
The Comparative Analysis of the Legal Implications of *Hadhanah* in Decision Number 2562/Pdt.G/2023/PA.Sbr and Decision Number 0037/Pdt.G/2016/PA.Bitg in the Perspective of *Maqāṣid al-Sharī'ah*

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ABSTRACT

This study examines the differences in the determination of custody rights in the Sumber Religious Court decision No. 2562/Pdt.G/2023/PA.Sbr and the decision of the Bitung Religious Court Number 0037/Pdt.G/2016/PA.Bitg, even though both refer to the Compilation of Islamic Law (KHI). The divergence arises due to variations in trial facts, the child's psychological condition, and the religious beliefs of the parties involved. Therefore, an analysis from the perspective of *maqāṣid al-sharī'ah* is essential to ensure that custody rulings not only adhere to normative provisions but also safeguard the child's welfare. The main objectives of this research are to analyse the application of custody law in both cases and to compare them within the framework of *maqāṣid al-sharī'ah*. The research problems addressed are: (1) How was custody law applied in the Sumber and Bitung Religious Court decisions? and (2) How do these decisions differ when examined through the lens of *maqāṣid al-sharī'ah*? Using a normative juridical method with comparative and case study approaches, data were collected from legislation, Islamic legal scholarship, and official court rulings. Findings reveal that the Sumber Court prioritised maternal attachment and piety, while the Bitung Court prioritised protection of faith by granting custody to the father.

Keywords: Comparison of Decisions; Legal Implications; *Hadhanah*; *Maqasyid Sharia*; Religious Court

A. INTRODUCTION

The development of Islamic law in Indonesia is closely related to social dynamics and the diverse needs of society. *Hadhanah*, or the right of child custody, is an essential aspect of Islamic family law. This concept not only regulates the fulfilment of physical needs but also encompasses spiritual, psychological, and social dimensions. The principle of *maqāṣid al-syarī'ah* serves as a fundamental foundation in understanding rulings related to *hadhanah*, as its primary objective is to preserve public welfare (*maslahah*) and prevent harm (*mafsadah*).¹

Hadhanah holds a strategic position within Islamic family law. Child custody concerns the care, education, and protection of a child after divorce. This issue is not merely a social matter but also a moral and religious obligation. Every court decision related to *hadhanah* should be oriented toward the welfare of the child, as the most vulnerable party who lacks full legal capacity. Custody disputes arising from divorce cases have the potential to cause psychological, social, and even spiritual impacts on the child, thereby requiring careful legal consideration.²

The cases decided in the Sumber Religious Court and the Bitung Religious Court demonstrate variations in the application of *hadhanah* law. Decision Number 2562/Pdt.G/2023/PA.Sbr emphasises the child's emotional closeness to the mother and her level of religiosity, while Decision Number 0037/Pdt.G/2016/PA. Bitg focuses more on protecting the child's faith, as the mother had reverted to a non-Islamic religion, resulting in custody being granted to the father. These differing considerations reflect the dynamic understanding and implementation of Islamic law within religious courts.

Maqāṣid al-syarī'ah, which encompasses the protection of religion, life, intellect, lineage, and property, provides a framework for judges in deciding *hadhanah* cases. These five core principles are directly related to the child's physical, psychological, and spiritual development. In practice, *maqāṣid* is understood not merely as a theoretical concept but also as a practical guideline to ensure the child's well-being and the continuity of life.³

The study of these two court decisions is relevant because the social, cultural, and geographical backgrounds of the two regions differ, which may influence the judges' considerations. Differences in local contexts allow for variations in the interpretation of Islamic law, even though the normative reference used—the

¹ M Nasir and A Badri, "Ijtihad Dan Perkembangan Hukum Islam Di Aceh," *Politica: Jurnal Hukum Tata Negara Dan Politik Islam* 9, no. 1 (2022): 41-51.

² Ach Fauzan and Moh Hamzah, "Pendekatan Holistik Dalam Hak Asuh Anak Pasca Perceraian: Perspektif Maqāṣid Syarī'ah Al-Tahir Ibnu Asyur," *al-Rasikh: Jurnal Hukum Islam* 13, no. 1 (2024): 111-126.

³ Nusra Arini, Asmuni Asmuni, and Nawir Yuslem, "Menggali Hukum Perkawinan Yang Melakukan Kecurangan," *JPPi (Jurnal Penelitian Pendidikan Indonesia)* 10, no. 1 (2024): 529-39.

Compilation of Islamic Law (Kompilasi Hukum Islam, KHI)—is the same. The analysis of these decisions is expected to reveal the extent to which judges consistently apply *maqāṣid al-syarī'ah* as the primary framework in adjudicating *hadhanah* cases.

