

Maqasid Syariah in the Judge's Decision on the Divorce Case at the

Amuntai Religious Court

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ABSTRACT

Marriage in Islam is a sacred institution aimed at establishing a family life characterized by sakinah (tranquility), mawaddah (affection), and rahmah (compassion). However, not all marriages fulfill these ideals, and divorce often becomes the last resort, including divorce petitions initiated by the wife (cerai gugat). This study aims to analyze the legal considerations of judges in divorce petition cases at the Amuntai Religious Court using a Maqāṣid al-Sharī‘ah approach. This research employs a descriptive-qualitative method based on document analysis, specifically focusing on Decision No. 114/Pdt.G/2023/PA.Amt. The Maqāṣid al-Sharī‘ah framework applied includes five essential aspects: the protection of religion (ḥifẓ al-dīn), life (ḥifẓ al-naḥs), intellect (ḥifẓ al-‘aql), lineage (ḥifẓ al-nasl), and wealth (ḥifẓ al-māl). The findings reveal that the judge prioritized principles of public interest (maṣlaḥah), particularly ḥifẓ al-naḥs and ḥifẓ al-nasl, in addressing a marital relationship marked by verbal abuse, ambiguity regarding the status of divorce, and the protection of children's lineage from a marriage that was not renewed through a valid contract. Although the petitioner believed that a triple divorce (ṭalāq ṭhalāth) had occurred, the judge ruled only a single bain sughra divorce due to the absence of formal legal evidence. This divergence highlights the judge’s prudence in avoiding greater harm (maḍarat). The study underscores that Maqāṣid al-Sharī‘ah can serve as an evaluative framework for resolving divorce petition cases in a manner that is just, contextual, and responsive to vulnerable parties-particularly women and children.

Keywords : *Maqāṣid al-Sharī‘ah, Judge’s Decision on Divorce Petition, Religious Court*

A. INTRODUCTION

Marriage in Islam is a sacred bond that encompasses both spiritual (*‘ibādah*) and social dimensions. Its primary purpose is to establish a family characterized by *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion), as stated in the Qur'an, Surah Ar-Rum [30]: 21. However, in practice, not all households are able to maintain the integrity of the marital relationship, and divorce often becomes the final recourse to resolve prolonged conflict. One common form of divorce is a judicial divorce petition (*cerai gugat*), which refers to a divorce initiated by the wife against her husband through the court system.

In Islamic legal discourse, divorce is permitted in cases of necessity, although it is considered a disliked action (*makrūh*) in the sight of Allah.¹ Therefore, legal processes and judicial considerations in divorce petition cases must uphold values of *maṣlaḥah* (public interest), which can be comprehensively analyzed through the *Maqāṣid al-Sharī‘ah* approach. *Maqāṣid al-Sharī‘ah* refers to the higher objectives of Islamic law, which include the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-‘aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).²

As an institution tasked with adjudicating civil disputes within Muslim families, the Religious Court bears a significant responsibility to ensure that its rulings are not only legally sound under positive law but also aligned with Islamic legal principles. In this context, judges must not rely solely on statutory regulations such as Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), but also demonstrate the ability to integrate *Maqāṣid al-Sharī‘ah* values into their decisions.³ This study analyzes Decision No. 114/Pdt.G/2023/PA.Amt from the Amuntai Religious Court to examine how judges incorporate *Maqāṣid al-Sharī‘ah* principles in adjudicating divorce petitions, the extent to which such considerations protect vulnerable parties—particularly women and children—and the degree of alignment between the plaintiff’s claims and the judge’s final ruling.

B. METHOD

This study employs a quantitative method with a descriptive approach, aiming to illustrate the extent to which the principles of *Maqāṣid al-Sharī‘ah* are reflected in judges’

¹ Abū Dāwūd, Sunan Abī Dāwūd, no. 2178; Lihat juga Ahmad ibn Ḥanbal, Musnad Aḥmad, no. 22861.

² Abū Ishāq al-Shātibī, Al-Muwāfaqāt fī Uṣūl al-Sharī‘ah, Jilid I (Beirut: Dār al-Ma‘rifah, 2003), 38.

