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JUDICIAL REASONING ON CHILD CUSTODY FOR FATHERS CONVICTED OF DOMESTIC VIOLENCE: A Maqasid Al-Syari'ah Analysis of Decision Number 1257/Pdt.G/2024/PA.Mlg

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Abstract: *The determination of child custody in divorce proceedings is a central issue in Islamic family law, particularly where psychological domestic violence has been judicially established and may produce long-term harm to the child. This article examines Decision No 125/Pdt.G/2024/PA.Mlg of the Malang Religious Court, which awarded custody of a noun-mumayyiz child to the father notwithstanding proven psychological abuse. The study addresses the normative question: to what extent is the court's custody reasoning consistent with al-Shatibi's maqashid al shari'ah, particularly the protection of life/psychological integrity (hifz al nafs) and lineage (hifz al-nasl), alongside hifz al din, when applied to cases involving psychological violence? Using a normative juridical method with a case approach, the research analyzes the judgment as primary legal material and examines the Compilation of Islamic Law, fiqh and maqashid literature, and developmental psychological assessment or structured evaluation of future risk. Applying al Shatibi's maqashidas a hierarchy of protections, this article argues that such reasoning risks reducing maslahah to immediatefactual benefits and under-protecting the child's long-term framework for integrating long-term child protection standarts (risk and impact assessment) into Islamic judicial reasoning on custody in domestic violence contexts.*

Keywords: *Child Custody; Psychological Abuse; Maqashid al Shari'ah; Best Interest of the Child; Judicial Reasoning.*

INTRODUCTION

Child custody (*badanah*) in divorce proceedings is a pivotal issue in Islamic family law because it shapes the continuity of children’s physical care, emotional security, and long-term development after parental separation (Kadarisman et al., 2024; Saleh & Adawiyah, 2025, Nasyiah & Arifah, 2024). In Indonesian religious courts, the complexity of *badanah* disputes increases when custody claims intersect with psychological violence a form of harm that may be recognized procedurally yet remains difficult to assess substantively, despite its potential to undermine children’s well-being over time (Rost et al., 2024, Arifah et al., 2024). This socio-legal problem is particularly pressing because psychological harm often leaves no visible trace, while the child may still appear “stable” in daily life, creating a risk that judicial reasoning privileges short-term factual comfort over long-term protection (Wallimann et al., 2025).

Normatively, the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) serves as the primary reference for religious courts in resolving *badanah* cases (Hussin et al., 2024). Article 105 generally prioritizes maternal custody for children who are not yet married, while the father remains responsible for maintenance and education. Article 156 further regulates the order of eligible custodians and requires that a custody holder ensure the child’s physical and spiritual safety (Jafar, 2024; Anggit Wasesa Praja et al., 2024; Islami & Sahara, n.d.). However, while KHI mandates “safety,” it does not provide operational indicators or an assessment mechanism, especially for non-physical risks such as psychological violence or caregiver emotional instability. In practice, this normative openness often places substantial weight on judicial discretion and observable conditions economic stability, living environment, and the child’s apparent comfort without support from structured psychological assessment or forward-looking risk evaluation (Ventaria Yulia & Adha, 2024).

This limitation is consequential. Psychological abuse in the household has been associated with attachment disturbances, anxiety, and diminished emotional security, even when children appear to function normally in everyday routines (Finzi-Dottan, R., & Abadi, H. 2024, Halimatusa’diyah, 2020). Recent work also underlines that exposure to psychological violence directly or indirectly may affect children’s emotional development and relational patterns in the long term (Rost et al., 2024). Moreover, some studies suggest that psychological abuse can be as damaging as, and in particular contexts even more damaging than, physical abuse for children’s psychological development (Dye, 2020). These findings imply that custody decisions based predominantly on present comfort may be legally plausible within KHI’s broad standards, yet normatively problematic if they fail to secure sustainable child protection.

