



**Child Custody Rights for Mothers of Different Religions:
Maqāṣid al-Sharī'ah Perspective on Islamic Family Law in Indonesia**

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Abstract: Marriage is a physical and mental bond between a man and a woman. It is hoped that it will give birth to a harmonious and happy family, including having offspring who will then care for them well. In reality, couples from different religions who later divorce and have children become a problem, because custody becomes a struggle between the father and mother. This research discusses the child custody rights of an apostate mother as happened in the Parigi religious court decision case, Central Sulawesi. This study uses empirical legal methods with a *maqāṣid al-sharī'ah* approach. The data collection techniques used were interviews and document study. The informants interviewed were judges, academics and ulama. The documents analyzed were religious court decisions, journal articles, legal rules and books related to the discussion. The results of the research show that in deciding cases, the panel of judges set aside the written law which was used as a reference, and the compilation of Islamic law in order to fulfill the principle of benefit from fulfilling legal objectives. There are several reasons for the judge to overrule these two laws: the interests of the child, social aspects, the principle of benefit (*mashlahat*) for all. In the end, the judge's decision within the framework of *maqāṣid al-sharī'ah* analysis has implications for the maintenance of the soul, eyesight, and the maintenance of offspring, as well as the maintenance of religion.

Keywords: Divorce, religious conversion, child custody, Islamic family law, *maqāṣid al-sharī'ah*

|| Submitted: June 02, 2024

|| Accepted: August 24, 2024

|| Published: August 24, 2024

Abstrak: Pernikahan adalah ikatan fisik dan mental antara seorang pria dan seorang wanita. Diharapkan dapat melahirkan keluarga yang harmonis dan Bahagia termasuk memiliki keturunan yang kemudian mengasuhnya dengan baik. Pada realitasnya pasangan berbeda agama yang kemudian bercerai dan memiliki anak menjadi persoalan, karena hak asuhnya menjadi perebutan antara pihak ayah dan ibunya. Penelitian ini membahas tentang hak asuh anak seorang ibu yang murtad sebagaimana terjadi pada kasus putusan pengadilan agama Parigi, Sulawesi Tengah. Kajian ini menggunakan metode hukum empiris dengan pendekatan *maqāṣid al-sharī'ah*. Teknik pengumpulan data yang digunakan adalah wawancara dan studi dokumen. Informan yang diwawancarai adalah, hakim, akademisi, dan ulama. Dokumen yang dianalisis adalah putusan pengadilan agama, artikel jurnal, aturan hukum dan buku yang terkait dengan pembahasan Hasil penelitian menunjukkan bahwa dalam memutus perkara, majelis hakim mengesampingkan hukum tertulis yang menjadi acuan, dan kompilasi hukum Islam guna memenuhi asas kemanfaatan dari pemenuhan tujuan hukum. Ada beberapa alasan bagi hakim untuk mengesampingkan kedua undang-undang tersebut: kepentingan anak, aspek sosial, asas kemaslahatan (*mashlahat*) bagi semua. Pada akhirnya putusan hakim dalam kerangka analisis *maqāṣid al-sharī'ah* berimplikasi pada pemeliharaan jiwa, penglihatan, dan pemeliharaan keturunan, serta pemeliharaan agama.

Kata Kunci: Perceraian, pindah agama, hak asuh anak, hukum keluarga Islam, *maqāṣid al-sharī'ah*

Introduction

Marriage is the physical and mental bond between a man and a woman. It is expected to give birth to a harmonious and happy family.¹ In Law Number 1 in 1974, marriage is defined as harmony between husband and wife in the household are expected by everyone because the household is the main environment that shapes the character of a child's personality. Marriage is the first institution where children learn, a place for physical and spiritual development.² Parents have a great responsibility for the physical and psychological development of children. The harmonious relationship between

¹Ahmad Tholabi Kharlie, et.al., "Reforming Islamic Marriage Bureaucracy in Indonesia: Approaches and Impacts," *al-Jami'ah: Journal of Islamic Studies* 59, No. 2 (2021). Zikri Darussamin, et.al., "The Urgency of Maturity to Get Married and Its Relevance to Family Life Goals," *Istinbath: Jurnal Hukum Islam* 8, No. 1 (2023).

²Fauzul Hanif Noor Athief and Resti Hedi Juwanti, "Court Decisions on Post-Divorce Children's Livelihood: Islamic Law Analysis on Their Practices In Indonesia and Malaysia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 20, No. 2 (2020). Erfandha Warasshandy, "Perlindungan Hukum Terhadap Anak Akibat Perceraian Atas Hak Nafkah" (Universitas Muhammadiyah Surakarta, 2020).

parents and children greatly influences the growth and development of the child's soul and personality.³

However, the household planned by husband and wife do not always run smoothly and happily. Facts show that not a few marital ties must end in divorce in court. Divorce has many impacts to the development of the children's personality.⁴ Law is considered a fundamental instrument which is needed by humans not only in achieving justice, creating clarity of norms as a guide for living together, but also as a basis for making decisions in the face of social and economic dynamics, politics and so on.

A number of researchers have highlighted the protection and welfare of Indonesian children, among which UNICEF has studied in Indonesia. Research on the impact of divorce, and related matters such as legal products in child protection and factors causing divorce have been carried out by researchers. Yahya studied legal products decided by judges in child custody cases, child custody rights according to Law Number 35 of 2014, and child custody rights due to divorce. Likewise, research on religious conversion as a basis for divorce filed before the court and offers to prevent divorce due to misuse of technology.

Research that specifically pays special attention to judges' decisions from the perspective of Islamic law and the results show that the Religious Court Decision on divorce Number 603/Pdt.G/2019/PA.Bm and found that the decision of the Bima Religious Court in the case of a convention divorce suit is still not in accordance with the provisions of Islamic law.⁵ A number of previous researchers have taken an interest in Islamic law in the dynamics of social change, including the issue of divorce as a crucial issue caused by various factors. Data from the Supreme Court of the Republic of Indonesia shows that throughout 2019 there were 604,997 cases of divorce filings, among which were caused by infidelity. Throughout July 2019 there were 2532 divorce cases due to unwise use of social media. Currently, there are 1,170 cases per day, or about 49 to 50 cases per hour. As many as 70 to 80 per cent of the cases are filed by women.⁶

³ Fitrotun, "Perlindungan Anak Dalam UU Nomor 35 Tahun 2014," *Isti'dal: Jurnal Studi Hukum Islam* 9, no. 1 (2014), p. 727–735.

