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The Judge's Ratio Decidendi in Determining Child Custody after Divorce: An Analysis of Maqāṣid al-Sharīʻah in Decision No. 838/Pdt.G/2025/PA.Kab.Kdr

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***Abstract**: The* study is motivated by the importance of protecting children's rights, as children are the most vulnerable parties affected by their parents' divorce. This research aims to analyze the judge's ratio decidendi in determining child custody and to examine the court decision from the perspective of Jamaluddin Athiyyah's maqāṣid al-sharī'ah. This research employs normative juridical legal research using three approaches: the statutory approach, the case approach, and the conceptual approach. The legal materials consist of primary legal sources (the decision, Law No. 1 of 1974, Law No. 35 of 2014, and the Compilation of Islamic Law) and secondary legal sources (books and scholarly journals), collected through library research and document analysis of the court decision, which were then analyzed descriptively-analytically to draw conclusions in accordance with the objectives of the study. The findings reveal that the judge's ratio decidendi consists of the grounds for divorce, the grounds for child maintenance, and the grounds for custody, which rest on the child's age; however, the custody ground is not explicitly elaborated through the principle of the best interests of the child. From the perspective of Jamaluddin Athiyyah's maqāṣid al-sharī'ah, the decision is implicitly in line with the protection of life (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), lineage (ḥifẓ al-nasl), family (ḥifẓ al-usrah), and children's rights (ḥifẓ ḥuqūq al-aṭfāl), but the protection of children's education (ḥifẓ al-tarbiyah) is not yet explicit. Based on this single case, this study recommends that judges elaborate the custody ground separately and integrate maqāṣid al-sharī'ah values explicitly.
Keyword: Ratio Decidendi, Child Custody, Maqāsid Al-Sharī'ah, Jamaluddin Athiyyah.
***Abstrak**:* Penelitian ini dilatarbelakangi oleh pentingnya perlindungan terhadap hak-hak anak sebagai pihak yang paling rentan akibat perceraian orang tua. Penelitian ini bertujuan untuk menganalisis ratio decidendi hakim dalam penetapan hak asuh anak serta menganalisis putusan tersebut berdasarkan perspektif maqāṣid al-syarīʻah Jamaluddin Athiyyah. Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Sumber bahan hukum terdiri atas bahan hukum primer berupa Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, Undang-Undang Nomor 1 Tahun 1974, Undang-Undang Nomor 35 Tahun 2014, dan Kompilasi Hukum Islam, serta bahan hukum sekunder

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berupa buku dan jurnal ilmiah yang diperoleh melalui studi kepustakaan dan dokumentasi putusan pengadilan, kemudian dianalisis secara deskriptif-analitis untuk memperoleh kesimpulan yang sesuai dengan tujuan penelitian. Hasil penelitian menunjukkan bahwa ratio decidendi hakim terdiri atas alasan perceraian, alasan nafkah anak, dan alasan hak asuh yang bertumpu pada usia anak, namun alasan hak asuh belum diuraikan secara eksplisit melalui prinsip kepentingan terbaik bagi anak. Berdasarkan maqāṣid al-syarīʻah Jamaluddin Athiyyah, putusan tersebut secara implisit sejalan dengan perlindungan jiwa (ḥifẓ al-nafs), akal (ḥifẓ al-'aql), keturunan (ḥifẓ al-nasl), keluarga (ḥifẓ al-usrah), dan hak-hak anak (ḥifẓ ḥuqūq al-aṭfāl), tetapi perlindungan pendidikan anak (ḥifẓ al-tarbiyah) belum eksplisit. Berdasarkan satu putusan yang dikaji, artikel ini merekomendasikan agar hakim menguraikan alasan hak asuh secara tersendiri dengan mengintegrasikan nilai maqāṣid al-syarīʻah.
Kata Kunci: Ratio Decidendi, Hak Asuh Anak, Maqāṣid Al-Syarīʻah, Jamaluddin Athiyyah.

A. Introduction

Divorce not only terminates the legal relationship between husband and wife but also gives rise to new issues concerning parental responsibilities toward children, including disputes over child custody (*ḥaḍānah*), which constitute one of the most frequently litigated matters before Religious Courts.[1] In such circumstances, children are the most vulnerable parties, and their rights must continue to be fulfilled even after their parents' marriage has ended.[2] Article 105 of the Compilation of Islamic Law stipulates that the mother is entitled to the custody of a child who has not yet reached the age of *tamyīz* (the stage at which a child can distinguish between right and wrong), whereas a child who has reached this stage has the right to choose whether to be cared for by the father or the mother. Nevertheless, the costs of the child's maintenance remain the father's responsibility.[3] At the statutory level, responsibility for child protection is vested in the state, government, community, family, and parents, as expressly provided for in Article 20 of Law No. 35 of 2014 concerning Child Protection.[4]

Although these provisions provide clear normative guidance, judges do not necessarily apply them rigidly in judicial practice. Instead, they continue to consider the factual circumstances established during the proceedings, the parents' respective caregiving capacities, and the principle of the best interests of the child. Legal

[1] Muchamad Coirun Nizar, 'The Religious Court's Decisions on Divorce: A Maqāṣid Sharīʻa Perspective', *Ulumuna*, vol. 24, no. 2 (2021), hlm. 398–416, https://doi.org/10.20414/ujis.v24i2.408.

