

Child Custody Due to Wife's Mental Disorder; A Maqashid Shariah Perspective Analysis

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Abstract

This study aims to explore the underlying considerations of the panel of judges in delivering a verdict on the case Number 381/Pdt.G/2024/PA.Tnk and to review it from the perspective of maqashid shariah. This research uses a qualitative method, is descriptive-analytical in nature, and employs a library research approach. The data is analyzed using the perspective maqashid shariah to assess the welfare of the child if raised by the father. The findings of this study reveal that the judge decided to grant hadhanah (custody) to the plaintiff (husband) until the children reach adulthood. One of the key considerations for this decision was the concern for the health and safety of the children while they were under the care of the defendant (wife), who was diagnosed with a mental disorder, rendering her unable to properly care for and educate the children. From the perspective of maqashid shariah, the transfer of custody to the plaintiff (husband) is clearly intended for the benefit of the children. This falls under the maqashid sharia daruriyyat (essential objectives), which include the preservation of religion, life, intellect, lineage, and wealth of the child. The analysis through the lens of maqashid sharia makes a significant academic contribution by framing the decision within the context of preserving the essential values (daruriyyat), namely the protection of the child's religion, life, intellect, lineage, and wealth. This approach enriches the study of Islamic family law by affirming the relevance of maqashid shariah principles in the legal decision-making process, thus offering a more comprehensive perspective.

INTRODUCTION

Etymologically, marriage refers to the bond between a man and a woman to form a family. In its figurative meaning, marriage (nikah) is defined as a contract that legitimizes the marital relationship between husband and wife, as it represents a solemn covenant (*mitsqan ghalidhan*) established to fulfill the command of Allah SWT, making its practice an act of worship.¹ Marriage is not merely a means of managing the life of husband and wife or fostering offspring, but also serves as a medium for mutual understanding between partners.²

According to Article 1 of Law No. 1 of 1974 on Marriage, it is explicitly stated that the fundamental purpose of a marital union between a man and a woman is to establish a household filled with happiness, peace, and continuity, firmly grounded on the principles of belief in the Almighty God. Stability and comfort in family life depend largely on the ability to build harmonious and balanced relationships within the household. Such harmony can only be realized through the awareness of each family member in fulfilling their rights and obligations as prescribed by God Almighty. Therefore, a family established through marriage can achieve tranquility, love, and affection among its members.

If a household can no longer be preserved, divorce becomes the final solution.³ Divorce is a legal process that terminates the marital bond through a court decision, with the aim of safeguarding the rights and obligations arising from the dissolution of the marriage. Following divorce, various issues such as division of property, maintenance, family relations, and child custody (*hadhanah*) must be resolved by both parties.⁴ In Islam, divorce is not prohibited, but rather regarded as the last resort when marriage can no longer be maintained. Juridically, the dissolution of marriage is regulated under Article 38(b) of Law No. 1 of 1974 on Marriage, which stipulates that marriage ends due to divorce, death, or court decree.⁵

¹ Khusnul Khotimah dan Dani Amran Hakim, "Pencatatan Pernikahan Sebagai Pilar Kepastian Hukum Administrasi Dalam Keluarga: Studi Di KUA Seputih Agung Lampung Tengah," *El-Izdiwah Indonesian Journal of Civil and Islamic Family Law* 52 (2024): 206.

² Agus Hermanto, *Larangan Perkawinan Perspektif Fikih Dan Relevansinya Dengan Peraturan Hukum Perkawinan Di Indoneisa*, t.t., 154.

³ Hendra Karunia Agustin, "Hak Asuh Anak Dari Istri Muslim Yang Bercerai Dan Menikah Lagi Dengan Suami Non Muslim Dalam Tinjauan Hukum Islam Dan Hukum Positif," *Jurnal Hukum Keluarga* 1, no. 1 (t.t.): 46.

⁴ Ira Yuni Rachmawati, "Problematisa Hak Asuh Anak Dalam Putusan Pengadilan Agama (Analisis Perkara Nomor 802/Pdt.G/2019/PA.pct)," *Jurnal Antologi Hukum* 2, no. 1 (2022): 30.

⁵ Muhammad Zainuddin Sunarto dan Diah Uswatun Hasanah, "Analisis Penjatuhan Hadhanah Pada Perempuan Dalam Tinjauan Maqashid Syariah," *Jurnal Hukum Lex Generalis* 6, no. 2 (2025): 2.