⁴ Ahmad Faisal, "The Intersection of Islamic Law and Nationhood in Contemporary Indonesia," *European Journal of Humanities and Social Sciences* 3, no. 2 (2023), p. 141–147.

⁵ Iksan and Adnan, "Gugatan Konvensi Dan Rekonvensi Dalam Bingkai Syariat Islam (Analisis Putusan Nomor: 603/Pdt. G/2019 /PA. Bm)," *Fundamental: Jurnal Publikasi Hukum* 9, no. 2 (2020), p. 102–124.

⁶ Asa'ari et al., "Urgensi Pemahaman Terhadap Maqāsid Al-Syari'ah Dan Perubahan Sosial Dalam Istinbath Al-Ahkam," *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 2 (2021), p. 222–239.

Data from the Religious Court 2019 in Depok city shows 4923 divorce cases.⁷ In the last five years, divorce in Indonesia has continued to increase, out of two million married couples, as many as 15 to 20% divorce. The number of divorce cases decided by the Religious High Courts throughout Indonesia reached 382,231, an increase of around 131,023 cases compared to 2010 of 251,208 cases. Data from the Supreme Court of Religious Courts Agency recorded an increase in cases of contested divorce of 59% to 80%.⁸

Different from a number of previous study objects, this research is concerned with child custody cases in families where the wife has experienced religious conversion in Parigi, Central Sulawesi. In fact, freedom of religion encourages changes in religious beliefs as stipulated in Article 18 of the Universal Declaration of Human Rights, and Article 29 paragraph 2 of the 1945 Constitution. In terms of marriage, Law of the Republic of Indonesia Number 1 of 1974 Article 38 concerning Marriage provides space for the breakup of marital ties through a court decision.⁹ Divorce is permissible but hated by God because it affects the custody and protection of children.¹⁰ It has implications for children's mental-psychological growth, and domino effect on children's personality development. The care and protection of children has received legal attention and child abuse is rampant. U-Report recorded that as many as 2,777 Indonesian youth aged 14-24 years or 45% experienced bullying that disturbed their psychology.¹¹

Therefore, this study aims to analyse the aspects influence the judge's consideration in deciding child custody cases for mothers who experience religious conversion, and the implications of the judge's decision on child custody in case number 0117/Pdt.G/2016/PA. Prgi within the framework of *maqāṣid al-sharī'ah*.

This study uses empirical legal methods with a *maqāṣid al-sharī'ah* approach.¹² The data collection techniques used were interviews and document

⁷ Aulia Nursyifa and Eti Hayati, "Upaya Pencegahan Perceraian Akibat Media Sosial Dalam Perspektif Sosiologis," *Jurnal Sosiologi Pendidikan Humanis* 5, no. 2 (2020), p. 144–58.

⁸ Ida Untari, et.al., "Dampak Perceraian Orang Tua Terhadap Kesehatan Psikologis Remaja," *Profesi (Profesional Islam): Media Publikasi Penelitian* 15, no. 2 (2018), p. 99–106.

⁹ Lukita Fahriana and Lufaei Lufaei, "Konversi Agama Dalam Masyarakat Plural: Upaya Merekat Persaudaraan Antarumat Beragama Di Indonesia," *Ushuluna: Jurnal Ilmu Ushuluddin* 1, no. 2 (2020), p. 209–222.

¹⁰ MY. Yusuf, "Dampak Perceraian Orang Tua Terhadap Anak," *Jurnal Al-Bayan* 20, no. 29 (2014), p. 33–44.

¹¹ UNICEF, *Perundungan Di Indonesia: Fakta-Fakta Kunci, Solusi, dan Rekomendasi Untuk Setiap Anak*, 2020.

¹² Faisal Ananda Arfa and Watni Marpaung, *Metode Penelitian Hukum Islam*, Jakarta: Kencana, 2018. Ahmad Ali and Wiwie Heryani, *Sosiologi Hukum: Kajian Empiris Terhadap Pengadilan*, Jakarta: Kencana, 2012.

study.¹³ The informants interviewed were judges, academics and clerics (*ulama*). The documents analyzed are religious court decisions (especially cases of child custody of apostate mothers, at the Parigi religious court, Central Sulawesi), journal articles, legal regulations and books related to the discussion. Research data obtained through in-depth interviews and all related documents were then analyzed using the *maqāṣid al-sharī'ah* theory.

Marriage, Divorce and Religious Conversion in Indonesia

In Law Number 1 of 1974, marriage is defined as “The inner and outer bond between a man and a woman as husband and wife”, the aim is to form a happy and eternal family (household) based on God Almighty. Article 1 of Law No.1 of 1974 states that the inner and outer bond is an important thing of a marriage because the purpose of marriage is not merely to fulfil the desires of lust, but to create a happy family and based on the Almighty God¹⁴, produce good offspring and multiply, and foster human life in harmony, peace and happiness, live in mutual love and love between husband and wife and children and other families.¹⁵

Divorce (*talaq*) means releasing or leaving the marital bond between husband and wife.¹⁶ Divorce is not recommended by all religions, in fact many occur in the community due to various things such as the provision of maintenance is not carried out properly,¹⁷ and domestic violence and religious conversion. The law does not allow divorce between husband and wife because the impact not only results in minor children, has a negative impact on the child’s psychology, and the development of a personality that is arid from the love of both parents.¹⁸

Religious conversion means changing religion, changing one’s stance on religious teachings or entering into a different religion than before. According to Max Heirich, religious conversion is an act in which a person or group of people enters or moves to a belief system or behaviour that is opposite to the previous

¹³ A Wicaksana and T Rachman, “Legal Research Method,” *Angewandte Chemie International Editio* 6, no. 11 (2018), p. 951–52. Gi Sang Choi, et.al., “Study on Position Control of Piezoelectric Actuators,” *IEEE International Symposium on Industrial Electronics*, 1997, p. 851–55.

¹⁴ Warasshandy, “Perlindungan Hukum Terhadap Anak Akibat Perceraian Atas Hak Nafkah.”

¹⁵ Fahriana and Lufaei, “Konversi Agama Dalam Masyarakat Plural: Upaya Merekat Persaudaraan Antarumat Beragama Di Indonesia.”

¹⁶ Iksan and Adnan, “Gugatan Konvensi Dan Rekonvensi,” p. 102–124.