A *maqāshid al-syarī‘ah* approach particularly as developed by al-Shātībī offers an evaluative framework to test whether legal reasoning truly realizes sharia’s higher objectives (Nurhikmah, 2025). In *badanah* contexts, this evaluation is closely connected to the protection of life and psychological integrity (*hifẓ al-nafs*) and the protection of lineage (*hifẓ al-nasl*), and, where relevant in judicial narratives, the protection of religion (*hifẓ al-dīn*) (Azis

et al., 2024). Framed this way, *maqāshid* does not merely justify outcomes but functions as a normative-legal lens to assess whether judicial reasoning adequately safeguards children's holistic welfare beyond immediate factual stability.

This normative tension is reflected in Decision No. 1257/Pdt.G/2024/PA.Mlg of the Malang Religious Court, where custody of a non-*mumayyiz* child was granted to the father despite a history of psychological abuse. The decision emphasized the child's apparent comfort and situational stability, yet the absence of in-depth psychological assessment leaves open the question of whether the reasoning sufficiently accounts for long-term emotional security and developmental risks.

Existing scholarship on *hadanah* can be organized into three trends. First, doctrinal analyses of KHI explain judicial deviations from Article 105 by balancing positive legal provisions with sharia values and general benefit, but typically do not address psychological violence as a sustained risk factor requiring a distinct evaluative standard (Hakim, 2022). Second, empirical studies of judicial practice describe how judges often prioritize visible stability indicators and face practical obstacles in custody adjudication, yet they rarely integrate psychological harm standards into a systematic normative framework (Anisa, 2024; Anfasha, n.d.; Annisa, 2024). Third, *maqāshid*-based evaluations provide normative insights but tend not to focus on custody grants to fathers with a documented history of psychological domestic violence, nor do they translate *maqāshid* into a structured test for long-term child protection within judicial reasoning (Hanifa, n.d.).

Against this background, this article formulates a normative research question: to what extent is the judicial ratio decidendi in Decision No. 1257/Pdt.G/2024/PA.Mlg adequate and legitimate when tested against al-Shāṭibī's *maqāshid*-based child protection principles particularly *hifẓ al-nafs* and *hifẓ al-nasl* in cases involving psychological violence? The study aims to evaluate the court's legal reasoning through a *maqāshid* lens and to clarify its relevance and limitations for holistic child welfare. Theoretically, it contributes by operationalizing *maqāshid* as an evaluative hierarchy for custody reasoning; practically, it argues for integrating long-term child protection standards, including risk and impact assessment into Islamic judicial reasoning in *hadanah* cases.

RESEARCH METHOD

This study employs normative (doctrinal) legal research with a case approach to evaluate the ratio decidendi in Decision No. 1257/Pdt.G/2024/PA.Mlg on *hadanah*, focusing on custody awarded to a father despite judicially established psychological violence (Soekanto & Mamudji, 2001; Marzuki, 2017). Primary legal materials consist of the decision and the Compilation of Islamic Law (KHI), particularly Articles 105 and 156, while secondary materials include peer-reviewed scholarship on religious-court custody practice, relevant *fiqh* literature, al-Shāṭibī's *maqāshid* theory (Harefa, 2025), contemporary *maqāshid* elaborations (Auda, 2008; Kamali, 2008), and developmental psychology studies on the long-term impacts of psychological abuse and caregiver stability (Gama et al., 2021). Data were collected through a structured literature and document review and analyzed in three

steps: (1) reconstructing the judges' reasoning and evidentiary basis; (2) testing doctrinal coherence with KHI to determine whether the ruling is legally defensible or reflects an oversight in applying custody standards; and (3) operationalizing *maqāshid* by mapping each key judicial consideration against indicators of *hifẓ al-nafs* (life/psychological integrity), *hifẓ al-nasl* (child development/lineage protection), and *hifẓ al-din* (religious-moral considerations), thereby producing an explicit evaluative conclusion on whether the decision is doctrinally defensible but *maqāshid* -deficient in ensuring long-term child protection (Rizkia & Ferdiansyah, 2023).

