

## Child Custody and the Principle of Best Interests in Divorce Decisions at the Makassar Religious Court: An Analysis of Maqashid al Syariah

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### Abstract

The high divorce rate in Indonesia has serious implications for child protection, particularly with regard to custody rights, which are often disputed in religious courts. In this context, the principle of the best interests of the child is a universal principle that judges must consider when determining custody rights. This study aims to examine the implementation of this principle in religious court practice through a case study of Decision Number 1278/Pdt.G/2023/PA.Mks at the Makassar Religious Court, while also reviewing its relevance to maqāṣid al-syarī'ah. The research uses a qualitative approach with a theological-normative design, combining the analysis of positive legal documents, Islamic legal theory, and the maqāṣid al-syarī'ah framework. Data was obtained through the study of decisions, Islamic family law literature, and supporting interviews, then analyzed through a process of reduction, categorization, and normative interpretation. The results of the study show that the panel of judges in this case not only considered formal legal aspects, but also psychological, emotional, social, economic, and child care environment factors as the basis for determining custody rights. These considerations reflect the application of the principle of the best interests of the child, as they place the welfare of the child above the interests of the parents. From the perspective of maqāṣid al-sharī'ah, this decision is in line with the main objectives of sharia, namely the protection of life (ḥifẓ al-nafs), reason (ḥifẓ al-'aql), and offspring (ḥifẓ al-nasl), so that it can be seen as a judicial practice that is responsive to Islamic values and contemporary social needs. Thus, this study emphasizes the importance of integrating the principle of the best interests of the child with maqāṣid al-syarī'ah in religious court practices, while also contributing conceptually to the development of Islamic family law that is more adaptive, humanistic, and oriented towards child protection in Indonesia.

**Keyword:** Child Custody; Best Interests of the Child; Divorce Ruling, Makassar Religious Court, Maqashid al Syariah.

### Abstrak

Tingginya angka perceraian di Indonesia membawa implikasi serius terhadap perlindungan anak, khususnya terkait hak asuh yang sering kali menjadi sengketa di pengadilan agama. Dalam konteks ini, asas kepentingan terbaik bagi anak (the best interests of the child) menjadi prinsip universal yang wajib dipertimbangkan hakim dalam menetapkan hak asuh. Penelitian ini bertujuan mengkaji implementasi asas tersebut dalam praktik peradilan agama melalui

studi kasus Putusan Nomor 1278/Pdt.G/2023/PA.Mks di Pengadilan Agama Makassar, sekaligus meninjau relevansinya dengan maqāṣid al-syarī'ah. Penelitian menggunakan pendekatan kualitatif dengan desain teologis-normatif, memadukan analisis dokumen hukum positif, teori hukum Islam, serta kerangka maqāṣid al-syarī'ah. Data diperoleh melalui studi putusan, literatur hukum keluarga Islam, dan wawancara pendukung, kemudian dianalisis melalui proses reduksi, kategorisasi, dan interpretasi normatif. Hasil penelitian menunjukkan bahwa majelis hakim dalam perkara ini tidak hanya mempertimbangkan aspek yuridis formal, tetapi juga faktor psikologis, emosional, sosial, ekonomi, dan lingkungan pengasuhan anak sebagai dasar penetapan hak asuh. Pertimbangan tersebut mencerminkan penerapan prinsip kepentingan terbaik bagi anak, karena menempatkan kesejahteraan anak sebagai prioritas di atas kepentingan orang tua. Dari perspektif maqāṣid al-syarī'ah, putusan ini selaras dengan tujuan utama syariat, yaitu perlindungan jiwa (ḥifẓ al-nafs), akal (ḥifẓ al-'aql), dan keturunan (ḥifẓ al-nasl), sehingga dapat dipandang sebagai praktik peradilan yang responsif terhadap nilai-nilai Islam dan kebutuhan sosial kontemporer. Dengan demikian, penelitian ini menegaskan pentingnya integrasi asas kepentingan terbaik bagi anak dengan maqāṣid al-syarī'ah dalam praktik peradilan agama, sekaligus memberikan kontribusi konseptual terhadap pengembangan hukum keluarga Islam yang lebih adaptif, humanis, dan berorientasi pada perlindungan anak di Indonesia.

