

The Impact Of Parental Divorce On Children's Rights According To The Perspective Of Islamic Law Through The Maqashid Syariah Approach (Study Of Decision Number 2560/Pdt. G/2022/Pa. Bks)

Indah Choiriyah¹, Musyaffa Amin Ash Shabah² Suprihatin³, Agus Supriyanto⁴
¹²³⁴Islamic University 45, Indonesia

musyaffaamin@unismabekasi.ac.id (corresponden)

Received: 28-06-2025

Revised: 30-06-2025

Accepted: 30-06-2025

Published: 30-06-2025

DOI:

Keywords:

Divorce
Children's Rights in Islam
Maqashid Syari'ah

ABSTRACT

This thesis aims to find out the basis of the Panel of Judges' considerations in the Decision of the Bekasi Religious Court Number 2560/Pdt.G/2022/PA.Bks in the Divorce Lawsuit for the accumulation of hadlonah and child support, and to find out the basis of Islamic Law in this decision. This research aims to analyze the impact of parental divorce on children's rights based on an Islamic legal perspective using the Maqashid Syariah approach, with a case study of Decision Number 2560/Pdt.G/2022/PA.Bks. Maqashid Syariah are principles in Islamic law that aim to protect five basic human interests: religion, soul, reason, lineage and property. In this context, research focuses on how the protection of children's rights, including rights to custody, education, living and psychological well-being, is considered and applied in divorce decisions. The research method used is a qualitative approach with juridical-normative analysis of Decision Number 2560/Pdt.G/2022/PA.Bks. Data was obtained through studying court decision documents and literature related to Islamic law and Maqashid Syariah. The analysis was carried out by examining how Maqashid Syariah principles were applied in the decision to ensure the protection and welfare of children. The research results show that in this decision, the court decided that child care was under the responsibility of the mother, while the father was obliged to provide maintenance. This decision is based on Maqashid Syariah principles which emphasize the importance of protecting the lives and welfare of children. Apart from that, this decision also takes into account the psychological aspects of the child to reduce the negative impact of divorce.

Kata Kunci:

Perceraian
Hak Anak dalam Islam
Maqashid Syariah

ABSTRAK

Tesis ini bertujuan untuk mengidentifikasi dasar pertimbangan Panel Hakim dalam Putusan Pengadilan Agama Bekasi Nomor 2560/Pdt.G/2022/PA.Bks terkait gugatan cerai atas akumulasi hadlonah dan nafkah anak, serta untuk mengidentifikasi dasar hukum Islam dalam putusan tersebut. Penelitian ini bertujuan untuk menganalisis dampak perceraian orang tua terhadap hak-hak anak berdasarkan perspektif hukum Islam menggunakan pendekatan Maqashid Syariah, dengan studi kasus Putusan Nomor 2560/Pdt.G/2022/PA.Bks. Maqashid Syariah adalah prinsip-prinsip dalam hukum Islam yang bertujuan untuk melindungi lima kepentingan dasar manusia: agama, jiwa, akal, keturunan, dan harta benda. Dalam konteks ini, penelitian berfokus pada bagaimana perlindungan hak anak, termasuk hak asuh, pendidikan, tempat tinggal, dan kesejahteraan psikologis, dipertimbangkan dan diterapkan dalam putusan perceraian. Metode penelitian yang digunakan adalah pendekatan kualitatif dengan analisis yuridis-normatif terhadap Putusan Nomor 2560/Pdt.G/2022/PA.Bks. Data diperoleh melalui studi dokumen putusan

pengadilan dan literatur terkait hukum Islam dan Maqashid Syariah. Analisis dilakukan dengan memeriksa bagaimana prinsip-prinsip Maqashid Syariah diterapkan dalam putusan untuk memastikan perlindungan dan kesejahteraan anak. Hasil penelitian menunjukkan bahwa dalam putusan ini, pengadilan memutuskan bahwa pengasuhan anak menjadi tanggung jawab ibu, sementara ayah diwajibkan untuk memberikan nafkah. Putusan ini didasarkan pada prinsip-prinsip Maqashid Syariah yang menekankan pentingnya melindungi kehidupan dan kesejahteraan anak. Selain itu, keputusan ini juga mempertimbangkan aspek psikologis anak untuk mengurangi dampak negatif perceraian.

