

Assessing the Best Interests of the Child in Hadhanah Disputes: Integrating Maqasid Shariah and Family Justice in Religious Court Rulings

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DOI: <https://doi.org/10.37729/amnesti.v8i2.7980>

Submitted: Juni 2026

Revision: Juli 2026

Accepted: August 2026

ABSTRACT

Keywords:
*Ḥaḍḥānah,
Maqāṣid
Alsharī'ah,
Justice in the
Family,
Religious
Courts*

Post-divorce ḥaḍḥānah is often understood as a parental right contested according to the classical fiqh hierarchy, whereas the contemporary child-protection paradigm requires custody to be determined according to the child's best interests, demonstrated substantively rather than merely by kinship status. This study analyzes the ratio decidendi of two purposively selected Religious Court decisions representing contrasting judicial reasoning in ḥaḍḥānah disputes: Tigaraksa Religious Court Decision No. 6110/Pdt.G/2022/PA.Tgrs, concerning custody transfer based on remarriage and separate residence, and Bukittinggi Religious Court Decision No. 525/Pdt.G/2024/PA.Bkt, concerning ratification of a mediation agreement despite indications of child abuse. Using a qualitative normative-analytical approach combined with case studies, the rulings were examined through conceptual, historical-normative, and doctrinal approaches and evaluated using a three-dimensional model—substantive, procedural, and relational—filtered through four maqāṣid al-sharī'ah parameters: ḥifẓ al-naḥs, ḥifẓ al-'aql, ḥifẓ al-nasl, and ḥifẓ al-dīn. The findings indicate that both rulings failed to fully satisfy these parameters, although in different respects. The study contributes a replicable three-dimensional evaluation model integrated with maqāṣid

al-sharī'ah for assessing the quality of Ḥaḍhānah rulings.

ABSTRACT

Keywords:

Maqāṣid Al-Sharī'ah, Keadilan dalam Keluarga, Pengadilan Agama

Ḥaḍhānah pascaperceraian sering dipahami sebagai hak orang tua yang dipersengketakan berdasarkan hierarki fikih klasik, sedangkan paradigma perlindungan anak kontemporer menghendaki agar hak asuh ditentukan berdasarkan kepentingan terbaik bagi anak (the best interests of the child), yang dibuktikan secara substantif dan tidak semata-mata berdasarkan status kekerabatan. Penelitian ini menganalisis ratio decidendi dari dua putusan Pengadilan Agama yang dipilih secara purposif karena merepresentasikan pola pertimbangan hukum yang kontras dalam sengketa Ḥaḍhānah, yaitu Putusan Pengadilan Agama Tigaraksa Nomor 6110/Pdt.G/2022/PA.Tgrs mengenai pengalihan hak asuh berdasarkan alasan pernikahan kembali dan tempat tinggal terpisah, serta Putusan Pengadilan Agama Bukittinggi Nomor 525/Pdt.G/2024/PA.Bkt mengenai pengesahan kesepakatan mediasi meskipun terdapat indikasi kekerasan terhadap anak. Dengan menggunakan pendekatan kualitatif normatif-analitis yang dipadukan dengan studi kasus, kedua putusan dianalisis melalui pendekatan konseptual, historis-normatif, dan doktrinal, kemudian dievaluasi menggunakan model tiga dimensi, yaitu substantif, prosedural, dan relasional, yang disaring melalui empat parameter maqāṣid al-sharī'ah: ḥifẓ al-naḥs, ḥifẓ al-'aql, ḥifẓ al-naḥsl, dan ḥifẓ al-dīn. Hasil penelitian menunjukkan bahwa kedua putusan tersebut belum sepenuhnya memenuhi keempat parameter tersebut, meskipun dengan kelemahan yang berbeda. Penelitian ini berkontribusi melalui model evaluasi tiga dimensi yang terintegrasi dengan maqāṣid al-sharī'ah dan dapat direplikasi untuk menilai kualitas putusan mengenai Ḥaḍhānah.