**Kata Kunci:** Hak Asuh Anak; Kepentingan Terbaik Anak; Putusan Perceraian, Pengadilan Agama Makassar, Maqashid al Syariah.

## Introduction

Divorce is a complex social phenomenon with far-reaching impacts, especially for children who are indirectly affected by their parents' separation. One of the most crucial legal consequences of divorce is the issue of child custody (*hadhanah*), which often becomes a major dispute between former husbands and wives.<sup>1</sup> In this context, the principle of the best interests of the child is a fundamental principle that must be the primary reference in determining custody.<sup>2</sup> Religious Courts, as judicial institutions that handle Islamic family matters, play a crucial role in ensuring that every custody decision reflects the protection of children's rights.<sup>3</sup> In national law, the principle of the best interests of the child has been incorporated into Article 105 of the Compilation of Islamic Law, which states that children who are not yet legally married are in the custody of their mother, unless there are compelling reasons to the contrary.<sup>4</sup> From an Islamic legal perspective, this principle is also in line with the objectives of the *maqāṣid al-syarī'ah*, which emphasizes the importance of protecting five

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<sup>1</sup> M Jafar, "Tinjauan Yuridis Hak Asuh Anak (Hadhanah) Setelah Perceraian Menurut Kompilasi Hukum Islam: (Studi Putusan Nomor 567/Pdt.G/2018/PA.Clg)," *Rechtsnormen: Jurnal Komunikasi Dan Informasi Hukum* 3, no. 1 (2024): 28–54, <https://doi.org/10.56211/rechtsnormen.v3i1.625>.

<sup>2</sup> Syahan Nur Muhammad Haiba and Anjar Sri Ciptorukmi Nugraheni, "Penetapan Hak Asuh Anak Pasca Perceraian Berdasarkan Asas Kepentingan Terbaik Anak," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 2 (2024): 151–61, <https://doi.org/10.62383/aliansi.v1i2.84>.

<sup>3</sup> Achmad Suhaili, "Integrasi Maqasid Al-Syari'ah Dalam Praktik Peradilan Agama Di Indonesia: Studi Alternatif Penyelesaian Sengketa Keluarga," *MABAHITS: Jurnal Hukum Keluarga* 6, no. 1 (2025): 29–42, <https://doi.org/10.62097/mabahits.v6i01.2236>.

<sup>4</sup> Dhiauddin Tanjung, Mhd Yadi Harahap, and Fadlan Fuadi, "Penyelesaian Sengketa Hak Asuh Anak Melalui Putusan Pengadilan Agama Medan (Studi Analisis Terhadap Kompilasi Hukum Islam)," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 9, no. 2 (2021): 581–200, <https://doi.org/10.30868/am.v9i02.2060>.

main aspects: religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).<sup>5</sup> However, the application of this principle in judicial practice still leaves room for study, particularly regarding how judges explore the facts and consider the conditions of children and parents in the social and psychological context after divorce.