Divorce not only affects the relationship between husband and wife but also significantly impacts the lives of the children involved in the marriage. In legal terms, child custody following divorce often becomes a contentious issue, as it directly concerns the welfare and future of the child. According to data from the Central Bureau of Statistics (BPS), the divorce rate in Indonesia has shown a consistent upward trend in recent years, indicating that issues related to child custody require serious attention. Divorce can also leave profound psychological effects on children, who may experience confusion and uncertainty regarding their familial roles and identities. Children of divorced parents often face emotional, social, and psychological challenges that may affect their development, both mentally and physically. Hence, in every divorce process, the determination of child custody plays a crucial role in ensuring that children receive adequate care, genuine affection, and proper upbringing from both parents, whether from the mother or the father.⁶

This is reflected in the Religious Court's Decision No. 381/Pdt.G/2024/PA.Tnk, in which the husband filed a lawsuit due to his wife's mental illness. In this case, the husband acted as the plaintiff, while the wife was the defendant. After the divorce, the child initially lived with the defendant. However, over time, the wife was diagnosed with a mental disorder, which led to the child's deteriorating health, noticeable weight loss, and poor living conditions in an uninhabitable and unsanitary environment. The plaintiff also faced difficulties in visiting and communicating with the child, which raised concerns about the child's growth, affection, morals, and education.

One of the requirements for child custody (*hadhanah*) is sound mental health, meaning that a person suffering from a mental disorder cannot provide adequate care and may endanger the child's well-being. This situation prompted the plaintiff to request the transfer of custody, as the father was deemed capable of raising and educating the child until adulthood. The main research questions addressed in this study are: (1) What judicial considerations were employed by the judge in granting custody to the father in Decision No. 381/Pdt.G/2024/PA.Tnk due to the mother's mental illness? and (2) How does the perspective of *maqashid shariah* evaluate this decision?

The purpose of this research is to identify and analyze the legal reasoning used by the panel of judges in Decision No. 381/Pdt.G/2024/PA.Tnk, which transferred custody to the father due to the mother's psychological condition, and to examine this ruling through the lens of *maqashid shariah*. This study aims to assess the underlying needs and

⁶ Ahmad Masyadi, "Hak Asuh Anak Pasca Perceraian Perspektif Hukum Islam Dan Hukum Positif Indonesia," *Jurnal Hukum Ekonomi Syariah Dan Hukum Islam* 3, no. 4 (2024): 36.

objectives in child custody cases using a *maqashid shariah* approach, as this framework must be considered in legal reasoning.

Previous studies relevant to this issue include: (1) Bhakti Afifi's thesis on "The Determination of Child Custody for Non-Mumayyiz Children to Fathers in the Perspective of Child Protection," which found that custody was granted to the father due to the mother's infidelity and neglect; (2) Rio Habib Ismail's thesis on "Child Custody in Cases of Maternal Illness in Decision No. 145/Pdt.G/2020/PA.Tas from a Maqashid Shariah Perspective," which concluded that custody remained with the mother in line with the best interest of the child, as long as the mother did not negatively impact the child's development; and (3) Ahmad Masyadi's journal article, "Child Custody after Divorce from the Perspective of Islamic Law and Indonesian Positive Law," which argued that custody under Islamic law generally belongs to the mother until the child reaches puberty, while under state law, custody of young children is given to the mother unless she is unable to provide proper care.

The novelty of this study lies in its approach: while Afifi emphasized Islamic law, this research applies *maqashid shariah* analysis; while Ismail focused on children below the age of discernment, this study highlights judicial considerations in granting custody to fathers for the sake of the child's welfare when the mother suffers from mental illness; and while Masyadi compared Islamic law and state law, this study uniquely examines the best interest of the child through the framework of *maqashid shariah*, especially in cases where the mother's psychological condition prevents her from fulfilling her parental role. This research ultimately explores the underlying needs and objectives in custody disputes using *maqashid shariah*, which serves as an essential factor for consideration.

METHODS

This study employs a qualitative method with the primary aim of comprehensively exploring the central issues under investigation. The type of research chosen is library research, which involves collecting data through the examination of various sources such as scholarly books, theses or dissertations, academic journals, and other relevant publications that are substantively connected to the problem being studied.⁷ The nature of this research is descriptive-analytical, intended to present findings by providing descriptions and explanations of the phenomena under study.⁸ The analytical framework applied is the *maqashid shariah* approach, which is used because it aligns with the

⁷ Zainudin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2011).

⁸ Muhammad Ramdhan, *Metode Penelitian* (Cipta Media Nusantara, 2021).

overarching objectives of Islamic law. Through this approach, the researcher is able to assess how the principle of public welfare (*maslahah*) is reflected in child custody cases.

The data sources for this study consist of primary and secondary materials. The primary source is the official copy of the Religious Court Decision Number 381/Pdt.G/2024/PA.Tnk, which serves as the central reference for analysis. The secondary sources include reference books, scholarly journals, and academic articles that are thematically related to the research problem, particularly those addressing the issue of granting child custody (*hadhanah*) to the father due to the mother's mental disorder.⁹

RESULTS AND DISCUSSION

1. The Concept of Child Custody (Hadhanah)

Child custody, known in Islamic jurisprudence as *hadhanah*, carries meanings both linguistically and terminologically. Etymologically, the word *hadhanah* originates from the root *hadhana-yahdhunu-hadhan*, which means to protect, embrace, or care for a child. Terminologically, *hadhanah* is defined as a series of activities aimed at nurturing, guiding, and raising a child who has not yet reached the age of discernment (*mumayyiz*), or a child who suffers from impaired mental capacity. This is because children in the pre-*mumayyiz* stage (under the age of 12) are not yet capable of fulfilling their needs independently.