³ Republik Indonesia, Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1; Departemen Agama RI, Kompilasi Hukum Islam di Indonesia (Jakarta: Dirjen Bimas Islam, 1991), Pasal 116.

legal reasoning in divorce petition (*cerai gugat*) cases. The data used in this research are secondary data, obtained through official documentation in the form of a copy of the court decision issued by the Amuntai Religious Court, specifically Decision No. 114/Pdt.G/2023/PA.Amt. Data collection was conducted using documentation and content coding techniques, by identifying and classifying sections of the judge’s legal reasoning that correspond to the five core principles of *Maqāṣid al-Sharī‘ah*, namely: protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-‘aql*), lineage (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*).⁴ The data were analyzed using a descriptive quantitative approach, which involved calculating the frequency of each *maqāṣid* principle appearing within the legal reasoning (*pertimbangan*) and the court’s final ruling (*amar*). The results are presented in narrative form to demonstrate patterns in the application of *maqāṣid* values in divorce rulings, as well as their implications for the protection of vulnerable parties, particularly women and children.⁵ This research aims to provide an objective and measurable overview of how far judges consider *maṣlaḥah* (public benefit) values when deciding divorce petition cases,⁶ especially within the context of Islamic family law in religious courts. Additionally, it seeks to examine the degree of alignment between the plaintiff’s claims and the judge’s final decision.

C. ANALYSIS/DISCUSSION

1. Islamic Legal Concept in *Maqāṣid al-Sharī‘ah*

Maqāṣid al-Sharī‘ah is a fundamental concept in Islamic legal theory referring to the higher objectives of Islamic legislation, which aim to realize *maṣlaḥah* (public welfare) and prevent *mafsadah* (harm) for humanity.⁷ Imam al-Ghazālī identified that the Shari‘ah seeks to safeguard five essential elements:

- a. Religion (*ḥifẓ al-dīn*): Encouraging belief and worship, preventing apostasy, and ensuring marriages are contracted in accordance with Shari‘ah in order to protect both individual and communal faith.

⁴ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, (London: International Institute of Islamic Thought, 2008), 25–32.

⁵ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, (Bandung: Alfabeta, 2017), 21.

⁶ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: RajaGrafindo Persada, 2006) 39.

⁷ Wahbah al-Zuhayli, *Ushul al-Fiqh al-Islami* (Beirut: Dar al-Fikr, 1986), Jilid 2, 882.

- b. Life (*hifẓ al-nafs*): Protecting human life through the prohibition of killing, the enforcement of *qisās*, and safeguards against violence.
- c. Intellect (*hifẓ al-‘aql*): Prohibiting consumption of substances that impair reason (like alcohol and drugs) and promoting educational development.
- d. Lineage (*hifẓ al-nasl*): Regulating marriage, divorce, parentage (*nasab*), and forbidding zina (fornication/adultery).
- e. Wealth (*hifẓ al-māl*): Protecting legal ownership, prohibiting theft and fraud, and ensuring fair division of inheritance.⁸

Contemporary scholars such as Jasser Auda emphasize a dynamic and contextual understanding of *Maqāṣid* that adapts to evolving social circumstances.⁹ In the context of family law, *Maqāṣid* is not merely a normative doctrine but also serves as an analytical tool for interpreting judicial reasoning in divorce petition cases. Further elaboration in the family law context includes:

- a. *Hifẓ al-dīn* (protection of religion): The Shari‘ah establishes religious obligations, prohibits apostasy, and mandates lawful marriage—safeguarding individual and societal religious integrity.
- b. *Hifẓ al-nafs* (protection of life): Encompasses prohibitions on domestic violence, neglect, and physical or psychological abuse. Judges in divorce proceedings must weigh the physical and mental safety of the parties.
- c. *Hifẓ al-‘aql* (protection of intellect): Protects against addictive substance use and ensures access to education and psychological stability for children. Divorce that leads to psychological harm may constitute legal consideration.
- d. *Hifẓ al-nasl* (protection of lineage): Underpins rules related to marriage, divorce, paternity, and custody. Judges must consider the child’s future and ongoing welfare in divorce petition cases.

⁸ Abu Hamid al-Ghazali, *al-Mustashfa min ‘Ilm al-Usul*, ed. Muhammad Mustafa al-Zuhayrī (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1993), 174.

⁹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 30–42.

- e. *Hifz al-māl* (protection of wealth): Involves safeguarding the economic rights of the wife and children, matters of maintenance, division of shared property (*gono-gini*), and inheritance.