For example, Decision Number: 2189/Pdt.G/2022/PA.Pbr Pekanbaru Religious Court. In this case, a 10-year-old child was given to the father because the mother was deemed to have insufficient emotional and economic capacity after the divorce. The judge stated that consideration of custody rights should not only be based on textual articles (Compilation of Islamic Law Article 105), but must also look at the child's actual condition (Pekanbaru PA Decision Number 2189/Pdt.G/2022/PA.Pbr, n.d.). The second case example, Decision Number: 1634/Pdt.G/2021/PA.Kab.Kdr Kediri Religious Court. The judge decided that the three children were divided: two to be cared for by the father, one to be cared for by the mother. The judge considered the emotional closeness, the children's interests, and the environmental conditions of each parent. This approach reflects the application of the principle of best interests and the values of *maqāṣid al-syarīʿah* (*ḥifẓ al-nafs* and *ḥifẓ al-nasl*) (Kediri Religious Court Decision Number: 1634/Pdt.G/2021/PA.Kab.Kdr, n.d.). Furthermore, Decision Number 0150/Pdt.G/2021/PA.Bks at the Bekasi Religious Court is a post-divorce child custody dispute. The 7-year-old child was contested by both parents; the father emphasized economic stability, while the mother prioritized emotional closeness and a nurturing role since birth. The panel of judges referred to Article 105 of the Compilation of Islamic Law (CIL) and the principle of the best interests of the child, and deemed the mother morally and materially worthy. Custody was awarded to the mother. This decision reflects the values of *maqāṣid al-syarīʿah*, especially *ḥifẓ al-nafs* and *ḥifẓ al-nas* (PA BEKASI Decision Number: 0150/Pdt.G/2021/PA.Bks, n.d.).

Studies into judicial practices at the Makassar Religious Court, particularly through a review of Decision Number 1278/Pdt.G/2023/PA.Mks, are highly urgent in evaluating the extent to which the principle of the best interests of the child is actually implemented concretely in the courtroom. Although this principle has been recognized as a fundamental principle in custody cases, its practical application still leaves room for further criticism and study. This primarily concerns how the panel of judges explores the facts in depth and assesses the social, emotional, and psychological conditions of both the child and the parents after the divorce. Therefore, this study is crucial to determine whether the judges'

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<sup>5</sup> Fazlon Umar, "Menjaga Kesejahteraan Anak Dalam Perceraian Tinjauan Hukum Keluarga Islam," *Jurnal Al-Mizan* 11, no. 2 (2024): 234–46, <https://doi.org/10.54621/jiam.v11i2.830>.

considerations align with the essence of child protection as mandated by both national law and the basic principles of *Maqāṣid al-Syarī'ah*.

Several previous studies have shown various dynamics in the implementation of child custody after divorce. A study by Umul Khair (2020) revealed deviations in the implementation of *hadhanah* from court decisions in Jopang Manganti Village due to the mother's low emotional readiness and religious understanding.<sup>6</sup> Suci Ramadhan and JM. Muslimin (2022) explained that judges' decisions in custody cases often rely on a textual or contextual approach to Article 105 of the Compilation of Islamic Law (CIL).<sup>7</sup> Meanwhile, A study by Andi Arizal Sastra Tjandi et al. (2020) emphasized the importance of the role of both parents in childcare obligations in the Parepare Religious Court.<sup>8</sup> Although the topic of child custody has been widely studied, this study is necessary because the issue of child custody due to divorce concerns not only formal legal aspects but also touches on complex psychological, social, and religious dimensions. Although the principle of the best interests of the child has become a primary principle in resolving custody cases, its implementation in judicial practice still often relies on subjective interpretations by judges and the circumstances of each case. Therefore, it is important to examine how this principle is applied concretely, particularly in the context of Decision Number 1278/Pdt.G/2023/PA.Mks in the Makassar Religious Court, to determine the extent to which the judge's considerations truly favor the welfare of the child.

The purpose of this study is to analyze how the principle of the best interests of the child is applied by the panel of judges in child custody cases due to divorce at the Makassar Religious Court, focusing on Decision Number 1278/Pdt.G/2023/PA.Mks. This study seeks to identify the basis for the judge's legal considerations in determining custody, including the extent to which the decision represents protection for the physical, psychological, and spiritual dimensions of children after divorce. Furthermore, this study also aims to examine the suitability of the application of the principle of the best interests of the child with the principles of *Maqāṣid al-Syarī'ah*. The study is expected to reveal the extent to which the judge's legal considerations are in line with the values of substantive justice in Islamic law and provide comprehensive protection for children as vulnerable legal subjects.