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A. Introduction

Allah SWT has created men and women as perfect beings. The purpose of human creation is none other than to worship Allah SWT, men and women live side by side to help each other in various kinds of worship (Ash Shabah, 2021). One of the noble worship that is the best means to worship Allah SWT is marriage. Marriage or marriage is a contract that has been established by the Shari'ah so that a man can take advantage of doing *istimta'* with a woman or vice versa. In marriage will give birth to many goodness which is the worship of a servant to Allah SWT. Marriage is also organized by the Prophet PBUH and is a complement to the religion of a believer. Marriage instills in a person several noble morals, including selflessness, love of neighbor, and having a sense of responsibility (Lestari, t.t.). And that is what each couple wants to create so that they provide comfort to each other so that the husband works hard, exerts all his power and energy to get strength to get sustenance for his wife and children. And a wife does not leave peace (in her house) except peace for her husband and children.

The difference is sometimes intractable with Marriage is a sacred bond between a man and a woman. A bond that unites two human figures who are full of differences in various perspectives of life. The differences that will later become beautiful flowers and can also be a thorn in their domestic journey. Because it is good, this difference of viewpoints on something will later become a problem in the household. The problems that occur in the household are so diverse. Starting from family problems, economy, childcare, work and so on.

The problems that occur are not only as worship, marriage also has noble goals in life. The goal is to make marriage full of blessings and always maintain the bond. Among them is to create peace for each couple. Calmness that will have a great effect on the psychology of husband and wife. Because with calmness a person can optimize himself in carrying out each of his obligations (Baits, 2017).

B. Methods

The research conducted is a type of legal research that is categorized in Normative research (Arfa & Marpaung, 2016). Normative Science (the science of norms), the science of law directs its reflection to basic norms that are given concrete form in norms determined in certain fields, for example how the common pattern of life between humans is based on the norms of justice. These norms will in turn be embodied in concrete regulations for a particular society

1. The Statue Approach (Marzuki, 2008, hlm. 93) is an approach that is carried out to various legal rules related to the Impact of Parental Divorce on Children's Rights According to the Perspective of Islamic Law, namely in the context of involving the analysis and application of various legal rules that have been stipulated in Islamic law. This approach emphasizes the interpretation and implementation of Islamic law

2. The Case Approach aims to study the application of legal norms or rules carried out in legal practice. Especially regarding cases that have been decided as can be seen in the case of divorce lawsuits for the accumulation of hadlonah and child support in case number 2560/Pdt.G/2022/PA.Bks (Efendi & Ibrahim, 2018)

C. Result and Discussion

1. Data Description

1.1 Case Position

The subject matter of this case is a case regarding a divorce lawsuit caused by the husband behaving nusyuz, committing an affair in the marriage bond.

1.2 Sitting Matter

That the subject matter of this decision is the case regarding the Divorce Lawsuit for the accumulation of hadlonah and child support, the application for Divorce Lawsuit for the accumulation of hadlonah and child support is submitted by **the Plaintiff (Wife)**, 40 years old, Muslim, High School Teresque Education, private employee employment, XXX place of residence, and **the Defendant (Husband)** 37 years old Muslim, private employee occupation formerly XXX and currently no longer known inside and outside the territory of the Republic of Indonesia (Ghoib). This case was registered on June 18, 2022 at the Bekasi Religious Court Clerk with registration number 2560/Pdt.G/PA. Bks, as for the chronology, the plaintiff and the defendant have held a religious marriage on March 7, 2015, in the presence of officials of the Religious Affairs Office of Jatiasih District, Bekasi City, as in the Citation of the Marriage Deed Number: **201/44/III/2015**, that after marriage the Plaintiff and the Defendant are married and reside in the house of the Plaintiff's parents, and the marriage of the Plaintiff and the Defendant has been going on for 7 years, and have mixed as befits husband and wife and have been blessed with 1 (one) child.