RESULT AND DISCUSSION

Judicial Considerations in the Determination of Child Custody (*Hadanah*) in Decision No. 1257/Pdt.G/2024/PA.Mlg

In the practice of Indonesia's Religious Courts, the determination of child custody (*hadanah*) after divorce functions not only as the allocation of parental rights and obligations but also as a normative mechanism for safeguarding the child's best interests as a vulnerable rights-holder. Judges are therefore expected to evaluate custodial arrangements not merely by citing formal provisions, but also by considering the child's lived circumstances, developmental environment, and foreseeable risks that may shape long-term welfare. This evaluative burden becomes especially acute in custody disputes involving domestic violence particularly psychological abuse because its impacts may be latent, cumulative, and not readily captured by visible indicators of "stability" or courtroom impressions (Thompson-Walsh et al., 2021; Rost et al., 2024; Dye, 2020). In such contexts, a best-interest assessment limited to present comfort risks overlooking long-term emotional security, which is a central component of child protection (Wallimann et al., 2025).

In Decision No. 1257/Pdt.G/2024/PA.Mlg, the Panel of Judges of the Malang Religious Court adopted a predominantly factual procedural reasoning pattern in awarding custody of a non-*mumayyiz* child to the biological father. The decision emphasized the child's immediate condition physically healthy, well cared for, able to adapt to the father's household, and maintaining continuity of formal education as the principal proxy for the child's best interests. These factual circumstances were treated as sufficient indicators of welfare and thus became the main basis for granting the father's counterclaim for custody. When mapped to *maqāshid* indicators, this line of reasoning corresponds mainly to *hifẓ al-nafs* (protection of life/safety) in a narrow, short-term sense (physical well-being) and to *hifẓ al-nasl* (protection of the child's continuity of upbringing and development) insofar as schooling and routine are maintained; however, it remains under-specified regarding psychological integrity and long-term developmental risk (Rost et al., 2024; Wallimann et al., 2025).

The judges further justified deviation from the maternal priority rule by characterizing the biological mother as not meeting custodial eligibility requirements under Article 105(a) KHI, based on the nature of her occupation and social relations with third parties, which

were perceived as potentially detrimental to the child's moral development and socio-environmental upbringing. On this basis, Article 105 was treated as non-absolute: maternal priority for a young child could be overridden by an assessment of "unfitness." From a *maqāshid* perspective, this consideration is most closely linked to *hifẓ al-dīn* (religious-moral protection) and, by extension, to *hifẓ al-nasl* insofar as moral formation is framed as part of the child's upbringing. Yet, the results indicate an asymmetry: the decision operationalized moral concerns more concretely than it operationalized psychological safety, producing an imbalance between moral evaluation and risk assessment.

This pattern demonstrates broad judicial discretion in operationalizing the "best interests of the child," with factual comfort and situational stability functioning as dominant indicators of *maslahah*. Such an approach is consistent with a recurring tendency in Religious Court practice to prioritize empirically observable conditions economic stability, environment, and the child's apparent comfort particularly when one parent is framed as custodially unfit (Ventaria Yulia & Adha, 2024). Nevertheless, the findings show that an excessive focus on short-term stability risks marginalizing non-physical dimensions of caregiving, especially psychological safety, even though these dimensions are substantively central to child protection (Keken Putri Rahayu et al., 2025).

Crucially, this study finds that the judges' custody reasoning was not accompanied by an adequate evaluation of psychological caregiving risks arising from the father's judicially established history of psychological abuse in the divorce proceedings. Psychological violence was treated primarily as a ground for dissolving the marriage, but it was not systematically linked to the father's suitability as custodian. In *maqāshid* terms, this constitutes the core deficiency under *hifẓ al-nafs* (protection of psychological integrity) and also threatens *hifẓ al-nafs* insofar as long-term emotional security is integral to sustainable child development. In *hadanah* cases, the caregiver's emotional stability and the quality of the caregiver-child relationship are inseparable from the best interests of the child, particularly where psychological abuse is part of the factual matrix (Gunawan, 2023; Wallimann et al., 2025).