¹⁷ Warasshandy, “Perlindungan Hukum Terhadap Anak Akibat Perceraian Atas Hak Nafkah.”

¹⁸ Aryati Yahya, Rusli Rusli, and Muhammad Akbar, “Analysis of Judges’ Considerations in Deciding Child Care Case Against Apostate Wife,” *International Journal of Contemporary Islamic Law and Society* 3, no. 2 (2021), p. 44–55.

belief.¹⁹ Religious conversion is a change in belief and obedience to a religion adhered to by a person, giving up belief in a religion and embracing or believing in another religion such as a Christian becoming a Muslim, or vice versa.²⁰

Child Custody Rights in Family and Islamic Law and *Maqāsid al-Sharī'ah*

Children as a mandate entrusted to both parents have human rights inherent in them like the right to be cared for, fostered, educated until they are independent. The implementation of children's human rights, especially children who are victims of divorce of both parents, requires a legally enforceable and just decision.²¹ The important role of legally enforceable decisions in resolving divorce and child custody cases is crucial. Therefore, Law is one of the fundamental needs of humans. It represents the social construct created to present certainty and clarity of norms as a guide for living together.²² Law is a reflection of the values believed by the community sourced from the aspirations of the community to serve as a reference in anticipating future social, economic and political developments.²³

The law is to create and direct the best for child custody after divorce so that the obligation to bear the cost of living for children both material and affection goes well in order the children grow up physically, mentally, confidently, and avoid victims of exploitation of others. Law No 35 of 2014 emphasises the protection of children from all forms of discrimination and violence. Child custody rights as stated in Article 41 of the Law on Marriage are to protect the religion, soul (health), intellectual (education), and social of children.²⁴ There is a dispute in child custody after divorce, the authority to

¹⁹ Mulyadi, "Konversi Agama," *Jurnal Tarbiyah Al-Awlad*, UIN Imam Bonjol Padang IX, no. 1 (2019), p. 29–36.

²⁰ Ilahi Kurnial, et.al., *Konversi Agama: Kajian Teoritis Dan Praktis Terhadap Fenomena, Faktor, Dan Dampak Sosial Di Minangkabau*, (Malang: Inteligencia Media, 2017).

²¹ Schriften Rudolf Gießen, *Feelings about Law/Justice Rechtsgeföhle*, 2023. Zainal Azwar, et.al., "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey," *Journal of Islamic Law* 5, No. 1 (2024).

²² Herry M. Polontoh and Yantje Liauw, "Constructing State Law Amid Local Laws: A Shift in the Paradigm of Legal Transformation," *Journal of Law and Sustainable Development* 11, no. 2 (2023), p. 1–16.

²³ Yahya, Rusli, and Akbar, "Analysis of Judges' Considerations in Deciding Child Care Case Against Apostate Wife."

²⁴ Gusti Ayu Satiawati, et.al., "Pola Adaptasi Pelaku Konversi Agama Dari Non Hindu Ke Hindu Melalui Perkawinan," *Widya Genitri: Jurnal Ilmiah Pendidikan, Agama Dan Kebudayaan Hindu* 12, no. 2 (2021), p. 118–23. Rifdah Alifiyah and Isa Anshori, "Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

determine who is more responsible and more entitled to care for the child lies with the Judge/Court.²⁵

Islamic law that has main characteristic features based on the Qur'an and Sunnah has compatibility with international law, especially in law-making and decision-making processes. It has main purposes to achieve justice for all mankind including those who have different religions and beliefs.²⁶ The establishment of Islamic law is dynamic and elastic without losing its normativity and;²⁷ respecting religious freedom, equality before the law, family protection and children's rights.²⁸

The Compilation of Islamic Law stresses that custody of children (*hadhanah*) who are not yet *mumayyiz* or the ability to fulfil his/her own needs is in the hand of mother. Article 105 letter (a) stipulates explicitly stated that the maintenance of children who are not yet *mumayyiz* (12 years old) after divorce belongs to the mother. After that, the child has the choice to live with the father or mother. This point shows that Islamic jurisprudence has the characteristic of balance in regulating child custody fairly.²⁹

Maqāṣid al-sharī'ah literally means the the objective of shariah.³⁰ Shariah is to protect and fulfill human rights including women's rights. (UUNo. 68/1958), the elimination of all forms of discrimination against Women (Law No. 7/84), the rights of the child. (Presidential Decree No. 36/1990), racial discrimination, and all the worst forms of child labour.³¹ The objective of *Sharia* is for the benefit of humans in this world and in the hereafter. There are three hierarchical levels of *maqāṣid al-sharī'ah*, namely primary (*dharuriyyat*), secondary (*hajiyyat*) and tertiary (*tahsiniyyat*). This is summed up in the five

²⁵ Yahya, Rusli, and Akbar, "Analysis of Judges' Considerations in Deciding Child Care Case Against Apostate Wife."

²⁶ Emilia Justyna Powell, "Islamic Law States and the International Court of Justice," *Journal of Peace Research* 50, no. 2 (2013), p. 203–217.

²⁷ Ismail Keri, et.al., "Sociological Aspects in the Determination of Islamic Law," *Al-Bayyinah* 6, no. 2 (2022), p. 152–165.

²⁸ Abdel Wadoud Moustafa Moursi El-Seoudi, "Human Rights in Islamic Law," *Social Sciences (Pakistan)* 7, no. 5 (2012), p. 683–688. Muzakkir Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Ahkam* 32, No. 2 (2022).

²⁹ Mohammad Hossein Mojtahedi and Joris Van Wijk, "Islamic Law and the Balancing of Justice and Peace in Iraq's Post-IS Landscape," *International Journal of Transitional Justice* 15, no. 2 (2021), p. 407–427.

³⁰ Syamsul Anwar, "Fertilisasi in Vitro Dalam Tinjauan Maqāṣid Asy-Syarī'Ah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2017), p. 139–156.

³¹ Baharuddin Husin, et.al., "Islam And Human Rights: A Case For Indonesian Muslim," *International Journal of Psychosocial Rehabilitation* 24, no. 01 (2020), p. 2101–13.

main joints, which are protecting religion, life (soul), mind (intellectual), offspring and protecting the property.³²

1. Protecting Religion

Sharia protection of religion is characterised by a person's right to embrace religion, believe in its teachings, and carry out religious obligations such as performing prayers, zakat, fasting, and hajj for Muslims. The preservation of religion is the responsibility of its adherents by doing what religion commands and avoiding what is prohibited.³³

2. Protecting the Soul

To protect the human soul, sharia prohibits anyone from harming others, not harming them with physical and verbal violence. The soul is also protected by fulfilling the need for good and nutritious food and drink, avoiding alcohol. Islam clearly insists that people protect their souls as well as the souls of others; killing one soul is the same as killing all human souls (QS. 5:32). Islam forbids its adherents to kill themselves who are considered to be opposing and resisting the decree and authority of Allah SWT.