According to Sayyid Sabiq, *hadhanah* refers to the effort to protect and care for children who are not yet mature, whether boys or girls, as well as those who have grown older but have not yet attained intellectual maturity (*mumayyiz*), without dependence on the will of others. The primary aim of *hadhanah* is to safeguard children from threats or harm while also providing both physical and spiritual development, enabling them to live independently, face life's challenges, and fully assume responsibilities in the future.¹⁰

Based on Article 1(g) of the Compilation of Islamic Law (KHI), *hadhanah* is defined as the activity of nurturing, guiding, and raising children until they reach adulthood and are capable of living independently. From the perspective of KHI, *hadhanah* is positioned as a fundamental obligation that must be borne by both parents without exception, whether in a harmonious household or after divorce. Custody encompasses all needs that support the development of a child, including primary and secondary needs such as education, living expenses, and health.¹¹

⁹ Abdurahman Fathoni, *Metodelogi Penelitian* (Rineka Cipta, 2006).

¹⁰ Agus Mahfudin, Fitrotunnisa, " Hak Asuh Anak Jatuh Kepada Bapak Perspektif Hukum Islam Dan Hukum Positif" Jurnal Hukum Keluarga Islam 4, no. 2 (2019): 125-126

¹¹ Ajeng Widanengsih dan Yandi Maryandi, " Analisis Putusan Hakim Pengadilan Agama Mengenai Hak Asuh Anak Kepada Ayah." Jurnal Riset Hukum Keluarga Islam 2, no. 1 (2022): 57.

In KHI, discussions on *hadhanah* can be grouped into two phases: before and after the child reaches *mumayyiz*. In cases of divorce involving a child who has not yet reached discernment and is unable to distinguish between right and wrong, custody belongs to the mother. Once the child reaches the *mumayyiz* stage, meaning the ability to differentiate between what benefits and what harms them, they are considered competent to make life choices and are given the right to choose whether to live with the father or the mother. This is explicitly regulated in Article 105(b) of the Compilation of Islamic Law, which states: "Custody of a child who has reached *mumayyiz* is determined by the child, who is given the right to choose between the father and mother as the custodian."¹²

The conditions required to qualify as a custodian (*hadhinah*) are as follows:

- a. Possession of sound mind and freedom from mental disorders, as those suffering from mental illness are deemed incapable of adequately caring for themselves, let alone bearing responsibility for child custody.
- b. Attainment of adulthood.
- c. Physical and psychological readiness to raise and care for the child. Custodians are expected to possess sufficient physical capability, mental stability, and available time. If a custodian is overly preoccupied with work to the extent that emotional interaction and communication with the child are neglected, they are considered unfit for custody, as such neglect could negatively impact the child's needs.
- d. Trustworthiness and good moral character. Custodians who cannot be trusted or who engage in immoral behaviour are deemed unworthy. Examples include a woman who frequently socialises inappropriately with non-mahram men leading to fornication, or one who consumes alcohol.
- e. Adherence to Islam, as Muslim children should not be raised by non-Muslim custodians. Child custody is part of guiding the child to grow as a devout Muslim, which is a parental obligation. Jurists cite Surah At-Tahrim (66:6) as evidence, emphasising the parental duty to safeguard themselves and their families from the Fire. Accordingly, parents must not allow their children to remain in disbelief, as disbelief leads to punishment in the Hereafter.
- f. The custodian must be a free individual (not a slave).

¹² Fawzia Hidayatul Ulya, Fashi Hatul Lisaniyah, Mu'amaroh, "Penguasaan Hak Asuh Anak Di Bawah Umur Kepada Bapak," *The Indonesian Journal of Islamic Law And Civil Law* 2, no. 1 (2021): 109-110.

- g. Custody is primarily granted to the mother, particularly if she has not remarried. However, if she remarries a man who is capable of providing proper care and affection to the child, the mother may still retain custody.¹³

In Indonesia, according to Amir Syarifuddin, child custody encompasses various aspects, including who has greater authority in caring for the child and who bears financial responsibility until the child reaches adulthood and is able to provide for themselves. In divorce cases where children are involved, the mother is given primary custodial rights, provided she does not lose eligibility or violate the requirements set for *hadhanah*. Mothers are prioritised as custodians because they are considered more capable of nurturing and raising children, possessing greater patience compared to fathers. Thus, mothers are deemed better positioned to prioritise the best interests of the child.¹⁴

The mother also plays a vital role in meeting the needs of her child, especially during the early stages of life, such as breastfeeding. The legal foundation for child custody is found in the Qur'an, Surah Al-Baqarah (2:233):

"Mothers shall breastfeed their children for two whole years, for those who wish to complete the term of nursing. The father shall provide for them and clothe them in a reasonable manner. No soul shall be burdened beyond its capacity. A mother shall not be made to suffer because of her child, nor shall a father because of his child. The same duty applies to the heir. But if both desire weaning, through mutual consent and consultation, there is no blame upon them. And if you wish to have your children nursed by another, there is no blame upon you, provided you pay in a fair manner. And fear Allah and know that Allah is All-Seeing of what you do."