1. INTRODUCTION

Divorce does not only dissolve the bond between husband and wife, it immediately raises a legal question, the law must answer with whom should the child now live, and on what basis can that arrangement be justified as serving the child's best interests? Classical fiqh answers this question through the doctrine of Ḥaḍhānah, which establishes a hierarchy of entitled carers based primarily on kinship and gender, with the mother generally placed foremost (Rizani et al., 2025; Zakaria et al., 2025). This doctrine, however, was formulated within a social order markedly different from that of contemporary Muslim societies, where the protection of children is increasingly framed not as a matter of parental entitlement but as an independent right of the child. Herein lies the central tension this study addresses: classical fiqh tends to determine custody based on who is entitled by status and kinship, whereas contemporary child-

protection discourse insists that custody must instead be justified by demonstrable benefit to the child.

According to data from the Supreme Court of the Republic of Indonesia's Directorate General of Religious Courts, published by the Central Statistics Agency (BPS, 2025), there were 399,921 divorce cases recorded in Indonesia in 2024. This figure indicates that the number of divorce cases in Indonesia remains at a fairly high level. This fluctuation reflects the changing dynamics of Indonesian family life, shaped by a range of social, economic, and attitudinal factors toward the institution of marriage, rather than a straightforward trend in one direction. It is important to note that these figures reflect the number of divorce cases, not the number of children directly affected, official statistics on the exact number of children involved in these disputes are not systematically published. Nevertheless, given that most divorces involve couples of reproductive ages, the scale of these figures indicates that Ḥaḍḥānah disputes represent a legal issue affecting a substantial and recurring population of Indonesian children every year.

Normatively, Compilation of Islamic Law (KHI) Article 105, stipulates that custody of a child who has not yet reached the age of discernment (*mumayyiz*) or is under twelve years of age is the right of the mother. Yet this normative provision does not, by itself, determine how custody disputes are resolved in practice. In judicial reality, the more pressing question is not merely who is normatively entitled to custody, but how judges assess whether granting custody to that party genuinely serves the child's best interests a determination that requires evaluating psychological, emotional, and welfare-related factors beyond the formal text of the law.

This concern is reinforced by Law (UU) Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which affirm that every child has the right to protection, care, and upbringing that ensures optimal physical, mental, and social development, and that the separation of a child from their parents may only occur where it serves the child's best interests. Read together with Article 105 of the KHI, these provisions suggest a potential shift in orientation, from a framework centred on parental entitlement toward one centred on the rights and welfare of the child. It is precisely this shift that provides the entry point for integrating *maqāṣid al-sharī'ah* into the evaluation of ḥaḍ and rulings.

Research on Ḥaḍhānah in Indonesia is already substantial, though it tends to cluster around three separate themes. The first concerns the construction and prioritisation of Ḥaḍhānah within fiqh itself, (Rizani et al., 2025) show that the classical order of ḥaḍīnah does not fully align with the sequence set out in Article 156 of the KHI, calling for reinterpretation grounded in the child's best interests rather than kinship hierarchy alone. The second concerns the application of the best-interests principle in court rulings, (Faizzati, 2024) examines the custody rights of a remarried mother from a maqāṣid al-Sharī'ah perspective and finds that remarriage does not automatically disqualify a mother as carer, provided no harm to the child is demonstrated, (Mansari & Maulana, 2018) examine the mumayyiz child's right to choose (takhyīr) and the risk of the child being pressured by both parents, (Nasution et al., 2022) find inconsistent custody rulings across the Aceh Sharia Court, pointing to the absence of uniform evaluative standards, and (Kadarisman et al., 2025), find that religious courts are gradually shifting from a fiqh-based hierarchy toward welfare-oriented standards, though the child's voice remains inconsistently accommodated. The third theme concerns the use of maqāṣid al-Sharī'ah in Child Protection, (Heriandi & Efendi, 2026) Formulate a maqāṣid-based framework for child protection, but their work remains theoretical and has not been operationalised into criteria for evaluating actual ḥaḍ and rulings.

Taken together, these three bodies of research point to a clear gap no study has yet systematically integrated the reconstruction of Ḥaḍhānah priority (theme one), the empirical inconsistency of judicial application of the best-interests principle (theme two), and the maqāṣid al-Sharī'ah framework (theme three) into a single, operational set of evaluative parameters for assessing Ḥaḍhānah rulings in the Religious Courts. Most existing studies, including (Rizani et al., 2025), are also limited to reconstructing the sequence of ḥaḍīnah (entitled carers) without developing evaluative parameters capable of assessing the substantive quality of a judge's reasoning against the best-interests principle and maqāṣid al-sharī'ah. Faizzati (2024), while directly relevant, applies maqāṣid al-sharī'ah to a single specific issue the remarried mother whereas the present study develops a more comprehensive model applicable to the evaluation of ḥaḍ and rulings.

