

The Judge's Consideration on Decisions on Custody of Minor Children on The Father's Maqasid Syariah Perspective Jamaluddin Athiyyah

Muhammad Rendra R^{1*}, Hana Chebaiki²

¹UIN Sayyid Ali Rahmatullah Tulungagung, Indonesia.

²University of Islamic Science Emir Abdelkader, Algeria.

rendraromadbon41@gmail.com

chebaikihana@gmail.com

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ABSTRACT. This study is driven by the growing complexity of divorce cases in Indonesia, particularly concerning disputes over child custody, which require strong legal certainty to protect children's welfare. Although Indonesian law grants both parents equal opportunity to claim custody, judicial decisions often vary depending on legal, psychological, and moral considerations, making it essential to analyze how judges formulate their rulings. Using a qualitative approach and normative legal research, this study draws on library data, with Decision Number 2075/Pdt.G/2023/PA.Kab.Kdr as its primary legal material. Data were analyzed through editing, systematization, description, and conclusion drawing. The findings reveal that custody of a minor child was granted to the father based on mutual agreement, the mother's improper behavior, financial capability, and the father's ability to meet the child's emotional and psychological needs. The judge's considerations align with Jamaluddin Athiyah's Maqasid Syariah framework, particularly the dharuriyat level (primary needs) and family-related objectives, including financial protection and strengthening familial bonds.

Keywords: *Judge's Considerations; Child Custody; Maqasid Syariah; Jamaluddin Athiyyah*

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INTRODUCTION

Child custody disputes often escalate to higher courts when one of the parties is dissatisfied with the ruling rendered by the lower court. In many cases, the mother believes she has a stronger claim to custody, especially when the child is still under age. However, the determination of child custody is not based solely on the age of the child. In judicial practice, judges assess a case by evaluating facts and evidence presented during trial, including the quality of parental care and all factors relating to the child's best interests psychologically, materially, and non-materially (Permanasari, 2021).

According to Mumtaz Jr. et al. (2023), in certain cases a mother frequently feels more entitled to custody, particularly when the child is still considered a minor. This assumption stems

from the general belief that mothers possess stronger emotional bonds and have acted as the primary caregivers since early childhood. However, in modern judicial systems, child custody is no longer determined merely by age or biological connection. Instead, courts apply a comprehensive assessment based on the principle of *the best interest of the child*, which prioritizes the child's safety, welfare, and long-term development over parental preferences.

In deciding custody cases, judges must not focus solely on traditional assumptions regarding parental entitlement. They must evaluate all aspects revealed during trial, including the quality of each parent's caregiving, the child's psychological condition, the stability of the household environment, and both material and non-material capacities to ensure the child's optimal growth. Judges also consider parental behavioral records, such as potential domestic violence, substance abuse, emotional instability, or any other condition that may endanger the child's development.

In some cases, judicial consideration extends further to the child's social relationships with the extended family, the characteristics of the residential environment, access to education, and the emotional preparedness of each parent in fulfilling long-term parenting responsibilities (Anggraini et al., 2025). This holistic approach is essential, as custody is not a "reward" granted to one party but a legal mandate entrusted to the parent who can best fulfill the child's physical, emotional, mental, and social needs. Accordingly, custody is not automatically awarded to the mother even when the child is underage if the father is proven more capable of providing a stable and conducive parenting environment.

Child custody disputes thus emphasize that, in modern family law, the best interest of the child is the central axis of judicial assessment. Judges are required to act objectively, basing their rulings on thorough evaluation of evidence and facts, rather than normative assumptions or emotional inclination. For this reason, parties to custody disputes must recognize that the primary purpose of the legal process is not to determine a "winner" between mother and father but to ensure a balanced, secure, and developmentally supportive future for the child.

Under Indonesian law, custody claims must proceed through litigation to obtain legal certainty. Both father and mother have equal legal standing to seek custody and may submit such requests either within a divorce petition whether *cerai gugat* or *cerai talak* or in a separate filing. Juridically, mothers are generally seen as having stronger entitlement to custody (Sari & Yulianawati, 2023). The legal consequences of divorce are outlined in Article 41(c) of the Marriage Law, stating that the court may require the former husband to provide maintenance costs; a child is entitled to financial support from the father (Devy & Muliadi, 2019).

