation of Islamic Law; rather, they represent a form of ijtihād in the contextual application of maqāṣid al-syarī'ah. Judges took into account aspects of maqāṣid such as ḥifẓ al-naḥs (protection of the child's life and safety), ḥifẓ al-'aql (preservation of intellect and education), ḥifẓ al-dīn (spiritual development), ḥifẓ al-nasl (continuity of lineage and healthy social life), and ḥifẓ al-māl (economic capacity of the caregiver). These considerations are evident in decisions addressing the child's psychological well-being, the father's financial stability, or the mother's conduct deemed harmful, while consistently applying the principle of the best interests of the child.

Accordingly, the application of maqāṣid al-syarī'ah in hadhānah cases constitutes a relevant and significant approach to ensuring the optimal protection of the child's rights and future. Its implementation serves as a valuable reference for judges in delivering fair and beneficial rulings.

Keywords: Hadhānah, Maqāṣid al-syarī'ah

KATA PENGANTAR

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

أَلْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ، سَيِّدِنَا وَمَوْلَانَا مُحَمَّدٍ وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ، أَمَّا بَعْدُ

Segala puji hanyalah bagi Allah Swt., atas segala limpahan karunia, nikmat, dan petunjuk-Nya sehingga pada akhirnya tesis ini dapat terselesaikan. Shalawat serta salam selalu kita haturkan kepada panutan Nabi Besar Muhammad Saw., keluarga, sahabat, dan para pengikut beliau hingga akhir zaman. Lepas dari khilaf dan segala kekurangan, penulis merasa sangat bersyukur telah menyelesaikan tesis yang berjudul “*Analisis Pertimbangan Hakim Pada Penetapan Hadhānah Kepada Ayah Perspektif Maqāshid Al-Syarī‘Ah*”, sebagai salah satu syarat guna memperoleh gelar strata dua Magister Hukum, pada Pascasarjana UIN Antasari Banjarmasin.

Penulis menyadari sepenuhnya, telah banyak mendapatkan dukungan, bimbingan dan dorongan dari berbagai pihak yang telah menyumbangkan pikiran, waktu, tenaga dan sebagainya. Oleh karena itu, pada kesempatan ini dengan setulus hati penulis mengucapkan terima kasih kepada:

1. Bapak Prof. Dr. H. Mujiburrahman, MA. selaku Rektor Universitas Islam Negeri (UIN) Antasari Banjarmasin, Terima kasih Penulis haturkan atas segala sarana dan prasarana yang disediakan selama kuliah di Pascasarjana UIN Antasari. Semoga Allah Swt. Selalu memberikan kelapangan, kesehatan, dan keberkahan dalam memimpin UIN Antasari agar semakin maju.
2. Bapak Prof. Dr. H. Zulfa Jamalie, M.Pd. selaku Direktur Pascasarjana UIN Antasari Banjarmasin, Penulis mengucapkan terima kasih atas segala pelayanan yang diberikan kepada seluruh mahasiswa Pascasarjana. Semoga Pascasarjana semakin maju sehingga banyak diminati oleh para pencinta ilmu.
3. Ibu Dr. Hj. Wahidah, M.H.I dan Ibu Tuti Hasanah, S.E.I, M.H.I. selaku ketua dan sekretaris Program Studi Hukum Keluarga Pascasarjana UIN Antasari