3. Protecting the intellect

The important position of intellect for humans is very central. Intellect plays a role in distinguishing humans from other creatures, reason is also developed to improve the standard of living and human civilisation. Islam requires every individual Muslim to study without limitation of time, place and nation to improve the ability of thinking.

Maintaining the mind can be fulfilled by avoiding things that damage the mind and developing human intellectual potential through the process of education, learning and developing science through research and development.³⁴ Consuming drugs, drinking intoxicating beverages, and other haram foods are prohibited by sharia because they have destructive potential that threatens the preservation of the human mind.

4. Protecting Property

Another *maqāṣid al-sharī'ah* is to protect wealth. Property has a strategic value in human life. Treasure becomes an economic source and an instrument to fulfil the needs of life. Without wealth, humans will find it difficult to fulfil their

³² Saifudin Zuhri, *Ushul Fiqih Akal Sebagai Sumber Hukum Islam* (Jakarta: Pustaka Pelajar, 2017). Abid Rohmanu and Khusniati Rofiah, "Ṭahā 'Abd al-Raḥmān's Philosophical Contribution to Theorize Ethical Maqāṣid," *Ahkam* 33, No. 2 (2023).

³³ Ayu Nor Azilah, et.al., "Peran Maqāṣid Syariah Dalam Memelihara Kedudukan Agama Islam Di Malaysia," *Islam Transformatif: Journal of Islamic Studies* 2, no. 1 (2018), p. 35–46.

³⁴ Anwar, "Fertilisasi in Vitro Dalam Tinjauan Maqāṣid Asy-Syarī'ah."

basic needs, which will result in the threat of extinction. Because the strategic function of property is so strategic that humans are motivated to work hard to seek and collect property for survival, social and economic status in society and facilitate life. Islam provides clear instructions on how to seek and accumulate wealth in a *halal* way, not cheating in the measurement of buying and selling transactions, not eating other people's wealth in an immoral way such as stealing, robbing and killing others. Assets can be developed through ethical business activities.³⁵ The sharia objective of looking at wealth also allows everyone to maximise their potential and creativity to own property individually, collectively and access the benefits of state ownership which is managed for the welfare of society.³⁶

5. Protecting offspring

Islamic law guarantees human honour by giving it great attention. Maintaining offspring is done through a marriage contract in accordance with the provisions of the law. The preservation of offspring begins with building a good and honourable family bound by law through the institution of marriage. The aim is to breed the population (offspring) of men and women through the process of pregnancy, childbirth, caring, breastfeeding, training goodness and providing proper education for the child's future. Marriage also aims to keep young men and women upholding religious orders, keeping their eyes and keeping their genitals by building a household for those who are mentally-psychologically ready and economically sufficient.³⁷ Marriage builds a legal household as a place to foster love, a place of education and socialisation of values in order to build a prosperous society³⁸ and ensure the implementation of offspring protection. More important in preserving offspring is avoiding prostitution and imposing severe sanctions on the perpetrators. Prostitution tarnishes the sanctity and honour of the person.³⁹

Child Care for Parents of Different religions at Pagiri Court, Central Sulawesi

The judge's decision on a divorce case that occurred between (AD bin AP as husband and defendant with E binti EM, wife acting as Plaintiff. Both of them have a child named F binti A D. The incompatibility and conflict between

³⁵ Naerul Edwin Kiky Aprianto, "Konsep Harta Dalam Tinjauan Maqāshid Syariah," *Journal of Islamic Economics Lariba* 3, no. 2 (2017), p. 65–74.

³⁶ Abdu Seid Ali, et.al., "Ethical Dimensions of Islamic Finance: Theory and Practice," *Turkish Journal of Islamic Economics* 6, no. 1 (2019), p. 113–118.

³⁷ M. Lutfi Khakim and Mukhlis Ardiyanto, "Menjaga Kehormatan Sebagai Perlindungan Nasab Perspektif," *Nizham* 8, no. 1 (2020), p. 32–41.

³⁸ Anwar, "Fertilisasi in Vitro Dalam Tinjauan Maqāshid Asy-Syarī'ah."

³⁹ Khakim and Ardiyanto, "Menjaga Kehormatan Sebagai Perlindungan Nasab Perspektif."

the two parties had an impact on the wife's claim for divorce, against the husband (defendant) through the Parigi Religious Court with Case No.117/Pdt.G/2016/PA.Prgi Parigi Religious Court. The lawsuit case process produces a legal product in the form of a decision-making case through legal processes and considerations.

The panel of judges considered that after connecting the legal facts with the elements contained in the Elucidation to Article 39 Paragraph (2) of Law Number 1 of 1974 concerning Marriage jis. Article 19 letter (f) Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage and Article 116 letter (f) Compilation of Islamic Law in Indonesia.

The Panel of Judges was of the opinion that the disputes and quarrels that occurred between the Plaintiff and the Defendant greatly affected the continuity and integrity of their household. Considering that the family has tried to reach peace but has been unsuccessful, there has been no good communication between the Plaintiff and the Defendant, and each party has abandoned their obligations as husband and wife and separated to live together. This is in accordance with SEMA instruction Number 04 of 2014 dated 28 March 2014 concerning the Implementation of the Formulation of the Results of the 2013 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of the Court's Duties, which concluded that there is no longer any hope for husband and wife to live in a married life.

The panel of judges considered further that based on the Defendant's answer, the Plaintiff submitted a written statement to the Court which basically maintained his claim to be determined as the holder of hadhanah rights over the child named F bint AD on the grounds that the Defendant was currently away. , the child remains in the care of the Plaintiff. The Defendant was never involved in the care and upbringing of the child because almost all of the Defendant's daily time was spent outside the home. The Plaintiff never limited the Defendant's relationship with the child and until now the child is still being breastfed by the Plaintiff as his mother and is in good health.