Law No. 1 of 1974 on Marriage affirms that child custody constitutes an obligatory duty of parents, as stated in Articles 45, 47, and 49. Similarly, the Compilation of Islamic Law (KHI) designates custody referred to as *hadhanah* as parental responsibility to raise, educate, and care for the child until adulthood or until the child becomes self-sufficient. Law No. 23 of 2002 on Child Protection further defines caregiving duties such as nurturing, educating, protecting, and fostering children's development as integral components of *hadhanah*, regardless of whether the parents remain married or have divorced (Fithriyah, 2022).

According to Islamic jurisprudence, *hadhanah* refers to the care of young children male or female who have not yet reached the age of discernment (*mumayyiz*). It is defined as assigning responsibility to one party to fulfill both the moral and material needs of a child who is not yet capable of independence, ensuring the child's basic rights until they are mature enough to face life's responsibilities (Fitrotun, 2022).

Classical jurists unanimously agree that mothers hold primary entitlement to custody of children who are not yet *mumayyiz*, given their perceived emotional closeness, patience, and nurturing capacity. Fathers occupy a secondary position and are often viewed differently due to gender-role assumptions within traditional jurisprudence. Nevertheless, both parents play crucial roles in a child's development providing education, attention, responsiveness, and emotional stability. A child's growth is shaped significantly by their immediate environment, primarily the

family composed of father and mother (Ardiansyah & Nggeboe, 2019). Parental caregiving encompasses fulfilling both the primary and secondary needs of the child (Hasanah et al., 2025).

Article 45(1) of Law No. 1 of 1974 states that both parents are obligated to educate their children to the best of their ability. When divorce occurs, the child often becomes the primary victim. Divorced parents must help the child cope with post-divorce impacts, as children may experience fear and anxiety over potential loss of affection from either parent (Siswanto, 2020). Article 45(2) emphasizes that parental obligations continue until the child becomes independent or marries, even when the marital bond has legally ended. One of the inherent jurisdictions of religious courts in Indonesia is the authority to adjudicate matters concerning marriage, including polygamy permits, marriage dispensations, divorce petitions, and child custody (Zulfikar & Fathinuddin, 2023). Granting custody to a father is typically accompanied by strict judicial consideration. For instance, Supreme Court Decision No. 2974 demonstrates a firm stance: when a mother neglects her duty to care for the child such as through habitual intoxication or infidelity custody may be revoked and granted to the father (Supreme Court Jurisprudence No. 2947/PDT/2008).

Judges possess broad discretion to explore legal sources and facts when deciding custody cases. Thus, judicial practice often yields divergent decisions in similar cases. Some rulings emphasize normative legal provisions, while others prioritize the child's best interests by examining parental history and other relevant circumstances to determine the most beneficial environment for the child (Asnawi, 2019). Referring to Articles 3 and 5 of Law No. 48 of 2009 on Judicial Power, judges are granted autonomy in uncovering facts to establish legal certainty and justice. If written law appears insufficient or contrary to fairness, judges may formulate legal reasoning beyond codified provisions to uphold societal justice (Jamil & Nur, 2022).

Although Indonesian courts rarely award custody to fathers, no statutory provision explicitly regulates post-divorce custody in detail. The principal reference is Article 105 of the Compilation of Islamic Law, which states that children under the age of twelve or those not yet *mumayyiz* shall be placed under the custody of their mother. This provision serves as the prevailing guideline. However, in 2007, the Supreme Court expanded this interpretation through two landmark rulings, establishing a legal principle that custody decisions must not rely solely on normative rules but must prioritize the child's best interests (Alfi Nurzikri, 2025). Therefore, granting custody to the father remains relatively rare, as such rulings may appear to contradict Article 105 KHI. This reality motivates further legal examination, including analysis of the reasoning underlying custody decisions awarded to fathers by the Kediri Religious Court in 2023, such as in Decision No. 2075/Pdt.G/2023/PA/Kab/Kdr.