[2] Nyoto Nyoto dkk., 'Pemenuhan Hak Anak Pasca Perceraian Orang Tua', *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi dan Pemikiran Hukum Islam*, vol. 11, no. 2 (2020), hlm. 479, https://doi.org/10.30739/darussalam.v11i2.626.

[3] H. Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, edisi pertama (Jakarta: Akademika Pressindo, 2015), hlm. 55.

[4] Ryan Nugraha Yahya dkk., 'Tinjauan Yuridis Pasal 20 Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak terhadap Kesejahteraan Anak', *Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora*, vol. 2, no. 3 (2024), hlm. 342–353, https://doi.org/10.59059/mandub.v2i3.1481.

reasoning, or *ratio decidendi*, refers to the legal grounds on which a judge bases a decision in light of the facts established during the proceedings and the applicable legal provisions. It therefore reflects the judge's underlying rationale for applying the law to a particular case. In child custody disputes, judges are expected to act not merely as the mouthpieces of the law (*la bouche de la loi*), but also to identify and consider the values of justice that prevail within society, as mandated by Article 5(1) of Law No. 48 of 2009 concerning Judicial Authority.

From the perspective of Islamic law, child protection is consistent with the primary objectives of Islamic law (*maqāṣid al-sharīʿah*), namely, the realization of human welfare and benefit (*maṣlaḥah*). Jamaluddin Athiyyah expanded the classical conception of *maqāṣid al-sharīʿah*, which had traditionally focused on the five essential necessities (*al-ḍarūriyyāt al-khams*), by developing a broader framework comprising four interrelated domains: the individual, the family, the public sphere, and humanity. This framework consequently encompasses the protection of families, education, and children's rights. In this study, *maqāṣid al-sharīʿah* is employed as an analytical framework for evaluating the judge's *ratio decidendi*, rather than as the primary object of investigation.

Previous research on post-divorce child custody has been extensive, but most of it still focuses on the normative aspects of *ḥaḍānah* in the KHI or on the legal protection of children in general. Research that specifically examines judges' *ratio decidendi* in light of the principle of the best interests of the child, and analyzes it through Jamaluddin Athiyyah's *maqāṣid al-sharīʿah* in relation to the decision under review (*a quo*), remains relatively limited.[5] Studies of judicial reasoning in custody cases do exist,[6] and *maqāṣid al-sharīʿah* has been used to examine custody awarded to mothers of a different religion ,[7] and divorce decisions in the Religious Courts.[8] To the author's knowledge, however, these studies have not separated the legal grounds that actually determine custody from the grounds for divorce and the considerations on maintenance, nor have they tested them against Jamaluddin Athiyyah's *maqāṣid al-sharīʿah*, which spans the individual, family, public, and humanity domains. This research gap constitutes the novelty of the present article.

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[5] Muhammad Yusril Alawi dan Wiwiek Wahyuningsih, 'Akibat Hukum Perceraian Pernikahan yang Diisbatkan terhadap Hak Asuh Anak menurut Hukum Islam (KHI) dan Undang-Undang Perkawinan', *Private Law*, vol. 2, no. 2 (2022), hlm. 486–494, https://doi.org/10.29303/prlw.v2i2.1188.

[6] Nawa Angkasa Suyinah dan Azizah Aziz Rahmaningsih, 'Studi Kritis Pertimbangan Hakim Pengadilan Agama dalam Perkara Hak Asuh Anak', *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*, vol. 12, no. 1 (2025), hlm. 14–24, https://doi.org/10.24252/al-qadau.v12i1.57000.

[7] Nasaruddin Mera dkk., 'Child Custody Rights for Mothers of Different Religions: Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, vol. 8, no. 3 (2024), hlm. 1645, https://doi.org/10.22373/sjhk.v8i3.23809.

[8] Nizar, 'The Religious Court's Decisions on Divorce', hlm. 398–416.

A systematic comparison with earlier studies clarifies the position of this article. Its new contribution lies in three respects: (1) isolating the *ratio decidendi* on custody from the grounds for divorce and maintenance within a single decision; (2) testing it against Athiyyah's four *maqāṣid* domains using measurable indicators, including an examination of weaknesses and tensions rather than conformity alone; and (3) formulating implications for judicial practice as a case-based recommendation.

Decision No. 838/Pdt.G/2025/PA.Kab.Kdr of the Kediri Regency Religious Court is relevant to examine because the judges did not rely solely on the normative provisions of the KHI. They also considered the child's factual circumstances and, in the author's view, the best interests of the child, which are implicitly reflected in the child's age and caregiving needs, although the judges did not mention this principle explicitly.[9] Accordingly, this article aims (1) to reconstruct the legal grounds that actually determine custody and distinguish them from the grounds for divorce and maintenance; (2) to test those grounds against Jamaluddin Athiyyah's *maqāṣid al-sharīʿah* in the individual, family, public, and humanity domains; and (3) to formulate a critique and its implications for religious judicial practice.

