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Doi: 10.32332/milrev.v4i2.10790

Dates:

Received 31 May, 2025

Revised 27 October, 2025

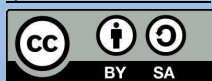
Accepted 01 November, 2025

Published 10 November, 2025

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Gender Justice in Child Custody Disputes: The *Maqāṣid al-Sharī'ah* Approach in Contemporary Judicial Practice

Abstract: Child custody disputes (*ḥaḍānah*) after divorce are a key issue in discussions of gender justice in Islamic family law, especially in Muslim-majority countries, including Indonesia. In this context, this study examines sixteen child custody decisions issued by religious courts in the Banten region, examining how the principles of *maqāṣid al-sharī'ah* are applied in legal deliberations and the extent to which these decisions reflect the principles of gender justice and the best interests of the child. Using an integrated socio-legal approach and content analysis, this study examines the construction of legal reasoning from the decisions' content and the surrounding social context. Research findings indicate a shift in the legal reasoning of some judges towards a more substantive and contextual approach, taking into account the emotional, psychological, and social dimensions of children within the framework of *hifẓ an-nafs* and *hifẓ ann-Nasl*. However, gender bias remains, including a tendency to place a higher burden of proof on mothers than fathers, and the influence of economic factors, which often outweigh the emotional well-being of the child. This study highlights the essence of incorporating the *maqāṣid al-sharī'ah* paradigm into judicial practice to ensure fair, responsive, and child-centered decisions. In addition to making a conceptual contribution to the reform of Islamic family law grounded in *maqāṣid* values, this study also recommends applying more appropriate jurisprudential guidelines to judges in adjudicating *ḥaḍānah* cases, thereby consistently upholding the principles of substantive justice and gender equality.

Keywords: Gender Justice, Child Custody, *Maqāṣid al-Sharī'ah*, Contemporary Judicial Practice

INTRODUCTION

Child custody disputes (*ḥaḍānah*) after divorce are the central problem in the global gender justice debate. Many Muslim-majority countries still adhere to legal systems that reflect gender inequality, mainly due to patriarchal interpretations of Islamic law that position women in a subordinate position.¹ This situation is evident in various divorce and child custody cases, where women often face structural and normative barriers to accessing justice.² According to a 2021 UNICEF report, nearly one-third of women worldwide face injustice in child custody decisions. This is due to legal systems that generally prioritize fathers as household heads and primary breadwinners.³ In response to this inequality, international organizations, such as Musawah and Equality Now, are calling for family law reform in Muslim countries to better address the rights of women and children⁴ by integrating the *maqāṣid al-sharī'ah* approach as the primary objective of Sharia, which emphasizes welfare, justice, and the protection of human life.⁵

The *maqāṣid* approach to family law has been implemented in several Muslim countries. In Tunisia, for example, family law reforms allow judges to consider children's emotional and psychological aspects, not just economic ones.⁶ Meanwhile, in Malaysia, some Sharia courts have incorporated the principles of *mashlah* (benefit) and non-discrimination based on gender into their decisions on family matters, although implementation remains inconsistent. These efforts demonstrate the development of

¹ Zahraa and Malek, "The Concept Of Custody In Islamic Law," *Arab Law Quarterly* 13, no. 2 (1998): 155–177, <https://doi.org/10.1163/026805598125826076>.

² A. Mohd et al., "An Overview of the Protection of Children Rights under Islamic Law," *Advanced Science Letters* 23, no. 4 (2017): 3251–3254, Scopus, <https://doi.org/10.1166/asl.2017.7730>.

³ UNICEF, "The State of the World's Children 2021," UNICEF, 2021, <https://www.unicef.org/reports/state-worlds-children-2021>.

⁴ Musawah, "CEDAW and Muslim Family Laws," Musawah, 2019, <https://www.musawah.org/resources/cedaw-muslim-family-laws/>.

⁵ D. Santoso et al., "The Understanding of the Jamaah Tabligh on Wife Gender Justice: A Maqāṣid Sharī'a Review," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022): 183–194, Scopus, <https://doi.org/10.31958/juris.v21i2.6935>.

⁶ Santoso et al., "The Understanding of the Jamaah Tabligh on Wife Gender Justice: A Maqāṣid Sharī'a Review."

Islamic law towards a more substantive model oriented towards children's welfare.⁷ In the Indonesian context, child custody disputes are regulated in the Compilation of Islamic Law (KHI), which stipulates that children under the age of 12 remain in the care of their mother. However, practice does not always comply with this provision. Several court decisions show a tendency to grant custody to the father, citing economic opportunities, social status, or the mother's remarriage. Data from religious courts in the Banten region recorded 103 child custody cases between 2021 and 2024.⁸ For example, in the Tangerang Religious Court decision No. 2200/Pdt.G/2021/PA.Tng, the judge awarded custody to the father on the grounds of the mother's remarriage. Such rulings demonstrate the continuing influence of patriarchy.

On the contrary, in the decision of the South Tangerang Religious Court No. 5894/Pdt.G/2021/PA.Tgrs, the judge considered the results of the psycho-social assessment. They decided that custody of the child would remain with the mother, as the mother had proven herself capable of providing care and emotional stability for the child. These two dissenting decisions demonstrate the inconsistent application of the substantive justice principle.⁹ This difference in practice underscores the need for a more context-specific legal approach that focuses on the best interests of the child. This focus is consistent with the spirit of *maqāṣid al-sharī'ah*.¹⁰ This principle positions justice, freedom, and human dignity as the fundamental basis for the application of law. It emphasizes that Sharia is not merely a system of norms but a system of values that prioritizes social welfare and justice.¹¹

⁷ Norani Othman, "Muslim Women and the Challenge of Islamic Fundamentalism/Extremism: An Overview of Southeast Asian Muslim Women's Struggle for Human Rights and Gender Equality," *Women's Studies International Forum* 29, no. 4 (2006): 339–53, <https://doi.org/10.1016/j.wsif.2006.05.008>.

⁸ Joan B. Kelly, "The Determination of Child Custody," *The Future of Children* 4, no. 1 (1994): 121, <https://doi.org/10.2307/1602481>.

⁹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (The International Institut of Islamic Thought, 2007).

¹⁰ N. Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia," *Samarah* 8, no. 3 (2024): 1644–1668, Scopus, <https://doi.org/10.22373/sjhk.v8i3.23809>.

¹¹ Nuansa Aulia, *Kompilasi Hukum Islam* (Citra Umbara, 2017).