Recent studies on child custody in Indonesian religious courts predominantly highlight the persistent dominance of maternal custody, especially for children under twelve, and the judiciary's tendency to rely on Article 105 of the Compilation of Islamic Law as the primary legal basis (Ernawati & Kasrulloh, 2025). Several scholars also note the gradual shift toward a "best interests of the child" doctrine following the Supreme Court's jurisprudence, yet empirical analyses remain limited to broad doctrinal reviews rather than case-specific judicial reasoning. Moreover, previous research seldom examines custody decisions that favor fathers, as such cases are statistically uncommon and often treated as legal anomalies. The present study thus offers novelty by providing a focused and in-depth analysis of a rare ruling Decision No. 2075/Pdt.G/2023/PA/Kab/Kdr thereby filling a significant gap in the literature by uncovering the legal considerations, interpretive methods, and contextual factors that enable paternal custody within a normative framework largely oriented toward maternal guardianship.

METHOD

This study employs a qualitative approach using a normative legal research design. The data utilized in this research are derived from library-based investigations. The primary data sources consist of legal materials, specifically Decision No. 2075/Pdt.G/2023 issued by the

Religious Court of Kabupaten Kediri. The secondary data sources include books on *Maqasid al-Sharia*, works by Jamaluddin Athiyah Muhammad such as *Nabwa Taf'il Maqashid al-Shari'ah*, as well as other books authored by Jamaluddin Athiyah, the Civil Code, Law No. 25 of 2022, the Compilation of Islamic Law (KHI), and related statutory regulations. Data analysis was carried out through editing, systematization, description, and concluding.

RESULT AND DISCUSSION

Judges' Considerations in Granting Child Custody of a Minor to the Father at the Religious Court of Kediri Regency in 2023

The panel of judges granted the plaintiff's claim and awarded custody of the child to the father, based on the judge's considerations and the agreement reached by both parties during the mediation process. Before awarding custody, the panel of judges considered the child's best interests, based on witness testimony and the legal facts established during the trial. Economic factors were the judge's primary consideration in determining custody. Economic factors determine and guarantee the child's life and well-being.

In addition to the child's age not yet reaching the age of 11, the father's financial ability is greater than the mother's to meet the child's basic needs (food, clothing, shelter, education, and healthcare). Beyond financial means, the judge also assessed the father's ability to provide affection, attention, and education, including understanding the child's emotional and psychological needs. This was derived from the facts, witnesses, and the child's own testimony.

According to Maryati, judges assign custody of children under the age of 12 to their biological fathers psychologically to ensure the child's well-being and interests. If the child is placed with the biological mother, based on the facts presented in court, the biological mother lacks the capacity and ability to adequately meet the child's needs (Permanasari, 2021).

Mansari, in her study, stated that before assigning custody to the father, the panel of judges considers the child's future well-being. To determine custody, the panel of judges examines witnesses during the trial. These witnesses are family members. Witness testimony during the custody hearing will be a consideration for the judge in determining whether custody should be assigned to the father or mother. Empirically, there is often an agreement between the two parties to transfer custody to the father or mother. Economic factors are one of the reasons judges determine custody (Tjandi et al., 2022).

In determining child custody, the judge should not solely rely on the text of the statutory regulations, but more deeply the judge must be able to explore and find the philosophy of the articles on child custody, namely the guarantee of the interests and welfare of the child that must be prioritized. Although the article textually determines the child's custody rights to the mother, however, based on the facts in the trial, the judge found that the child was more secure and had better development with the father, so the judge can determine the child's custody rights to the father.

Normatively, provisions in legal instruments such as the Compilation of Islamic Law and child protection regulations generally give priority to the mother as the custodian of young children. This is based on the general assumption that mothers naturally have a stronger emotional bond, nurturing ability, and care for young children. However, this norm is not absolute. The law allows judges to determine exceptions if evidence and facts demonstrate that the mother no longer meets the eligibility criteria for child custody, or if staying with the mother could hinder the child's development. Therefore, the principle of the child's best interests becomes the primary reference, transcending the textual provisions.