While this verse explicitly discusses breastfeeding, it also addresses *hadhanah*, establishing that both parents are obliged to fulfil the comprehensive needs of the child. In the context of custody, Surah Al-Baqarah provides essential guidance, especially in cases of divorce. The verse highlights several key elements relevant to *hadhanah*. First, it encourages mothers to nurse their children for two full years, where possible. Breastfeeding is a fundamental aspect of early childcare, not only meeting physical needs but also fostering a strong emotional bond between mother and child. This illustrates the central role of the mother during a child's early years. Second, it emphasises the father's absolute responsibility to provide financial support, including food and clothing, for both mother and child in accordance with his means. This underscores that while custody is primarily granted to the mother, the father remains obligated to ensure the child's

¹³ M. Khoirur Rofiq, "Pemberian Hak Asuh Anak Dalam Perceraian Karena Peralihan Agama (Murtad)," *Journal of Islamic Studies and Humanities* 6, no. 2 (2021): 100.

¹⁴ Muhammad Zainuddin Sunarto dan Diah Uswatun Hasanah, "Analisis Penjatuhan Hadhanah Pada Perempuan Dalam Tinjauan Maqashid Syariah." *Jurnal Hukum Lex Generalis* 6, no. 2 (2025): 2

welfare, even after divorce. Third, the verse stresses that custody arrangements must not result in undue hardship for either parent. The mother should not be overburdened on account of the child, nor should the father be required to provide beyond his capacity. This indicates that *hadhanah* is governed by principles of justice and proportionality between parental rights and responsibilities.

Based on Surah Al-Baqarah (2:233), the concept of *hadhanah* in Islam aims to secure a child's holistic wellbeing, encompassing physical, emotional, and economic aspects. The verse illustrates the shared responsibilities of both parents in child custody, even after divorce. Cooperation and constructive interaction between parents are essential in shaping an ideal custodial arrangement for the child. This principle aligns with *maqashid shariah*, which emphasises the protection and welfare of individuals within the framework of Islamic law.¹⁵

2. The Concept of Maqashid Shariah

Etymologically, the term *Maqashid Shariah* consists of two words: *maqashid* and *shariah*. The word *maqashid* is the plural form of *maqsad*, which literally means "main purpose" or "ultimate goal." Terminologically, *maqashid* is understood as an effort to explore and comprehend the essence and wisdom behind the establishment of legal rulings. According to scholars of Islamic jurisprudence, *maqashid* can also be seen as synonymous with the concept of *masalih*, namely the various forms of public interest or benefits sought through the implementation of Shariah law.

Linguistically, the word *shariah* derives from the meaning "a path to a water source," since water is regarded as a vital element essential for human survival. Terminologically, *shariah* refers to a set of divine laws and guidelines revealed by Allah SWT, regulating three major domains: the relationship between humans and the Creator, interactions among individuals within society, and the relationship between humans and other creatures in the universe. In the scholarly tradition of Islamic law, *shariah* is categorized into three main forms: (a) Shariah as divine law that is absolute and eternal; (b) Shariah as law that is fixed yet flexible, allowing adaptation to the dynamics of changing times; and (c) Shariah derived through *istinbath* (legal deduction) from the Qur'an and Hadith, interpreted by jurists using analogy (*qiyas*) and other methodological approaches.¹⁶

When discussing *Maqashid Shariah*, it is inseparably linked to the concept of *maslahah*. Etymologically, *maslahah* denotes goodness, benefit, appropriateness, and suitability. In

¹⁵ Ach. Fauzan, Moh. Hamzah " Pendekatan Holistik Dalam Hak Asuh Anak Pasca Perceraian Perspektif Maqashid Syariah Al-Tahir Ibnu Asyut," *Jurnal Hukum Islam* 13, no. 1 (2024): 118-119.

¹⁶ Risky Pradana Hidayatullah, "Penemuan Hukum Oleh Hakim Perspektif Maqashid Syariah," *Jurnal Syariah Dan Hukum* 2, no. 1 (2020): 85.

the Indonesian Dictionary (KBBI), *maslahah* is defined as matters that generate goodness, advantages, and utility.¹⁷ Imam al-Shatibi further clarified this concept into four main points: first, the ultimate aim of Shariah is to realize human welfare both in this world and the hereafter; second, Shariah is a legal system that must be understood comprehensively; third, Shariah contains obligatory legal injunctions (*taklifi*) that must be implemented in daily life; and fourth, the final objective of Shariah is to place human beings under the framework of divine law as a guiding principle for all aspects of life.¹⁸

According to al-Shatibi, *Maqashid Shariah* does not only emphasize individual welfare but also collective welfare to preserve harmony in social life. This concept is divided into three levels: *dharuriyyat* (essential needs), *hajiyyat* (complementary needs), and *tahsiniyyat* (embellishments). The *dharuriyyat* level encompasses five primary aspects as outlined by al-Ghazali: *hifz al-din* (preservation of religion), *hifz al-nafs* (preservation of life), *hifz al-'aql* (preservation of intellect), *hifz al-nasl* (preservation of lineage), and *hifz al-mal* (preservation of property). Meanwhile, *hajiyyat* includes matters that ease human life but do not cause harm if unfulfilled, while *tahsiniyyat* relates to values of perfection and refinement in both religious and social practice.