B. Research Methods

This is normative juridical legal research that examines written legal norms, court decisions, and the doctrines of legal scholars through the statute approach, the case approach, and the conceptual approach. The statute approach is used to read the norms on custody and child protection in the Marriage Law, the Child Protection Law, and the KHI as benchmarks for the judges' considerations. The case approach is used to reconstruct the facts, legal bases, and reasoning of the judges in the decision under review. The conceptual approach explains the concept of *ratio decidendi* and constructs Jamaluddin Athiyyah's *maqāṣid al-sharīʿah* framework as an analytical tool. The legal materials consist of primary legal materials, namely the Qur'an, hadith, statutory regulations, and Decision No. 838/Pdt.G/2025/PA.Kab.Kdr of the Kediri Regency Religious Court as the main object of study, and secondary legal materials, namely books, scholarly journals, and previous research. The data were collected through library research by systematically searching for and reviewing legal documents. They were then analyzed descriptively, analytically, and prescriptively in three stages: establishing the facts (*konstatir*), legally qualifying them (*kualifisir*), and applying the legal norms (*konstituir*). Concretely, the analysis (1) isolates the legal grounds that determine custody from the grounds for divorce and maintenance, (2) tests them against the *maqāṣid* indicators in an analytical matrix, and (3) draws out a critique and

[9] Putusan Pengadilan Agama Kabupaten Kediri Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.

its implications. The aim is to produce a legal argument on the conformity of the judges' *ratio decidendi* with positive law and with Jamaluddin Athiyyah's *maqāṣid al-sharīʿah*.

C. Discussion and Research Results

Decision No. 838/Pdt.G/2025/PA.Kab.Kdr of the Kediri Regency Religious Court concerns a contested divorce (*cerai gugat*) filed by the wife (Plaintiff) against the husband (Defendant) on the ground of continuous disputes and quarrels. The couple, who have a son of about six years old, experienced the breakdown of their household after the Defendant failed to provide adequate financial support and developed a habit of consuming alcohol. The parties lived apart for approximately four years, and attempts at reconciliation were unsuccessful. On the basis of documentary evidence and witness testimony, the judges declared the marriage irretrievably broken (*broken marriage*) and impossible to maintain. They therefore granted the divorce petition and, at the same time, ruled on child custody and the father's post-divorce maintenance obligation.

The Legal Construction of Post-Disvorce Child Custody

The legal construction of post-divorce child custody in Indonesia rests on three layers of norms. First, Articles 105 and 156(a) of the KHI make the care of a child who is not yet *mumayyiz* the mother's right, while the costs of maintenance are the father's responsibility according to his means. Second, Article 41 of Law No. 1 of 1974 on Marriage (the Marriage Law) affirms that both parents remain obliged to care for and educate their children, solely in the interests of the child.[10] Third, Law No. 35 of 2014 on Child Protection makes the best interests of the child the standard for every decision concerning children.[11] A father's rights and obligations toward his biological child remain attached after divorce,[12] and the development of these norms forms part of the reform of marriage law through legislation and judicial decisions.[13]

Given this construction, the custody norm operates on two levels: a general rule that makes the mother the custodian of a child who is not yet *mumayyiz*, and a testing standard, namely the best interests of the child, which allows judges not to apply the general rule absolutely where the facts so require. The legal grounds that determine

[10] Luluk Septaniar Triyanita dan Paramita Prananingtyas, 'Hak Anak Akibat Perceraian berdasarkan Undang-Undang Perkawinan dan Kompilasi Hukum Islam', *Notarius*, vol. 16, no. 2 (2023), hlm. 850–860, https://doi.org/10.14710/nts.v16i2.39312.

[11] Mira Azzasyofia, Christa Fouche, dan Liz Beddoe, 'The Representation of Indigenous Children in Policies in Indonesia', *Asian Social Work and Policy Review*, vol. 18, no. 2 (2024), hlm. e12310, https://doi.org/10.1111/aswp.12310.

[12] Fahrurrozi Fahrurrozi dkk., 'Tinjauan Yuridis Hak dan Kewajiban Ayah terhadap Anak Kandung setelah Perceraian (di Pengadilan Agama Selong Lombok Timur)', *Media Keadilan: Jurnal Ilmu Hukum*, vol. 14, no. 1 (2023), hlm. 126, https://doi.org/10.31764/jmk.v14i1.14926.

[13] Theresia Dyah Wirastri dan Stijn Cornelis Van Huis, 'The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms', *AHKAM: Jurnal Ilmu Syariah*, vol. 24, no. 2 (2024), hlm. 215–232, https://doi.org/10.15408/ajis.v24i2.38424.

custody must therefore be distinguished from those that determine divorce (Article 39(2) of the Marriage Law and Article 116(f) of the KHI) and from those that determine child maintenance. This distinction underpins the reconstruction of the *ratio decidendi* in the following section.

Reconstruction the Judges' *Ratio Decidendi* in Decision No.838/Pdt.G/2025/PA.Kab.Kdr

Ratio decidendi is one of the most important elements of a court decision because it supplies the legal argument by which judges resolve a case.[14] It is understood as the legal reasoning that connects the facts proven at trial with the applicable legal norms to produce the operative ruling (*amar putusan*). It therefore reflects not only the application of positive law but also the judges' thinking in pursuing legal certainty, justice, and utility.[15] According to Sudikno Mertokusumo, in examining and deciding a case judges proceed through three stages: establishing the facts (*konstatir*), giving the facts a legal qualification (*kualifisir*), and applying the legal norm to the proven facts (*konstituir*).[16]

In Decision No. 838/Pdt.G/2025/PA.Kab.Kdr, the judges considered not only the facts that emerged at trial but also linked them to statutory provisions, the KHI, Supreme Court jurisprudence, and relevant principles of Islamic law. Legal facts are an essential element in resolving a case because they guide judges in identifying the relevant legal norms before constructing the *ratio decidendi*.[17] In the case under review, the judges declared it proven that the Plaintiff and Defendant were a lawfully married couple with a six-year-old child; that continuous disputes and quarrels had occurred because the Defendant did not provide adequate financial support and was in the habit of consuming alcohol; and that the parties had lived apart for approximately four years without successful reconciliation.[18]

On these facts, the judges based their considerations on Article 39(2) of Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019; Article 19(f) of Government Regulation No. 9 of 1975; and Article 116(f) of the KHI, which regulate divorce on the ground of continuous disputes and quarrels without hope of living in harmony again.[19]

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[14] Fatonah, Amalia, dan Abas, 'Judicial Consideration of Child Custody to Father'.