The Plaintiff is a Christian by religion. However, prior to the marriage the Defendant always assured the Plaintiff that there would be no restrictions on the Plaintiff to continue practising her Christian faith, so an Islamic marriage was arranged and the Plaintiff never signed a certificate of willingness to convert to Islam. After carrying out analysis and consideration, the panel of judges then made a decision to judge this case, namely:

- a) Grant the Plaintiff's claim;
- b) Placing a divorce of one *ba'in shughra* between the Defendant (AD bin AP) and the Plaintiff (E binti EM);
- c) Ordering the Registrar of the Parigi Religious Court to deliver a copy of this decision which has permanent legal force to the Marriage Registrar

of the Religious Affairs Office of South Parigi Sub-District, Parigi Moutong Regency to be recorded in the register provided for that purpose;

- d) Charging the Plaintiff to pay the costs of this case in the amount of Rp 431. 000,- (four hundred thirty-one thousand rupiah) (Document Copy of Decision of the Parigi Religious Court, Number 0117/Pdt.G/2016/PA.Prgi).

Then in the end the panel of judges decided that the child, F binti AD, who was born on February 28 2014, was under the care of the Plaintiff until the child was *mumayyiz* or able to differentiate between good actions for himself and others.

Analysis of the Basis for Consideration of the Case Decision

The judge decided Case No.117/Pdt.G/2016/PA.Prgi divorce and child custody overruling the Compilation of Islamic Law, using positive law, the applicable law. Decisions are taken with consideration of a sense of justice, public interest and morality, which develops in society; not solely based on statutory regulations. This illustrates that there are events that have legal regulations that are resolved using other approaches.

This means that it is not always the case that the legal regulations to resolve an event are relevant so that they can be overruled. In addition, the case decision shows that the judge has the authority as the executor of judicial power such as Article 5 of Law Number 48 of 2009 which empowers judges to be obliged to explore, follow and understand the legal values and sense of justice that live in society.

Hadhanah decisions in divorce and child custody cases in this research are based on the Child Protection Law No. 23 of 2002 and the Human Rights Law No. 39 of 1999. The Compilation of Islamic Law Article 105 letter (a) is used by the judge if in general there is no dispute between the plaintiff and the defendant. Conversely, if it is known by the mother that there is a problem with the father, then the judge refers to the Child Protection Law and the Human Rights Law as the basis for his consideration.

Content analysis of the documents showed a number of problems with the father (respondent), namely the results of the document analysis found several reasons for the divorce and child custody dispute. Firstly, the respondent neglected his obligations and responsibilities as a father in caring for and nurturing the child. The respondent spent almost all of his time; every day on business outside the home. Secondly, the defendant's argument that the wife apostatised was in fact incorrect because the plaintiff had embraced and practised the teachings of her original religion, namely Christianity, even though the plaintiff had an Islamic marriage. Thirdly, the Defendant promised and

assured the plaintiff that after the marriage the defendant would not force and prohibit the Plaintiff from continuing to practice her faith as a Christian.

The judge, in handling the case of divorce asserted that “although Article 105 letter (a) of the Compilation of Islamic Law states that the maintenance of children who are not yet *mumayyiz* is the right of the mother, the judge can make considerations that go beyond the applicable rules (*contra legem*).” In relation to the judge’s decision on child custody, even though the mother is considered apostate, she still has custody of the child.

In the consideration of the decision, it is also not explained about Child Protection Law No.23 of 2002, but the panel of judges argued that the consideration of the decision was out of the rules, namely the Compilation of Islamic Law article 105 letter (a), for the sake of benefit, and avoiding harm. The provisions of Article 41 of Law No. 1 of 1974 concerning marriage make a distinction between material maintenance responsibilities and parenting responsibilities. Article 41 focuses more on the material obligations and responsibilities that fall on the former husband if he is able. If the husband is incapable, then the religious court may determine otherwise in accordance with the judge’s conviction.

Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage, “The husband has the obligation to fulfil and provide all the financial interests needed in the life of the child. If the husband fails to fulfil his obligation, the ex-wife shall have the burden of implementing the decision of the local Religious Court to order her ex-husband to pay for *hadhanah* as much as the Religious Court deems appropriate” (Law Number 1 Year 1974 on Marriage, Article 34 paragraph 1). Based on Article 49 of Law Number 1 Year 1974 concerning marriage, it is possible for the Court to give a decision in the event of a dispute over the control of children. As a formal juridical justification to the appointed parent, the judge determines the sole physical custody model (physical power rights for the child).

Judge’s Reasoning in Case Decision

The judge determines who has the right to care for the child by taking into account the interests and benefits of the child in accordance with Article 3 of Law Number 23 of 2002 concerning Child Protection. Child protection aims to ensure the fulfilment of children’s rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and abuse, discrimination, for the realisation of quality, noble and prosperous Indonesian children (Law No 23 on Child Protection Article 3).

1. The Interests of the Child

The judge in his decision determined that the custody of a child who is still in the breastfeeding period remains with the mother even though the mother

undergoes religious conversion until the child reaches the age of 12 years. Children who are still in the breastfeeding period require care and protection and ensure that their souls are safe and remain healthy in the care of their mother. In this case, the defendant did not accept the decision and the case proceeded on appeal to the Religious High Court of Palu.

In Decision No. 0020/Pdt.G/2016/PTA.PAL dated 31 October 2016 the appeal judge upheld the decision of the first instance judge. At the appeal level there is an editorial correction that the custody of children who are still in the breastfeeding period remains with the mother, even though the mother has converted. Dissatisfaction with the decision of the appellate level judge prompted the defendant to file an appeal to the Supreme Court of the Republic of Indonesia. In Decision No. 96 K/Ag/2017, dated 28 February 2017, the cassation judge upheld the decision of the first instance judge; determining that the custody of a child who is still in the breastfeeding period remains with the mother until the child is 12 years old even though the mother is proven to have apostatised.

The Supreme Court of the Republic of Indonesia in its consideration asserted that the child was more than 2 (two) years old and still needed the care and affection of his biological mother even though his biological mother was proven to have apostatised. To protect and maintain the welfare of the child, especially in terms of character building and faith in the future, the biological mother's *hadhanah* rights are limited to child custody until the child is 12 years old. Furthermore, the child's *hadhanah* rights are determined in the hands of his biological father without limiting the biological mother's right to meet and devote affection to her child. Meanwhile, the cost of maintaining the child is borne by the father.