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<sup>6</sup> Umul Khair, "Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian," *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (2020): 291, <https://doi.org/10.33760/jch.v5i2.231>.

<sup>7</sup> Suci Ramadhan and J. M. Muslimin, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," *Juris: Jurnal Ilmiah Syariah* 21, no. 1 (2022): 89–100, <https://doi.org/10.31958/juris.v21i1.5723>.

<sup>8</sup> Andi Arizal Sastra Tjandi, Aksah Kasim, and Andi Heridah, "Kedudukan Hak Asuh Anak Akibat Cerai Hidup," *Jurnal Litigasi Amsir* 9, no. 2 (2022): 163–71, <https://journalstih.amsir.ac.id/index.php/julia/article/view/78>.

## Research Methods

This study employed a qualitative approach with a case study design to gain an in-depth understanding of legal practices from the perspective of *Maqāṣid al-Syarī'ah*. This type of study was descriptive-analytical, aiming to comprehensively describe legal phenomena based on empirical facts and normative analysis. The approaches used included theological, normative, and empirical. The theological approach served to identify the principles of *Maqāṣid al-Syarī'ah* relevant to the context of child protection; the normative approach was used to analyze laws and regulations, fatwas, and court decisions; while the empirical approach was applied to examine how these norms are implemented in judicial practice.

The research data sources consisted of primary and secondary data. Primary data was obtained through in-depth interviews with judges and court clerks selected through purposive sampling based on their direct involvement in the trial process. In addition, non-participatory observations were conducted in the courtroom to obtain a factual picture of the dynamics of legal practice. Secondary data was obtained from legal documents, court decisions, academic literature, reputable scientific journals, and laws and regulations relevant to the research theme.

Data analysis was conducted using Miles and Huberman's interactive model, which included three main stages: data reduction, data presentation, and conclusion drawing. Data reduction was carried out by filtering and grouping important information; data presentation was arranged in narrative form and thematic tables; while conclusions were drawn iteratively by linking field findings with the principles of *maqāṣid al-syarī'ah* to assess the extent to which court decisions reflect child protection values. To ensure the validity and reliability of the findings, this study applied triangulation of sources and methods, as well as an audit trail to ensure the consistency of the research process. This approach allowed the research results to be not only empirically valid but also theologically and normatively relevant, thus providing conceptual and practical contributions to the development of Islamic law and judicial practice in Indonesia.

## Results and Discussion

### 1. Judge's Considerations in Child Custody Decisions Due to Divorce

Decisions regarding child custody (*hadhanah*) in divorce cases are one of the most sensitive aspects in religious justice practice.<sup>9</sup> The decisions handed down are not only based

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<sup>9</sup> Khaizaran Atthallah, Rafardhan Rafardhan, and Firash Qazzafi, "Analysis of Fiqh Review of Child Custody Rights After Divorce (Hadanah) in Religious Court Decisions," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasa and Muamalah* 1, no. 4 (2024): 189–97, <https://doi.org/10.35335/4m7ekc86>.

on normative legal rules, but also take into account various aspects that favor the welfare of the child.<sup>10</sup> One of the main principles used as guidance is the principle of the best interests of the child.<sup>11</sup>

In case No. 1278/Pdt.G/2023/PA.Mks at the Makassar Religious Court, the panel of judges considered several important aspects before issuing a decision regarding the custody of three children. This decision emphasized that in the context of *hadhanah*, the principle of the child's interests is much more prioritized than the formal rights of both parents (Makassar PA Decision Number: 1278/Pdt.G/2023/PA.Mks, n.d.). The panel of judges referred to the provisions of Law No. 35 of 2014 concerning Child Protection, which emphasizes that every decision must prioritize the best interests of the child. The judge not only assessed the material aspect (financial sufficiency), but also considered non-material aspects such as the child's emotional condition, the quality of the child's relationship with the parents, and the most conducive environment for their growth and development. In this case, the child's emotional bond with each parent became the basis for the division of custody. The first child is raised by the father, while the second and third children are raised by the mother, with the guarantee of broad access to maintain relationships with both parties.