[15] Rupert Cross dan J. W. Harris, *Precedent in English Law* (Oxford: Oxford University Press, 1991), hlm. 198, https://doi.org/10.1093/oso/9780198761624.001.0001.

[16] Dea Mahara Saputri dan Abdul Azis, 'Kedudukan Alat Bukti dalam Hukum Acara Perdata sebagai Implementasi Kepastian Hukum', *Rechtsregel: Jurnal Ilmu Hukum*, vol. 6, no. 2 (2023), hlm. 207–216, https://doi.org/10.32493/rjih.v6i2.37572.

[17] Zaka Firma Aditya, 'Does the Judiciary Support Legal Certainty? An Indonesian Perspective', *Frontiers in Law*, vol. 2 (2023), hlm. 15–23, https://doi.org/10.6000/2817-2302.2023.02.03.

[18] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Duduk Perkara dan Pertimbangan Hukum.

[19] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.

They also referred to Supreme Court Jurisprudence No. 379 K/AG/1995, which holds that maintaining a broken marriage causes greater harm (*kemudaratan*).[20] In considering the child's interests, the judges further referred to Qur'an 2:233, Law No. 35 of 2014 on Child Protection, and Supreme Court Circular Letter (SEMA) No. 4 of 2016 as the basis for obliging the father to provide monthly maintenance for the child.[21]

According to Cross, the *ratio decidendi* is the legal principle on which a judge decides a case and is therefore the binding part of the decision, while Duxbury emphasizes that it is derived by reasoning from the material facts proven at trial.[22] On this theory, the judges' *ratio decidendi* in the decision under review can be understood through three interrelated stages: establishing the legal facts through proof, connecting the facts with the relevant legal norms through qualification, and drawing a legal conclusion as the basis for the operative ruling.[23] As for the legal consequences of divorce for the child, the judges considered the child's age and the father's economic capacity as the basis for imposing the maintenance obligation. Their reasoning, however, is oriented more toward fulfilling the maintenance obligation as a legal consequence of divorce, while an explicit account of the principle of the best interests of the child is not adequately reflected in their legal considerations.[24]

On the basis of these three stages, the legal grounds in the decision need to be sorted into three layers so that the *ratio decidendi* on custody is not confused with other considerations. The first layer is the ground for divorce, namely the breakdown of the household (*broken marriage*) due to continuous disputes, based on Article 39(2) of the Marriage Law, Article 19(f) of Government Regulation No. 9 of 1975, Article 116(f) of the KHI, and Supreme Court Jurisprudence No. 379 K/AG/1995. The second layer is the ground for child maintenance, namely the child's age and the father's economic capacity, based on Qur'an 2:233, Law No. 35 of 2014, and SEMA No. 4 of 2016. The third layer is the ground for awarding custody, namely that a child of about six years old needs intensive attention and affection, so that his care is awarded to the mother.[25] In the author's view, this third layer is what actually determines custody, yet it receives the briefest treatment and is not explicitly linked to the principle of the best interests of the child.

The strength of each layer is tested through four questions: what facts were declared proven, what norm was used, how the two are logically connected, and what

[20] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[21] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[22] Neil Duxbury, *The Nature and Authority of Precedent* (Cambridge: Cambridge University Press, 2008), hlm. 67.
[23] Peter Mahmud Marzuki, *Penelitian Hukum*, edisi pertama (Jakarta: Kencana, 2005), hlm. 162.
[24] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[25] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.

the strengths or weaknesses are. In the divorce layer, the facts of continuous disputes, roughly four years of separation, and failed reconciliation were proven through documentary evidence and witness testimony and were then linked to Article 39(2) of the Marriage Law, Article 116(f) of the KHI, and Supreme Court Jurisprudence No. 379 K/AG/1995. The logical connection is strong because each element of the norm (continuous disputes and absence of hope of reconciliation) has proven supporting facts. In the maintenance layer, the child's age and the father's economic capacity are linked to Qur'an 2:233, Law No. 35 of 2014, and SEMA No. 4 of 2016. The normative basis is layered and the logical connection adequate, but this reasoning explains the father's obligation more than the child's interests. In the custody layer, the only facts used are the child's age and need for affection, and the conclusion that custody goes to the mother appears to be an application of the general *ḥaḍānah* rule with the briefest reasoning. This is the weakest point of the *ratio decidendi* of the decision under review.[26]

To test the three layers authentically, the judges' considerations are paraphrased below from the Legal Considerations section of the decision. In the divorce layer, the panel considered that the disputes and quarrels were continuous because the Defendant did not provide adequate financial support and was in the habit of consuming alcohol, that the parties had lived apart for approximately four years, and that reconciliation efforts had failed, so that the household was declared broken (*broken marriage*).[27] In the child maintenance layer, the panel, taking into account the child's age and the Defendant's economic capacity, obliged the father to provide monthly maintenance for the child.[28] In the custody layer, the panel considered that the child, who was about six years old, needed intensive attention and affection, so that his care was awarded to the Plaintiff as the mother.[29] These formulations form the basis of the author's assessment of the strengths and weaknesses of each layer discussed above.