The *hadhanah* decision is based on Law No. 23 of 2002. The informant in this case said that the consideration of deciding *hadhanah* cases based on child custody considerations was based on Child Protection Law No. 23 of 2002, namely for the benefit of children. The best interests and comfort of the child as the basis for consideration of the judge's decision contains the basis of humanity, universal justice and overrides the Compilation of Islamic Law. Decisions on child custody cases ignore the Compilation of Islamic Law. In the jurisprudence quote, the Supreme Court considers the issue of *hadhanah* (Child Custody) as the benefit and interests of the child, not solely based on normative considerations of who has the most rights. This means that although the judge makes the Compilation of Islamic Law the main reference, the judge is also obliged to pay attention to the facts and evidence revealed at trial.

This is in line with Article 229 of the Compilation of Islamic Law that judges in the stages of resolving cases must pay close attention to the legal values that live in the community, so that the resulting decision is in accordance with a sense of justice that fulfils the interests and safety of children.

2. Psycho-Social Aspects

Every case decision by a judge is based on objective legal argumentation⁴⁰ namely consideration of the case or legal events and consideration of the law. The consideration of the case clearly describes the chronology of the case, starting from the peace efforts, the arguments of the lawsuit, the defendant's answer, the replication, the duplicates, the evidence and witnesses and the conclusions of the parties, as well as a description of how the judge constatarised the arguments of the lawsuit or the events submitted by the parties. Meanwhile, legal considerations are related to how the judge qualifies facts or events, the judge's assessment of the facts presented by the plaintiff and defendant, and contains the legal basis used by the judge in assessing the facts and deciding the case, both written and unwritten law.⁴¹

The decision of the *hadhanah* case in this study is based on state laws and regulations, namely rules in order of degree by paying attention to the principles, types and hierarchy of laws and regulations by prioritising aspects of psychological comfort and sociological aspects for children. Judges consider the cultural values that live in society, which reflect the benefit of the interests of the child and the interests of the litigants and the benefit of all parties. On the basis of these considerations, case No.117/Pdt.G/2016/PA.Prgi was decided involving psychological considerations and sociological aspects of the child.

A Religious Court Judge handling a divorce case, ZZ, emphasised that although the plaintiff was determined to be the holder of *hadhanah* rights over the child, the plaintiff still had to provide the defendant with the opportunity to meet with the child to devote his affection so that the community would sociologically know that the child under the care of the plaintiff received his father's affection. In terms of the isolation of the defendant's right to meet their child, Judge ZZ asserted "If the plaintiff does not provide access to the defendant to meet their child, then this can be used as a reason for the defendant to file a lawsuit to revoke *hadhanah* rights."

The legal guarantee obtained by the defendant, even though he does not care for the child, is the freedom to meet with the child. If the plaintiff obstructs, then the plaintiff's actions have the potential to revoke the custody rights that fall to the plaintiff. The implementation of Article 105 KHI in the decision of case No.117/Pdt.G/2016/PA. Prgi is flexible in terms of child custody rights attached to both. This means that the decision of this case contains legal justice, legal benefits and legal certainty in accordance with legal provisions in Indonesia. This principle of justice is indicated by the opening of

⁴⁰ Bambang Sugeng, *Hukum Acara Perdata Dan Dokumen Litigasi Perkara Perdata*, Jakarta: Kencana, 2011.

⁴¹ Abdul Qadoos and Murat SIMSEK, "Ways for Peaceful Society in Islamic Law," *IJISH (International Journal of Islamic Studies and Humanities)* 3, no. 1 (2020), p. 32–37.

space for both parents to nurture, give attention and love to their children which can supplement the mental and social development of children.

3. Consideration of Mind and Spirit

One of the judges who decided this case emphasised that the equal opportunity for both parents outlines that the owner of custody (the plaintiff) should not arbitrarily interfere with the rights and obligations of the father (the defendant). In the case of the mother who experienced religious conversion, the panel of judges prioritised the principle of expediency, without ignoring the principles of justice and legal certainty. The judge's decision in this case did not consider the aspect of the defendant's argument, namely that he was worried about the future of his child if he was raised by his mother who had a different religion from him, because of the influence and doctrine of his mother to follow her religion, and reject his father's religion.

On the contrary, the defendant's thesis was answered by the plaintiff with the argument that he was worried about the condition of his child's soul and mind, which would not be fulfilled properly if he was cared for by the defendant. This condition was justified because one of the reasons for the divorce was that almost all of the defendant's time was spent on matters outside the household; the child did not receive attention. This reasoning was strengthened by the argument that the child's condition would worsen if in the future the father remarried another woman.

Implications of Court Decisions on Plaintiff's Divorce Cases

At this stage, the results of the discussion and data analysis are discussed in relation to the second research objective as the sub-title of the article. The results of the data analysis found several implications of the Judge's decision in the case of a contested divorce. Some of these implications are described briefly as follows:

a. *Physiology (Hifdz al-Nafs)*

The clarity of the child custody status of the case decision has an influence on the preservation of the child's soul. Children who are not cared for properly and correctly in a family environment that is not harmonious (broken home) will shape the development of the child's personality, soul and character.

As a child who grows and is raised in a broken home family environment, the child not only does not get love and affection and attention from both parents which makes him experience a sense of mental and psychological inferiority. Psychologically, the judge's decision on a divorce case due to religious conversion has implications for the avoidance of children due to the unclear custody of children from both parents. The judge's case decision has implications for the legal provisions adhered to by both parties (plaintiff and defendant). The judge's decision that has permanent legal force

binds the plaintiff and defendant to the rules and mechanisms of good communication in terms of fulfilling children's needs.

b. Benefit (*Maslahat*)

Concerned about the future of the child's belief (religion) due to the doctrine of the mother who has converted from Islam, the panel of judges prioritised the principle of expediency, without ignoring the principles of justice and legal certainty. The basis of the decision in this case is in line with the principles of Islamic law, namely rejecting *mudharat* and taking benefits so that the parties (plaintiff and defendant) accept this decision. In terms of Islamic law, the concerns of the plaintiff's mother are in line with the objectives of Islamic law, namely safeguarding the interests of the child's mind and soul (*nafs*). Therefore, to ensure the maintenance of the child's mind and soul on an ongoing basis, the custody of the child is given to the mother. The judge's firm stance in determining the custody of the child who is still breastfeeding the mother is in line with what al Jauhari (1965) asserts, it is permissible to prioritise *maslahah*, namely choosing considerations of greater benefit for the parties and preventing harm to both parties. The judge's decision to end the dispute between the two parties is in line with the essence of *maslahah* theory or goodness, usefulness, appropriateness, feasibility, harmony and propriety.