Both classical and contemporary *fiqh* literature record differences of opinion among scholars regarding the age limit for *hadith*, the rights of guardians, and the point at which a child has the right to choose their custodian. These differences highlight the need for a more flexible instrument in judicial decision-making, such as the *maqāṣid* approach. This approach enables judges to move beyond textual differences among schools of thought (*madhāhib*) toward more contextual resolutions that prioritise the child's welfare (*maslahah*).

The high rate of divorce in Indonesia directly contributes to the increasing number of *hadhanah* cases. This condition underscores the urgency of research focused on substantive justice and child protection. The analysis of the two court decisions is expected to provide empirical contributions to the development of Islamic family law that is more responsive to children's needs and to enrich the application of *maqāṣid al-syarī'ah* within religious courts.

In this study, several previous studies are referenced. The first is by Moh. Hamzah and Ahmad Fathorrozi, in their journal article titled "*The Best Interests of the Child in Hadhanah Disputes: A Critical Study of the Surabaya Religious Court Decision Number 2742/Pdt.G/2024/PA.Sby.*" When a divorce has obtained permanent legal force from the court, legal issues do not necessarily end. This research is a normative legal study employing a statute approach. The study focuses on four main aspects: the case chronology, legal reasoning, methods of legal finding, and the analysis of the application of legal principles in the decision. The results of the study show that although custody rights had previously been granted to the mother under a prior court ruling, the father filed a lawsuit to revoke *ḥaḍānah* on the grounds of limited access to interact with the child. In rendering its judgment, the panel of judges did not merely adhere to the normative provisions of Article 105 of the *Compilation of Islamic Law*, but also considered the child's psychological aspects, based on assessments conducted by the Women and Child Protection Agency. The legal method employed was combinative, integrating both systematic and teleological approaches while remaining grounded in Islamic legal sources, national positive law, and the principle of public welfare (*maslahah*) in *maqāṣid al-syarī'ah*. From a legal perspective, the decision reflects the judges' prudence in balancing the three fundamental values of law: legal certainty, justice, and expediency.⁴

⁴ Moh Hamzah and Ahmad Fathorrozi, "Kepentingan Terbaik Anak Dalam Sengketa Hadhanah: Studi Kritis Terhadap Putusan Pengadilan Agama Surabaya Nomor 2742/Pdt. G/2024/PA. Sby," *At-Tafakur: Jurnal Ilmu Syari'ah Dan Hukum* 2, no. 1 (2025): 121–38.

The second study is by Firdaus, Juhasdi Susono, Nahariah, and Fita Dewi Yuniar, titled *"Juridical Analysis of Judges' Considerations in Granting Hadhanah to the Father (A Study of the Makassar Class 1A Religious Court Decision)."* This research aims to conduct a juridical analysis of the judges' considerations in awarding *hadhanah* (custody) to the father based on a case study of the Makassar Class 1A Religious Court decision, and to examine the views of *fuqahā'* (Islamic jurists) regarding the granting of custody to fathers. The study employs a qualitative approach, with in-depth interviews as the primary data collection technique. The results show that in making their decision, the judges were guided not only by the provisions of existing legislation but also by considerations of *maslahah* (public welfare) and the child's emotional closeness to their parents. In this case, the judge granted a divorce based on *ṭalāq bain sughrā* and determined that custody of the first child, aged five, was awarded to the father because the child was more comfortable with him. In contrast, the second child, aged two, was placed in the mother's custody, although the grandmother provided daily care due to the mother's busy schedule. Based on the opinions of the *imams of the madhāhib* (schools of thought) referenced, the judge concluded that if a child is capable of making their own choice, that decision should be considered in the *best interest of the child*.⁵

The third study is by Bariq Habibi, Tarmizi M. Jakfar, and Hajarul Akbar, titled *"Settlement of Hadhanah Cases (A Study on Judges' Considerations in Cases No. 0138/Pdt.G/2015/Ms.Bna and No. 13/Pdt.G/2016/Ms.Aceh)."* The *Mahkamah Syar'iyah* (Sharia Court) of Banda Aceh, in Decision No. 0138/Pdt.G/2015/Ms. Bna granted custody rights that exceeded the plaintiff's original request. In that case, the plaintiff, who was the mother, requested custody only of her children, who had not yet reached the age of discernment (non-mumayyiz), out of five siblings. At the same time, she did not include in her petition the four children who had already reached the age of discernment (*mumayyiz*). However, the panel of judges at the Banda Aceh Sharia Court decided to grant custody of all the children, including those who were already *mumayyiz*, to the mother. Meanwhile, at the appellate level, the Aceh Sharia Court, in Decision No. 13/Pdt.G/2015/Ms. In Aceh, in the same case, custody was granted only to the *non-mumayyiz* children. This study aims to analyse the judges' legal reasoning in making these decisions and to assess their conformity with Islamic law and existing statutory regulations. The research method employed is library research, which examines relevant primary and secondary legal sources. The findings show that the Banda Aceh Sharia Court based its ruling on Supreme Court Decision No. 556 K/Sip/1971, which permits judges to grant claims beyond those requested, provided