This gap is not merely conceptual. Nabila (2026), analysis of the Bukittinggi Religious Court Ruling No. 525/Pdt.G/2024/PA. Bkt shows that judges may prioritize the formal validity of a mediation agreement over

documented evidence of harm, demonstrating that formal compliance with legal procedure does not necessarily produce substantive justice for the child. This finding underscores the need to evaluate Ḥaḍḥānah rulings not only in terms of procedural correctness, but also substantively (does the outcome serve the child's welfare) and relationally (was the child's voice, psychological wellbeing, and freedom from parental pressure genuinely considered). It is this three-fold concern substantive, procedural, and relational, that forms the basis of the evaluative model proposed in this study, distinguishing it from prior research, which has generally examined shifts in judicial orientation without translating those observations into a structured, applicable evaluative framework.

[Nasution et al. \(2022\)](#), finding of inconsistent rulings across the Aceh Sharia Court can, in this light, be read not merely as evidence of "inconsistency" but as evidence of the absence of a structured, replicable framework judges can use to assess whether their considerations have genuinely served the child's best interests a gap this study seeks to close. Whereas [Kadarisman et al. \(2025\)](#), document a shift in judicial orientation over time, and [Heriandi & Efendi \(2026\)](#), provide the philosophical grounding of maqāṣid al-sharī'ah for child protection without translating it into concrete evaluative criteria, the present study's contribution lies precisely in that translation: developing a systematic model that integrates three evaluative dimensions with four maqāṣid parameters, applicable directly to the analysis of ḥaḍḥānah rulings.

From the perspective of maqāṣid al-sharī'ah, Ḥaḍḥānah is not merely a question of who prevails in a custody dispute, but of how the primary objectives of Sharia are safeguarded within it. Al-Ghazali, in *al-Mustaṣfour min 'Ilm al-Uṣūl*, identifies the preservation of five essential values religion (dīn), life (nafs), intellect ('aql), lineage (nasl), and property (māl) as the ultimate purpose of Islamic law ([Luthfi & Kurniawan, 2023](#)), of which four are directly operative in the context of ḥaḍḥānah now ḥifẓ al-nafs relates to the child's physical safety and health ḥifẓ al-'aql relates to the child's education and mental development ḥifẓ Al-Nasl relates to the continuity of family relationships and identity and ḥifẓ Al-Dīn relates to the child's spiritual upbringing and religious formation. Al-Ghazali further emphasises that a child is a great trust (amānah) for which the carer will ultimately be held accountable. What matters, therefore, is not merely the formal status of custody, but whether these four dimensions of

the child's wellbeing are genuinely safeguarded a standard against which judicial rulings can, and should, be evaluated.

This study, therefore, examines the concept of *Ḥaḍḥānah* through the lens of *maqāṣid al-sharī'ah* as both a normative framework and a medium for dialogue between classical *fiqh*, statutory law, and judicial practice. Specifically, it aims to develop and apply an evaluative model integrating three dimensions (substantive, procedural, relational) with four *maqāṣid* parameters capable of assessing the extent to which Religious Court rulings on *Ḥaḍḥānah* genuinely realise the best interests of the child, using the Tigaraksa Religious Court Ruling No. 6110/Pdt.G/2022/PA. Tgrs and the Bukittinggi Religious Court Ruling No. 525/Pdt.G/2024/PA. Bkt as illustrative cases. In doing so, this study addresses the gap left by prior research, which has either reconstructed the doctrinal hierarchy of *Ḥaḍḥānah*, documented inconsistency in judicial reasoning, or theorised *maqāṣid al-sharī'ah* in the abstract, without integrating these three strands into a single, applicable evaluative framework. The novelty of this study lies in that integration: it does not merely describe the concept of *Ḥaḍḥānah* but develops and demonstrates a concrete tool for evaluating judicial reasoning against the best interests of the child.