Article 105 of the Compilation of Islamic Law (CIL) states that children who are not yet *mumayyiz* (unable to distinguish between right and wrong) are preferred to be cared for by their mothers.<sup>12</sup> However, this ruling demonstrates the judge's flexibility in assessing cases individually. The parents' suitability and competence are also taken into consideration, including their emotional stability and moral track record.<sup>13</sup> This decision to share custody, although based on a peace agreement, raises critical questions. Does the separation of children between divorced parents, regardless of their age, not have the potential to cause long-term psychological problems? This ruling tends to assume that separation is the best solution without providing a more in-depth psychological analysis of its impact (Makassar PA Decision Number: 1278/Pdt.G/2023/PA.Mks, n.d.). In this case, the children's emotional

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<sup>10</sup> Muhammad Fakhri Budiaulia and Suparji Ahmad, "Pelaksanaan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum: (Studi Putusan No. 6/Pid.Sus.Anak/2019/PN Sdr)," *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial Dan Pendidikan* 5, no. 2 (2024): 312–23, <https://doi.org/10.36418/syntaximperatif.v5i2.378>.

<sup>11</sup> Bagus Ary Darmawan, M Reza Saputra, and Jaenal Aripin, "Analisis Hak Asuh Anak Dalam Putusan Pengadilan Agama Lahat Nomor 685/Pdt. G/2022/PA. LT: Perspektif Maqashid Al-Syari'ah Muhammad Thahir Ibn Asyur," *Konsensus: Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi* 1, no. 4 (2024): 319–35, <https://doi.org/10.62383/konsensus.v1i4.297>.

<sup>12</sup> Erica Ferdiyana, Zainal Arifin, and Rifanto Bin Ridwan, "Hak Hadhanah Anak Yang Belum Mumayyiz Kepada Ayah Kandung Menurut Pasal 105 Kompilasi Hukum Islam" (IAIN Curup, 2018), <https://e-theses.iaincurup.ac.id/2291/>.

<sup>13</sup> Maryanih Maryanih, Andi Akram, and Syarif Fadillah, "Analisis Hukum Terhadap Penetapan Kuasa Asuh Anak Sebagai Akibat Perceraian (Analisa Hukum Pasal 156 Kompilasi Hukum Islam)," *Jurnal Hukum Jurisdictie* 3, no. 1 (2021): 117–48, <https://doi.org/10.34005/jhj.v3i1.43>.

bonds with each parent form the basis for the division of custody. The first child is cared for by the father, while the second and third children are cared for by the mother, with guaranteed access to maintain contact with both parties.

This decision, which makes a peace agreement the basis, is in line with the principle of *maqāṣid al-syarī'ah*, which encourages peaceful conflict resolution to avoid harm (loss) for all parties, especially children.<sup>14</sup> However, the lack of data directly reflecting the perspectives of judges or parents, relying solely on narratives of the ruling and interviews with court clerks, makes this analysis appear one-sided and less comprehensive.

Judges' considerations in child custody cases are no longer focused solely on legal aspects but have shifted toward a more holistic approach.<sup>15</sup> The judges' approach in these cases reflects the harmonization of national positive law and the values of substantial justice within the *maqāṣid al-syarī'ah*, namely safeguarding lineage (*ḥifẓ al-nasl*), safeguarding the soul (*ḥifẓ al-nafs*), and safeguarding intellect (*ḥifẓ al-'aql*). This indicates that the principle of the child's best interests is relevant from an Islamic legal perspective.