Previous research on *ḥaḍānah* has shown that approaches vary across regions. Research in Aceh has revealed conflicting court decisions arising from differing legal interpretations,¹² while in Manado, sociological considerations and the principle of *mashlah* serve to maintain family stability and child welfare.¹³ A comparative legal study conducted in southern Thailand highlights the dual role of Islamic law and civil law in safeguarding children in the face of parental conflict.¹⁴ Meanwhile, Jordan's 2019 Personal Status Law takes a progressive approach, distinguishing between *ḥaḍānah* (physical custody), which is usually granted to the mother, and *wilāyah* (legal custody), which is generally awarded to the father, taking into account contemporary family dynamics.¹⁵ In the context of *maqāṣid al-sharī'ah* theory, Saini argues that the *maqāṣid* framework can serve as a basis for reforming child custody practices to be more holistic and child welfare-oriented.¹⁶ However, Lilik Andar Yuni found that many religious court judges still rely on normative legal logic with a bias towards patriarchal family structures. This suggests that the application of the value of justice in family law must be strengthened to a more comprehensive level that goes beyond mere normativity.¹⁷

Therefore, the complexity of determining child custody requires a legal approach that is not only normative and formal but also encompasses emotional, social, and psychological dimensions. A substantive, contextual, and gender-sensitive approach is needed to ensure that *maqāṣid al-sharī'ah* simultaneously serves as a moral reference and a

¹² A. Nasution, "The Disparity of Judge's Verdict on Child Custody Decision in Aceh Sharia Court," *Samarah* 6, no. 2 (2022): 890–913, Scopus, <https://doi.org/10.22373/sjkh.v6i2.12758>.

¹³ R. Jamal and R. Bukido, "Pertimbangan Perkara Pemeliharaan Anak Di Pengadilan Agama Manado," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (2021): 205–222, Scopus, <https://doi.org/10.29240/jhi.v6i2.2453>.

¹⁴ A.B. Mohamad et al., "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," *Asian Social Science* 12, no. 10 (2016): 18–26, Scopus, <https://doi.org/10.5539/ass.v12n10p18>.

¹⁵ H. Mahaseth and S. Khatoon, "Jordan's Child Custody Law: A Blueprint for Progress," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 1 (2025): 355–59, Scopus.

¹⁶ S Saini, "Rekonstruksi Hukum Hak Asuh Anak Perspektif Maqāṣid Syarī'ah Dalam Hukum Keluarga Islam," *Journal of Innovative and Creativity* 5, no. 2 (2025), <https://doi.org/10.31004/joecy.v5i2.1465>.

¹⁷ Lilik Andar Yuni and Murjani Murjani, "Gender Sensitivity at Judge's Verdicts in Samarinda and Magelang Religious Courts; The Implementation of PERMA Number 03 of 2017," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (2020): 251–179, <https://doi.org/10.19105/al-lhkam.v15i2.2714>.

paradigm of legal reasoning. This study aims to answer three main questions: how do religious courts in the Banten region make decisions on child custody, to what extent are the principles of *maqāṣid al-sharī'ah* applied in judges' considerations in child custody cases, and do these considerations reflect the principles of gender justice and the best interests of the child? At the end, this study is expected to provide theoretical and practical contributions to reinforcing the application of *maqāṣid al-sharī'ah* in the reform of Islamic family law in Indonesia, particularly in achieving a more just, inclusive, and child-oriented judicial system.

METHODS

This study uses a socio-legal approach that combines normative legal analysis with the social realities of religious court practices. The legal approach examines the norms and positive provisions of Islamic law pertaining to child custody (*ḥaḍānah*), while the sociological approach helps understand how judges apply the values of *maqāṣid al-sharī'ah* and the principles of gender justice in their rulings.¹⁸ The integration of these two approaches enables a textual, normative, and contextual analysis reflective of the surrounding social conditions.

This study focuses on religious court decisions in the Banten region related to child custody disputes after divorce. Primary data was obtained through the Suice Search Information System (SIPP) and the <https://putusan3.mahkamahagung.go.id/>, with the following inclusion criteria: (1) decisions from [enter year range, e.g., 2018–2024]; (2) divorce cases involving child custody disputes; and (3) decisions that fully reflect the judge's legal considerations. Based on these criteria, the researcher purposively selected 16 decisions that met the criteria of relevance and substantive connection to the study's subject. In addition to legal documents, this study also used scientific literature on Islamic family law, gender justice, and the theory of *maqāṣid al-sharī'ah* as supplementary material for analysis. To improve data triangulation, semi-structured interviews were conducted with several judges in the Banten region. The interviews focused on their understanding of

¹⁸ Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Pustaka Pelajar, 2010).

justice, *maqāṣid* values, and practical obstacles in applying the principle of the best interests of the child in court.

The data were analyzed using content analysis and thematic analysis. This process began with the initial coding of the decisions' text, followed by the identification of patterns, themes, and legal arguments. Thematic coding was developed inductively and then grouped into broad thematic areas, including the legal basis for decision-making, *maqāṣid* considerations, and gender justice.¹⁹ Data were interpreted using Hans-Georg Gadamer's hermeneutic approach, highlighting the importance of social context and horizons of meaning in understanding legal texts. This approach helps us understand court decisions as the dialogical product of legal norms, social values, and judges' subjective experiences.²⁰ To ensure the validity and reliability of the findings, this study employed triangulation techniques to compare data from court decisions, scientific literature, and interviews. The principles of credibility and confirmability are also maintained through systematic documentation of the entire data collection and analysis process, thereby enabling transparent data collection.²¹ With this methodological approach, this study comprehensively describes the legal framework of child custody cases and examines the extent to which the principles of *maqāṣid al-sharī'ah* and gender justice have been applied in the practice of religious courts in Indonesia.

RESULTS AND DISCUSSION

The Dynamics of Judicial Decisions: Between Norms and the Interests of Children in Religious Courts in the Banten Region

Child custody cases are an essential part of the divorce process in religious courts in Banten. In various court rulings related to child custody disputes, a dynamic tension exists between normative approaches, including positive legal texts such as Article 105 of

¹⁹ John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (SAGE Publications, 2014), https://books.google.co.id/books/about/Research_Design.html?hl=id&id=4uB76IC_pOQC&redir_esc=y.

²⁰ Hans-Georg Gadamer, *Truth and Method* (Sheed & Ward, 1975), <https://books.google.co.id/books?id=96qIQAAACAAJ>.

²¹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Remaja Rosdakarya, 2007).

the Compilation of Islamic Law (KHI). The substantive approach considers the child's psychological, emotional, and social well-being. An analysis of 16 court decisions under the jurisdiction of the Banten Supreme Religious Court reveals multiple interpretations of the principle of "the best interests of the child" and differences in the application of the principle of gender justice.