The judge's decision also reflects the essence of *maslahat* which is in line with Imam al Ghazali that the purpose of the law (*sharia*) is to preserve the soul, and mind of children so that they develop properly and perfectly. Meanwhile, the case of maintaining religion which is a concern for the defendant is indicated by the strict custody of children by apostate mothers limited to 7 years of age. The time limit for child custody until *mummyyiz* is intended to prevent the child from being influenced by the mother to follow her mother's religion and beliefs. After the child reaches puberty, the ability to distinguish legal matters, the custody of the child is continued by the father while still opening space for the mother to meet, communicate and provide attention and affection to her child.

c. Juridical-Philosophical

Philosophically-normatively, it is said that divorce is an act hated by God even though it is lawful for a husband and wife to do it if their household is at a critical point so that it is difficult to recover. This crucial point will bring greater *mafsadat* if the Judge's decision is not immediately determined. With a decision that has binding legal force, philosophically-normatively the Judge has prevented the two litigants in accordance with the *ushul* rule "preventing greater damage and promoting benefit". Divorce as a halal act that is hated by God is possible and even considered better in maintaining the soul and intellect as well as preserving loving relationships between families. The household of the

plaintiff and the defendant as stated in the verdict of the divorce case has been fractured. The judge, with these legal facts, was of the opinion that divorce was the final recourse after peace efforts through mediation by the family had failed; it was difficult to maintain but had to be through divorce.

d. Rationality and Humanity

The implication of rationality and humanity defeats the argument of preserving religion used as the basis by the plaintiff. The defendant's argument to fight for hadhanah rights to maintain religion and avoid concerns that the child cared for by a Christian mother will follow her religion. The argument of maintaining the child's religion in the decision of this case was overturned by considerations of ratio and a sense of humanity. The growth and development of the child's personality who is still breastfed by his mother is the main consideration of the judge. In the verdict, the judge stipulated that the child named F binti AD, born on 28 February 2014, is in the hadhanah of the plaintiff until the child is able to distinguish good things and actions for themselves and others, and perfect their physical, brain and mental abilities.

Child Custody in the Parigi Court Decision from the *Maqāṣid al-Sharī'ah* Perspective

Based on the results of the analysis of the Decision of the Panel of Judges examining case No. 117/Pdt.G/2016/PA.Prgi, several findings were obtained that can be taken into consideration in resolving child custody disputes due to divorce due to the former wife's religious conversion. In general, the research findings show that the decision of the Panel of Judges in deciding the case is based on a number of considerations. First, the consideration of the child's interest to get the mother's intensive love and care until they reach the perfection of reason to distinguish good and bad, right and wrong. This first consideration is in accordance with the sharia objective of protecting offspring (*hifdz al nasl*) to achieve broad benefits. *Mashlahah* is to bring about something that has a beneficial effect and avoid harm which is characterised by the establishment of worldly life for the sake of achieving the life of the hereafter. *Mashlahah* is universal, general and eternal for all humans and in all circumstances.⁴²

Second, psycho-sociological considerations, namely the acquisition of rights and obligations for the parties, namely determining that the child is in the care of the apostate mother (Plaintiff) until he is able to fully distinguish what the law wants in his life or *mumayyiz* until the child is 12 years old. The judge's

⁴²Nasitotul Janah and Abdul Ghofur, "Maqāṣid As-Asyari'ah Sebagai Dasar Pengembangan Ekonomi Islam," *International Journal Ihya' 'Ulum Al-Din* 20, no. 2 (2018), p. 167-192.

consideration in deciding this case of divorce was in line with the right to *hadhanah* in the Compilation of Islamic Law. The facts of the trial showed that the marriage of the plaintiff and the defendant could not be maintained anymore because it would cause greater harm to both parties and the psychological condition, mind and personality of the child so that the solution that was considered fair was divorce.

Third, the consideration of benefit in the case in question is characterised by the factual condition of the household atmosphere which is no longer harmonious, always coloured by disputes, arguments and not caring for each other. In the framework of *maqāṣid al-sharī'ah* analysis, divorce which is considered by the judge as the best alternative solution to maintain the benefit is in line with the theory of *sharī'ah* objectives (*maqāṣid al-sharī'ah*), especially in maintaining the soul, mind and offspring. The general objective of sharia is to realise human welfare by guaranteeing basic needs, fulfilling the needs of *Hajjiyat*, and the good of goodness (*tahsiniyat*)⁴³ as well as the maintenance of children's intellect and intellect. The judge's decision also contains important values in maintaining the child's mind. Intellect has a strategic role as the main prerequisite for *taklif* (obligation in *sharia*) and the limit of *baligh* (perfection of reason) in accepting and carrying out Islamic duties. Furthermore, the neglect of children's education due to unclear child custody and parental responsibility for the development of children's minds will have an impact on intellectual weakness, disconnection of children's thinking creativity which causes stagnation and stagnation of thinking.⁴⁴

Another implication of the judge's decision in the case of divorce and child custody by a mother who has apostatised is ruled out because the *maslahat ad daharuriyat* of the child is neglected, thus threatening the child's mental development. The defendant's argument for child custody (*hadhanah*) to preserve religion and avoid the fear of children being cared for by a Christian mother will follow her religion was ignored by the judge. This was reinforced by the fact that the plaintiff was basically a Christian. She agreed to an Islamic marriage because the Defendant convinced her to continue practising her Christian faith after the marriage.

On the other hand, the plaintiff never signed a certificate of willingness to embrace Islam. On the basis of these facts, the Defendant's argument for obtaining custody of the child to maintain the child's religion is weak and undermines the argument for maintaining religion, putting forward considerations of ratio and humanity, the growth and development of the child's personality who is still breastfed by the mother. Considerations of safety and the interests of the child, considerations of psycho-social development, and the

⁴³Khakim and Ardiyanto, "Menjaga Kehormatan Sebagai Perlindungan Nasab Perspektif."