Isolating the third layer, the *ratio decidendi* on custody in the decision under review can be formulated as follows. Material fact: a boy of about six years old (not yet *mumayyiz*) who needs intensive attention and affection. Referenced norm: the *ḥaḍānah* provisions that make the mother the custodian of a child who is not yet *mumayyiz* (Articles 105 and 156(a) of the KHI). Legal conclusion: the child's care is awarded to the Plaintiff as the mother. The other facts, namely the continuous disputes, the Defendant's habit of consuming alcohol, the roughly four years of separation, and the Defendant's economic capacity, support the grounds for divorce and maintenance. Because the decision's formulation of the third layer mentions only the child's age and

[26] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[27] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[28] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[29] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.

need for affection, these facts are not the determining grounds for custody, and any connection between them and the caregiving environment is the author's own reading. The *ratio decidendi* on custody therefore rests on the child's age, and the other considerations are not read as part of the binding ground for custody.[30]

The status of the principle of the best interests of the child in the decision under review must be distinguished carefully, because it appears at three different levels. First, as an explicit statement by the judges: on the author's reading of the legal considerations, the principle is not expressly stated as a ground for custody.[31] Second, as implicit content: the judges considered the child's age, the need for intensive affection, and the father's economic capacity, which substantively relate to the child's interests. Third, as the author's interpretation: the reading that awarding custody to the mother and obliging the father to provide maintenance realizes the best interests of the child is the author's own assessment, not a statement by the judges. Accordingly, any statement in this article that the decision conforms with the best interests of the child refers to implicit conformity according to the author's interpretation.

In the author's assessment, the custody considerations in the decision under review are inadequate for three reasons. First, the custody ground rests on a single variable, namely the age of a child who is not yet *mumayyiz*, so the conclusion that care is awarded to the mother is an application of the general rule in Article 105(a) of the KHI rather than the result of weighing the child's concrete circumstances. Article 105 sets a starting point but does not answer whether that arrangement is truly the best for a particular child in a particular case. Second, the facts declared proven, namely the Defendant's alcohol habit and economic capacity, are used only to support the grounds for divorce and maintenance,[32] while the benchmark in Article 156(c) of the KHI, namely the custodian's ability to guarantee the child's physical and spiritual safety, is not used as a test. On the author's reading, the judges do not appear to have assessed the Plaintiff's capacity and caregiving environment as the mother, or the effect of the Defendant's habit on the child's care. Third, the judges' considerations do not discuss the child's relationship with the father after divorce, although Article 14(2) of Law No. 35 of 2014 affirms the child's right to continue meeting and maintaining regular personal and direct contact with both parents.[33]

The principle of the best interests of the child should function as the determining standard for custody, not merely as a supplementary consideration. It is one of the

[30] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[31] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[32] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.
[33] Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam, Pasal 105 huruf (a) dan Pasal 156 huruf (c); Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, Pasal 14 ayat (2).

principles of child protection under Article 2(b) of Law No. 35 of 2014 and derives from Article 3(1) of the Convention on the Rights of the Child, which makes the child's best interests a primary consideration in all actions concerning children.[34] In custody cases involving a child who is not yet *mumayyiz*, it can be applied in four steps. First, the judges establish the child's concrete circumstances on the basis of evidence, including age, health, emotional bonds with each parent, educational needs, and residential stability. Second, they assess each parent's caregiving capacity and environment against the benchmark of guaranteeing the child's physical and spiritual safety under Article 156(c) of the KHI. Third, they test whether the general rule in Article 105(a) of the KHI accords with those circumstances: if it does, they state so expressly together with their reasons; if it does not, they depart from it with reasons that can be examined. Fourth, they ensure the child's access to the non-custodial parent and secure the child's maintenance. With these steps, the conclusion that custody goes to the mother in the case under review could remain the same but would rest on a freestanding *ratio decidendi*, and the *maqāṣid* values of protecting life, intellect, and education (*ḥifẓ al-nafs*, *ḥifẓ al-ʿaql*, and *ḥifẓ al-tarbiyah*) would become indicators that can be verified in the text of the decision rather than merely in the author's reading.

Maqāṣid al-Syarīʻah Analysis of the Judges' *Ratio Decidendi*

Maqāṣid al-sharīʿah are the primary objectives for which Islamic law was laid down, oriented toward realizing benefit (*maṣlaḥah*) and preventing harm in human life.[35] Jamaluddin Athiyyah developed the concept more broadly than the classical *maqāṣid*, which centered on five essential necessities (*al-kulliyyāt al-khams*), into four interrelated domains: the individual, the family, the public, and humanity.[36] This approach is considered relevant for analyzing post-divorce custody disputes because such disputes concern not only the normative application of the law but also the protection of the child's growth and development, education, psychological condition, family stability, and children's rights as a whole.

The individual domain in Athiyyah's *maqāṣid al-sharīʿah* is a form of protection for basic human needs, which in this study focuses on *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-ʿaql* (protection of intellect).[37] *Ḥifẓ al-nafs* requires that judicial decisions ensure the child lives in a safe environment that supports his development. The panel considered that the child was about six years old and therefore needed intensive attention and affection, then awarded custody to the mother and obliged the father to

[34] Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, Pasal 2 huruf b dan Pasal 14; Convention on the Rights of the Child, Pasal 3 ayat (1), sebagaimana disahkan dengan Keputusan Presiden Nomor 36 Tahun 1990.