Table 1: The Summary of Child Custody Decisions in Religious Courts in the Banten Region

No	Decision	Summary	No	Decision	Summary
1.	1873/Pdt.G/2022/PA.Srg	Custody was granted to the mother due to the emotional bond.	9.	132/Pdt.G/2021/PA.Pdlg	Children under the age of 12, factors of affection and humanity.
2.	2875/Pdt.G/2022/PA.Srg	Custody was granted to the father due to his more stable financial situation.	10.	1333/Pdt.G/2022/PA.Pdlg	Children who are not yet <i>mummayyiz</i> (under the age of 12) are entitled to <i>hadlanah</i> from their mother.
3.	2959/Pdt.G/2022/PA.Srg	The father neglected the child, so custody was granted to the mother.	11.	1393/Pdt.G/2022/PA.Pdlg	Custody rights went to the father. Women from the mother's side cannot legally fulfill the child's right to <i>hadlanah</i> .
4.	5894/Pdt.G/2021/PA.Tgrs	The mother took good care of the child and had time to do so.	12.	1222/Pdt.G/2022/PA.Rks	The child was handed over to the father because the mother was working.
5.	6509/Pdt.G/2021/PA.Tgrs	The mother was capable of caring for and raising her child. Referring to Article 105 letter (a) of the Compilation of Islamic Law	13.	321/Pdt.G/2023/PA.Rks	The child was under 12 years old, and compassion and humanity were contributing factors.
6.	247/Pdt.G/2021/PA.Clg	Following the best interests of the child as stated in the hadith of the Prophet.	14.	451/Pdt.G/2023/PA.Rks	Children under the age of 12; factors of affection and humanity.

7.	266/Pdt.G/2023/PA.Clg	Custody to the mother, consideration of the best interests of the child (physical, psychological, and psychomotor).	15.	2200/Pdt.G/2021/PA.Tng	Custody rights went to the father, contrary to what is stipulated under Article 105, letter a of the Compilation of Islamic Law.
8.	337/Pdt.G/2023/PA.Clg	The father never provided affection, attention, and protection after the divorce.	16.	1642/Pdt.G/2022/PA.Tng	The best interests of the child, as they were still under 12.

Source: edited by the authors

In several decisions, including Decision No. 132/Pdt.G/2021/PA.Pdlg, No. 1333/Pdt.G/2022/PA. Pdlg, No. 321/Pdt.G/2023/PA.Rks, No. 451/Pdt.G/2023/PA.Rks, and No. 1642/Pdt.G/2022/PA.Tng, the judges emphasized that children who have not reached *mumayyiz* are better treated by their mothers. This consideration is based on factors of affection, emotional bond, and humanity, with the separation of young children from their biological mothers being considered inhumane. In this context, the judges sought to balance the formal legal norms contained in Article 105 of the Compilation of Islamic Law (KHI) with the principles of prudence and psychological considerations.

Similarly, several decisions, such as Decision No. 1873/Pdt.G/2022/PA.Tng and Decision No. 5894/Pdt.G/2021/PA.Tgrs, imply that the child's comfort and desire to live with their mother are significant factors influencing the decision. Meanwhile, in Cases 247/Pdt.G/2021/PA.Clg, 6509/Pdt.G/2021/PA.Tgrs and 266/Pdt.G/2023/PA.Clg, the judge assesses the best interests of the child by considering their physical, mental, and psychomotor development. This approach demonstrates the court's progressive awareness and is consistent with international principles, such as the Convention on the Rights of the Child (1989), which mandates child protection from violence and discrimination and the fulfillment of their rights to optimal growth and development. In some cases, fathers have been proven to have neglected their children, failing to provide love, care, and

protection, and not visiting them after the divorce (case No. 337/Pdt.G/2023/PA. Clg). In some cases, children have been traumatized at the hands of their fathers even though they were in their care (case No. 2959/Pdt.G/2022/PA.Srg).²²

Furthermore, in case No. 2875/Pdt.G/2022/PA.Srg, custody was granted to the father based on economic stability, with little consideration for the child's emotional and social well-being. This decision reflects a persistent gender bias in which the role of the mother as the primary caregiver is often subordinated to economic considerations.²³ Similarly, in cases No. 2200/Pdt.G/2021/PA.Tng and No. 1393/Pdt.G/2022/PA.Pdlg, the judge awarded custody to the father because the mother had remarried or was considered to have limited moral capacity. This shows a patriarchal tendency in legal practice, which assesses the mother's parenting capacity based on stricter moral standards than those applied to the father.

Some other cases reflect a more collaborative and humane model of dispute resolution, such as case No. 1222/Pdt.G/2022/PA.Rks. where child custody disputes are resolved through mediation and mutual agreement between parents. This agreement demonstrates a collective awareness of shared responsibility and the best interests of the child, while setting a positive precedent for achieving substantive justice.²⁴ These findings show that court deliberations in the Banten region tend to incorporate formal legal norms alongside sociological and psychological dimensions.²⁵ However, differences and inconsistencies in interpretation show that the principle of "the best interests of the child" does not yet have uniform assessment standards. Although most decisions reflect empathy and sensitivity to

²² Jumardin et al., "Analisis Yuridis Tentang Hak Asuh Anak (Hadhanah) Dan Penerapannya Di Pengadilan Agama Barru," *Hukamaa: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024), <https://doi.org/10.35905/hukamaa.v2i2.11507>.

²³ Muhammad Amin Al-Syahir Ibnu Abidin, "Peranan Hakim Dalam Pencegahan Perkawinan Di Usia Anak Dan Perlindungan Kepentingan Terbaik Bagi Anak Terkait Pengajuan Perkara Dispensasi Kawin Di Pengadilan Agama Pangkalan Balai," *Jurnal Hukum Doctrinal* 8, no. 1 (2023), <https://jurnal.um-palembang.ac.id/doktrinal/article/view/6159>.

²⁴ Badilag Mahkamah Agung RI, "Diserahkan Secara Sukarela, Eksekusi Hak Asuh Anak Berakhir Damai Di PA Serang," *Berita Badilag*, June 29, 2021, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/diserahkan-secara-sukarela-eksekusi-hak-asuh-anak-berakhir-damai>.