2. RESEARCH METHODS

This study employs a qualitative normative-analytical approach combined with case study analysis to examine the extent to which *Ḥaḍḥānah* rulings in Religious Courts realise the best interests of the child. The materials consist of three categories: classical *fiqh* texts concerning *Ḥaḍḥānah*, Indonesian legal instruments including the Compilation of Islamic Law (KHI), the Child Protection Law, and relevant Supreme Court Circular Letters (SEMA), and two purposively selected Religious Court decisions, namely Tigaraksa Religious Court Decision No. 6110/Pdt.G/2022/PA.Tgrs and Bukittinggi Religious Court Decision No. 525/Pdt.G/2024/PA.Bkt. The cases were selected because they represent contrasting patterns of judicial reasoning involving, respectively, custody transfer following maternal remarriage and the approval of a mediation agreement despite indications of harm to the child. The analysis combines conceptual, historical-normative, and doctrinal approaches. The conceptual approach is used to examine the best interests of the child, *Ḥaḍḥānah*, *maqāṣid al-sharī'ah*, and family justice; the historical-normative approach situates the development of *Ḥaḍḥānah* within the classical *fiqh*

tradition and Indonesian legal framework; and the doctrinal approach examines the ratio decidendi of the selected decisions. The findings are evaluated through a three-dimensional framework comprising substantive, procedural, and relational dimensions, filtered through four maqāsid al-sharī'ah parameters: ḥifẓ al-naḥs, ḥifẓ al-'aql, ḥifẓ al-naḥs, and ḥifẓ al-dīn. This framework enables the study to assess not only the formal legal basis of each ruling but also its substantive implications for the child's welfare and its capacity to preserve the child's rights and relationships following divorce.

3. RESULT AND DISCUSSION

3.1. The Best Interests of the Child as the Primary Objective: A Study of the Turāṭ and Fiqh Principles

3.1.1. Ḥaḍḥānah in the Classical Fiqh Tradition

The classical jurist had systematically formulated the concept of hadanah long before the emergence of modern discourse on child protection. Ibn Qudamah in *Al-Mughni* emphasizes that hadanah is the responsibility to protect a child from harm (ḥifẓ al-walad min al-halak), so the choice of carer is based on emotional closeness and the ability to care for the child, not merely on family ties. (Al-Maqdisī, 1985). In line with this, Al-Kāsānī, in *Badā'iy al-Ṣanā'iy*, also states that the mother's right to Ḥaḍḥānah is based on the assumption that she is better able (aqdaru) to provide the affection (al-ḥanān) and care (al-ṣiyānah) that a child needs during early childhood (Al-Khashan, 1986). On the other hand, al-Nawawī, in *Rawḍat* the same time, al-Ṭālibīn, emphasizes that the primary requirements for a custodial parent are the ability to bring up the child (ahliyyat al-tarbiyah) and the absence of any situation that could potentially harm the child (intifā' Al-Maḍarrah) (Al-Nawawi, 1991).

Differences amongst the schools of thought regarding the age limit for ḥaḍāAnd the scholars' Ijtihād in understanding the child's needs. The Hanafi school stipulates that the mother's Ḥaḍḥānah continues until the age of seven for boys and nine for girls. The Maliki school holds that the mother's right remains until the boy reaches adulthood and the girl marries. The Shafi'i and Hanbali schools grant the child who has reached the age of discernment (mumayyiz) the option (takhyīr) to choose their guardian (Januar, 2018). This diversity of views demonstrates that classical scholars regarded the child's circumstances and needs as the primary factors in determining ḥaḍāwell, rather than relying solely on formal provisions.

3.1.2. Normative Foundations: The Qur'an and Hadith

The normative foundation of Ḥaḍhānah is also reflected in the Qur'an and Hadith, particularly through the principles of parental responsibility, protection, and the fulfilment of children's needs. Sūrah At-Tahrīm [66]: 6 establishes the responsibility of parents to protect their families ([Surah At-Tahrim Verse 6](#)), while Sūrah al-Baqarah [2]: 233 emphasises parental responsibility for children's care and welfare, including the fulfilment of their basic needs ([Surah Al-Baqarah Verse 233](#)). These principles indicate that parental responsibility does not cease upon divorce but continues to require arrangements that safeguard the child's welfare ([Ulfah & Syafitri, 2024](#)).