In the contemporary context, the application of *Maqashid Shariah* extends beyond classical jurisprudence to various fields such as social, political, and economic domains. Modern scholars have expanded this concept in response to global challenges such as social injustice, human rights violations, and issues of prosperity. Jasser Auda, for instance, offers a systematic approach to *Maqashid Shariah*, emphasizing the importance of understanding it holistically and adaptively so that it remains relevant and applicable in diverse social contexts.

The core objective of *Maqashid Shariah* is to realize benefits (*maslahah*) and prevent harm (*mafsadah*), which form the essence of Islamic law. In the context of child custody (*hadhanah*), this aligns with the principle of *hifz al-nasl* (preservation of lineage). This principle stresses the importance of safeguarding children both physically and emotionally so that they receive their rights properly, especially in cases of parental divorce. The idea of *hadhanah* can be examined through the perspective of Imam al-Ghazali regarding *Maqashid Shariah*, particularly under the framework of *hifz al-nasl*, which ensures that a child's lineage remains legally recognized from both parents even after divorce. This principle also closely relates to family law, particularly in inheritance

¹⁷ Agus Hermanto, "Konsep Maslahat Dalam Menyikapi Masalah Kontemporer (Studi Komparatif)," *Jurnal Al-Adalah* 14, no. 2 (2017): 436.

¹⁸ Ica Haryani dkk., "Analisis Maqashid Asy-Syari'ah Terhadap Kelahiran Melalui Operasi Caesar," *El-Izdiwaj Indonesian Journal of Civil and Islamic Family Law* 5, no. 1 (2024): 92.

cases, which require clarity of lineage (*nasab*) as the basis for legitimizing inheritance rights.¹⁹

3. Analysis of the Religious Court Decision No. 381/Pdt.G/PA.Tnk/2024 on Child Custody from the Perspective of Maqashid Shariah

Hadhanah refers to providing protection for children, whether they have reached the stage of discernment (*mumayyiz*) or not. It includes all efforts aimed at ensuring the child's well-being, safeguarding them from harmful influences, offering physical and spiritual care, and delivering proper education.²⁰

Hadhanah often arises as a consequence of divorce between parents, each of whom naturally wishes to secure custody of the child. Whether granted to the mother or the father, the custodian is obliged to provide the best care and upbringing possible. In divorce proceedings, both the plaintiff and the defendant have the right to submit a petition regarding custody before the panel of judges in the Religious Court. Another alternative is to file a separate custody lawsuit, either independently or after the divorce has been legally finalized. The granting of custody in court is determined by the evidence and facts presented, which may result in different rulings, such as:

a. Custody is granted to the mother

The mother is generally considered more capable of caring for and educating the child, especially as the one who gave birth. Custody of a child who has not reached *mumayyiz* (under 12 years of age) is typically granted to the mother, provided she is still alive and not facing a criminal conviction.

b. Custody is granted to the father

The father may obtain custody if he files a lawsuit and presents valid evidence that the mother is unable or unfit to provide care, particularly if her environment is unsuitable for the child's growth and well-being.

The legal basis for transferring custody of a non-*mumayyiz* child from the mother to the father can be found in Supreme Court Decision No. 102 K/Sip/1973. This ruling stipulates that custody belongs to the mother unless it can be proven that she is incapable of properly raising the child. Several conditions may disqualify a mother from custody, including:

¹⁹ Bagus Ary Dermawan dkk., "Analisis Hak Asuh Anak Dalam Putusan Pengadilan Agama Lahat Nomor 685/Pdt.G/Pa.Lt; Perspektif Maqashid Al-Syariah Muhammad Thahir Ibn Asyur," *Jurnal Ilmu Pertahanan hukum Dan Ilmu Komunikasi* 1, no. 4 (2024): 322.

²⁰ Khoiri Rafiq, "Pemberian Hak Asuh Anak Dalam Perceraian Kerena Peralihan Agama," *Jurnal Of Islamic Studies And Humanities* 6, no. 2 (2021): 99.

- a. Having immoral behavior,
- b. Serving a prison sentence,
- c. Being unable to provide adequate physical and mental protection for the child.²¹

A similar situation occurred in Religious Court Decision No. 381/Pdt.G/PA.Tnk/2024 concerning custody. The lawsuit was filed by the plaintiff (the husband), who argued that after the divorce, the two children initially lived with the defendant (the wife). During this period, the plaintiff experienced difficulty in meeting and communicating with his children. According to witness testimonies, the children were neglected, failed to attend school, and were living in unhygienic and unfit conditions, which caused the plaintiff serious concern for their well-being. Importantly, both children were still under the age of 12 (not yet *mumayyiz*).