[35] ʿAṭīya, *Naḥwa Tafʿīl Maqāṣid aš-šarīʿa*, hlm. 25.

[36] Dalimunthe, 'Maqasid Syariah dalam Pandangan Jamaluddin Athiyah Muhammad'.

[37] ʿAṭīya, *Naḥwa Tafʿīl Maqāṣid aš-šarīʿa*, hlm. 92.

provide maintenance, which in the author's view reflects an effort to secure the child's basic needs and welfare as an individual.[38] As for *ḥifẓ al-ʿaql*, what the decision declares proven is only the Defendant's alcohol habit and the prolonged household disputes; the judges did not state that either affected the child's mental development or education. On the author's interpretation, supported by the literature, these conditions are likely to create an environment less conducive to the child's mental and educational development, so that awarding custody to the mother can be read as consistent with the aim of protecting the child's intellect and intellectual future. This reading is not a consideration of the judges.[39]

The family domain (*maqāṣid al-usrah*) treats the family as the primary foundation of society and is analyzed in this study through three objectives: *ḥifẓ al-usrah* (preserving the family), *ḥifẓ al-nasl* (preserving lineage), and *ḥifẓ al-tarbiyah* (preserving education).[40] With regard to *ḥifẓ al-usrah*, the author considers that the judges' decision to grant the divorce after finding the household permanently broken (*broken marriage*) in fact reflects the aim of safeguarding family welfare, because maintaining a marriage that continues to generate conflict is not always consistent with the objectives of the sharīʿah.[41] With regard to *ḥifẓ al-nasl*, awarding custody to the mother together with the father's maintenance obligation shows an effort to preserve the child's survival and welfare as offspring who must remain protected even after the parents' marriage has ended.[42] With regard to *ḥifẓ al-tarbiyah*, however, the author argues that the judges' considerations do not explicitly address guarantees for the continuity of the child's education and character formation after divorce. Protection in this dimension is therefore realized only implicitly through the maintenance obligation, not through legal reasoning that affirms the importance of education as part of the

[38] Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.

[39] Felicitas Auersperg dkk., 'Long-Term Effects of Parental Divorce on Mental Health – A Meta-Analysis', *Journal of Psychiatric Research*, vol. 119 (2019), hlm. 107–115, https://doi.org/10.1016/j.jpsychires.2019.09.011. Fakta dan pertimbangan hakim: Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.

[40] Spencer L. James dkk., 'Marital Quality over the Life Course and Child Well-Being from Childhood to Early Adolescence', *Development and Psychopathology*, vol. 34, no. 4 (2022), hlm. 1492–1505, https://doi.org/10.1017/S0954579421000122.

[41] Inge Bethzeda Stefany dan Rifqi Ridlo Phahlevy, 'Marriage Validity and Divorce Resolution in Islamic Law Perspective: Keabsahan Perkawinan dan Penyelesaian Perceraian dalam Perspektif Hukum Islam', *Indonesian Journal of Islamic Studies*, vol. 13, no. 1 (2025), https://doi.org/10.21070/ijis.v13i1.1796. Fakta dan pertimbangan hakim: Putusan Nomor 838/Pdt.G/2025/PA.Kab.Kdr, bagian Pertimbangan Hukum.

[42] Moh Rosil Fathony dan Ellemmia Lorenza Pradana, 'Analisis Perbandingan Perceraian dan Akibat Hukumnya di Beberapa Negara Islam', *HAKAM: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam*, vol. 7, no. 1 (2023), https://doi.org/10.33650/jhi.v7i1.5770.

child's best interests.[43] Strengthening this aspect would make the *ratio decidendi* more comprehensive in realizing the objectives of *maqāṣid al-usrah* in full.

The public domain (*maqāṣid al-mujtamaʿ*) treats child protection as a shared responsibility of the family, society, and the state, and is analyzed through three objectives: *ḥifẓ ḥuqūq al-aṭfāl* (protecting children's rights), *ḥifẓ maṣlaḥat al-mujtamaʿ* (protecting the welfare of society), and *ḥifẓ al-ʿadālah al-ijtimāʿiyyah* (protecting social justice).[44] The author argues that the judges' *ratio decidendi* reflects *ḥifẓ ḥuqūq al-aṭfāl*, because the legal considerations not only resolve the dispute between Plaintiff and Defendant but also secure the child's rights to maintenance and proper care as part of the public interest in protecting the nation's next generation.[45] With regard to *ḥifẓ maṣlaḥat al-mujtamaʿ* and *ḥifẓ al-ʿadālah al-ijtimāʿiyyah*, the decision's proportionate allocation of the maintenance obligation to the father shows an effort to balance the rights and obligations of both parents so that social justice is achieved in resolving the family dispute, although the judges' considerations say little explicitly about the broader dimension of societal welfare.[46]

The humanity domain in Athiyyah's perspective concerns the protection of human dignity and human rights, and in this study focuses on *ḥifẓ al-karāmah al-insāniyyah* (protecting human dignity) and *ḥifẓ ḥuqūq al-insān* (protecting human rights).[47] The decision contains no statement by the judges that expressly positions the child as a party who must be protected from the effects of his parents' domestic conflict; the effect of that conflict on the child's psychological condition is the author's reading based on the literature, not a finding of the judges. On this reading, the author considers that the judges' considerations regarding the child's age, need for affection, and maintenance can be understood as respect for the child's dignity as a human being entitled to grow and develop properly, not as an object of dispute.[48] Likewise, the award of maintenance and custody, oriented as it is toward the child's welfare, can in the author's view be read

[43] Naja Fahira dkk., 'Pengaruh Perceraian terhadap Perkembangan Sosial Emosional Anak Usia 5–6 Tahun di Desa Pondok Perasi Ampenan Kota Mataram Tahun 2023 (Studi Kasus)', *Jurnal Ilmiah Profesi Pendidikan*, vol. 8, no. 4 (2023), hlm. 2165–2172, https://doi.org/10.29303/jipp.v8i4.1669.