1.3 Conference Process

On the day of the trial, on the day and date of the trial that has been set, the Plaintiff is present accompanied by a lawyer, while the Defendant even though he has been officially and appropriately summoned by the bailiff of the Bekasi Religious Court to appear at the trial has never been present without a valid reason and has not sent another person as his representative or proximate, then the examination continues without the presence of the Defendant (Republic of Indonesia, 1974), that then the Plaintiff's lawsuit was read out whose contents were still ordered by the Plaintiff and the reason the Plaintiff filed his lawsuit postulated that the Plaintiff's household with the Defendant had often quarrels since 2018 because the Defendant had another dream woman.

1.4 Judge's Considerations and Decisions

In deciding the case of the Divorce Lawsuit for the Accumulation of Hadlonah and Child Support, the Panel of Judges granted the Plaintiff's Lawsuit to be ratified, with legal considerations including (Republic of Indonesia, 1974):

- a. Considering the provisions of article 73 paragraph 1, law Number 7 of 1989, which has been amended by law Number 3 of 2006 and the second amendment by law Number 50 of 2009, jo article 129 of the Compilation of Islamic Law, the Plaintiff filed a divorce lawsuit in accordance with the provisions in the intention (P.1) therefore the Bekasi Religious Court is authorized to examine and decide the case aquo, that the Plaintiff is in the position of the Defendant's legal wife, therefore the Plaintiff is the party to the lawsuit and has legal standing in this case.
- b. That based on the Defendant has been officially summoned and is appropriate to appear in court in accordance with the provisions of article 26 paragraph (1) of Government Regulation Number 9 of 1975 jo article 138 paragraph (1) Compilation of Islamic Law to the address as in the lawsuit but never present without a valid reason and also not send another person as

his representative or attorney, Therefore, the Panel of Judges is of the opinion that the absence of the Defendant without a valid reason is considered by the Defendant not to object to the postulation of the Plaintiff's lawsuit and the Plaintiff's lawsuit is not against the law, based on the provisions of article 126 of the HIR, this case can be examined and decided without the presence of the Defendant or *verstek*. To corroborate the allegations of his lawsuit, the Plaintiff has submitted evidence letter (P.2). in the form of a photocopy of the marriage certificate excerpt on behalf of the Plaintiff and the Defendant has been *nazegheln* with sufficient stamp.

- c. Considering that the Defendant has been officially summoned and pledged to face the trial in accordance with the provisions of article 26 paragraph (1) of government regulation number 9 of 1975 JO. Article 138 paragraph (1) compilation of Islamic Law to the address as in the lawsuit, but never present without a valid reason and also not sending another person as his representative or attorney, Therefore, the Panel of Judges is of the opinion that the absence of the Defendant without a valid reason is considered that the Defendant will not submit his right of rebuttal, this also means that the Defendant does not object to the postulates of the Plaintiff's lawsuit and the Plaintiff's lawsuit is not against the law
- d. Considering that based on the above, the Lawsuit to file a Lawsuit against the Defendant on the basis of quarrels that occur continuously and it is impossible to live in harmony in one marriage, has fulfilled the elements of article 19 of Government Regulation No. 9 of 1973 and article 116 of the Compilation of Islamic Law so that based on the law to declare this divorce lawsuit is granted.
- e. Considering that the evidence of the witness submitted by the Plaintiff named XXX has been heard separately in accordance with his testimony under oath, in essence, the Panel of Judges ruled: the two witnesses knew the substance of this case, both heard the quarrel between the Plaintiff and the Defendant since 2018 because the Defendant was in a relationship with another woman and had a child, has been reconciled to not succeed in even separating the house since February 2022, thus the statements of the two witnesses are in accordance with each other, so that they have met the material requirements to be accepted as per Articles 171 and 172 of the HIR.