## **2. Application of the principle of the best interests of the child in custody decisions at the Makassar Religious Court**

The application of the principle of the best interests of the child in Decision Number 1278/Pdt.G/2023/PA.Mks at the Makassar Religious Court is clearly reflected. The judge not only considered the parents' positions as disputing parties but also considered the children's welfare holistically. The peace agreement ratified by the judge indicates that the placement of the first child under the father's care, and the second and third children under the mother's care, was carried out with an approach that takes into account the children's emotional comfort, developmental needs, and psychological stability.

This decision aligns with the principle of the best interests of the child, which is the spirit of the Child Protection Law and the Convention on the Rights of the Child.<sup>16</sup> The judge, in the decision, also accommodated the children's financial needs in detail. The panel *ex officio* determined that the father remains responsible for providing financial support for all his children, including those under the mother's care, at a rate of IDR2,000,000 per month

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<sup>14</sup> Dwi Aprilianto, Farida Ulvi Na'imah, and Ahmad Fauzi, "The Controversy of Child Marriage Culture in The Perspective of Maqasid Al-Usrah: A Case Study of The Authority of Lebe'in Brebes," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 199–218, <https://doi.org/10.24090/mnh.v18i2.11554>.

<sup>15</sup> Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 529–51, <https://doi.org/10.22373/sjhk.v5i2.11082>.

<sup>16</sup> Marit Skivenes and Line Marie Sorsdal, "The Child's Best Interest Principle across Child Protection Jurisdictions," in *Human Rights in Child Protection: Implications for Professional Practice and Policy* (Springer International Publishing Cham, 2018), 59–88.

plus a 10% increase annually until the children are adults, excluding education and healthcare costs.

Another aspect that strengthens the implementation of this principle is the guarantee of parental access to the child, as affirmed in Article 4 of the agreement. The judge ordered both parties not to hinder the child's relationship with his or her parents, even if they are in separate care. However, this ruling does not explicitly address the monitoring mechanism to ensure this guaranteed access is actually implemented. Without strict oversight, a decision that is ideal on paper may be ineffective in practice.

This decision demonstrates the role of judges as protectors of children's rights. By strengthening child support and providing broad access to communication, the court strives to create a supportive environment for children's post-divorce development.<sup>17</sup> However, further study is needed to determine whether similar rulings in other Religious Courts demonstrate the same consistency. Is this decision an anomaly, or does it reflect a new trend in religious court jurisprudence in Indonesia that is increasingly oriented towards the interests of children? Without comparison with other rulings, it is difficult to draw strong conclusions about the consistency of the application of this principle.

### **3. An Analysis of *Maqasid al-Syari'ah* of the Implementation of the Principle of the Best Interests of Children**

The primary objective of Islamic law, from the perspective of the *maqāṣid al-syarī'ah*, is to realize the benefit (*jalb al-maṣlaḥah*) and prevent harm (*dar' al-mafṣadah*).<sup>18</sup> The principle of the best interests of the child is a manifestation of these universal values,<sup>19</sup> as it positions children as legal subjects who have the right to grow and develop optimally, both physically, psychologically, and spiritually.<sup>20</sup> Within the *maqāṣid* framework, this principle aligns with several primary objectives of sharia, namely protecting lineage (*ḥifẓ al-nasl*),<sup>21</sup>

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<sup>17</sup> Ayesha Kadir et al., "Child Public Health Indicators for Fragile, Conflict-Affected, and Vulnerable Settings: A Scoping Review," *PLOS Global Public Health* 5, no. 3 (2025): 1–23, <https://doi.org/10.1371/journal.pgph.0003843>.

<sup>18</sup> Noerrachman Atjo et al., "Status Agama Anak Akibat Ayah Atau Ibu Yang Murtad Dalam Hukum Islam (Analisis Pasal 26 KHI Perspektif Maqasidu As Syariah)," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 3, no. 1 (2025): 1–16, <https://doi.org/10.5281/zenodo.16369732>.

<sup>19</sup> Ahmad Muchlis, "Penegakan Prinsip Kepentingan Terbaik Anak Pada Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Progresif* 12, no. 1 (2024): 66–77, <https://doi.org/10.14710/jhp.12.1.66-77>.