²⁵ Maria Reimann, "Everybody Likes It More When It's Even': Joint Physical Custody from the Children's Perspective," *Intersections* 9, no. 3 (2023): 188-201, <https://doi.org/10.17356/ieejsp.v9i3.1120>.

the welfare of children, other decisions are still trapped in legal formalism and entrenched gender bias.²⁶

From the perspective of *maqāṣid al-sharī'ah*, every decision related to *haḥāḍānah* must be directed towards protecting *ḥifẓ an-nafs* (protection of life) and *ḥifẓ an-nasl* (protection of offspring). These principles require that the child's emotional, psychological, and spiritual interests be prioritized over purely material considerations. Therefore, the direct application of *maqāṣid al-sharī'ah* can help evaluate the extent to which a judge's decision represents substantive justice that favors the best interests of the child. To achieve justice in such a setting, more systematic reforms are needed. First, judicial guidelines must be standardized to include psycho-social assessments and gender equality in *haḍānah* cases. Second, judicial competence must be strengthened through training grounded in *maqāṣid* and gender justice, to ensure that legal considerations are not confined to a formalistic setting. Third, existing regulations and technical guidelines must be revised to more comprehensively foster the principle of "the best interests of the child", covering the psychological, social, and spiritual aspects of the child. Through these steps, the religious court system in Indonesia, particularly in the Banten region, can move towards a more humanistic, inclusive, and flexible Islamic family law paradigm—making *maqāṣid al-sharī'ah* a solid foundation for justice in child custody cases.

Analysis of *Maqāṣid asy-Syarī'ah* on Child Custody Decisions: From Protection to Maintenance

Maqāṣid asy-Syarī'ah is a method for seeking and understanding Islamic law to discover its objectives.²⁷ *Maqāṣid asy-Syarī'ah* is a framework for ensuring that the law is applied normatively and provides essential protection for the primary aspects of human life, including protection of religion (*ḥifẓ al-dīn*), protection of life (*ḥifẓ al-nafs*), protection

²⁶ Milla Salin et al., "Factors Associated with the Joint Physical Custody of European Children," *Population Research and Policy Review* 43, no. 4 (2024), <https://doi.org/10.1007/s11113-024-09909-z>.

²⁷ Agus Purnomo et al., "Characteristics of Hate Speech and Freedom of Expression in the Perspective of *Maqāṣid Al-Sharī'ah*," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023): 171, <https://doi.org/10.31958/juris.v22i1.9446>.

of reason (*ḥifẓ al-'aql*), protection of lineage (*ḥifẓ al-nasl*), and protection of property (*ḥifẓ al-māl*). The actions of protection based on *maqāṣid asy-syarī'ah* can be categorized into levels, as shown in Table 2.

Table 2. Classification of Actions in *Maqāṣid asy-Syarī'ah*

No.	Level	Aspect
1.	The right of Allah	<i>Hifẓ al-Din</i> (preserving religion)
2.	The Rights of Servants (collectively)	These include the activities of <i>ḥifẓ al-Insan/ al-nas</i> (protecting/preserving humanity), <i>ḥifẓ al-ummah</i> (protecting/preserving the Muslim community), <i>ḥifẓ al-daulah</i> (protecting/preserving the state/Islamic politics), <i>ḥifẓ al-mujtama'</i> (protecting/preserving society), and <i>ḥifẓ al-nasl/ usrah</i> (protecting/preserving the family).
3.	The Rights of Servants (individuals)	These include <i>ḥifẓ al-nafs</i> (preserving/protecting the soul), <i>ḥifẓ al-ird</i> (preserving/protecting honor), <i>ḥifẓ al-mal</i> (preserving/protecting property), and <i>ḥifẓ' aql</i> (preserving/protecting reason).

Source: edited by the authors

The table indicates that the aspects upheld and maintained in *maqāṣid asy-syarī'ah* are essential to human life. According to Ibn' Ashur, the existence of Sharia aims to provide *fitrah* (goodness) and ensure appropriate actions in all aspects of life.²⁸ As for the scope of *maqāṣid asy-syarī'ah*, in the contemporary era, Jasser Auda divides the *maqāṣid asy-syarī'ah* into three levels: 1) *Maqāṣid' amm* (general), used in a broad scope such as necessity, needs, human rights, and human resource development; 2) *maqāṣid al-bab*/specific objectives, specifically used in certain chapters, such as family, and economy, among others; 3) *maqāṣid juz'iyah* (partial objectives), regarding the objectives behind a particular *naṣh* or law.²⁹

²⁸ Afrizal Ahmad, "Reformulasi Konsep Maqashid Syar'iah; Memahami Kembali Tujuan Syari'at Islam Dengan Pendekatan Psikologi," *Hukum Islam* 14, no. 1 (2014), <http://dx.doi.org/10.24014/hi.v14i1.988>.

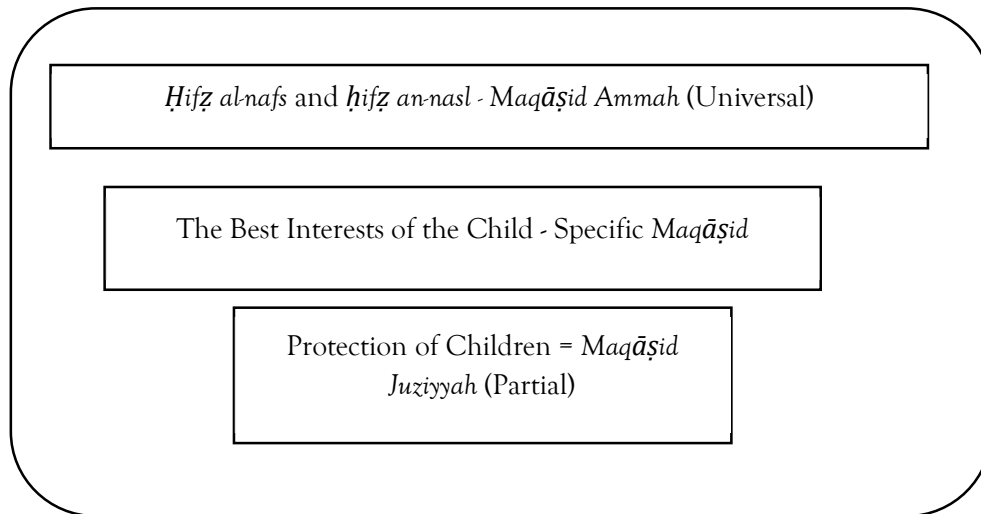
²⁹ Jasser Auda, *Membumikan Hukum Islam* (Mizan, 2015).

Maqāṣid asy-syarī'ah is also known as *mashlahat* (benefit). However, in this case, *mashlahah* does not conflict with the values of Sharia;³⁰ rather, it concerns what has been taught by religion. When combining *maqāṣid asy-syarī'ah* with child custody, the primary needs of *maqāṣid asy-syarī'ah* become the primary focus. From the perspective of *maqāṣid asy-syarī'ah*, the priority lies in the aspect of *ḍharūriyat*. Thus, in the context of child custody, *ḥifẓ al-nafs*—the protection of the physical and psychological safety of the child, and *ḥifẓ al-nasl*—the continuity of healthy and fair parenting patterns, are the priority. Therefore, it is necessary to analyze custody rulings issued by Religious Courts across the Banten region to determine whether judges have consistently applied the principles of *maqāṣid*.