These five principles are interrelated and together form a just and solution-oriented system within Islamic law.¹⁰

2. Substance of the Divorce Petition Case in the Amuntai Religious Court

Islamic legal thought (*fiqh*) is an intellectual product formulated by scholars through the interpretative process of deriving rulings from legal texts in relation to real-life contexts, events, or cases. Based on this understanding, a judge in a Religious Court (Pengadilan Agama/PA) must take into account legal considerations that extend beyond normative textual references when deciding on a divorce case. Divorce, as a marital dissolution, is generally an outcome that no party ever wishes for.¹¹ However, when it occurs, there are urgent matters that must be considered particularly the implications and consequences arising from the divorce itself.¹²

These implications are often complex, especially for the wife as a woman who bears multiple social roles as a member of society, a wife, and a mother.¹³ Various studies have identified numerous contributing factors to divorce cases filed at Religious Courts in Indonesia, including domestic violence, frequent disputes, unregistered marriages, underage marriages, infertility, financial crises, and infidelity.¹⁴

In Decision No. 114/Pdt.G/2023/PA.Amt (the focus of this study), the plaintiff and defendant were validly married and had four children (two boys and two girls). During court proceedings, the plaintiff attended personally, while the defendant initially failed to appear or

¹⁰ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, The International Institute of Islamic Thought, 2008, 25–30.

¹¹ Islamy, A., *Pemikiran Hukum Islam Nurcholish Madjid*, (Disertasi: Pascasarjana Universitas Islam Negeri Walisongo, 2021), 60.

¹² Athief, 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, 2020), 20 (2), 151.

¹³ Shalihah, F., & Irfan, M. M., *Jasser Auda's Maqasid Sharia Application in the'Iddah for Career Women*, (Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum, 2022), 20 (1), 15.

¹⁴ Willya, E., Harun, N., & Anom, A., *Lawsuits Related To Divorce Due To Apostasy In Bitung Religious Court*, (Miqot: Jurnal Ilmu-Ilmu Keislaman, 2022), 46 (1), 55.

send representation. At the second hearing, the defendant appeared. The court attempted to mediate reconciliation, which ultimately failed.

The plaintiffs cited repeated verbal abuse, financial burdens, slander, and the defendant’s extramarital infidelity as grounds for the divorce petition. They based their claim on Article 19(f) of Government Regulation No. 9 of 1975 (the implementing regulation of Law No. 1 of 1974) and Article 119(f) of the Compilation of Islamic Law (KHI). Witnesses close relatives provided sworn testimony confirming ongoing conflict and irreparable breakdown, supporting the request for divorce under Indonesian family law.

The court accepted the petition, issuing a single *ṭalāq bain sughrā* (minor irreversible divorce) despite reconciliation attempts. Even though the parties had reunited without renewing the marriage contract after two years of separation, the judge determined the marriage could not be sustained and that divorce was the lesser harm compared to prolonged dysfunction.¹⁵

3. *Maqāṣid al-Sharī‘ah* Values in Judgment No. 114/Pdt.G/2023/PA.Amt

- a. *Hifẓ al-nafs* (protection of life): The judge prioritized protection of the plaintiff’s mental and emotional well-being, acknowledging that prolonged psychological harm due to verbal abuse and emotional manipulation outweighed the benefit of continuing the marriage, in line with the principle *dar’ al-mafāṣid muqaddam ‘alā jalb al-maṣāliḥ* (preventing harm takes precedence over obtaining benefit).
- b. *Hifẓ al-nasl* (protection of lineage): The decision provided legal certainty regarding the status of children born within a marriage that lacked a renewed contract after reconciliation. Clarifying lineage rights prevented confusion and protected the children’s legal status.
- c. *Hifẓ al-dīn* (protection of religion): Resolving the divorce lawfully through the court upheld Islamic and national legal integrity, showing respect for Shari‘ah procedures in family law.
- d. *Hifẓ al-‘aql* (protection of intellect): The judge applied rational and proportionate reasoning—despite the defendant’s formal acknowledgement of wrongdoing, the

¹⁵ No. 114/Pdt.G/2023/PA.Amt, *Pengadilan Agama Amuntai*, 16 Maret 2023.

judge prioritized objective facts over formal declarations, demonstrating *ijtihād* grounded in logical assessment and public welfare.

- e. *Hifẓ al-māl* (protection of wealth): Implicitly protected the plaintiff’s economic rights by severing the financial burden of debt imposed by the defendant. The legal end of the marriage permitted autonomous economic reevaluation.