[44] Rini Auliani, Arrie Budhiartie, dan Iswandi, 'Peran Gentle Parenting dalam Menjamin Hak Tumbuh Kembang Anak Berdasarkan Perspektif Hak Asasi Manusia', *Juris Humanity: Jurnal Riset dan Kajian Hukum Hak Asasi Manusia*, vol. 4, no. 1 (2024), hlm. 25–37, https://doi.org/10.37631/jrkhm.v4i1.79.

[45] Yahya dkk., 'Tinjauan Yuridis Pasal 20', hlm. 342–353.

[46] Rahazatul Aisyi, Riyan Ramdhani, dan Ahmad Maulana Hadi, 'Perlindungan Hak Anak Pasca Perceraian melalui Kewenangan Ex Officio Hakim dalam Perspektif Best Interest of the Child', *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga*, vol. 8, no. 2 (2026), https://doi.org/10.47467/as.v8i2.11943.

[47] ʿAṭīya, *Naḥwa Tafʿīl Maqāṣid aš-šarīʿa*, hlm. 180.

[48] Sofa Aliyah Sita dkk., 'Dampak Perceraian Orang Tua terhadap Kondisi Psikologis Anak: Systematic Literature Review', *Jurnal Ilmu Psikologi dan Kesehatan*, vol. 3, no. 1 (2026), hlm. 102–114, https://doi.org/10.62379/jipk.v3i1.1755.

as an effort to secure the child's basic rights as part of human rights that the state must protect through the judiciary.[49] On the basis of the analysis across these four domains, the author concludes that the judges' *ratio decidendi* in Decision No. 838/Pdt.G/2025/PA.Kab.Kdr is substantively in line with Jamaluddin Athiyyah's *maqāṣid al-sharīʿah* on most indicators (this conformity is implicit and has weaknesses, as discussed below), although the quality of its legal argumentation could be strengthened through a more explicit account of the best interests of the child in each domain.

So that the assessment of "in line" does not stop at a general impression, each *maqāṣid* objective is operationalized through indicators that can be verified in the text of the decision. *Ḥifẓ al-nafs*: the designation of a caregiver and the fulfillment of the child's basic needs (care and monthly maintenance). *Ḥifẓ al-ʿaql*: a consideration of the child's education or learning environment. *Ḥifẓ al-usrah*: a consideration of the effect of divorce on the child's relationship with both parents. *Ḥifẓ al-nasl*: a guarantee of the child's survival and welfare as offspring. *Ḥifẓ al-tarbiyah*: a guarantee of the child's education and character formation. *Ḥifẓ ḥuqūq al-aṭfāl*: fulfillment of the child's rights to care and maintenance. *Ḥifẓ maṣlaḥat al-mujtamaʿ* and *ḥifẓ al-ʿadālah al-ijtimāʿiyyah*: consideration of broader societal welfare and a proportionate division of burdens between both parents. *Ḥifẓ al-karāmah al-insāniyyah* and *ḥifẓ ḥuqūq al-insān*: considerations that position the child as a protected subject rather than an object of dispute. The assessment uses three levels: "in line" where the indicator appears in the text of the decision, "implicit" where it can only be inferred from other considerations, and "not yet explicit" where it is not found.

This test must also look for weaknesses and tensions, not only conformity. First, the conformity on *ḥifẓ al-nafs* and *ḥifẓ al-ʿaql* rests on the child's age, so it is more a consequence of the general *ḥaḍānah* rule than the result of a case-specific weighing of the parties' caregiving capacity. Second, there is tension between *ḥifẓ al-usrah*, which justifies divorce to end conflict, and *ḥifẓ al-tarbiyah* and the child's psychological well-being, whose impact from the parents' separation is not addressed in the judges' considerations. Third, the proportionality of maintenance as an expression of social justice cannot yet be tested in a measurable way, because the only available indicators are the child's age and the father's economic capacity. In addition, the claim that the Defendant's alcohol habit and prolonged disputes affect the child's mental development and education needs to be qualified: what the decision proves is only the habit and the

[49] Sarnawiah Sarna dan Wirani Aisiyiah, 'Status Perkawinan Beda Agama Tinjauan Maqasid al-Syariah (Studi Putusan 916/Pdt.P/2022/PN.Sby)', *Jurnal Marital: Kajian Hukum Keluarga Islam* (2023), hlm. 30–40, https://doi.org/10.35905/marital_hki.vi0.5652.

disputes, while their effect on the child's development is the author's interpretation, supported by psychological literature,[50] not a finding of the judges.

The results of testing across the four domains are summarized in the following analytical matrix.