2. Research Findings

Based on the description above, the author found that there was a desire to legalize the Plaintiff's marriage with the Defendant and the Plaintiff's discomfort with the Defendant As for the reasons in the lawsuit in accordance with Article 116 of the KHI, divorce can occur because ("PP_NO_9_1975.pdf", n.d.):

1. One of the parties commits adultery or becomes a drunkard, stuffer, gambler and so on which is difficult to cure;
2. One party leaves the other party for 2 (two) consecutive years without the consent of the other party and without a valid reason or for any other reason beyond his or her ability
3. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place

The facts of the research findings in the decision Number 2560/Pdt.G/2022/PA. Bks:

- a. Plaintiff's Desire to Break Up Marriage on Grounds Breaking up a marriage or divorce can be caused by a variety of reasons, which are often very personal and complex. Here are some common reasons that often form the basis of decisions to divorce, incompatibility or irreconcilable Differences
- b. Couples feel that they no longer have the same similarities or life goals.
- c. There are differences in values, beliefs, or outlooks on life that cannot be united
- d. There is a difference in values, beliefs, or outlook on life that cannot be united, Infidelity or Infidelity, one of the spouses has an affair or an extramarital relationship The existence of emotional or physical infidelity that damages trust.

- e. The judge has carried out judicial duties according to procedures and in the procedural law it has been carried out in the examination through mediation

3. Research Analysis

The judge used 2 legal bases in considering case number 2560/pdt. G/20202PA. Bks where the case contains a divorce lawsuit caused by the husband's claim that the accumulation of hadlonah and child support, as explained by the decision Number 2560Pdt.G/2022/PA. Bks. is about the divorce case of talak accumulation of child custody filed by the Plaintiff (wife) on the grounds of divorce caused by *musyuz* behavior carried out by the husband, the Applicant filed the lawsuit also because of the bad influence of the Petitioner's ex-husband's behavior on the child's life. The child was born in 2015 and his age is considered not *mumayyiz* since this case was submitted to the Bekasi Religious Court. In this case, the Bekasi Religious Court is heard because the domicile of the Defendant (husband) is in the Bekasi area.

This is clearly the relative competence of the Bekasi Religious Court in handling cases in accordance with Article of Law Number 1 of 1974 concerning Marriage: Article 39 states that divorce can only be carried out in front of the Court session after the Court concerned has tried to reconcile the two parties and has not succeeded. Article 39 Paragraph (2) mentions the acceptable grounds for divorce, such as adultery, neglect, imprisonment, violence, incurable diseases, and persistent disputes. then the application is submitted to the Court whose jurisdiction includes the Respondent's place of residence. In the case of the trial at the Bekasi Religious Court, the Panel of Judges has sought peace between the two parties. This effort was made because it was in accordance with Article 39 paragraph (1) and paragraph (2) of Law Number 1 of 1974 (“Cara Pengajuan Gugat Cerai Menurut Undang-undang Perkawinan”, 2024). The filing of a divorce or talaq lawsuit must meet the provisions of the applicable law, but unfortunately in this peace effort was not achieved.

1. Review of Maqasid Shari'ah in Decision Number 2560/Pdt.G/2022/PA.Bks.

In Decision Number 2560/Pdt.G/2022/PA. Referring to the facts used by the Panel of Judges as a consideration to determine that child custody falls to the Plaintiff (wife), the author reviews that the decision of the Panel of Judges is also based on the purpose and principle of sharia', namely benefit. Efforts to achieve these benefits are in line with the concept of *maqasid shari'ah* according to Imam Syatibi (Abu Ishaq asy-Syatibi) by categorizing the needs that must be maintained in order to achieve maslahat into 3 levels, namely *daruriyyat*, *hajiyyat*, and *tahsiniiyyat*. The need of *daruriyyat* can be interpreted as an urgent or emergency need. So that if this need cannot be met, it will lose benefits and cause harm. After the need for *daruriyyat* is the need for *hajiyyat*. (Huda, 2017) *Hajiyyat* needs or secondary needs are a level of needs that if they cannot be met, will only cause *musyaaqqab* (difficulties). However, the difficulties obtained will not cause great harm such as not being able to meet the needs of *daruriyyat*. After *daruriyyat* and *hajiyyat*, the next need is the need for *tahsiniiyyat* which this need will not become a great mudharat and will not become *musyaaqqab* (difficulty) if it is not fulfilled. In addition, we can analyze the verdict based on the five main goals (*maqasid*) formulated by Imam Syatibi, namely:

- a. Religious Protection (Hifz al-Din)
- b. Life Protection (Hifz al-Nafs)
- c. Protection of Reason (Hifz al-'Aql)
- d. Protection of Descent (Hifz al-Nasl)
- e. Protection of Property (Hifz al-Mal)

Therefore, if the (Kadir & Yunia, t.t.) parents' religious understanding is lacking, it will be affected by the lack of religious understanding for the child The close relationship between the concept of *dharuriyyat* and the consideration of the Panel of Judges is in the element of protecting the child's soul (*hifzu an-nafs*) (Nasution & Nasutio, 2022). If you look at the facts

in Decision Number 2560/Pdt.G/2022/PA.Bks., it is that the Defendant (husband) does not have time due to work demands and the Defendant also has bad behavior. Even in the case of Decision Number 2560/Pdt.G/2022/PA. Bks also found the fact that the Defendant (husband) admitted to the existence of an allegation of adultery.

So if the child's parents have bad behavior, it will affect the child's personal, character, and psychological development. Impact also In the perspective of Islamic law, the impact of parental divorce on children's rights can be analyzed through the Maqasid Sharia approach. This approach emphasizes the five main goals formulated by Imam Syatibi, namely the protection of religion, soul, intellect, descendants, and property. The following is the legal impact of parental divorce on children's rights according to the Maqasid Sharia approach:

1. Religious Protection (Hifz al-Din)

Right to Religious Education: Children must still receive a good religious education, even if their parents are divorced. Judges must ensure that these rights are protected by regulating custody and visitation rights that support religious teaching. Religious environment, the judge needs to consider whether the child's living environment will support the child's spiritual and religious development after divorce.

2. Life Protection (Hifz al-Nafs)

Physical and Emotional Well-Being: A divorce decree should take into account the physical and emotional well-being of the child. Children must be guaranteed adequate care and attention from both parents. Custody and Protection: The judge must ensure that custody is given to a parent who is able to provide a safe and supportive environment for the child.

3. Protection of Reason (Hifz al-'Aql)

Education and Intellectual Development: Children deserve a decent education to develop their intellectual potential. The judge needs to ensure that the child still has access to a good education after the divorce. Mental Stimulation, Judges must consider the child's need for mental and intellectual stimulation in arranging custody and visitation rights.

4. Protection of Descent (Hifz al-Nasl)

Stability and Consistency: Judges need to consider the impact of divorce on stability and consistency in a child's life. Children need a stable environment for healthy growth and development. Custody and Family Relations: Custody should be arranged in such a way that the child still has a good relationship with both parents and their extended family.

5. Protection of Property (Hifz al-Mal)

Child Support: The father is still responsible for providing child support even though he has been divorced. The judge must determine the amount of alimony that is in accordance with the needs of the child and the father's financial ability. Financial Management: Children's financial management must be well organized to ensure that the child gets his or her financial rights and that the funds are used for the child's well-being.