During the examination process at the Religious Court of Bandar Lampung, the panel of judges obtained several juridical findings confirming that the plaintiff and defendant had previously been in a legally valid marriage, which had formally ended through divorce. This was legally established by Divorce Certificate No. 497/AC/2022/PA.Tnk dated May 9, 2022. From the marriage, the couple had two children who were still legally minors. Witness statements further revealed that they personally knew the defendant and testified that her condition was highly concerning. They described the defendant's home as dirty, messy, and neglected, leaving the children in a state of distress. The plaintiff filed for custody out of concern for his children's welfare, arguing that the defendant was unfit to care for them due to suffering from depression or a mental disorder.

Based on the witnesses' testimonies, each confirmed that they personally knew the Defendant and further testified that the Defendant's condition was deeply concerning. The Defendant's house was described as extremely dirty, messy, and neglected, which in turn placed the children in a very alarming situation. The Plaintiff therefore filed a petition to obtain custody (*hadhanah*), driven by his anxiety over the children's wellbeing. The Plaintiff also argued that the Defendant was incapable of caring for the children due to experiencing depression or a mental disorder.

In its ruling, the Panel of Judges determined that custody (*hadhanah*) should be granted to the Plaintiff, namely the husband and biological father of the children, until they reach adulthood and are able to live independently. At the same time, the Plaintiff was obliged to provide the Defendant with opportunities and access to maintain

²¹Andi Arizal Sastra Tjandi, Aksah Kasim, Andi Heridah, "Kedudukan Hak Asuh Anak Akibat Cerai Hidup," *Jurnal Litigasi Amsir* 9, no. 2 (2019): 154-156.

communication and express affection towards the children on a continual basis. This decision was based on several considerations. During the period when the children lived under the Defendant's care, their health was highly concerning: they were frequently ill, did not attend school, and appeared significantly thinner compared to when they had previously been cared for by both parents. Furthermore, the Defendant's house was deemed unfit for habitation due to its filthy and chaotic condition, and the Plaintiff faced obstacles in meeting his children. These factors were compounded by the Defendant's deteriorating psychological state.

Under Article 105(a) of the Compilation of Islamic Law (KHI), a mother is entitled to care for and raise a child who has not yet reached the age of discernment (*mumayyiz*). However, in this case, the Panel of Judges also referred to Article 156(c) of the KHI, which grants the Religious Court authority to transfer custody if the current custodian is deemed unfit or incapable of fulfilling their responsibilities. Moreover, Law No. 1 of 1974 – amended by Law No. 16 of 2019 on Marriage – Article 49(1) stipulates that if both parents neglect their obligations or demonstrate morally or socially inappropriate behaviour, their custody rights may be revoked or annulled through legal proceedings. Such revocation is intended as a last resort to safeguard the child's welfare.

In this ruling, the Court found that the mother was no longer capable of nurturing and educating her two children, both of whom were still under the age of discernment. Therefore, to protect the children's welfare and uphold justice, custody was transferred to the biological father. The ruling was grounded in principles of justice and humanity, aiming to ensure the children's health and safety until they reached maturity. The children's physical condition was also an important consideration, as they appeared malnourished and unhealthy due to the mother's inadequate care. Accordingly, custody was awarded to the father.

Motherhood is inherently natural, as a mother gives birth to her children. Both father and mother are therefore obliged to raise, educate, and care for their children wholeheartedly. In the event of divorce, custody must be entrusted to one of the parents. However, the jurists hold differing opinions. According to the Hanafi and Maliki schools, the mother retains the right to raise her child as long as she has not relinquished it. By contrast, the majority of scholars (*jumhur*) argue that custody is a shared right between the child and both parents.

In Islamic teachings, guidance exists to direct human beings toward goodness. The concept of Maqashid Shariah emphasizes that humans must strive for the realization of benefit (*maslahah*) and the prevention of harm (*mafsadah*). Islam's humanistic character

reflects values within Maqashid Shariah, upholding human dignity and ensuring protection of human beings.²²

The Judges thus granted custody to the Plaintiff (the father) based on witness testimony and various considerations. The father was deemed capable of providing care, education, and upbringing for his children in a safe, clean, comfortable, and loving environment. This judicial decision also rested upon the method of Maqashid Shariah, aiming to secure benefit while averting harm.²³

In the Religious Court Decision No. 381/Pdt.G/2024/PA.Tnk concerning custody due to the mother's mental disorder, the children initially lived with their mother. However, because of her psychological condition, the children were neglected, frequently ill, absent from school, and resided in an unfit home. Concerned for their wellbeing, the father petitioned for custody to be transferred to him in order to safeguard their best interests.