Maqāṣid asy-syarī'ah has several levels, with the highest level being primary needs (*ḍarūriyyah al-khamsah*). This level is further broken down into applicable theories that can be implemented on a case-by-case basis, following a priority scale, and without violating higher priorities (which are given precedence). To understand *maqāṣid asy-syarī'ah* in child custody decisions, it is necessary to apply *maqāṣid asy-syarī'ah* deductively at the *maqāṣid amm* (general) level, until reaching derivative theories at the *maqāṣid juziyah* (partial) level, and even more narrowly from the partial level when more applicable theories are needed. The explanation is as follows. To help understand the scheme and relationship between these four *maqāṣid*, the following diagram presents the levels of *maqāṣid* adapted to this discussion.

³⁰ Saini, "Rekonstruksi Hukum Hak Asuh Anak Perspektif Maqāṣid Syarī'ah Dalam Hukum Keluarga Islam."

Figure 1: Levels of *Maqāṣid asy-Syarī'ah* in Child Custody



Source: edited by the authors

1. Protection of Life (*ḥifẓ al-nafs*) and Psychological Protection of Children (*ḥifẓ al-nafs*)

At this level, the *maqāṣid asy-syarī'ah* is universal in nature, existing in every aspect of the law within *fiqh*. At this level, the *ḍarūriyyah al-khamsah* is the top priority and must be upheld, but it does not negate the necessity (*ḥājiyyah*) and the goal of improvement (*taḥsīniyyah*). The discussion regarding child custody is a priority that encompasses *ḥifẓ al-nafs* and *ḥifẓ al-nasl*, both of which serve as the primary references for determining next steps and lower-level steps. Thus, the *maqāṣid* at the lower levels must not exceed the limits of *ḥifẓ al-nafs* and *ḥifẓ al-nasl*.

Several decisions on *ḥaḍānah* (child custody), including Decisions No. 1873/Pdt.G/2022/PA.Srg and No. 1333/Pdt.G/2022/PA.Pdlg, reflect a fairly strong approach to *maqāṣid asy-syarī'ah*, as seen in the judges' consideration emphasizing that children under the age of 12 should remain in their mother's care due to their strong emotional bond. Therefore, this consideration reflects the principles of *ḥifẓ al-nafs* and *ḥifẓ al-nasl*. Then, in Decision Number 1333/Pdt.G/2022/PA.Pdlg, the judge provided considerations referring to the opinions of scholars, as in the book *Mizan As-Sya'rani*, Volume II, p. 140:

وإذا فارق الرجل زوجته وله منها ولد فهي احق بحضانة. واتفق الأئمة على أن الحضانة للأم ما لم تتزوج

"If a husband has divorced his wife and he has children from that wife, then she has more rights to their custody (*ḥaḍānah*). And the Ulama Jumah agree that custody (*ḥaḍānah*) is given to the mother as long as she has not remarried."

Additionally, the spirit of preserving life (*ḥifẓ al-nafs*) and preserving lineage (*ḥifẓ al-nasl*) of the child is evident in Decision Number 321/Pdt.G/2023/PA.Rks and Decision Number 132/Pdt.G/2021/PA.Pdlg, in which the judge considers not only the child's age (under 12 years old) but also factors such as affection and humanity. Affection seems natural and innate in mothers, giving them the ability to nurture children. Such an ability is vital for developing affection toward children and providing comfort, yet it is absent mainly in fathers. Meanwhile, the factor of humanity emphasizes that it is highly unlikely for a young child to be separated from and kept away from the care of their biological mother.

The above rulings indicate that the best interests of the child are not always solely associated with material capabilities; this aspect also concerns the protection of the child's soul (*ḥifẓ al-nafs*), comprising emotional protection, education, and a supportive environment for their growth and development. This argument aligns with the framework of *maqāṣid al-syarī'ah* in Islamic family law, which establishes *ḥifẓ al-nafs*, *ḥifẓ al-'aql*, and *ḥifẓ al-nasl* that act as the foundation for child protection.³¹

Unlike the above rulings, which granted custody of the child to the mother, Decision Number 2875/Pdt.G/2022/PA.Srg granted custody of the child to the father, with the judge considering the factors of economic stability and the child's emotional closeness to the father. Although this decision does not explicitly contradict the principle

³¹ Ds Khairunnisa, "Disparitas Putusan Hakim Terhadap Hadhanah Bagi Anak Yang Belum Mumayyiz Perspektif Masalah Mursalah (Studi Putusan Pengadilan Agama Nomor 368/Pdt.G/2022/Pa.Pdg. Dan Putusan Pengadilan Agama Nomor 74/Pdt.G/2023/Pa.Tas)" (Bachelor thesis, UIN Syarif Hidayatullah, 2024), <https://repository.uinjkt.ac.id/dspace/handle/123456789/76166?mode=full>.

of *ḥifẓ al-nafs*, the dominant emphasis on financial aspects, without exploring the psychological condition of the mother or child, signals a reduced understanding of *maslahat* (*ḥifẓ al-nafs*) as mere material stability.³² This aligns with Arifuddin Ahmad's view that a narrow interpretation of *maslahat*, focusing solely on financial aspects, overlooks the spiritual and psycho-social dimensions that are integral to the core of *maqāṣid asy-syarī'ah*, particularly in family matters.³³

Conversely, in Decision Number 5894/Pdt.G/2021/PA.Tgrs, the judge prioritized the principle of the child's welfare, not only emphasizing economic capability but also considering the caregiver's (mother's) parenting behavior and availability of time. The judge's approach in this case demonstrates an understanding of the *maqāṣid al-syarī'ah framework*, not only protecting life (*ḥifẓ al-nafs*) and lineage (*ḥifẓ al-nasl*), but also protecting the child's intellect (*ḥifẓ al-'aql*). The *maslahat* approach in this context supports Monateri's proposal, in which, in family matters, legal considerations should be situated within a dynamic dialectic, not confined to the rigidity of written norms, but also taking into account sociological aspects.³⁴

Protecting children is equivalent to protecting life (*ḥifẓ al-nafs*) and lineage (*ḥifẓ al-nasl*), in which *ḥifẓ al-nafs* and *ḥifẓ al-nasl* are the command of the Qur'an: *educate your children according to their nature* (Surat Ar-Rum verse 30), *educating children is a duty imposed on parents* (Surat Hud verse 46), *the importance of educating children to become strong individuals* (Surat An Nisa' verse 9), *children are a test, but also a source of great reward if they are well cared for* (Surat At-Taghabun verse 15), and *the importance of being kind to parents, which also includes the duty of parents in educating children* (Surat Luqman verse 14).