⁴⁴Muhammad Said, et.al., "Effect of Zakat Potential Management on Achieving SDGs.

psychological condition of a young child take precedence over arguments for maintaining religion.⁴⁵ Judges' decisions on cases that ignore religious aspects and prioritise psycho-social aspects are the right choice.⁴⁶ The impact of parental divorce is enormous for children. He or she loses a role model who has an impact on the inhibition of psychological and personality development and even children will tend to behave badly.⁴⁷

Noor Hasanuddin, Judge at the Parigi Religious Court, emphasized that the considerations used by the judge in deciding the case had many legal bases, including the KHI, the Marriage Law, which in essence is for the best interests of the child. We cannot force a child who is already comfortable with his mother, for example, and then we end that comfort. Then, during the examination, we will see how close the father and mother have been with the child, for example, how far the child has performed. So in essence the child's best interests are not egoism. Child protection, what we read should not only be KHI, because the procedural law we use is the same in all the courts we use, not just KHI. We also use many laws. The law is clear about where it is going, only the judge did a little digging. Judges are the mouthpieces of the laws we read, not just KHI. This science continues to develop, things also develop. So it is clear that the considerations used, the legal basis is Protection Law number 23 of 2002 article 2 letter B based on the best interests of the child.⁴⁸

In line with that, Ihsan, Chairman of the Toli-Toli Religious Court, said that regarding the judge's decision regarding child maintenance or *hadhanah*, of course, use Law Number 23 of 2002 concerning child protection. The judge has taken appropriate consideration, namely for the best interests of the child, whether related to nurturing, nurturing, educating, or developing the child according to his abilities, talents and interests. Of course, Religious Court is a state court that does not only adhere to one law, but adheres to the law. Laws that have been passed by the state, in the best interests of the child. Therefore, the judge is careful and careful in making this decision, because in the Compilation of Islamic Law, article 105 is also mentioned; Children whose age or who are not yet *mumayyiz* are under 12 years of age are the mother's rights, therefore the mother automatically has custody of children under 12 years of age, unless there are things that will certainly interfere, will damage the best interests of the child. Therefore, of course all child protection laws will be a reference for the panel of judges in making a decision in the best interests of the child, whether in the form of Supreme Court regulations or Supreme Court jurisprudence, which can protect the best rights of children, will of course be a

⁴⁵ Abdul Rahman Ghazaly, *Fiqh Munakahat* (Jakarta: Kencana, 2006).

⁴⁶ Dahlan Tamrin, *Filsafat Hukum Islam* (UIN Parigi Press, 2007).

⁴⁷ Yusuf, "Dampak Perceraian Orang Tua Terhadap Anak."

⁴⁸ Interview with Noor Hasanuddin, Judge of the Parigi Religious Court, Central Sulawesi, November 22, 2023.

reference. express the right opinion in making decisions about children, no longer looking at interests from a religious perspective, but from the side of the best interests of the child.⁴⁹

Apart from the formal legal aspect, in the *maqāṣid al-sharī'ah* aspect, the judge's considerations are in line, especially *hifdz al-din* (maintaining religion), as the most important goal of Islamic law because of the father's responsibility as a parent in safeguarding the child's faith. What if a mother then outside of her love is definitely sincere towards her child but there is definitely an element of inviting this child to her faith. This is something we have to consider carefully. The last aspect is the sociological aspect from the point of view of its benefits. In terms of social benefits, psychologically it is true, the judge decided. Of these three aspects, I prefer what the court decides, and then the husband takes over this *hadhanah* right. Apart from that, this philosophical aspect is related to the issue of justice, whether the judge's decision is fair, which has determined the apostate mother to be the one who takes care of the child.⁵⁰ Therefore, the judge must not only look at one aspect, but he must look at it comprehensively according to the objectives of the law. At least when a judge decides a case, he must look not only at the juridical aspect, then at the benefit aspect, and thirdly, at the justice aspect. In terms of the academic aspect, the judge's decision was correct, because it took into account many aspects, not only the juridical aspect, but also the philosophical aspect, and *maqāṣid al-sharī'ah*, this was ideal.⁵¹

Chairman of the Fatwa Commission of the Indonesian Ulema Council, Palu, explained that if it is related to the theory and rules of Islamic law, *maqāṣid al-sharī'ah*, especially in the aspect of *hifdz al-din*, then child care is more appropriately given to the father, as the head of the family, considering that the child is already old. above 10 years. So the *hifdz al-din* aspect becomes the starting point in raising children, which of course is handed over to their father. If care is handed over to the mother who is an apostate, it will have consequences for the child's future and will have implications for conditions that are contrary to *maqāṣid al-sharī'ah*, especially maintaining religion and offspring. The judge's consideration on the basis of the child protection law only looks at the protection aspect, which is physical and material, while the belief aspect is not put forward, even though there is no guarantee, that if custody is given to the mother, then the belief aspect cannot be guaranteed.⁵² If the mother

⁴⁹Interview with Ihsan, Chairman of the Toli-Toli Religious Court, Central Sulawesi, November 22, 2023.

⁵⁰Interview with Dr. Hilal Mallarangan, Lecturer at UIN Datokarama Palu, Central Sulawesi, November 24, 2023.

⁵¹Interview with Dr. Akbar, Lecturer at UIN Datokarama Palu, Central Sulawesi, November 24, 2023.

⁵² Interview with Dr. Syarif Hasyim, Chair of the Central Sulawesi MUI Fatwa Council, November 25, 2023.

is firm about wanting to keep the child, it can be considered if the child is still a toddler (5) years old, with consideration, but in this case the child is already 10 years old. In fact, one of the lessons of why Islamic law prohibits interfaith marriages is that cases like this will give rise to legal issues such as inheritance rights and child maintenance rights.⁵³

Conclusion

Based on the discussion of the analysis of the research results, conclusions can be drawn. First, the Judge's reasoning in deciding the case of contested divorce No. 117/Pdt.G/2016/PA.Prgi due to religious conversion involves several aspects, namely the interests of the child, psycho-social aspects, fair legal considerations, and aspects of benefit. In deciding the contested divorce case with the number in question, the Panel of Judges did not base the decision on the Compilation of Islamic Law on *hadhanah*, child custody, but the Child Protection Law Number 23 of 2002. *maqāṣid al-sharī'ah* that emerged in the case of contested divorce due to religious conversion was *hifdz al-naḥs*, *hifdz al-aql*, and *hifdz al-nasl*. Secondly, the judge's decision on the case of divorce brings several implications within the framework of maqasid shariah, namely the interests of children, psycho-social aspects, and the mental and intellectual development of children. Attention to children's mental development from an early age is very influential on the process of forming children's personalities. Neglect of parental responsibility, lack of attention and affection towards children have an impact on the development of personality that is not optimal.

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