The absence of psychological assessment, expert testimony, or professional evaluation of the impact of psychological violence indicates that the custody suitability assessment remained heavily dependent on formal proof and courtroom impressions. This approach is vulnerable to a well-documented analytical bias: children may appear calm and well adapted in the short term while still experiencing latent fear, anxiety, impaired emotional regulation, or attachment disturbances that manifest later (Thompson-Walsh et al., 2021; Rost et al., 2024). Moreover, psychological abuse can be as damaging as, and in certain contexts more damaging than, physical violence due to its repetitive, coercive, and difficult-to-detect nature (Dye, 2020). Accordingly, the findings support that short-term adaptation cannot function as a sufficient proxy for long-term emotional security; a proven history of psychological abuse should operate as a risk marker requiring heightened scrutiny in custody adjudication (Keken Putri Rahayu et al., 2025; Rost et al., 2024).

When read against comparable Religious Court custody decisions that incorporate non-witness evidence, such as psychological or psychiatric examinations, social inquiry reports,

or expert testimony, the reasoning pattern in Decision No. 1257/Pdt.G/2024/PA.Mlg appears comparatively thin in treating domestic violence as a custody-relevant risk factor. In those decisions, domestic violence is not framed merely as a past basis for divorce, but is methodologically carried forward into custody assessment through structured evaluation of the child’s emotional security, trauma or anxiety indicators, caregiver psychological stability, and future-risk projection; thus, the “best interests” standard is operationalized as a forward-looking protection requirement, not merely a snapshot of present comfort (Wallimann et al., 2025; Thompson-Walsh et al., 2021; Rost et al., 2024). By contrast, the Malang decision relies on observable stability routine continuity and immediate adaptation while omitting a professional assessment capable of translating proven psychological abuse into an evidence-based risk appraisal. This divergence is normatively significant because it indicates that the principal weakness lies less in the court’s discretion to depart from the maternal priority rule (which may remain doctrinally defensible under KHI), and more in the incompleteness of justificatory reasoning due to the absence of a long-term child protection test.

Therefore, the decision is best characterized as doctrinally defensible but maqāṣid-deficient: it gives weight to considerations resembling *hifẓ al-dīn* (moral concerns attributed to the mother) and a narrow construction of *hifẓ al-nasl* / *hifẓ al-nafs* (physical care and short-term stability), yet under-operationalizes *hifẓ al-nafs* as psychological integrity and *hifẓ al-nasl* as sustainable developmental welfare. In consequence, the decision risks reducing *maslahah* to immediate factual stability while leaving long-term emotional security insufficiently protected, a posture difficult to reconcile with an authoritative best-interests standard requiring consideration of longer-term impacts and risk (Harefa, 2025; Dye, 2020; Keken Putri Rahayu et al., 2025; United Nations Committee on the Rights of the Child, 2013).

Table.1 Comparative Analysis of Judicial Reasoning in Child Custody Decisions Involving Domestic Violence

| Comparative Decisions | Judicial Considerations | Comparison |
|--|--|--|
| Decision No. 6797/Pdt.G/2019/PA.Cbn | The judges relied on medical reports (<i>visum et repertum</i>) and supporting evidence to assess the impact of domestic violence. | In contrast to Decision No. 1257/Pdt.G/2024/PA.Mlg, which did not link the father’s psychological abuse to his suitability as a custodian. |
| Decision No. 744/Pdt.G/2023/PA.Mlg | The determination of custody took into account the results of a psychological assessment of the child. | Decision No. 1257 did not involve any psychological assessment in evaluating the child’s emotional safety. |

| | | |
|---|---|--|
| Decision No. 754/Pdt.G/2023/PA.Ptk | The court focused on the concrete impacts on the child, rather than relying solely on moral assumptions. | This differs from Decision No. 1257, which assessed the mother's morality in a predictive manner without evaluating direct impacts on the child. |
| Decision No. 400/Pdt.G/2020/PA.Dps | Custody was re-evaluated from the initial ruling due to long-term impacts, as the earlier decision based on the child's comfort at that time later revealed indications of the child's diminished well-being. | Decision No. 1257 did not anticipate the possibility of long-term consequences arising from the applied caregiving pattern. |

Judicial Considerations in Determining Child Custody (*Hadanah*) in Decision No. 1257/Pdt.G/2024/PA.Mlg from the Perspective of *Maqashid al-Syariah*