³² Ibnu Akbar Maliki et al., "Pengasuhan Dan Perlindungan Anak Dalam Undang-Undang Negara Muslim (Meninjau Resiprokalitas Keluarga Dan Negara)," *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 14, <https://doi.org/10.32332/syakhshiyah.v3i1.7028>.

³³ Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia."

³⁴ Pier Giuseppe Monateri, "Form and Substance in Comparative Law and Legal Interpretation," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 37, no. 5 (2024): 1533-1556, <https://doi.org/10.1007/s11196-024-10124-4>.

The focus on *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-nasl* (protection of offspring) serves as the basis for determining who is most suitable to care for children, from a *maslahat* perspective rather than legal or economic status. There is also a spirit of gender justice, involving the reinterpretation of Islamic legal texts that have often been interpreted in patriarchal settings and a call for the affirmation of women as autonomous legal subjects, including in their role as primary caregivers for children.³⁵

2. The Dimension of the Best Interests of the Child: Psychology, Education, and Economics in Court Decisions

At this level, the specific *maqāṣid* (objectives) center on the best interests of the child. A critical aspect in this regard is providing security and guaranteeing peace of mind for children in their growth and development. This peace of mind can be achieved unless there is tension arising from poor parenting that is detrimental to the child. For example, in Decision Number 2959/Pdt.G/2022/PA.Srg, the judge integrated formal legal norms as stipulated in Article 105 of the KHI with social realities, where the judge not only considered formal legal factors but also the history of parenting and emotional conditions, given that, in this case, the child experienced neglect and traumatic experiences. This ruling, therefore, demonstrates the protection of offspring (*ḥifẓ al-nasl*) and the child's mind (*ḥifẓ al-'aql*).

This aligns with the Prophet's hadith, stating,

"O Messenger of Allah, this child once used my womb as his vessel, my breasts as his source of nourishment, and my room as his home. Now his father has divorced me and wants to take him away from me. The Messenger of Allah said to this woman: "You have more right to him as long as you have not remarried." (HR. Abu Daud Number 2276, Ahmad (2/182)

However, in some cases, legal considerations regarding child custody rights are not systematic or holistic. Economic factors often take precedence in granting child custody

³⁵ Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (University of Texas Press, 2002), <https://www.amazon.com/Believing-Women-Islam-Patriarchal-Interpretations/dp/0292709048>.

rights, while sociological and psychological factors come second. This contradicts the principles of *maqāṣid asy-syarī'ah*, which views a systematic, holistic approach to child protection as vital.

For example, Decision Number 1393/Pdt.G/2022/PA.Pdlg and Decision Number 2200/Pdt.G/2021/PA.Tng, awarded the father the child custody because the mother could not meet the legal requirements and had remarried. This appears to violate the principle of child protection, but the judge used several references, such as the Hadith of the Prophet Muhammad SAW narrated by Ahmad and Abu Dawud, authenticated by al-Hakim, stating,

أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي

"You (the biological mother) have more rights over your child as long as you are not married."

In addition, several requirements that the holder of child custody rights must meet are also contained in the Book of Kifayatul Akhyar Juz II, page 94:

وشرائط الحضانة سبع : العقل والحرية والدين والعفة والأمانة والأقامة في بلد المميز والخلو من زوج اختل

شرط منها أي السبعة في الأم سقطت حضانتها

"There are seven requirements for those who will carry out the task of ḥaḍānah: being of sound mind, free, Muslim, modest, trustworthy, residing in a certain area, and not having a new husband. If one of these requirements is not met, the mother loses her right to ḥaḍānah."

Therefore, judges also consider their decisions by referring to hadith and the opinions of scholars, ensuring that the best interests of the child remain the primary and paramount. The judge considers not only who is entitled to custody, but also who is best able to provide for the child. This is consistent with the findings of Syahri et al. (2024), arguing that judges, ideally, should not only focus on "who" is entitled to custody but also

consider "who" is best able to provide a healthy mental and intellectual environment for the child's best interests.³⁶

Similarly, Hsuan-Lei Shao's findings indicate that the three most significant factors considered by Taiwanese judges are the parent who is currently the child's primary caregiver, the child's wishes, and the judge's assessment of parent-child interactions.³⁷

3. Dimensions of *Maqāṣid Juziyyah* Child Custody Rights: Prioritizing the Protection of Children's Rights

At this level, *maqāṣid* can even change rapidly in response to the needs and priorities of the prevailing conditions. *Maqāṣid juziyyah* (partial) is part of the specific *maqāṣid* at the level above it. In this context, *maqāṣid juziyyah* (partial) refers to all actions taken to protect children. Mobilizing all potential in the right to provide protection is crucial to ensure children's growth and development. Deciding child custody should not rely solely on who is responsible; the most important factor is who can provide protection. The eligibility to give protection can refer to anyone with such a capacity.

As in Decision Number 1222/Pdt.G/2022/PA.Rks, in this case, the decision was revoked because it had been agreed upon through mediation. The mother voluntarily relinquished custody to the father, considering that the father was better equipped to protect the child. Similarly, in Decision Number 2875/Pdt.G/2022/PA.Srg, an agreement was reached between the father and mother through mediation. The mother voluntarily left custody to the father, with the condition that the father refrain from smoking in front of the child and continue to allow the mother to see their child.

³⁶ Abdullah Abdullah et al., "Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia," *ElUshrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 253–271, <https://doi.org/10.22373/ujhk.v7i1.22281>.

³⁷ Hsuan-Lei Shao et al., "Factors Determining Child Custody in Taiwan after Patriarchy's Decline: Decision Tree Analysis on Family Court Decisions," *Asian Journal of Comparative Law* 18, no. 2 (2023): 272–288, <https://doi.org/10.1017/asjcl.2022.28>.