The same orientation can be identified in the hadith concerning the mother's priority in caring for a child before remarriage, which recognises the mother's emotional and caregiving role while making custody conditional upon the child's welfare ([Hadith Abudawud No. 2276](#)). Accordingly, these sources provide a normative foundation for understanding Ḥaḍhānah not merely as a parental entitlement, but as a responsibility directed toward the protection and welfare of the child.

This normative orientation is consistent with the classical fiqh tradition, in which the entitlement to Ḥaḍhānah is not absolute. The priority given to particular carers is connected to their ability to provide care, protection, affection, and appropriate upbringing. Therefore, the central concern underlying Ḥaḍhānah is the child's welfare rather than the formal status of either parent. This principle provides the normative basis for assessing Ḥaḍhānah rulings through the *maqāṣid al-sharī'ah* and best-interests-of-the-child frameworks.

3.2. The Legal Basis of Ḥaḍhānah in Indonesian Positive Law

Divorce does not mean that parental responsibility towards a child ceases. Indonesian positive law clearly regulates this matter through a variety of mutually supportive regulatory instruments, ranging from the Marriage Act to the Compilation of Islamic Law (KHI).

Law No. 1 of 1974 on Marriage, Article 45(2), clearly states that parental responsibility towards a child continues until the child marries or becomes self-sufficient, and, most importantly, that responsibility remains even if the

parents' marriage has ended. This provision precludes anyone from using divorce as a reason to evade their childrearing obligations.

Furthermore, the Compilation of Islamic Law (KHI), Article 156, explains in detail the right to *Ḥaḍhānah*. These provisions are differentiated according to the child's age and development. For children who are not yet capable of discernment, custody is granted to the mother. If the mother is unable to exercise this responsibility or has passed away, the right passes in sequence to the relatives specified in Article 156. For children who have reached the age of discernment, the law permits them to choose to live with either their father or mother, in recognition of the child's mental maturity.

However, custody is not the only issue regulated. The Compilation of Islamic Law also stipulates that all costs relating to *Ḥaḍhānah* and child maintenance remain the responsibility of the father, at least until the child reaches the age of 21 or can support themselves. Even if a judge considers that the holder of the right to *Ḥaḍhānah* cannot guarantee the child's physical or mental well-being, the court has the authority to transfer that right to another party deemed more suitable (Article 156 Letter (c) of the Compilation of Islamic Law).

The protection of children's rights is further strengthened by Law No. 35 of 2014 on Child Protection. Article 26 of this Act emphasises that parents are responsible for caring for, educating, protecting, and nurturing their children, including instilling character and moral values. This responsibility is comprehensive and does not cease simply because the parents' marriage has ended.

At a technical level, several additional provisions provide guidance to judges in determining child maintenance. Supreme Court Circular Letter (SEMA) No. 3 of 2015 recommends that child maintenance be adjusted by an increase of 10–20 per cent annually in response to inflation and the child's increasing needs, excluding education and healthcare. SEMA No. 4 of 2016 also grants judges the authority to determine child maintenance *ex officio*, meaning that judges may determine it even if it is not explicitly requested in the statement of claim, in order to protect the interests of the child. For civil servants, Article 8 of Government Regulation No. 10 of 1983 provides a specific provision concerning the division of salary following divorce.

Underlying these provisions is the fundamental principle of the best interests of the child. This principle was introduced through the Convention on

the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990. In this context, policies and court decisions must prioritise the best interests of the child as a primary consideration.

This is consistent with the principle of *maṣlaḥah* in Islamic law, which requires that every ruling promote the common good and protect the interests of the weaker party (Nabila, 2026). In the context of divorce, children are particularly vulnerable. Judges therefore have not only the authority but also a legal and moral responsibility to consider whether an arrangement concerning custody may adversely affect the child's future (Nelli et al., 2026).

Read together, these instruments perform complementary functions rather than simply repeating one another. The KHI provides the structural framework for determining custody, the Child Protection Law establishes the substantive obligation of care that survives divorce, and the best-interests-of-the-child principle supplies the interpretive standard judges must apply when the formal framework and the child's actual welfare diverge. Mapped onto the *maqāṣid* parameters, the KHI's custody provisions correspond most directly to *ḥifẓ al-nasl*, the Child Protection Law's care obligations to *ḥifẓ al-nafs* and *ḥifẓ al-ʿaql*, and the provisions on child maintenance to the practical sustenance underlying *ḥifẓ al-nafs*. The discussion of positive law therefore provides the normative basis for evaluating the substantive quality of *Ḥaḍḥānah* rulings.