Tabel 1. Analytical Matrix of the *Ratio Decidendi* on Custody against Jamaluddin Athiyyah's *Maqāṣid al-Sharīʿah*

Domain	***Maqāṣid* Objective**	**Findings on the Ratio Decidendi**	**Assessment**
Individual	*ḥifẓ al-nafs*, *ḥifẓ al-aql*	A child of about six years old needs intensive affection; custody is awarded to the mother and maintenance is imposed on the father. The alcohol habit and household conflict are proven as facts, but their effect on the child is the author's interpretation, not a consideration of the judges.	In line on *ḥifẓ al-nafs*; implicit on *ḥifẓ al-ʿaql* (author's interpretation)
Family	*ḥifẓ al-usrah*, *ḥifẓ al-nasl*, *ḥifẓ al-tarbiyah*	Divorce is granted because the household has broken down (*broken marriage*); maternal custody and paternal maintenance preserve the child's survival; guarantees for the child's education are not explicitly set out.	In line on *usrah* and *nasl*; not yet explicit on *tarbiyah*
Public	*ḥifẓ huquq al-atfal*, *ḥifẓ maslahah al-mujtama'*, *ḥifẓ al-'adalah al-ijtima'iyyah*	The child's rights to proper maintenance and care are secured; maintenance is imposed proportionately; the broader dimension of societal welfare is scarcely addressed.	In line on children's rights and social justice; not yet elaborated on societal welfare
Humanity	*ḥifẓ al-karamah al-insaniyyah*, *ḥifẓ huquq al-insan*	The decision does not expressly state that the child is protected from the effects of parental conflict (author's interpretation); the child's basic rights are met through custody and maintenance.	Implicit (author's interpretation)

[50] Auersperg dkk., 'Long-Term Effects of Parental Divorce on Mental Health', hlm. 107–115.

Critique of the *Ratio Decidendi* and Its Implications

First, the *ratio decidendi* on custody in the decision under review remains implicit. The judges' reasoning is oriented more toward fulfilling the maintenance obligation as a consequence of divorce, whereas the principle of the best interests of the child is not adequately set out as a freestanding ground. The problem of consistency and clarity in the grounds of custody decisions is also visible in a study of Aceh Sharia Court decisions.[51] Second, protection of the child's educational and psychological development is not explicitly addressed, although children's well-being under various caregiving arrangements has been a concern of family psychology research.[52] Third, the *maqāṣid* test applied in this article is interpretive, because the conclusion of conformity is drawn from facts that the judges did not explicitly connect to the child's interests. The assessment "in line" is therefore read as conformity between the outcome of the decision and the objectives of *maqāṣid*, not as evidence that the judges reasoned through *maqāṣid*. In contrast to earlier studies, which assess a decision's conformity with norms or apply *maqāṣid* to other objects, this finding shows that conformity of outcome can be achieved without explicit reasoning, so that the main weakness lies in the transparency of the judges' reasoning, not in the operative ruling.

From this critique, the theoretical implication is that testing the *ratio decidendi* against Athiyyah's *maqāṣid al-sharīʿah* can be done in a structured way through the analytical matrix in Table 1, so that this study does not stop at decision analysis. The practical implication, on the basis of this case, is that Religious Court judges should set out the custody ground separately from the considerations on divorce and maintenance, and should state the best interests of the child and *maqāṣid* values explicitly in their legal considerations. Because the object of study is a single decision, this implication is offered as a case-based recommendation, not as a picture of the practice of all Religious Court judges; generalization requires research on more decisions.

D. Conclusion

Based on the discussion above, four main conclusions can be drawn. First, the judges' *ratio decidendi* in Decision No. 838/Pdt.G/2025/PA.Kab.Kdr of the Kediri Regency Religious Court consists of three layers of legal grounds: the ground for divorce, based on the Marriage Law, Government Regulation No. 9 of 1975, and the KHI; the ground for child maintenance, based on Qur'an 2:233, the Child Protection Law, and SEMA No. 4 of 2016; and the ground for custody, which rests on the child's age and

[51] Nasution, Pagar, dan Asmuni, 'The Disparity of Judge's Verdict'.

[52] Anja Steinbach dan Lara Augustijn, 'Children's Well-Being in Sole and Joint Physical Custody Families', *Journal of Family Psychology*, vol. 36, no. 2 (2022), hlm. 301–311, https://doi.org/10.1037/fam0000875.

caregiving needs. The custody ground is not explicitly elaborated through the principle of the best interests of the child and remains intermingled with the maintenance considerations.

Second, when analyzed through Jamaluddin Athiyyah's *maqāṣid al-sharīʿah*, the award of custody in the decision essentially reflects protection (implicitly and with several weaknesses) of the child's welfare in the individual, family, public, and humanity domains. Nevertheless, this protection is not yet explicit with respect to *ḥifẓ al-tarbiyah* and *ḥifẓ maṣlaḥat al-mujtamaʿ*, which appear only implicitly through the maintenance obligation.

Third, the contribution and critique of this article are to separate the legal grounds that determine custody from the grounds for divorce and maintenance, and then to test them against *maqāṣid al-sharīʿah* as an analytical tool through an analytical matrix. Fourth, on the basis of the single decision studied, the implication for judicial practice is the need to set out the custody ground separately from the considerations on divorce and maintenance. In addition, Religious Court judges are advised to integrate *maqāṣid al-sharīʿah* values explicitly into their legal considerations in child custody cases, so that the resulting decisions truly achieve legal certainty as well as benefit for the child as the party most vulnerable to the effects of his parents' divorce.

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