Viewed from the perspective of Maqashid Shariah, this case demonstrates the realization of *maslahah*. As is well known, the ultimate objective of Maqashid Shariah is the pursuit of human benefit both in this world and the hereafter.²⁴ In essence, Maqashid Shariah consists of three levels: *Dharuriyat* (primary necessities), *Hajiyyat* (secondary needs), and *Tahsiniyyat* (complementary needs). *Dharuriyat* includes the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). *Hajiyyat* refers to secondary requirements that facilitate life and remove hardship. *Tahsiniyyat* refers to complementary interests, the absence of which does not cause hardship but enhances life's quality.²⁵

The following are the categories of *maqāṣid al-sharī'ah* at the level of *ḍarūriyyāt*:

a. *Ḥifẓ al-Dīn* (Protection of Religion)

The protection of religion, from the perspective of *maqāṣid al-sharī'ah*, aims to ensure that a child receives proper religious education and is raised in an environment that upholds Islamic values. In this case, a mother suffering from a mental disorder was incapable of providing sound religious education, and therefore could not guide her

²² Bagus Ary Dermawan dkk., "Analisis Hak Asuh Anak Dalam Putusan Pengadilan Agama Lahat Nomor 685/Pdt.G/Pa.Lt; Perspektif Maqashid Al-Syariah Muhammad Thahir Ibn Asyur." *Jurnal Ilmu Pertahanan Hukum Dan Ilmu Komunikasi* 1, no. 2 (2024): 322.

²³ Muhammad Nurul Azmi dan Khalid, "Penetapan Hak Asuh Anak Yang Belum Mumayyiz Kepada Ayah Perspektif Maqashid Syari'ah (Analisis Putusan PTA Padang No.18/Pdt,G/2022/PTA.pdg," *Unes Law Review* 6, no. 2 (2023): 4589.

²⁴ M.Rifky Rasyid, Abdul Azis, "Putusan Hakim Atas Kasus Perceraian Akibat Gangguan Jiwa Analisis Maqashid Syariah," *Journal Of Family Studies* 7, no. 2 (2023): 300-315.

²⁵ Agus Hermanto dkk., "Keluarga Harmonis Dalam Berpikir Jaringan (Telaah Mubadalah Terhadap Hak Dan Kewajiban Suami Istri," *As-Salam Jurnal Studi Hukum Islam dan Pendidikan*, 2024, 6.

children in matters of worship, good character, and faith. For this reason, the court decided that custody (*ḥaḍānah*) should be entrusted to the biological father, who was deemed capable of providing religious instruction and guiding the children in worship, moral conduct, and faith within a healthy environment. Indeed, the ultimate objective of *maqāṣid al-sharī'ah* is to realize benefit (*maṣlahah*) and to prevent harm (*mafsadah*).

b. *Hifz al-Nafs* (Protection of Life)

The protection of life, within the framework of *maqāṣid al-sharī'ah*, emphasizes safeguarding the health and safety of children as the foremost priority. Thus, custody was granted to the biological father, who was considered more capable of ensuring their physical and psychological wellbeing. As illustrated in Religious Court Decision No. 381/Pdt.G/2024/PA.Tnk, the children were neglected while under their mother's care due to her mental disorder, leading to both physical and psychological distress. Ensuring children's health and psychological stability requires greater parental attention, including meeting their nutritional needs and providing an environment conducive to emotional balance. A lack of proper parenting knowledge can adversely affect children's cognitive development and mental stability.²⁶

c. *Hifz al-'Aql* (Protection of Intellect)

The preservation of intellect is essential from the perspective of *maqāṣid al-sharī'ah* because it directly relates to protecting and developing a child's intellectual capacity. In custody disputes, this aspect is a fundamental consideration in determining the most suitable guardian. Since children's intellectual growth is strongly influenced by their caregivers and living environment, treatment, education, and surroundings play a significant role in shaping their mental faculties. In the above case, the court entrusted custody to the father, as he was deemed capable of ensuring the children's intellectual development and providing stability for their mental and cognitive growth.²⁷

d. *Hifz al-Nasl* (Protection of Lineage/Progeny)

The preservation of progeny, according to *maqāṣid al-sharī'ah*, extends beyond biological continuity to ensuring the quality and worthiness of a child's upbringing. Children are a divine trust that must be nurtured with care, love, and education. In the aforementioned court decision, custody of the non-*mumayyiz* children was granted to the father because the mother, due to her mental illness, was deemed incapable of fulfilling

²⁶ Savvy Dian Faizzati, "Hak Asuh Anak (Hadhanah) Bagi Ibu Yang Menikah Lagi Perspektif Maqashid Syariah," *International Journal of Islamic Studies* 1, no. 2 (2024): 287-288.