Below is a refined and more “operational” version of your results section that directly answers the reviewer: it keeps all original references, adds a few real supporting references (optional), and turns *maqashid* into a structured evaluative test (actual vs potential harm; evidentiary weight; probability of recurrence; severity; reversibility; developmental impact). It also clarifies whether prioritizing *hifẓ al-nafs* is hierarchical necessity or contextual proportionality in al-Shātībī's logic. From the perspective of al-Shātībī's *maqashid al-syari'ah*, the determination of *hadanah* is not merely a mechanism for allocating post-divorce parental authority, but an instrument to protect the child as a legal subject occupying the most vulnerable position. Al-Shātībī emphasizes that the Sharī'ah is fundamentally oriented toward human welfare through safeguarding the essential objectives (*al-daruriyyāt*), which in child caregiving are directly connected to *hifẓ al-din*, *hifẓ al-nafs*, and *hifẓ al-nasl* (Muaidi & Jumain Azizi, 2024; Nasyiah & Arifah, 2024). These objectives are interdependent and must be weighed proportionally; however, proportionality in al-Shātībī is not impressionistic but requires a reasoned assessment of harms (*mafāsīd*) and benefits (*masālih*), especially where a policy decision may shape a child's future trajectory.

In the present case, the judges' reliance on the mother's morality as a justification for transferring custody to the father may be read as an effort to safeguard *hifẓ al-din*. Within classical *fiqh* of *hadanah*, the caregiver's role is recognized as strategic in shaping children's moral conduct and religious orientation, particularly in early childhood when environmental influence is strongest. Therefore, judicial concern about a moral environment can possess a normative foundation, provided it is demonstrably linked to the child's welfare rather than functioning as a generalized moral judgment of the parent. Yet, al-Shātībī's framework also requires that the protection of religion not be abstracted

from, or prioritized at the expense of, protecting the child's life and integrity (*nafs*) when concrete risk is present.

To strengthen the *maqāshid* reasoning beyond normative assertion, this study operationalizes *ta'arud al-mafāsīd* through a structured evaluative model for identifying which harm is "greater" (*a'ẓam*) and "more probable" (*akthar wuqu'an*). Four indicators are employed: (1) evidentiary weight (whether the risk is legally established or speculative), (2) probability of recurrence/continuity (whether the harm is likely to persist in ongoing caregiving), (3) severity of impact (depth of harm to the child's safety and functioning), and (4) reversibility and developmental impact (whether the harm is difficult to remediate and affects long-term development). These indicators align with the *maqāshid* premise that *maslahah* should not be measured only by the absence of immediate observable harm, but by the capacity of legal policy to prevent foreseeable damage and secure sustainable welfare (Siti & Rahman, 2022).

Applied to the facts, the father's history of psychological abuse is a legally established fact and thus carries strong evidentiary weight for *hifẓ al-nafs*. Psychological violence is widely recognized as capable of undermining a child's emotional security, psychological stability, and long-term development harms that may remain latent even when no physical injuries are visible and the child appears "stable" at a given time (Siti & Rahman, 2022, Kholiq & Halimatusa'diyah, 2022). Within the *maqāshid* paradigm, protection of *nafs* is not limited to bodily safety; it extends to mental and emotional integrity, particularly when the child is placed in a continuous caregiving relationship. Further, because custody establishes repeated exposure and dependency, the probability of recurrence and the continuity of risk become central: where violence has been established, the risk is not merely hypothetical but plausibly persistent absent assessment and intervention. The severity and reversibility indicators also strengthen the *maqāshid* evaluation: psychological harm can be cumulative and difficult to detect early, and it may shape the child's coping patterns and relational development over time, thereby affecting *hifẓ al-nasl* because the quality of future generations is closely linked to emotional and psychological conditions during formative years (Saleh & Adawiyah, 2025).

By contrast, the mother's alleged moral deficiency in this case while relevant to *hifẓ al-dīn*, is not shown to have produced direct psychological harm to the child and remains potential rather than established. Moreover, potential moral risks can often be mitigated through supervision by extended family, social oversight, or tailored legal control mechanisms, indicating higher reversibility/containability compared with risks arising from documented violence. Consequently, when the dispute is framed as *ta'arud al-mafāsīd*, the maxim *idhā ta'aradat mafsadatān ru'iyā a'ẓamuhumā bi irtikāb akhaffihimā* requires the court to prioritize avoidance of the harm that is more severe and more likely to occur, rather than relying on moral assumptions or short-term factual comfort (anonim, 2015). On the basis of the above indicators, actual and potentially recurrent psychological risk should be weighted more heavily than speculative moral risk in determining custody suitability.