<sup>20</sup> Khoirunnisa Khoirunnisa, Edith Ratna, and Irawati Irawati, "Perlindungan Hukum Anak Terlantar Atas Hak Anak Mendapatkan Jaminan Kesehatan," *Notarius* 13, no. 2 (2020): 546–56, <https://doi.org/10.14710/nts.v13i2.31073>.

<sup>21</sup> Siti Hanna and Lia Fauziyyah Ahmad, "Nasab Of Sirri Married Children From A Fiqh Perspective And The Compilation Of Islamic Law (KHI)," *Al Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 4, no. 1 (2024): 26–40, <https://doi.org/10.35896/alhakam.v4i1.733>.

protecting the soul (*ḥifẓ al-nafs*),<sup>22</sup> protecting the intellect (*ḥifẓ al-ʿaql*),<sup>23</sup> and protecting honor (*ḥifẓ al-ʿird*).<sup>24</sup> The application of the principle of the best interests of the child in post-divorce custody cases is an important test for religious courts, because it requires judges to not only decide based on legal texts, but also to consider the interests of the child in a social, emotional, and religious context.

In this context, Decision Number 1278/Pdt.G/2023/PA.Mks serves as a significant case study illustrating how this principle was substantively applied by the panel of judges at the Makassar Religious Court. This decision demonstrates a balance between positive legal considerations and the *maqāṣidi* approach in determining child custody. Therefore, the analysis of this decision reflects not only legal rationality but also the ethical and spiritual dimensions inherent in Islamic law.<sup>25</sup>

An interview with Hariyati, a court clerk at the Makassar Religious Court, provided a more concrete picture of the decision-making process in the case. She explained that in this decision, the judge not only adhered to the normative provisions of the Marriage Law but also considered the psychological condition and emotional needs of the children involved in the case. According to Hariyati, the first child was raised by the father because they were emotionally close and were approaching the age of marriage, making them considered capable of adapting to the father's parenting style. Meanwhile, the second and third children were handed over to the mother because, at that age, the children still greatly needed a mother's direct attention and emotional attachment.

Hariyati also emphasized that the division of custody was not merely the result of administrative considerations, but rather a concrete manifestation of the application of the principles of *ḥifẓ al-nafs* (protection of the soul) and *ḥifẓ al-nasl* (protection of lineage). These considerations stem from the view that children should be placed in an environment that best guarantees their physical safety, emotional stability, and the continuity of their moral education. Furthermore, the judge also stipulated detailed child support obligations,

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<sup>22</sup> Aay Siti Raohatul Hayat, "Impelementasi Pemeliharaan Jiwa (Hifz Al-Nafs) Pada Pengasuhan Anak Berbasis Keluarga," *FOKUS Jurnal Kajian Keislaman Dan Kemasyarakatan* 5, no. 2 (2020): 151–70, <https://doi.org/10.29240/jf.v5i2.1404>.

<sup>23</sup> Nur Ahmad Yasin, "Tanggung Jawab Orang Tua Kepada Anak Di Era Digital Perspektif Hukum Keluarga Islam Di Indonesia," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 8, no. 2 (2018): 430–55, <https://doi.org/10.15642/alhukama.2018.8.2.430-455>.

<sup>24</sup> Hafiz Rafi Uddin and Natal Kristiono, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Menurut Perspektif Hukum Pidana Islam," *Media Hukum Indonesia (MHI)* 3, no. 1 (2025): 160–66, <https://doi.org/10.5281/zenodo.14785387>.