⁵ Firdaus Firdaus et al., "Analisis Yuridis Pertimbangan Hakim Dalam Penetapan Hadhanah Kepada Ayah (Studi Putusan Pengadilan Agama Makassar Kelas 1 A)," *Jurnal Tana Mana* 5, no. 3 (2024): 296–306.

that such claims remain consistent with the material facts of the case. Another legal basis cited was Article 105 (b) of the Compilation of Islamic Law (KHI), which stipulates that the custody of children who have reached the age of discernment (*mumayyiz*) should be determined by allowing the child to choose between the father and the mother. On the other hand, the Aceh Sharia Court, as the appellate court, based its decision on Article 178 (2) of the *Herziene Indonesisch Reglement* (HIR) and Article 189 (2) of the *Rechtsreglement voor de Buitengewesten* (RBg), which require judges to examine and adjudicate all parts of a lawsuit comprehensively. However, Article 178 (3) of the HIR and Article 189 (3) of the RBg also emphasise that judges are not permitted to grant claims beyond what is requested in the plaintiff's petition (*petitum*). Thus, there is a difference in interpretation between the two levels of the judiciary regarding the limits of judicial authority in determining *hadhanah* rights.⁶

Based on the three studies mentioned above, none have examined “*The Comparative Analysis of the Legal Implications of Hadhanah in Decision Number 2562/Pdt.G/2023/PA.Sbr and Decision Number 0037/Pdt.G/2016/PA.Bitg in the Perspective of Maqāṣid al-Syari’ah.*” This study not only emphasises the normative legal aspects but also presents an ethical reflection on Islamic judicial practice. The research focuses on how judges employ *ijtihad* in considering the psychological and social conditions of the child, as well as the child's relationship with the parents. The aim is to ensure that religious courts function not merely as dispute-resolution institutions but also as bodies that guarantee the protection and welfare of children.

B. RESEARCH METHODS

The type of research used in this study is normative juridical research, which is a legal study that views law as a system of prescriptive norms and can be logically analysed through normative interpretation and construction.⁷ This study employs a normative juridical approach, examining statutory regulations, legal doctrines and principles, and relevant sources of Islamic law, including the Qur'an, Hadith, the Compilation of Islamic Law (KHI), and the opinions of *fiqh* scholars. To strengthen the analysis, the research also employs a case study and a comparative analysis by examining two court decisions: Decision of the Sumber Religious Court No. 2562/Pdt.G/2023/PA.Sbr and Decision of the Bitung Religious Court No. 0037/Pdt.G/2016/PA.Bitg. The primary data consist of official copies of court decisions, while secondary data include books, journals, articles, and other academic

⁶ Bariq Habibi, Tarmizi M Jakfar, and Hajarul Akbar, “Penyelesaian Perkara Hadhanah (Studi Terhadap Pertimbangan Hakim Pada Kasus No. 0138/Pdt. G/2015/Ms. Bna Dan No. 13/Pdt. G/2016/Ms. Aceh),” *El-Ussrah: Jurnal Hukum Keluarga* 4, no. 2 (2021): 470–87.

⁷ Suteki dan Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori, Dan Praktik)* (Raja Grafindo, 2018).

literature on Islamic law, *maqāṣid al-sharī'ah*, and family law. Data collection is conducted through library research, including reviews of credible legal documents and scholarly literature.

Data analysis is conducted in several stages: reduction, interpretation, and comparison. The reduction stage is used to filter data in accordance with the research focus; the interpretation stage involves interpreting legal norms and judicial reasoning in light of the principles of *maqāṣid al-sharī'ah*; and the comparison stage aims to contrast the two rulings to identify similarities and differences, as well as their juridical implications. This analytical process draws on legal methodology literature and prior studies, yielding a study that not only conceptualises legal norms but also evaluates their application in judicial practice. Thus, this research method provides a strong theoretical and argumentative foundation for analysing *hadhanah* law, particularly from the perspective of *maqāṣid al-sharī'ah*.

C. RESULTS AND DISCUSSION

1. The Concept of Hadhanah in Islamic Law and Positive Law

Hadhanah is defined as the care and maintenance of a child who is not yet capable of managing their own physical, mental, or spiritual needs, to ensure proper growth and development.⁸ Siti Fitrotun explains that *hadhanah* entails protecting a child from harm, meeting their needs, and educating them until they can live independently.⁹ Thus, *hadhanah* is not merely a right but also an obligation that embodies the values of compassion (*rahmah*) and moral responsibility (*taklīf syar'ī*) toward the child.