With the Maqasid Sharia approach, the divorce decree should aim to, Ensure the religious and spiritual education of the child, Protect the physical and emotional well-being of the child, Ensure the child's access to quality education, Create stability and consistency in the child's life, Ensure the child gets a living and good financial management This approach emphasizes the importance of maintaining the holistic well-being of the child, which includes religious aspects, physical, intellectual, social, and financial. Judges must consider all of these aspects in making decisions that affect the rights of children after parental divorce. That way, according to the author's consideration of the Panel of Judges in Decision Number 2560/Pdt.G/2022/PA. Bks has a close relationship with the concept of *daruriyyat* in *maqasid shari'ah*, namely for the sake of maintaining the quality of the child's religion (*hifzu ad-din*) and also for the preservation of the child's soul (*hifzu an-nafs*).

Based on *the shari'ah maqasid* that the author observes that the consideration of the Panel of Judges regarding child custody falls to the mother is focused on the interests, safety, and welfare of the child. Especially in relation to educating religion which is the foundation for good in this world and in the hereafter (Humaidi, t.t.), in terms of the benefit of the child, the author argues that the Panel of Judges considers that if the Defendant (husband) is unable to provide a good understanding of religion and the behavior of the parents does not reflect behavior in accordance with the sharia of the Islamic religion (Rasyidi, t.t.), This will cause losses and threaten the child's religious understanding in the future. Therefore, to prevent the impact of the Defendant's (husband's) lack of religious understanding, the Panel of Judges prevented the adverse impact on the child by giving custody of the child to the Plaintiff (wife).

This is in line with one of the *qama'id fiqhyyah* , namely:

دَرْءُ الْمَفَاسِدِ أَوْلَى مِنْ جَلْبِ الْمَصَالِحِ

Meaning: "*Rejecting mafsadah (damage) takes precedence over gaining benefits.*" That is why Based on the results of the research and discussion above, the analysis can be taken by the author;

- a) Eliminating women's difficulties in marriage is the sunnah of rosul that can be done for all Muslims who have reached puberty, (Idi & Safarina, 2024) marriage is intended to achieve the goal of sakinah, but not everyone can, as explained in Surah Ar-Rum verse 21 which read:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Which means: "*And among the signs of His power is that He has created for you wives of your own kind, so that you may be inclined and at peace with him, and He has made love and affection among you. Verily, in such a thing there are signs for the people who think.*" (QS. Ar-Rum verse 21)

But in its implementation, everyone is not able to reach the family of sakinah, because there may be quarrels, economic and others that are allowed in Islam.

- b) In the decision 2560/Pdt.G/2022/PA. Bks, a wife is no longer able to continue her marriage because of her marriage, she has several legal options that can be taken to end the marriage and in Indonesia a wife who can no longer continue the marriage is protected by the state and can file a divorce lawsuit based on Law Number 1 of 1974 concerning Marriage is the main legal basis that regulates marriage, including divorce, in Indonesia. In this law, there are several provisions that regulate divorce. Here are some important points related to divorce in Law No. 1 of 1974

D. Conclusion

Based on the results of the analysis in the previous discussion, several things can be concluded , including:

1. In Decision Number 2560/Pdt.G/2022/PA. Bks is a divorce case of talak accumulation of child custody filed by the Plaintiff (wife) on the grounds of divorce caused by *nusyuz* behavior carried out by the husband. In this case, the Panel of Judges determined that the rights of guardianship, education, maintenance and upbringing (*badanah*) of the child fell to the Plaintiff (wife). In this case, the Plaintiff (wife) and the Defendant (husband) are a married couple who have officially divorced and have permanent legal force (InKracht) based on the Decision of the Bekasi Religious Court Number 2560/Pdt.G/2022/PA. Bks dated April 11, 2019., the Panel of Judges determined that child custody fell to the mother because the Defendant left his wife and children for approximately nine months.
2. Judge's Legal Considerations in Decision No. 2560 /Pdt.G/2022/PA. Bks that the Judge referred to the provisions on who is entitled to the custody of the child is also regulated in

Article 49 paragraph (1) of Law Number 1 of 1974 which has been amended to Law Number 16 of 2019 concerning Marriage which states that one of the Judges based on the case that has been analyzed, that it is closely related between the facts found and the consideration of the Panel of Judges with the review of *maqasid shari'ah*.

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