3.3. Family Justice as an Evaluative Parameter

Maqāṣid al-Sharīʿah in the context of *Ḥaḍḥānah* can be operationalised through four primary objectives of child protection, namely *ḥifẓ al-nafs* (protection of life and physical well-being), *ḥifẓ al-ʿaql* (protection of the mind and intellect), *ḥifẓ al-nasl* (protection of lineage and identity), and *ḥifẓ al-dīn* (protection of religious and spiritual development) (Yusuf, 2021). The aim is to establish a comprehensive assessment standard.

The concept of family justice from an Islamic perspective does not merely entail formal equality between parents in disputes over custody. Rather, it centres on justice that prioritises the best interests of the child as the primary consideration while maintaining a balance between the rights and obligations of all parties. As an evaluative parameter, family justice consists of three dimensions: substantive, procedural, and relational. The substantive dimension examines whether the decision genuinely prioritises the child's welfare; the procedural dimension considers whether the process provides adequate

opportunity for the child's interests and voice to be considered; and the relational dimension assesses whether the decision preserves the child's relationship with both parents.

Table 1. Cross-Matrix of Maqāṣid al-Sharī'ah Parameters and Family Justice Dimensions in Ḥaḍhānah Evaluation

The Dimension of Family Justice/Maqāṣid	Ḥifẓ al-Nafs	Ḥifẓ al-'Aql	Ḥifẓ al-Nasl	Ḥifẓ al-Dīn
Substantive (result of the verdict)	Children are free from violence/neglect	Access to education and stimulation	Continuity of family identity	Religious and moral education guaranteed
Procedural (trial process)	There is a verification of the condition of the house (descente)	Mumayyiz's son heard his opinion	Testimony from two parties, not one-sided	Child psychologists involved
Relational (post-decision)	Secure access to both devices	Continuous communication	Proportional division of parenting roles	Continuity of spiritual guidance from both parties

The three dimensions are mutually complementary. The substantive dimension concerns the quality of the outcome, the procedural dimension concerns the fairness and adequacy of the process through which the decision is reached, and the relational dimension concerns the consequences of the decision for the child's continuing relationship with both parents. These dimensions are subsequently examined through the four maqāṣid parameters in order to determine whether a custody ruling genuinely realises the best interests of the child.

3.4. Case Analysis and Application of the Evaluative Model

3.4.1. Tigaraksa Religious Court Ruling No. 6110/Pdt.G/2022/PA. Tgrs

The ruling of the Tigaraksa Religious Court No. 6110/Pdt.G/2022/PA.Tgrs serves as an important reflection on how Religious Courts must consider the best interests of the child, maqāṣid al-sharī'ah, and justice within the family. In this case, a father filed a custody claim for his child, who had not yet reached

the age of discernment, and the Tigaraksa Religious Court accepted the claim on the grounds that the mother had remarried and was living separately from the child, despite Article 105(a) of the Compilation of Islamic Law (KHI), which essentially designates the mother as the holder of Ḥaḍhānah for a child who has not reached the age of discernment.

The decision has been criticised because the judge did not conduct a site visit and only heard evidence from one side. Consequently, the decision has been considered insufficiently reflective of the best-interests-of-the-child principle and maqāṣid al-sharī'ah, particularly ḥifẓ al-naḥs, ḥifẓ al-'aql, and ḥifẓ al-naṣl, which require Ḥaḍhānah to be granted to the party genuinely proven to be capable of guaranteeing the child's overall welfare rather than merely on formal grounds ([Fitria & Azzahra, 2025](#); [Hafis, 2022](#)).

The issue of the mother's remarriage is therefore relevant not because remarriage should automatically terminate custody ([Hasan, 2024](#)), but because it must be assessed in relation to the child's actual welfare. A formal finding of remarriage and separate residence does not by itself establish that the mother is incapable of providing adequate care ([Aqna, 2016](#)). The decisive consideration should be whether the existing or proposed caregiving arrangement protects the child's physical, psychological, intellectual, familial, and religious interests ([Faizzati, 2024](#)).