Overall, the ruling reflects the application of justice and welfare principles, firmly rooted in *Maqāṣid al-Sharī‘ah*, particularly when marital life no longer fosters peace or well-being.

4. Discrepancies Between Plaintiff’s Claims and the Judge’s Decision

- a. Plaintiff’s assertion: The plaintiff claimed the defendant had issued two to five divorces between October 2003 and January 2004, reaching *ṭalāq bain kubra* (triple divorce), which would legally preclude *rujū’* (reconciliation) without remarriage via a third party (*muhallil*). From her perspective, a new marriage without a valid contract would render any children illegitimate and the relationship religiously invalid.
- b. Judicial outcome: The court did not acknowledge that triple divorce had occurred. Instead, it declared a single *ṭalāq bain sughrā*—which does not prohibit remarriage after the *‘iddah*. Consequently, the children born between 2006 and 2013 were implicitly recognized as legitimate based on the principle of *walad lil-firāsh* (children born of a presumed legitimate marriage inherit lineage from the father). The judge’s refusal to classify the post-2006 relationship as invalid underscores the emphasis on legal caution and *maqāṣid* principles rather than literal claims of divorce frequency.

This discrepancy carries legal implications: the plaintiff’s belief in triple divorce precluded any attempt at reconciliation, whereas the court’s judgment allowed for future remarriage if both parties wish. The ruling illustrates that the judge required formal proof to validate triple divorce before nullifying the possibility of *rujū’*.

Comparative Table: Plaintiff’s Claims vs. Judicial Decision

Aspect	Plaintiff’s Claim	Court’s Decision
<i>Ḍalāq</i> (Divorce)	2–5 times; claimed as triple ([bain kubra])	One bain sughrā; allows a renewed marriage
Reconciliation (<i>Rujū’</i>)	Prohibited without muhallil after triple divorce	Permitted after ‘iddah once divorce is valid
Children’s Status	Illegal due to invalid marriage	Legitimate under walad lil firāsh principle
Marriage Legality	Relationship (2006–2022) invalid	Recognized as valid, lacking legal evidence of triple divorce

From a *Maqāṣid* perspective, the judge took into account the prolonged ambiguity surrounding the couple’s status from 2006 to 2022 and its negative social, psychological, and legal implications. Legal uncertainty over a lengthy period can cause confusion, stigma, and disputes over rights and duties within the family for both spouses and children.

By issuing a shari‘ah-compliant divorce verdict with the possibility of reconciliation, the court ensured legal clarity while maintaining flexibility consistent with Islamic principles. Crucially, this decision upholds:

- a. *ḥifẓ al-nasl*: protecting children’s legitimate lineage;
- b. *ḥifẓ al-nafs*: safeguarding mental health and emotional well-being;
- c. *ḥifẓ al-māl*: preserving financial rights and justice for the plaintiff.

However, the ruling also carries a social consequence some communities may pressure a divorced wife to remarry for the sake of reconciliation or children even when she is uncomfortable or unwilling. That social pressure can threaten *ḥifẓ al-nafs* and *ḥifẓ al-‘aql*. The judge’s balanced approach reflects a nuanced application of Islamic family law, integrating legal text, social context, and individual welfare.

5. CONCLUSION

In this case, the judge sought to balance formal legal aspects with considerations of public benefit (*maṣlaḥah*) in adjudicating a divorce lawsuit. Although the plaintiff claimed that a triple divorce (*ṭalāq thalātha*) had occurred since 2004 and no remarriage had taken place thereafter, the judge decided to issue a ruling of *ṭalāq bā'in sughrā* (revocable minor divorce). This reflects the judge's caution in ensuring the legal validity of the divorce in accordance with formal procedural law, while also protecting the rights of women and children.

The application of *Maqāṣid al-Sharī'ah* is evident in the judge's reasoning, particularly in upholding the objectives of protecting life (*ḥifẓ al-naḥs*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). The judge considered the psychological, social, and legal implications of prolonged uncertainty regarding marital status. Instead of explicitly annulling or reaffirming the marriage following the alleged previous divorce, the judge issued a ruling that provides legal certainty for all parties involved. The *maqāṣid*-based approach thus serves as a vital foundation for legal reasoning that is not only normatively valid but also substantively just and beneficial.

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