The legal basis for *hadith* is found in the Qur'an, the Hadith, and the codified principles of Islamic law, as compiled in the *Compilation of Islamic Law* (KHI). The Qur'an emphasises the importance of parental responsibility toward their children, as stated in Surah *At-Tahrīm* [66]: 6: "O you who believe, protect yourselves and your families from the Fire." This verse indicates that parents' obligations toward their children encompass moral and spiritual protection.

Meanwhile, the *Compilation of Islamic Law* (Presidential Instruction No. 1 of 1991) reinforces this principle in Article 105 (a), which states that "The custody of a

⁸ Husnatul Mahmudah, Juhriati Juhriati, and Zuhrah Zuhrah, "Hadhanah Anak Pasca Putusan Perceraian (Studi Komparatif Hukum Islam Dan Hukum Positif Indonesia)," *Sangaji: Jurnal Pemikiran Syariah Dan Hukum* 2, no. 1 (2018): 57-88; Muhammad Alfi Syahrin and Akmal Abdul Munir, "Hak Asuh Anak (Hadhanah) Dalam Sistem Hukum Keluarga Indonesia Dan Aljazair," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 1946-55; Abdul Hamid Asy'ari, Jumni Nelli, and Almi Jera, "Konsep Pengasuhan Bersama (Join Custody) Pasca Perceraian Dalam Pemeliharaan Anak Mernurut Hukum Islam," *Posita: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025): 27-35.

⁹ Siti Fitrotun, "Perlindungan Anak Dalam UU Nomor 35 Tahun 2014 Dalam Perspektif Fikih Hadhanah," *Istidal: Jurnal Studi Hukum Islam* 9, no. 1 (2022): 83-97.

child who has not yet reached the age of discernment (*mumayyiz*) or is under twelve years old belongs to the mother.”¹⁰ This means that Islamic law in Indonesia prioritises the mother as the most suitable party to perform *hadhanah*, taking into account the emotional, affectionate, and psychological bond between mother and child. However, if the mother does not meet the requirements, custody may be granted to another party deemed capable of ensuring the child’s welfare (*masalah*).

In the context of Indonesian positive law, the regulation concerning *hadhanah* or child custody after divorce is stipulated in Law Number 1 of 1974 on Marriage, specifically Article 41 (a), which states that “Both the mother and the father are equally obliged to care for and educate their children, solely based on the best interests of the child”.¹¹ Thus, Indonesian positive law adopts the best interests of *the child* as the primary basis for determining custody rights. This principle is also consistent with the Convention on the Rights of the Child (1989), which Indonesia ratified by Presidential Decree Number 36 of 1990, thereby granting it binding legal force.

The requirements for a custodian (*ḥāḍinah* for women and *ḥāḍin* for men) according to Islamic *fiqh* include: (1) being of sound mind (*‘āqilah*), (2) being an adult (*bālighah*), (3) being honest and trustworthy (*amānah*), (4) being capable of caring for the child physically and mentally (*qādirah ‘alā al-ri’āyah*), (5) possessing good moral character, and (6) being a Muslim if the child is Muslim. Scholars of the Shāfi’ī school further add that the custodian must not remarry if the prospective spouse could harm the child’s welfare, as emphasised in the aforementioned hadith.¹² In cases where the mother does not meet these criteria, custody may be transferred to another party, such as the maternal grandmother, the father, or the closest family member who is capable of safeguarding the child’s best interests.

The rights and obligations in *hadhanah*, both under Islamic law and positive law, share the same essence, namely, the protection of the child’s best interests

¹⁰ Fawzia Hidayatul Ulya, Fashi Hatul Lisaniyah, and Mu’amaroh Mu’amaroh, “Penguasaan Hak Asuh Anak Di Bawah Umur Kepada Bapak,” *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 1 (2021): 101–17; Aldi Jaya Mandala Putra, “Tinjauan Yuridis Terhadap Pemeliharaan Anak Dibawah Umur (Hak Hadhanah) Akibat Suatu Perceraian Berdasarkan Kompilasi Hukum Islam,” *Journal of Law (Jurnal Ilmu Hukum)* 5, no. 2 (2020); Umul Khair, “Pelaksanaan Hak Asuh Anak Setelah Terjadinya Perceraian,” *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (2020): 291–306; Ahmad Baidawi and Muhammad Zainuddin Sunarto, “Hak Asuh Anak Dalam Perspektif Khi Dan Madzhab Syafi’i,” *HAKAM: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam* 4, no. 1 (2020).

¹¹ Ahmad Haris Muizzudin and M Willian Anwar, “Tinjauan Yuridis Relevansi Pasal 41 Huruf a Undang-Undang Nomor 1 Tahun 1974 Dan Pasal 105 Kompilasi Hukum Islam Tentang Hak Asuh Anak Pasca Perceraian,” *Al-Akmal: Jurnal Studi Islam* 2, no. 3 (2023): 50–62.