Viewed through the evaluative model, the case raises concerns primarily in the substantive and procedural dimensions. Substantively, the transfer of custody requires adequate evidence that the father is better able to protect the child's welfare. Procedurally, the absence of a site visit and the reliance on evidence from only one side raise concerns regarding whether the court sufficiently verified the actual circumstances of the child and both prospective carers.

3.4.2. Bukittinggi Religious Court Judgment No. 525/Pdt.G/2024/PA. Bkt

The Bukittinggi Religious Court Ruling No. 525/Pdt.G/2024/PA.Bkt provides a different example of the tension between formal legal compliance and the best interests of the child. The judge approved a mediation agreement granting custody of the child, who was not yet of discerning age, to the mother, even though it emerged during the proceedings that the mother had previously committed acts of physical and verbal abuse against the child and did not deny this.

The judge's reasoning relied on the formal validity of the mediation agreement under Article 1338 of the Civil Code without an in-depth analysis of the mother's suitability as a carer. From the perspective of *maṣlaḥah*, this decision does not adequately reflect the child's best interests because it prioritises formal reconciliation over the prevention of harm. Such an approach raises particular concerns under the principle of *dar' al-mafāsid awlā min jalb al-maṣāliḥ* and *ḥifẓ al-nafs*, which should constitute a fundamental consideration in *Ḥaḍḥānah* disputes (Nabila, 2026).

The presence of alleged physical and verbal abuse requires the court to examine whether the proposed custody arrangement can genuinely protect the child from further harm. In such circumstances, the best interests of the child cannot be determined solely by reference to the parents' agreement. The court must independently assess whether the agreement is compatible with the child's rights and welfare.

The case also demonstrates the importance of an adequate procedural assessment. Where allegations of violence are present, the court's consideration should not be limited to the formal validity of the mediation agreement. Verification of the child's circumstances and, where necessary, professional assessment may be required to determine the potential psychological and physical consequences of the proposed custody arrangement.

3.5. An Evaluative Model for Custody Rulings Based on Maqāṣid and Family Justice

Based on the preceding discussion, this study formulates an evaluative model as a framework for assessing the quality of *Ḥaḍḥānah* dispute rulings in Religious Courts. This model is not intended as a rigid guideline but as a reference for judges and researchers to assess whether a ruling has genuinely prioritised the best interests of the child. The model consists of three mutually supportive dimensions, with *maqāṣid al-sharī'ah* serving as the connecting framework.

a. The Substantive Dimension

The substantive dimension addresses the most fundamental question: does the decision genuinely prioritise the child's well-being in practice? Its operational indicators include: (a) the fulfilment of the child's basic physical and psychological needs (*ḥifẓ al-nafs*), which can be assessed through findings concerning violence, neglect, or hazardous environmental

conditions; (b) the fulfilment of the child's intellectual and educational development needs (*ḥifẓ al-ʿaql*), including consideration of access to education and developmental stimulation; (c) the preservation of the child's identity and lineage (*ḥifẓ al-nasl*); and (d) the fulfilment of the child's right to religious and moral education (*ḥifẓ al-dīn*).

This dimension is not merely about ensuring that the judge has followed the order of priority set out in the KHI. What is important is whether the child's physical and psychological well-being is genuinely safeguarded under the care arrangement determined by the court and whether adequate consideration is given to the child's future welfare.

b. The Procedural Dimension

The procedural dimension examines the court proceedings: was the child given an adequate opportunity to be heard and to have their interests considered? Operational indicators include: (a) whether the direct examination or opinion of a *mumayyiz* child was recorded in the court minutes; (b) whether a site visit (*descente*) or verification of the prospective carer's household conditions took place; (c) whether witness statements were obtained from both parties rather than only one party; and (d) whether a child psychologist or other relevant professional was involved in providing evidence where necessary.

Justice in this dimension relates not only to a fair outcome but also to a process conducted with full respect for the child's status as a person directly affected by the proceedings ([Hafis et al., 2025](#); [Nurafifa et al., 2025](#)).

c. The Relational Dimension,

The relational dimension concerns whether the decision can maintain the child's relationship with both parents even though they have divorced. Its operational indicators include: (a) the presence or absence of arrangements for access rights for the parent who does not hold *Ḥaḍḥānah*; (b) the existence or absence of arrangements for communication between the child and the separated parents; and (c) the existence or absence of a proportional division of caregiving responsibilities between the father and mother, regardless of the formal status of the custodial parent.