This cooperative and peaceful attitude aims to avoid open conflict while emphasizing the importance of agreement, emotional stability, and continuous love as key factors in the child's development. Thus, this attitude aligns with the principles of protecting life (*ḥifẓ al-nafs*) and lineage (*ḥifẓ al-nasl*), as emphasized by Al-Shāṭibī, that the *maqāṣid* requires state authority (the judge) to safeguard human existence in its entirety, including the emotional dimension, for the protection of children post-divorce.³⁸

However, although the majority of judges prioritize the interests of the child, there is a tendency for mothers to be subjected to moral and economic scrutiny more often than fathers. When a father files for child custody, he only needs to prove his financial capability. On the contrary, mothers must demonstrate emotional and financial competence, as well as sufficient time for the child. This disparity indicates the existence of gender bias as a result of the poor implementation of the Supreme Court Regulation (PERMA) Number 3 of 2017 by Religious Court Judges. However, if two conditions arise as a result of legal reasoning, the principle of greater benefit (*mashlahah*) takes precedence over *istihsān*.³⁹ Furthermore, related to *maqāṣid*, this principle must be used as a reference to break down structural and social biases in the practice of Islamic law, including in decision-making concerning family and children, as reflected in judicial arguments.⁴⁰

Therefore, in protecting children's rights, every custody decision includes a clause stating that even though custody has been granted to one parent (mother or father), the custodial parent is not permitted to prohibit or restrict access or prevent the other parent from meeting, playing with, showing affection to, or spending time with their child. This provision is in accordance with Article 14 of the Child Protection Law, which states, "Every child has the right to be cared for by their own parents." Furthermore, the Supreme Court Circular Letter (SEMA) Number 1 of 2017 mandates the revocation of the custody rights of a parent who refuses to grant the other parent access to their child. This rule shows that

³⁸ Al-Shāṭibī, *Al-Muwāfaqāt Fī Uṣūl al-Sharī'ah* (Dār al-Kutub al-'Ilmiyyah, 2003).

³⁹ Ramadhita Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (2023), <https://doi.org/10.1080/23311886.2023.2206347>.

⁴⁰ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications, 2008), <https://oneworld-publications.com/work/shariah-law/>.

protection and attention from both parents remain essential for children, even after divorce.

Furthermore, an analysis of *maqāṣid* in *ḥaḍānah* rulings in religious courts throughout the Banten region shows that although some rulings have accommodated the principles of *ḥifẓ al-nafs* and the best interests of the child, their application has been inconsistent. This finding aligns with Ramadhita et al. (2023), who found that many judges in the religious court system still rely on legal-formalistic logic and fail to internalize a *maqāṣid*-based approach to justice in family cases.⁴¹ From the perspective of *maqāṣid al-syaṁīʿah*, judges' considerations should be directed toward the principle of the best interests of the child and relational justice between both parents. The tenets of *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-nasl* (protection of offspring) require that child custody be viewed not only from a formalistic perspective but also in light of the family's actual conditions and the child's emotional relationship with their caregiver. However, such rulings remain an exception rather than the norm, as few judges explicitly implement *maqāṣid* in their legal arguments.⁴²

Based on the analysis of *maqāṣid*, most custody-related rulings in Religious Courts in the Banten region have incorporated the principles of *maqāṣid* in child protection, particularly *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-nasl* (protection of lineage) for the child. However, integrating a holistic approach to psychological, educational, and economic aspects in a balanced manner remains an issue. Thus, a critical reading of custody rulings in Banten shows that the judicial system needs some improvements in its perspective and methodology.

⁴¹ Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia."

⁴² Khairunnisa, "Disparitas Putusan Hakim Terhadap Hadhanah Bagi Anak Yang Belum Mumayyiz Perspektif Maslahah Mursalah (Studi Putusan Pengadilan Agama Nomor 368/Pdt.G/2022/Pa.Pdg. Dan Putusan Pengadilan Agama Nomor 74/Pdt.G/2023/Pa.Tas)."

A Critical Reading of Gender Justice in Child Custody Court Decisions

Gender justice in the context of child custody is not only about the equal distribution of rights between men (fathers) and women (mothers), but more profoundly, it relates to the power relations that can be granted authority to care for children. The important question should not only be "who" gets custody, but also "why" they get it and "on what grounds" the other party is denied custody. Thus, many religious court rulings have been inconsistent in terms of the patterns of argumentation between claims of Islamic legal justice and practices that are still gender biased, even though judges have the right to exercise individual legal reasoning.

Based on an analysis of court decisions in the Banten region, an imbalance in the treatment of both parents persists, particularly in the burden of proof and the assessment of suitability. For example, in Decision Number 2875/Pdt.G/2022/PA.Srg, custody was transferred to the father primarily on the grounds of economic stability. This indicates that mothers are more likely to be positioned as the party who must strictly prove their "suitability" for custody, while fathers only need to prove their financial capability. This phenomenon reflects gender bias that is not yet completely free from patriarchal influence,⁴³ with women often experiencing discrimination in court proceedings, particularly in family disputes, including child custody cases.⁴⁴

Several child custody decisions in Religious Courts across the Banten region illustrate the interaction between legal norms and gender justice principles. To understand this, the analysis will use the gender justice theory framework developed by Nancy Fraser and Ann Phoenix. Fraser maps gender justice across three main scopes—distribution, recognition, and representation—that can be used to assess family law structures that appear neutral but often normalize gender inequality.

⁴³ Farida Nurun Nazah and Muslimin Muslimin, "The Judges Legal Reasoning on Child Welfare's Perspective in the Hadanah Cases at Banten Religious Courts," *Jurnal Hukum* 40, no. 1 (2024): 14, <https://doi.org/10.26532/jh.v40i1.36621>.

⁴⁴ Xin Zhang et al., "Gender Bias in Child Custody Judgments: Evidence from Chinese Family Court," *PLOS ONE* 19, no. 7 (2024): e0305479, <https://doi.org/10.1371/journal.pone.0305479>.

1. Inequality in the Dimension of Distribution

The dimension of distributional inequality bias is illustrated in the *hadhanah* Decision Number 2875/Pdt.G/2022/PA.Srg, in which the judge ruled to grant custody to the father by virtue of the father's more stable financial condition. Economic stability became the benchmark in assessing the ability and wealth to obtain custody rights under this ruling. Women (mothers) often find themselves in difficult economic situations due to divorce, as they generally do not have jobs and are required to perform domestic work, leading to financial instability and enabling distributive injustice (maldistribution) following divorce.⁴⁵

2. Injustice in the Dimension of Recognition

Another ruling requiring mothers to prove their morality, psychological stability, and availability constitutes symbolic injustice, as illustrated by ruling number 5894/Pdt.G/2021/PA.Tgrs. In this court decision, the child has been well cared for by the mother, and the mother has sufficient time to care for the child. The stereotype that women are more emotionally unstable after divorce reinforces their subordination. This condition is referred to as misrecognition, equivalent to the failure to give equal social value to women's identities or roles in the family.⁴⁶ Meanwhile, men as fathers are rarely tested in terms of morality or psychology; they need only demonstrate economic capability and good intentions. Courts tend to judge women's behavior more harshly, while being tolerant of men's violations, including their absence from parenting during marriage.⁴⁷

⁴⁵ Nancy Fraser, *Justice Interruptus*, 0 ed. (Routledge, 2014), <https://doi.org/10.4324/9781315822174>.