<sup>25</sup> Ezieddin Elmahjub, "Islamic Jurisprudence as an Ethical Discourse: An Enquiry into the Nature of Moral Reasoning in Islamic Legal Theory," *Oxford Journal of Law and Religion* 10, no. 1 (2021): 16–42, <https://doi.org/10.1093/ojlr/rwaa023>.

including educational costs and other basic needs, as a form of implementation of *ḥifẓ al-māl* (protection of property) and *ḥifẓ al-nafs*. At the end of the trial, the judge encouraged both parties to reach a peace agreement, which was outlined in a peace deed. According to Hariyati, this step was taken so that the decision would not only be coercive but would also reflect the principle of *iṣlāḥ* (reconciliation), which is an important part of *maqāshid al-syarī'ah*.<sup>26</sup>

This demonstrates the progressive efforts of religious courts to implement the principle of the best interests of the child in accordance with the values of *maqāshid*. However, from an academic perspective, there is still room for strengthening the methodological aspects in measuring indicators of child welfare. Although the court clerk explained that judges consider the child's emotional state and developmental needs, no measurable evaluative mechanisms were found—for example, through psychological or sociological assessments, or assistance from professionals such as family counselors. This indicates that the application of *maqāshid* remains normative-conceptual and relies on the judge's subjective judgment.

Furthermore, the aspects of the peace agreement that form the basis for resolving the dispute also require further examination. Within the *maqāshidi* framework, peace is indeed a manifestation of *jalb al-maṣlaḥah* (realizing the benefit) and *dar' al-mafṣadah* (avoiding harm). However, it is necessary to examine whether the agreement truly reflects the free will of the parties or is merely the result of a compromise due to emotional and economic pressures. This question is crucial to ensure that the resulting decision appears not only formally just but also substantively just.

The judge's detailed ruling on the obligation to provide child support is commendable, demonstrating the simultaneous application of the principles of charity (*ḥifẓ al-māl*) and the principles of self-reliance (*ḥifẓ al-nafs*). This step demonstrates the judicial commitment to ensuring the material and moral well-being of children. However, from a long-term perspective, it is crucial to ensure a monitoring mechanism for the implementation of the ruling so that children's rights are not only legally guaranteed but also effectively implemented.

Overall, Decision Number 1278/Pdt.G/2023/PA.Mks reflects progress in Indonesian religious court practice, particularly in integrating the principle of the best interests of the child with the principles of *maqāshid al-syarī'ah*. However, this study also emphasizes the need for an in-depth study of the methodology for measuring *maqāshid*, consistency between

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<sup>26</sup> Hariyati (45 years old), Registrar of the Makassar Religious Court, Interview, April 22, 2025.

decisions, and implementation evaluation of the social impact of these decisions on children and families. Thus, the principle of the best interests of the child will not remain merely a normative ideal but can be realized as a measurable, contextual, and comprehensive judicial instrument oriented towards the welfare of humanity.

## Conclusion

Decision Number 1278/Pdt.G/2023/PA.Mks demonstrates that the Makassar Religious Court has substantively applied the principle of the best interests of the child, going beyond a procedural legal approach. The judge's considerations are based not only on formal legal aspects but also on the emotional, psychological, and developmental needs of the child after divorce. This approach reflects the implementation of the values of Maqāṣid al-Syarī'ah, particularly within the framework of protecting the soul (ḥifẓ al-nafs), lineage (ḥifẓ al-nasl), and intellect (ḥifẓ al-'aql). Thus, this decision demonstrates that the principle of maqāṣid can function as a normative and ethical instrument in judicial decision-making within the religious courts. The findings of this study confirm that the integration of positive law and the principles of maqāṣid al-syarī'ah is not only a conceptual ideal but can also be realized in the practice of Islamic family law in Indonesia. Peace agreements facilitated by judges are a concrete form of restorative justice oriented towards the welfare of children. Academically, this study makes an empirical contribution to contemporary Islamic legal studies by presenting a model for implementing the principle of best interests based on maqāṣid. However, this study has limitations in the scope of the data and the number of cases analyzed. Therefore, further research is recommended to expand comparisons across regions or case types to strengthen understanding of the dynamics of the application of maqāṣid al-syarī'ah in the Islamic justice system in Indonesia and its relevance to sustainable child protection.

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#### Interview

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