In practice, court proceedings often reveal facts that cannot be captured solely through legal texts. Witness testimonies, results from mediation, the child's psychological condition, living environment, parents' character and behavior, as well as economic stability, are crucial elements that judges must consider holistically. In certain cases, although the law prioritizes the mother as

the custodian, judges may find that the father is better able to ensure the child's safety, comfort, education, and psychological development. For example, the father may have greater financial stability, consistently provide care and attention, create a conducive upbringing environment, or even receive direct acknowledgment from the child that he feels safe and comfortable with the father. (Barlow & Ewing, 2024)

Thus, when the trial facts indicate that maternal custody could negatively impact the child, or that the father is more capable and better positioned to secure the child's future, judges have both legal and moral grounds to grant custody to the father. Such a decision is not a violation of the law but rather an application of the principle of genuine child protection, as both Islamic family law and positive Indonesian law prioritize the child's welfare above all else. Therefore, a decision that deviates from the textual provision does not constitute legal deviation but represents the enforcement of a responsive and equitable legal judgment. Judges who can explore the philosophical values behind the law effectively act as both interpreters and creators of the law, ensuring that it remains relevant and adaptive to societal needs, particularly the needs of vulnerable children who rely entirely on adult decisions. With this approach, a judge's ruling is not only legally valid but also embodies wisdom, public interest, and comprehensive protection for the child as a legal subject who must be safeguarded.

Judges' Considerations in Child Custody Rulings for Minors Awarded to the Father from the Perspective of Jamaluddin Athiyah's Maqasid al-Shariah

Decision Number 2075/Pdt.G/2023/PA.Kab.Kdr concerning the custody of a minor child by the father takes several factors into consideration. The judge prioritizes the child's best interests, not solely the legal basis for the child's rights. The judge assesses the child's condition, including psychological, economic, and behavioral aspects of the parents, as well as witness testimony. In this case, the judge awarded custody to the father because the mother was deemed negligent in fulfilling her obligations and responsibilities, and the child felt comfortable living with him.

Based on the research findings in the previous sub-chapter, the judge's decision established the custody rights (*hadhanah*) of the 11-year-old child as the child's biological father. This decision was based on the considerations of an agreement between the two parties during the mediation process, the father's greater financial capacity than the mother to meet the child's basic needs (food, clothing, shelter, education, and healthcare), and the father's ability to provide affection, attention, and educate the child, including the ability to understand the child's emotional and psychological needs. The child's mother exhibited undesirable behavior, frequently exchanging messages and meeting with men unknown to her husband (the father).

The judge's rationale for mediation is that the agreement between the two parties is in accordance with the *maqashid sharia* (necessary) at the level of *dharuriyat* (necessary). In family disputes, mediation can help resolve issues without the need for protracted court proceedings. Therefore, this consideration constitutes a primary decision (*dharuriyat*) that ultimately contributes to the preservation of religion, life, intellect, descendants, and property (Dalimunthe, 2024).

Jamaluddin Athiyah also emphasized that the existence of essential matters is essential for the survival of humankind, whether religious or worldly. This means that if these essential matters are not established, human survival is destroyed. At this level, everything is permitted for the sake of sustaining life. For example, if there is no more food to eat, even food that is forbidden may be consumed simply to sustain one's life. Necessary needs are often referred to as primary needs (Dalimunthe, 2024). The essential needs are divided into five categories: preserving the soul, preserving religion, preserving descendants, preserving property, and preserving the intellect (Islam, 2024).

The judge's rationale was that the father's financial ability was superior to the mother's to meet the child's basic needs (food, clothing, shelter, education, and healthcare). This consideration aligns with the Maqashidus Syari'ah Fiimaa Yata'alaqu Bil Usroh (Family Scope) by Jamaluddin Athiyah in the section on Tandhimil Jaanibil Maali Lil Usroh (Family Financial Protection). Family financial protection is inseparable from personal and social financial management. However, Sharia law regulates finances, with obligations to give and distribute assets, as those entitled to them, such as dowries, maintenance, inheritances, and wills, all of which serve as guidelines for managing family finances (Afiah et al., 2024a). Therefore, the judge's consideration aligns with the scope of family financial protection, ensuring the child's livelihood is guaranteed.

Before determining child custody, the panel of judges considers the child's best interests based on witness testimony and the legal facts presented during the trial. Economic factors are a key consideration in determining child custody. Considering that economic factors will determine and guarantee a child's life and well-being, the father has the primary responsibility to provide for the child after a divorce, although custody may be vested in the mother.