¹² Al-Nawawī, *Al-Majmū’ Sharḥ Al-Muhadhdhab* (Beirut: Dār al-Fikr, 1997).

(*maslahah al-mahḍūn*).¹³ From an Islamic perspective, the right of *hadhanah* is not an absolute personal right but a trust (*amānah*) that must be carried out based on the welfare (*maslahah*) of the child.¹⁴ Meanwhile, under positive law, both parents have a legal obligation to continue caring for and educating their children even after divorce. Therefore, *hadhanah* can be viewed as a form of legal protection grounded in the principle of substantive justice, from both the *shar'ī* and legal normative perspectives.

2. Legal Analysis of the Implementation of the Hadhanah Decision

a. PA Decision. Source Number 2562/Pdt.G/2023/PA.Sbr

This case involves a 37-year-old Muslim private-sector employee who serves as the Plaintiff. The Defendant is a 36-year-old Muslim woman working as a university lecturer. The two were previously married and officially divorced on March 25, 2019. They have a daughter, currently 8 years old.

After the divorce, from 2019 until April 16, 2023, the child was under the care of the Defendant, her biological mother, and lived in Blitar, East Java. However, on April 17, 2023, the Plaintiff took the child to Cirebon without the Defendant's consent. The Plaintiff argued that the child was no longer receiving proper attention since the Defendant remarried and moved out of her mother's home, Siti Maryam's residence. Under these circumstances, the child was allegedly often left alone at home because her stepfather worked as a vegetable trader in the market. In contrast, the Defendant worked as a lecturer from morning until late afternoon.

The Plaintiff expressed objections to the Defendant's caregiving, citing concerns over the child's psychological condition and developmental well-being, which he believed were not being adequately addressed. He also claimed that he was better able to support the child financially, including by providing for her education and future welfare, because he worked as a contractor and had more available time to spend with her.

As a follow-up, the Plaintiff consulted a psychiatrist regarding the child's condition and submitted a petition to the Regional Indonesian Child Protection

¹³ Syukri Saleh, Robiatul Adawiyah, and Ana Andriyani, "Perlindungan Hak Asuh Anak Pasca Perceraian (Hadhanah): Perspektif Hukum Islam Dan Psikologi Anak," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2829–38; Cantika Aprilia Hasanah, "Perlindungan Hukum Dan Pertimbangan Hakim Dalam Menentukan Hak Asuh Anak Pasca Perceraian," *Journal of Multidisciplinary Inquiry in Science, Technology and Educational Research* 2, no. 1b (2025): 1099–1113; Ahmad Misbakh Zainul Musthofa, "Perlindungan Hukum Terhadap Kesejahteraan Anak Dalam Kasus Perceraian Menurut Kitab Fathul Qarib," *Syakhshiyah Jurnal Hukum Keluarga Islam* 5, no. 1 (2025): 157–67; Sophie Hanna Putri and Mairul Mairul, "Upaya Hukum Dalam Perlindungan Hak Nafkah Anak Akibat Perceraian Orang Tua," *Innovative: Journal Of Social Science Research* 5, no. 2 (2025): 664–75.

¹⁴ Firdaus Firdaus, "Hak Hadhanah Dalam Putusan Pengadilan Agama," *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018): 233–43.

Commission (KPAID) of Cirebon Regency, which later issued a recommendation that custody be granted to the Plaintiff for the best interest of the child.

On the other hand, the Defendant denied all the Plaintiff's claims, arguing that the accusations were unfounded and fabricated. She stated that she had been directly and attentively caring for the child together with her husband. The Defendant also emphasised that the child's financial needs, including education and healthcare, had always been met, with the majority of expenses covered by the Defendant herself. Her position as a certified permanent lecturer, supported by her husband, a vegetable-distribution entrepreneur, was presented as evidence of the family's stable economic condition.

The Defendant further rejected the claim that she had obstructed communication between the Plaintiff and the child. She explained that she had once offered to communicate via her husband's phone number as a sign of respect and to maintain harmony in her new household. However, in practice, communication between the Plaintiff and the child was allowed without restrictions. The Defendant also stated that the mediation efforts conducted by KPAID Cirebon Regency were unsuccessful because the Plaintiff refused to bring the child to meet her biological mother. The Plaintiff's absence during mediation and his unwillingness to facilitate contact between the child and the Defendant were viewed as signs of insincerity and possibly driven by personal motives rooted in jealousy over the Defendant's remarriage.

Considering the parties' chronology and arguments, this case concerns a post-divorce child-custody dispute that requires an objective assessment of the child's best interests, including emotional, psychological, physical, and financial well-being.