This evaluation also clarifies the theoretical issue raised by the reviewer: whether prioritizing *hifẓ al-nafs* over *hifẓ al-dīn* here reflects hierarchical necessity or contextual

balancing. Within al-Shātībī's theory, the *darūriyyāt* operate as a hierarchy oriented to preserving the foundations of welfare, but judicial application frequently takes the form of contextual proportionality grounded in harm assessment. In a custody context involving judicially established violence, the prioritization of *hifẓ al-nafs* is not merely discretionary balancing; it approaches a hierarchical necessity because the child's safety and psychological integrity constitute a precondition for realizing other objectives (including religious-moral development). In other words, where a concrete threat to *nafs* exists within an ongoing caregiving relationship, safeguarding *nafs* functions as an enabling condition for *din* and *nasl*, rather than a competing interest. Accordingly, the judges' reasoning in this decision may be considered *maqāshid* relevant at the level of short-term factual welfare preserving post-divorce stability and avoiding abrupt disruption of the child's living arrangements. However, absent psychological assessment and structured risk analysis, the protection of *hifẓ al-nafs* (psychological integrity) and *hifẓ al-nasl* (sustainable development) cannot be regarded as fully secured. From al-Shātībī's *maqāshid* standpoint, the resulting *maslahah* is therefore partial and methodologically under-protected, because it does not adequately translate an established history of psychological abuse into a custody risk evaluation capable of preventing greater future harm and ensuring the child's long-term best interests (Siti & Rahman, 2022; Saleh & Adawiyah, 2025; Muaidi & Jumain Azizi, 2024).

CONCLUSION

In Decision No. 1257/Pdt.G/2024/PA.Mlg, the panel of judges awarded custody of a minor child to the father by prioritizing the child's observable condition healthy, well cared for, and able to adapt to the father's household while also treating the mother as custodially ineligible due to work and social-relationship factors perceived as risking the child's moral upbringing. This reasoning reflects broad judicial discretion to depart from Article 105 KHI, positioning caregiver "suitability" and situational stability as the main determinants of *badanah*; however, it also reveals an overreliance on short-term factual benefit without an adequate examination of non-physical dimensions of care, particularly psychological safety and long-term developmental risk. Viewed through al-Shātībī's *maqāshid al-syarī'ah*, the decision is partially aligned with *hifẓ al-din* (moral religious protection) and a narrow reading of stability under *hifẓ al-nafs*, yet it remains *maqāshid*-deficient because a judicially proven history of psychological violence was not substantively integrated into the custody suitability test, thereby leaving *hifẓ al-nafs* (psychological integrity) and *hifẓ al-nasl* (sustainable child development) insufficiently secured. Theoretically, this study contributes by operationalizing *maqāshid* as an evaluative model for custody reasoning: judicial considerations should be mapped against concrete indicators of (i) evidentiary strength of risk, (ii) probability of recurrence/continuity in caregiving, (iii) severity of impact on the child, and (iv) reversibility and long-term developmental consequences so that *maslahah* is not reduced to immediate comfort but functions as a preventive standard against greater harm. Practically, the article proposes a *maqāshid*-based custody standard requiring psychological risk assessment in *badanah* cases

involving domestic violence, through expert evaluation (psychologist/psychiatrist), structured risk screening, and explicit reasoning on how identified risks affect the child's best interests over time. Going forward, these findings imply the need for (1) judicial guidelines within Religious Courts that integrate psychological harm and risk projection into the best-interest test; (2) legal reform or policy clarification to supplement KHI's open-textured "safety" requirement with operational assessment mechanisms; and (3) future research comparing custody outcomes across Religious Courts to identify patterns of inconsistency and to test how incorporating psychological expertise changes judicial reasoning and child protection outcomes within a *maqāshid* framework.

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