According to Jamaluddin Athiyah, Tandhimil Jaanibil Maali Lil Usroh (Protection of Family Finances) refers to the obligation of parents, especially fathers, to ensure that children's economic rights, such as maintenance and property maintenance, are met even after their parents divorce (Afiah et al., 2024). This includes responsible asset management, avoiding usury and unfair financial practices, and ensuring the blessings of using assets to meet family needs and contribute to social welfare. The father must still guarantee the child's financial well-being before the age of 21.

The judge's considerations were based on the father's ability to provide affection, attention, and educate the child, including the ability to understand the child's emotional and psychological needs. Furthermore, the child's mother had inappropriate behavior, frequently exchanging messages and meeting with men unknown to her husband (the father). This consideration aligns with Jamaluddin Athiyah's Maqashidus Syari'ah Fiimaa Yata'alaqu Bil Usroh (Family Sphere) in the section on hifdz nasl, which includes preserving the soul. This is to ensure the fulfillment of children's rights so they can grow and develop optimally, achieve excellence in accordance with human dignity and dignity, and receive protection from violence and discrimination, in order to realize children with good morals and quality (Fikriyah & Alam, 2021).

Furthermore, this consideration aligns with the Maqashidus Syari'ah Fiimaa Yata'alaqu Bil Usroh (Family Sphere) by Jamaluddin Athiyah in the section on Strengthening Relationships between Family Members (Tandhimil Jaanibil Muasisi Lil Usroh), where fathers are considered more capable of providing a sense of comfort and educational opportunities (Kristianti, 2020). Therefore, child custody after divorce can fall to the father if the court deems him more capable of providing a sense of comfort and a stable environment for the child's development.

In Islamic law, including the perspective of Maqashidus Syari'ah Fiimaa Yata'alaqu Bil Usroh (Family Sphere), child custody (hadhanah) after divorce does not automatically fall to the father simply because he is considered more capable of providing comfort. Custody decisions in Islam are based on the best interests of the child, and judges consider various factors, including the parents' ability to provide love, education, and a stable environment, as well as the child's own condition. The final decision regarding custody is always oriented toward the child's best interests. Judges will consider various factors to ensure the child receives optimal care. Judges may consider the father's ability to provide a good environment, educate, and facilitate contact with the mother.

Child custody after divorce does not necessarily fall to the father simply because he is considered physically stronger or financially more capable (Toban, 2021). Such an understanding is considered inappropriate when viewed from the maqashid shari'ah (the principle of benefit and benefit) and the principle of maslahah (benefit). Classical and contemporary scholars agree that child custody is awarded to the party best able to ensure the child's safety, mental health,

emotional stability, and educational and spiritual needs. Therefore, the decision regarding who has the right to custody is not automatic but requires careful consideration of the circumstances of each parent and the child.

The four schools of Islamic jurisprudence place considerable emphasis on the mother in early childhood care, as she is considered to possess closeness, tenderness, and a natural ability to care for children. However, this priority is not absolute. If the mother is proven incapable or unfit according to Islamic law to care for the child, for example due to neglecting her parenting duties, engaging in dangerous behavior, or failing to provide a supportive environment for moral and religious education, custody can be transferred to the father or another close relative. In other words, custody is not determined solely on the basis of gender or biological relationship, but rather on the child's actual capacity to ensure the child's well-being.

In the context of modern law, including Islamic family law in many Muslim countries, this principle is reinforced by the doctrine of the best interest of the child (Bianca, 2021). This principle aligns with the objectives of the *maqāshid* (laws of the law), which prioritize the protection of the child's life, mind, morality, and future. Therefore, in the event of a divorce, the judge plays a crucial role in objectively evaluating the family's circumstances, the behavior of each party, and the child's developmental needs. The judge should not rely solely on normative assumptions such as "the father is more financially well-off" or "the mother is closer to the child," but must also consider the facts revealed in court and their impact on the child's future.

The judge's considerations in *hadhanah* cases encompass various aspects. Psychologically, the judge must assess whether the child feels safe, comfortable, and protected when with either party. Indicators of this comfort can be seen from the child's emotional relationship with the parents, communication patterns, and past history of treatment. Materially, judges need to consider whether parents have the ability to provide for their children's basic needs, such as education, healthcare, adequate housing, and other facilities to support their growth and development. However, material ability is not necessarily the determining factor, as the *maqāshid sharia* prioritizes the child's emotional and spiritual needs.