In this case, the judge ruled that custody of the child would be awarded to the mother (the Defendant).

b. Bitung PA Decision Number 0037/Pdt.G/2016/PA.Bitg

This case is recorded in the Decision of the Religious Court of Bitung Number 0037/Pdt.G/2016/PA Bitg. It involves a 30-year-old Muslim man working as a private employee, as the Petitioner, against a 21-year-old Christian woman with no occupation as the Respondent. The couple married on June 22, 2014, and had a child, AK I, who was 1 year and 7 months old at the time the petition was filed.

In his petition dated April 4, 2016, the Petitioner filed for divorce because, since November 2015, the marital relationship had no longer been harmonious. He claimed that the Respondent no longer respected his position as a husband

and, without his knowledge, had reverted to Christianity. The conflict peaked in March 2016 when the Respondent refused to reconcile and insisted on maintaining her faith, leading the Petitioner to conclude that the marriage could no longer be sustained.

The Petitioner also filed for custody of the child, arguing that the Respondent had no stable employment and had converted to another religion. He expressed his willingness to bear all court expenses and the child's needs should custody be granted to him.

In response, the Respondent denied part of the Petitioner's claims. She admitted that conflicts had occurred since November 2015, but maintained that she had remained obedient to her husband. According to the Respondent, the marital disputes were actually triggered by her disappointment after discovering the Petitioner's closeness with several other women. She also denied the allegation of apostasy, asserting that she remained a Muslim, though she had once attended a Christmas celebration due to emotional instability.

Regarding child custody, the Respondent objected to granting full custody to the Petitioner, stating that childcare had been shared alternately between them. She also expressed her desire to preserve the marriage and had even invited the Petitioner to renew their religious commitment.

This dispute concerned divorce and child custody, requiring fair legal consideration and the prioritisation of the child's best interests.

In this case, the judge granted custody of the child to the father (the Petitioner).

c. Legal Analysis of the Implementation of *Hadhanah* Decisions in the Religious Court Decision of Sumber Number 2562/Pdt.G/2023/PA.Sbr and the Religious Court Decision of Bitung Number 0037/Pdt.G/2016/PA.Bitg

The study of *hadhanah* (child custody) in Islamic family law is significant, as it directly relates to the child's welfare from legal, psychological, and social perspectives. *Hadhanah* is understood as both a right and an obligation of parents or guardians to nurture and educate their children. The Compilation of Islamic Law (KHI) stipulates that custody rights generally rest with the mother until the child reaches the age of discernment (*mumayyiz*), as the mother is considered better able to provide affection and care. However, judicial practice indicates that judges' decisions may vary depending on the facts of the case and the consideration of *maslahah* (the child's best interests). This is evident in the Religious Court Decision of Sumber Number 2562/Pdt.G/2023/PA.Sbr, which granted custody to the mother due to emotional closeness and piety, and in the Religious Court Decision of Bitung Number 0037/Pdt.G/2016/PA. Bitg

awarded custody to the father because the mother had converted to another religion, raising concerns about the child's faith.

A comparison of these two rulings reveals the flexibility of judges in interpreting and applying *hadith* law. The Sumber Religious Court emphasised the child's emotional and affectionate needs, whereas the Bitung Religious Court focused on the protection of the child's faith. Despite their differing emphases, both decisions implement the principle of the child's best interests, adjusted to the factual circumstances of each case. A deeper analysis shows that these rulings align closely with the objectives of *maqāṣid al-syarī'ah*: the protection of life and lineage is reflected in the first decision, while the protection of religion underpins the second.

The differing judicial considerations in both cases illustrate the role of religious courts as institutions that interpret Islamic law dynamically and contextually. Judges do not merely apply formal legal provisions but also strive to ensure substantive justice by prioritising the child's welfare. This flexibility demonstrates that Islamic family law in Indonesia is adaptive and responsive to the child's concrete circumstances, rendering *hadhanah* a legal instrument that safeguards the child's holistic best interests. Thus, the application of *maqāṣid al-syarī'ah* in *hadhanah* cases provides a strong normative foundation for judicial decisions to uphold justice and promote the child's well-being after divorce.

3. Comparison of Legal Decisions from the Perspective of Maqasyid Syariah

a. Final Decision and Socio-Economic Impact

1) Final Decision of the Sumber Religious Court with No. 2562/Pdt.G/2023/PA-Sbr

The decision of the Sumber Religious Court is as follows:

- a) To grant the Counterclaim Plaintiff's lawsuit (*Penggugat Rekonvensi*) in its entirety;
- b) To determine that the Counterclaim Plaintiff/Conventional Defendant (*Penggugat Rekonvensi/Tergugat Konvensi*) shall hold the right of *hadhanah* (child custody) over a daughter born on November 9, 2015;
- c) To order the Counterclaim Defendant/Conventional Plaintiff (*Tergugat Rekonvensi/Penggugat Konvensi*) to hand over the child as mentioned in dictum point 2 above to the Counterclaim Plaintiff/Conventional Defendant;
- d) To order the Counterclaim Plaintiff to provide complete and unrestricted access to the Counterclaim Defendant to meet, communicate with, express affection for, and play with the child;

- e) In both the convention and counterclaim, to order the Conventional Plaintiff to pay all court costs incurred in this case for IDR 1,090,000 (one million and ninety thousand rupiahs).