⁴⁶ Arto Laitinen, "Misrecognition, Misrecognition, and Fallibility," *Res Publica* 18, no. 1 (2012): 25–38, <https://doi.org/10.1007/s11158-012-9183-5>.

⁴⁷ Richard A. Warshak, "Gender Bias In Child Custody Decisions," *Family Court Review* 34, no. 3 (1996): 396–409, <https://doi.org/10.1111/j.174-1617.1996.tb00429.x>.

3. Injustice in the Dimension of Representation

Women in custody disputes are often positioned as the defensive party, since they are required to prove their eligibility, as in Decision Number 1393/Pdt.G/2022/PA.Pdlg, where the mother was deemed unable to fulfill her legal custody rights. The judge did not explicitly mention consideration of PERMA Number 3 of 2017, even though this regulation grants women the right to be heard when facing legal proceedings. Fraser refers to this inequality as misrepresentation, a condition where legal institutions fail to provide fair space for vulnerable and subordinated groups, in this case, women as legal subjects.⁴⁸

An analysis of gender inequality in the distribution, recognition, and representation of women in *ḥaḍānah* court decisions shows that this local phenomenon in Banten mirrors the national pattern that various studies have widely criticized. Judges across regions of Indonesia tend to use biased legal-formalistic logic when granting custody to fathers because they are considered more stable financially, without considering the context of inequality experienced by mothers following divorce.⁴⁹

For example, the considerations of judges at the Kupang Religious High Court show that, despite the rhetoric about the "best interests of the child," in practice, judges still reproduce gender stereotypes detrimental to women, such as the assumption that working women are more likely to abandon their children or are unable to educate them optimally.⁵⁰ Additionally, a study conducted in East Java found that some judges often make erroneous decisions regarding children, despite Article 31 of the Child Protection Law providing

⁴⁸ Fitriyani Fitriyani et al., "The Judges' Legal Consideration on Divorce of Nushūz Cases at the Kupang High Religious Court: Gender Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1971, <https://doi.org/10.22373/sjhk.v7i3.14425>.

⁴⁹ Miftahul Huda and Tri Wahyu Hidayati, "The Concept of Muḥammad Shaḥrūr on Gender Parity in Inheritance Legislation," *El-Ussrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 262, <https://doi.org/10.22373/ujhk.v6i2.18121>.

⁵⁰ Ana Ulfiana et al., "Judges' Considerations In Divorce Cases Due To Broken Marriage: An Analysis Of Contemporary Islamic Family Law," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 (2025): 135–152, <https://doi.org/10.20885/mawarid.vol7.iss1.art8>.

space for children to participate in determining their custody rights, especially after the age of 12.⁵¹

Thus, this comparison reinforces the conclusion that although some judges are making efforts to move toward substantive and *maqāṣidiyah* justice, symbolic, economic, and representational biases remain strong. Custody rulings still largely reflect patriarchal logic that prioritizes the father's financial status and disproportionately questions the mother's morality. From an Islamic legal perspective, *maqāṣid al-syarī'ah* provides a solid foundation for rejecting this inequality. The principles of *ḥifẓ al-nafs* and *ḥifẓ al-nasl* are internalized in every consideration of the decision as an effort to protect children's rights through proper custody without gender bias.

Therefore, integrating the principles of *maqāṣid* and gender justice should become a new paradigm for adjudicating custody cases. As Amina Wadud⁵² and Musdah Mulia⁵³ argue, Islamic law (in this case, religious court decisions) must favor fair and equal relationships, free from structural domination. Thus, it is necessary to continue reforming gender-based justice, strengthen the implementation of PERMA Number 3 of 2017, provide gender-sensitive training for judges, and encourage the application of *maqāṣid* and gender as the basis for legal considerations in family cases.

CONCLUSION

This study found that child custody (*ḥaḍānah*) decisions in the Banten Religious Court reveal a persistent conflict between formal legal norms and substantive justice, which should be more oriented towards *maqāṣid al-sharī'ah* (the principles of justice). Although some decisions show an awareness of the need to protect the life of the child and offspring

⁵¹ Supriyadi and Nik Abdul Rahim Nik Abdul Ghani, "Negotiating Tradition and Modernity: The Practice of Prohibiting Marriage in the Month of Suro among Javanese Muslims in South Lampung," *NUSANTARA: Journal Of Law Studies* 4, no. 2 (2025): 114-128, <https://doi.org/10.5281/zenodo.17340470>.

⁵² Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam* (Oneworld Publications, 2006), <https://www.amazon.com/Inside-Gender-Jihad-Womens-Reform/dp/1851684638>.

⁵³ Musdah Mulia, *Islam Dan Inspirasi Keadilan Gender* (Kibar Pres, 2007).

(*hifẓ an-nafs* and *hifẓ an-nasl*), the judges' approach remains inconsistent and influenced by entrenched patriarchal structures. This imbalance is reflected in the tendency to assess the mother's capacity more strictly, while the father is often assessed solely on economic stability indicators. This pattern reveals a gender bias that undermines the goal of substantive justice and neglects the overall welfare of the child. Therefore, reforming judges' legal reasoning has become an urgent normative imperative. *Maqāṣid al-sharī'ah* must be reformulated not only as moral guidelines, but also as a specific legal paradigm in decision-making. The *maqāṣid juziyyah* approach can be used to strengthen the comprehensive protection of children's rights, emphasizing the balance between the emotional, psychological, social, and spiritual aspects of children after divorce. Thus, applying *maqāṣid* will facilitate the creation of an Islamic family law system that is more humane, inclusive, and gender-equitable.

ACKNOWLEDGEMENTS

The author would like to express sincere gratitude to the Rector of Universitas Esa Unggul, Jakarta, Indonesia, and the entire academic community for their support, inspiration, and valuable contributions to the completion of this research. May this collaboration continue to strengthen the spirit of academic excellence and the advancement of knowledge.

AUTHOR CONTRIBUTIONS STATEMENT

All authors contributed significantly to the completion of this study. Farida Nurun Nazah led the conceptualization, research design, and overall manuscript preparation. Restia Gustiana was responsible for data collection, analysis, and interpretation. Tobibatus Saadah contributed to the literature review, validation, and critical revision of the manuscript. All authors have read and approved the final version of this manuscript.

CONFLICT OF INTEREST

The authors declare that there are no conflicts of interest, financial or otherwise, that could have influenced any aspect of this study. This research was conducted independently and objectively, with full academic integrity and a commitment to uphold

ethical standards in every stage of the research process, including data collection, analysis, and publication.

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