These three dimensions are then assessed through the *maqāṣid al-sharīʿah* as a benchmark for the best possible outcome. Each element of the decision is evaluated according to four criteria: whether the decision protects the

child's life (*ḥifẓ al-nafs*), ensures the child's intellectual and cognitive development (*ḥifẓ al-ʿaql*), preserves the child's identity and lineage (*ḥifẓ al-nasl*), and ensures that the child continues to receive adequate religious and moral education (*ḥifẓ al-dīn*). Because these parameters are interrelated, a decision that fulfils only one or two of them cannot be considered to have fully met the standard of the child's best interests

3.6. Example of the Model's Application in the Bukittinggi Religious Court Decision No. 525/Pdt.G/2024/PA. Bkt

The application of the model to the two decisions demonstrates that deficiencies in the best-interests-of-the-child standard may arise in different dimensions.

In the Bukittinggi case, the substantive dimension is not adequately fulfilled because indications of physical and verbal abuse against the child were not followed by sufficient legal consideration concerning the mother's suitability as a carer. This raises a direct concern under *ḥifẓ al-nafs*. The procedural dimension is also problematic because the decision relied heavily on the formal mediation agreement without an independent assessment of the mother's suitability as a carer. From a relational perspective, however, the ruling is relatively unproblematic insofar as there is no evidence that the father's access to the child was denied. Thus, the principal deficiencies lie in the substantive and procedural dimensions.

By contrast, the Tigaraksa ruling reveals a different pattern of deficiency. The procedural dimension is problematic because the judge did not conduct an on-site inspection and relied on evidence from only one party. The substantive dimension is also questionable because the transfer of custody to the father was based primarily on the mother's remarriage and separate residence without sufficiently detailed evidence regarding the comparative caregiving capacity of both parents.

A comparison of the two rulings confirms that failure to meet the best-interests-of-the-child standard can occur through different pathways. In the Bukittinggi case, formal reliance on a mediation agreement overshadowed substantive concerns regarding the child's safety. In the Tigaraksa case, formal considerations relating to remarriage and residence overshadowed the need for a comprehensive assessment of caregiving capacity. The three-dimensional

model is therefore useful for diagnosing more precisely the point at which a custody ruling requires closer scrutiny.

The model does not provide a single definitive answer as to who should be granted custody. Every child has unique needs, every family has its own complexities, and no single formula can resolve every custody dispute. Rather, the model provides a structured framework for judicial reasoning that seeks to prevent judges from becoming trapped in textual formalism while also avoiding overly subjective considerations. In essence, it seeks to reconcile the normative precision of *fiqh* with sensitivity to the real-life circumstances of children appearing before the court.

4. CONCLUSION

Ḥaḍḥānah, within both classical *fiqh* and Indonesian positive law, is fundamentally a responsibility directed toward the welfare of the child rather than merely a right contested between parents after divorce. However, the analysis of Tigaraksa Religious Court Decision No. 6110/Pdt.G/2022/PA.Tgrs and Bukittinggi Religious Court Decision No. 525/Pdt.G/2024/PA.Bkt reveals a gap between this normative orientation and judicial practice. In the Tigaraksa case, custody was transferred primarily on the grounds of the mother's remarriage and separate residence without an adequate assessment of the actual caregiving capacity of the parents, while in the Bukittinggi case, the approval of a mediation agreement did not substantively address evidence of physical and verbal abuse against the child. These findings demonstrate that formal adherence to legal provisions and procedures does not necessarily secure the child's best interests. To address this gap, this study develops a three-dimensional evaluative model—substantive, procedural, and relational—integrated with four *maqāṣid al-sharī'ah* parameters: *ḥifẓ al-nafs*, *ḥifẓ al-'aql*, *ḥifẓ al-nasl*, and *ḥifẓ al-dīn*. Applied to the two cases, the model identifies distinct deficiencies in judicial reasoning and provides a structured and replicable basis for assessing whether Ḥaḍḥānah rulings adequately protect the child's welfare beyond formal custody rules. The study thus contributes an operational framework for evaluating Ḥaḍḥānah rulings through the integration of *maqāṣid al-sharī'ah* and family justice, while its reliance on two purposively selected decisions limits broader generalisation and indicates the need for further research using a larger and more representative body of judicial decisions.

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