2) Final Decision of the Bitung Religious Court Number 0037/Pdt.G/2016/PA.Bitg

In this decision, the Panel of Judges issued the following rulings:

- a) To grant the Petitioner's (*Pemohon*) application in its entirety;
- b) To annul (*fasakh*) the marriage between the Petitioner and the Respondent (*Termohon*);
- c) To determine that the child named AK I, aged 1 year and 7 months (born on September 29, 2014), shall remain under the custody (*hadhanah*) of the Petitioner, without revoking the Respondent's right to meet, take the child out, and exercise other maternal rights, as long as such actions do not interfere with the child's best interests;
- d) To order the Registrar of the Bitung Religious Court to send a copy of this legally binding decision to: the Marriage Registrar of the Office of Religious Affairs (KUA) of Madidir Subdistrict, Bitung City (where the marriage was registered); the Marriage Registrar of the KUA of Girian Subdistrict, Bitung City (the Petitioner's residence), and the Marriage Registrar of the KUA of Aertembaga Subdistrict, Bitung City (the Respondent's residence), to be duly recorded in the respective official registers;
- e) To reject the Plaintiff's (*Penggugat*) claim in its entirety;
- f) To order the Petitioner to pay the IDR 331,000 court fees (three hundred and thirty-one thousand rupiahs).

3) Socioeconomic Impact

The Sumber Religious Court Decision Number 2562/Pdt.G/2023/PA.Sbr granted child custody to the mother by considering religious, psychological, juridical, and sociological aspects. The mother was deemed a devout Muslim woman with good moral character and capable of providing proper religious education. From a psychological perspective, the child—an eight-year-old girl—was found to feel more comfortable living with her mother, ensuring her emotional needs are better fulfilled. This consideration aligns with Article 105 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), which states that custody of a non-*mumayyiz* child belongs to the mother. In addition, sociological factors, such as economic stability and a supportive family environment,

strengthened the judges' conviction that the child's future would be more secure under the mother's care.

Conversely, the Bitung Religious Court Decision Number 0037/Pdt.G/2016/PA. Bitg granted child custody to the father because the mother had reverted to Christianity. The primary consideration was the protection of the child's faith (*'aqidah*) in accordance with the provisions of the Compilation of Islamic Law, which applies when both parents are Muslim, and Article 6 of Law Number 23 of 2002 on Child Protection, which guarantees every child's right to practice their religion. The judges' reasoning was further supported by the Supreme Court of Indonesia's Jurisprudence No. 349K/AG/2006, which permits the father to be granted custody to preserve the child's religion. Beyond religious factors, economic considerations were also taken into account: the father had a stable income, whereas the mother was unemployed, indicating that the child's welfare would be better secured. Nonetheless, the court permitted the mother to maintain emotional contact with the child, provided that it did not interfere with the father's custodial responsibilities.

b. Precedent and Public Compliance with the Decisions of the Sumber Religious Court Number 2562/Pdt.G/2023/PA.Sbr and the Bitung Religious Court Number 0037/Pdt.G/2016/PA.Bitg

The Decision of the Sumber Religious Court Number 2562/Pdt.G/2023/PA.Sbr and the Decision of the Bitung Religious Court Number 0037/Pdt.G/2016/PA. Bitg established essential precedents in *hadhanah* (child custody) cases, emphasising the principle of *the child's best interests* within the framework of *maqāṣid al-sharī'ah*. The Sumber decision highlights the central role of the mother in caring for an eight-year-old daughter who has not yet reached the age of discernment (*mumayyiz*), while taking into account her piety, emotional closeness, and the mother's economic stability as a university lecturer. This is reinforced by Article 105 of the Compilation of Islamic Law (KHI) and reflects the protection of the five fundamental objectives of *maqāṣid al-sharī'ah*: religion (*dīn*), life (*naḥs*), lineage (*nasl*), intellect (*'aql*), and property (*māl*).

Conversely, the Bitung decision grants custody to the father because the mother was proven to have returned to Christianity, which was deemed potentially detrimental to the child's Islamic religious upbringing. This consideration is supported by Law No. 23 of 2002 on Child Protection and Supreme Court Jurisprudence No. 349K/AG/2006, which stresses the importance of safeguarding the child's religious identity.

Both decisions affirm that *hadhanah* is not merely a parental right but also a moral and legal duty to protect the child's future in religious, ethical, psychological, and economic aspects. Judges hold broad discretionary authority to assess parental fitness based on actual conditions rather than purely normative texts. In the Sumber Religious Court, the practice over the past five years indicates a tendency to award custody to mothers. However, a pattern of shared *hadhanah* between both parents is emerging when there are multiple children. This reflects a more contextual approach in which judges consider each child's individual needs.