²⁷ Muhammad Hafis dan Johari, "Maqashid Al-Syariah Sebagai Problem Solver Terhadap Penetapan Hak Asuh Anak Pasca Perceraian," *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 3 (2022): 1528.

this responsibility. This decision reflects the importance of safeguarding the wellbeing and future of the progeny (*nasl*).

e. *Hifz al-Māl* (Protection of Property/Wealth)

Parents with sound mental health are better equipped to manage finances for the benefit of their children. In this case, the mother's mental disorder rendered her incapable of properly managing the children's financial needs. Accordingly, custody of the children under twelve years of age was granted to the father, who was considered more responsible and trustworthy in managing their financial support.²⁸

Divorce inevitably has adverse consequences for the couple, their families, and especially the children. One of the most severe impacts on children is the fear of losing their parents, which may lead to trauma and the absence of parental affection when the parents no longer live together. Divorced individuals may also experience loneliness, having lost their life partner. Family members affected by divorce often experience disappointment, sadness, stress, anger, trauma, and disrupted communication between the two parties.

In Religious Court Decision No. 381/Pdt.G/2024/PA.Tnk, custody was granted to the Plaintiff (father) in consideration of the children's best interests, since the Defendant (mother) suffered from a mental disorder and was evidently unable to care for the children. Had custody remained with the mother, significant harm (*mafsadah*) would have arisen within the family.²⁹ The Panel of Judges reasoned that the decision aligned with the principles of *maṣlaḥah* and the prevention of harm, as articulated in the *maqāṣid al-sharī'ah al-darūriyyāt* under *ḥifz al-nafs* (protection of life) and *ḥifz al-dīn* (protection of religion). The mother's mental illness resulted in the children's neglect: they frequently fell ill, were absent from school, and lived in an unclean, unfit environment. This posed a threat to their physical and psychological health. Furthermore, because of her condition, the mother was unable to provide proper education, particularly in religious matters. Parents, especially mothers, bear the responsibility of providing not only care but also religious education at home, complementing formal instruction at school. If parents fail to understand or respond to the needs of their children, this neglect may endanger the children's psychological wellbeing.³⁰

²⁸ Katrina Annur dan Ramdan Fauzi, "Tinjauan Maqashid Syariah Terhadap Cerai Gugat Akibat Mental Disorder (Studi Putusan 4309/Pdt.G/2021/PAJT)." *Jurnal Riset Hukum Keluarga Islam* 3, no. 2 (2023): 105.

²⁹ Katrina Annur dan Ramdan Fauzi, "Tinjauan Maqashid Syariah Terhadap Cerai Gugat Akibat Mental Disorder (Studi Putusan 4309/Pdt.G/2021/PAJT)." *Jurnal Riset Hukum Keluarga Islam* 3, no. 2 (2023): 105.

³⁰ Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak, *Modul Lokalatif Kebijakan Keselamatan Anak Bagi Lembaga Layanan Perlindungan Perempuan Dan Anak* (Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak, 2019).

In accordance with this reasoning, the Judges applied the *qawā'id fihiyyah*:

الضرر يزال

"Harm must be eliminated."

Relating this legal maxim to the case, the potential harms included the deterioration of the children's mental health, intellectual stagnation, lack of education, and threats to their health and safety if they remained with the Defendant. Consequently, all potential harms needed to be removed for the sake of the children's welfare.³¹

From an Islamic educational perspective, the mother ideally plays a central role as the primary caregiver, educator, and role model for her children. A mother who provides quality care, fosters healthy growth, and maintains a proper home environment contributes fundamentally to a child's development. However, in this case, the mother could not fulfill this role due to her mental illness. Therefore, the court's decision to award custody to the father was considered the most appropriate and beneficial outcome.

CONCLUSION

In the Religious Court Decision Number 381/Pdt.G/2024/PA.Tnk concerning child custody, the panel of judges decided to grant hadhanah to the plaintiff (husband). This decision was based on the consideration that the defendant (wife) was suffering from a mental disorder, rendering her incapable of caring for and educating the children. Several facts revealed during the trial also showed that the children's physical and psychological conditions had deteriorated due to living in an unfit environment, which caused them to become frequently ill and neglected. Therefore, the judges concluded that, for the sake of the children's welfare, custody should be granted to the plaintiff (father). From the perspective of *maqāṣid al-sharī'ah*, the judges' decision to entrust custody to the plaintiff is closely related to the principle of *ḍarūriyyāt*, namely the preservation of religion, life, intellect, lineage, and property of the children. The judges placed the principle of *maṣlaḥah* (public benefit) as the primary foundation in adjudicating the custody case, with the aim of ensuring the continuity of the children's lives. Thus, the concept of *maqāṣid al-sharī'ah* can serve as an integrative paradigm in resolving future child custody disputes, with the ultimate goal of guaranteeing the best protection for children.

³¹ Fikri Al Muhaddits Dalimunthe dan Faisar Ananda, "Pencabutan Hak asuh Anak Di Bawah Umur Akibat Kelalaian Ibu Dalam Mengurus Anak Ditinjau Dari Maqashid Syariah Analisi Putusan Pengadilan Agama Medan No.2568/Pdt.G/2020/PA.Mdn," *Journal of Social Science Research* 4, no. 1 (2024).

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