Furthermore, non-material considerations, such as the ability to provide religious education, moral role models, and a positive social environment, are crucial. Islamic law emphasizes that children require strong moral guidance and religious values from an early age. Therefore, parents who consistently provide moral and religious education have a stronger position in obtaining custody, provided other factors are supportive. This aligns with the Islamic principle of *tarbiyah*, which integrates intellectual, emotional, and spiritual aspects of education.

Another important aspect is the child's condition, such as age, psychological needs, and mental readiness. Young children tend to require greater emotional warmth, so mothers are often given priority unless there are reasons to diminish their suitability. Meanwhile, older children are encouraged to consider their preferences, as long as they do not conflict with *sharia* principles and the public interest. In some cases, children are permitted to express their opinions before a judge, particularly when they are over seven or ten years old, depending on the jurisdiction of each country.

Within this framework, judges also have the authority to regulate visitation rights between children and their non-custodial parents (Alfarauq et al., 2025). This arrangement is crucial for maintaining the emotional bond between children and their parents, as Islam views the presence of both fathers and mothers as essential for a child's balanced development. Judges can assess whether the father is able to provide a positive environment and opportunities for the child to continue seeing the mother, or vice versa. This factor is an indicator of eligibility for granting custody, as a wise parent who does not obstruct the child's relationship with his or her ex-partner demonstrates a strong commitment to the child's well-being.

Furthermore, judges can also consider the child's social environment, such as residence, access to education, the child's proximity to the extended family, and the continuity of a stable parenting pattern. An environment that has the potential to cause psychological or moral harm

will be grounds for a judge to reconsider a person's suitability for parenting. This aligns with the principle of dar' al-mafāsīd muqaddam 'alā jalb al-mashālih (preventing harm takes precedence over achieving benefit). If one party is proven to have the potential to harm the child's development, custody can be revoked to prevent further harm.

According to (Alfarauq et al., 2025), in the context of positive law in many countries, including Indonesia, various Islamic jurisprudence considerations are accommodated in religious court decisions. Courts not only refer to normative evidence such as hadith and the opinions of scholars, but also relate these to studies of child psychology, child protection, and modern family law. This demonstrates the adaptive and dynamic nature of the maqāshid shari'ah, enabling it to be applied in a variety of contemporary situations without losing its essential values of welfare.

Thus, it is understandable that final decisions regarding child custody under Islamic law are always oriented toward the child's best interests. This principle serves not only as a moral foundation but also as a legal guideline that judges must adhere to. When a judge awards custody to a father, mother, or other close relative, the decision takes into account not only material capabilities but also psychological aspects, education, morals, social environment, and comprehensive spiritual values. Ultimately, the main goal of Islamic law in hadhanah cases is to ensure that children can grow up in an environment that is safe, full of love, stable, and supports the formation of noble character. Therefore, the parties involved in a custody dispute must understand that the legal process is not an arena for ego struggles or personal victory, but a sharia mechanism to guarantee the child's future optimally in accordance with maqāshid sharia principles.

CONCLUSION

The 2023 decision of the Religious Court of Kabupaten Kediri regarding the custody of a minor granted to the father is reflected in Decision No. 2075/Pdt.G/2023/PA.Kab.Kdr. The ruling awards custody (*hadhanah*) of an 11-year-old child to the father on the basis of mutual agreement reached during mediation, the mother's unfavorable behavior as the plaintiff, the father's stronger financial and economic capacity, and his demonstrated ability to understand the child's emotional and psychological needs. From the perspective of Jamaluddin Athiyah, the judges' consideration particularly the mutual agreement achieved by both parties in the mediation process aligns with Jamaluddin Athiyah's concept of *maqashid al-shariah* at the *dharuriyat* level (primary necessities). To strengthen future decisions of similar nature, it is recommended that courts place greater emphasis on comprehensive child-centered assessments, including independent psychological evaluations and continuous post-mediation monitoring to ensure that agreements reached truly serve the child's best interests. Additionally, integrating broader socio-emotional indicators alongside financial considerations would enhance the alignment of court rulings with the principles of *maqashid al-shariah*, particularly in safeguarding the child's overall welfare

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