The implementation of *hadhanah* rulings in society demonstrates relatively high compliance, although emotional resistance sometimes arises among parents who do not obtain custody. Through mediation and the support of relevant institutions, acceptance of the rulings has increased. From the perspective of *maqāṣid al-sharī'ah*, the predominant granting of custody to mothers aligns with the protection of life and lineage. In contrast, the flexibility of shared custody reflects the principle of justice (*ta'ādul*). Overall, these two decisions exemplify the dynamic application of Islamic law in ensuring the welfare of children and reaffirm that divorce not only dissolves the marital bond but also entails shared responsibility for the upbringing of the next generation.

c. Comparison of *Hadhanah* Decisions in the Sumber Religious Court and Bitung Religious Court Decisions from the *Maqasyid Syariah* Perspective

The decisions of the Sumber and Bitung Religious Courts are both grounded in *maqāṣid al-sharī'ah*, with the primary goal of safeguarding the welfare of the child. However, their considerations differ. The Sumber Court granted custody to the mother on the grounds of piety, emotional closeness, and economic stability. In contrast, the Bitung Court granted custody to the father because the mother had converted to another religion. This difference demonstrates that *maqāṣid al-sharī'ah* is contextual, applied according to the social, psychological, religious, and economic conditions of each party.

The application of *maqāṣid* in both decisions reflects a balance in protecting the child's religion, life, intellect, lineage, and property. Judges considered not only the normative aspects of Article 105 of the KHI but also the parents' moral, spiritual, and material suitability. The Sumber Religious Court emphasised the mother's role as caregiver for a young daughter. In contrast, the Bitung Religious Court stresses the protection of religion (*hifz al-dīn*) and the father's economic capability. These approaches illustrate the flexibility of Islamic law in prioritising the child's best interests.

More broadly, both decisions affirm that *hadhanah* is not merely a parental right but a duty to ensure that the child grows up healthy, physically and mentally, practices religion correctly, and receives adequate economic and emotional support. The application of *maqāṣid al-sharī'ah* in *hadhanah* cases also represents contextual *ijtihād* in Islamic law, adaptive to modern challenges. By centring on the child's welfare, Islamic law is not only normative but also solution-oriented and dynamic, thereby contributing to the development of a just, civilised, and cultured society.

D. CONCLUSION

Based on the research findings and analysis of the two *hadhanah* decisions, namely the Sumber Religious Court Decision Number 2562/Pdt.G/2023/PA.Sbr and the Bitung Religious Court Decision Number 0037/Pdt.G/2016/PA. Bitg, several conclusions can be drawn as follows:

1. The legal analysis of the implementation of *hadhanah* in both decisions shows that the Panels of Judges relied on the principle of *the best interest of the child*. In the Sumber Religious Court decision, custody was granted to the mother on the basis of religious, psychological, sociological, and juridical considerations. These included the emotional closeness of the eight-year-old daughter to her mother, the mother's piety as a devout Muslim, and her economic capability as a certified lecturer. The judges also referred to Article 105 of the Compilation of Islamic Law, which grants custody to the mother for children who have not yet reached the age of discernment (*mumayyiz*). In contrast, in the Bitung Religious Court decision, custody was granted to the father because the mother had returned to Christianity, which was considered potentially disruptive to the child's continued Islamic religious education. This decision was also based on Article 6 of the Child Protection Law and reinforced by Supreme Court Jurisprudence No. 349K/AG/2006, which emphasises the protection of a child's right to practice their religion.
2. A comparative legal analysis of the two decisions from the perspective of *maqāṣid al-sharī'ah* shows differences in emphasis on safeguarding the five primary objectives of Islamic law: religion (*hifz al-dīn*), life (*hifz al-naḥs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-māl*). The Sumber Religious Court decision placed greater emphasis on *hifz al-naḥs* and *hifz al-nasl*, focusing on the child's psychological comfort with the mother, greater emotional closeness, and the daughter's caregiving needs. Additionally, *hifz al-māl* and *hifz al-'aql* were protected through the mother's economic stability and access to a supportive educational environment. Conversely, the Bitung Religious Court decision prioritised *hifz al-*

dīn, ensuring that the child continued to grow up within Islam after the mother's conversion. The father's economic capability was also considered to safeguard *hifz al-māl*, while the mother's right to express affection was maintained to protect *hifz al-nafs* and *hifz al-nasl*.

Thus, although the two decisions reached different outcomes, both reflect the application of *maqāṣid al-sharī'ah* values in safeguarding the child's welfare. The differences in rulings arise from the specific circumstances of each case, which the judges assessed in light of religious, psychological, social, and economic considerations to ensure the child's physical and spiritual protection and well-being.

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