

## Judicial Reasoning in Child Guardianship: Gender Justice and Maqāṣid Al-Sharī'ah in Indonesian Religious Courts

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### Abstract

*Child guardianship (ḥaḍānah) in Islamic family law represents a critical mechanism for child protection during family dissolution, yet existing scholarship remains predominantly normative and fragmented, lacking longitudinal socio-legal analysis of judicial reasoning that integrates child protection and gender justice within Islamic legal frameworks. This study aims to analyze the transformation of child guardianship adjudication in Indonesian Religious Courts (Pengadilan Agama) during 2020–2025, focusing on judicial reasoning patterns, child welfare orientations, and the positioning of women's rights. Employing a normative-empirical (socio-legal) approach, this study analyzed 120 guardianship decisions retrieved from the Supreme Court Verdict Directory through qualitative content analysis and systematic coding, integrating three analytical frameworks: the best interest of the child, maqāṣid al-sharī'ah, and gender justice theory. The findings reveal a significant shift from textualist-normative reasoning toward discretionary, welfare-oriented adjudication, with judges increasingly prioritizing emotional stability, caregiving continuity, and socioeconomic conditions. A pronounced maternal preference pattern was identified, reflecting caregiving realities while simultaneously indicating latent gender bias. Women's rights were found to be implicitly integrated yet structurally subordinated within the best interest framework rather than recognized as autonomous legal principles. The COVID-19 pandemic additionally functioned as a structural catalyst accelerating guardianship litigation. This study contributes a longitudinal socio-legal framework that bridges maqāṣid al-sharī'ah with contemporary human rights discourse, while critically exposing the risks of unchecked judicial subjectivity. These findings underscore the urgent need for verdict standardization, explicit gender justice integration, and systematic reform of Islamic family law in Indonesia.*

**Keywords:** Child Guardianship; Ḥaḍānah; Islamic Family Law; Judicial Reasoning; Maqāṣid Al-Sharī'ah; Gender Justice; Indonesian Religious Courts.

### Abstrak

Perwalian anak (*ḥaḍānah*) dalam hukum keluarga Islam mewakili mekanisme penting untuk perlindungan anak selama pembubaran keluarga, namun keilmuan yang ada tetap

didominasi normatif dan terfragmentasi, tidak memiliki analisis sosio-hukum longitudinal dari penalaran yudisial yang mengintegrasikan perlindungan anak dan keadilan gender dalam kerangka hukum Islam. Penelitian ini bertujuan untuk menganalisis transformasi adjudikasi perwalian anak di Pengadilan Agama Indonesia selama tahun 2020–2025, dengan fokus pada pola penalaran yudisial, orientasi kesejahteraan anak, dan penentuan posisi hak-hak perempuan. Menggunakan pendekatan normatif-empiris (sosio-legal), penelitian ini menganalisis 120 keputusan perwalian yang diambil dari Direktori Putusan Mahkamah Agung melalui analisis konten kualitatif dan pengkodean sistematis, mengintegrasikan tiga kerangka analitis: kepentingan terbaik anak, maqāṣid al-sharī'ah, dan teori keadilan gender. Temuan ini mengungkapkan pergeseran signifikan dari penalaran tekstualis-normatif menuju adjudikasi diskresioner dan berorientasi kesejahteraan, dengan hakim semakin memprioritaskan stabilitas emosional, kontinuitas pengasuhan, dan kondisi sosial ekonomi. Pola preferensi ibu yang diucapkan diidentifikasi, mencerminkan realitas pengasuhan sekaligus menunjukkan bias gender laten. Hak-hak perempuan ditemukan terintegrasi secara implisit namun secara struktural disubordinasikan dalam kerangka kepentingan terbaik daripada diakui sebagai prinsip hukum otonom. Pandemi COVID-19 juga berfungsi sebagai katalis struktural yang mempercepat litigasi perwalian. Studi ini menyumbangkan kerangka sosial-hukum longitudinal yang menjembatani maqāṣid al-sharī'ah dengan wacana hak asasi manusia kontemporer, sambil secara kritis mengekspos risiko subjektivitas yudisial yang tidak terkendali. Temuan ini menggarisbawahi kebutuhan mendesak untuk standarisasi putusan, integrasi keadilan gender yang eksplisit, dan reformasi sistematis hukum keluarga Islam di Indonesia.

**Kata Kunci:** Perwalian Anak; *Ḥaḍānah*; Hukum Keluarga Islam; Penalaran Yudisial; Maqāṣid Al-Syariah; Keadilan Gender; Pengadilan Agama Indonesia.

## INTRODUCTION

Guardianship (*wilāyah* and *ḥaḍānah*) within Islamic family law and Indonesian national law constitutes a fundamental legal mechanism for ensuring the protection and welfare of children, particularly in situations where parents are unable to fulfill their caregiving responsibilities. Classical Islamic jurisprudence establishes a dual framework in which maternal custody is prioritized during early childhood, while paternal guardianship retains legal authority over broader decision-making.<sup>1</sup> Contemporary legal developments, however,

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<sup>1</sup> A Mohd et al., "Protecting Children from Labour: Muslim Scholar's Viewpoint and Legal Provisions in Selected Muslim Countries," *Advanced Science Letters* 23, no. 7 (2017): 6106–9, <https://doi.org/10.1166/asl.2017.9215>; D S P Sarfitri et al., "Battle for Blood: Child Custody Conflicts in Divorce – Islamic vs. Customary Law," *Contemporary Issues on Interfaith Law and Society* 3, no. 2 (2024): 263–82, <https://doi.org/10.15294/ciils.v3i2.31406>; Deri Eka Putra, Johari Johari, Norsuhaida Che Musa, Muhammad Bilal, and Jusniati Sari, "Guardian Navigation in Islamic Family Law: From History to Implementation in Indonesia and Muslim Countries,"

increasingly emphasize the *best interest of the child* as a central normative principle, aligning Islamic legal interpretation with international child protection standards such as the United Nations Convention on the Rights of the Child.<sup>2</sup> In Indonesia, this principle has been integrated into statutory law and judicial practice, resulting in a hybrid legal system that combines religious doctrine with child-centered jurisprudence.<sup>3</sup>

Despite this normative convergence, the practical implementation of guardianship law within religious courts reveals a complex interaction between legal texts, judicial discretion, and socio-cultural realities. Judicial decisions frequently incorporate sociological and psychological considerations, particularly regarding emotional attachment between children and their mothers, which often supersedes rigid doctrinal hierarchies.<sup>4</sup> At the same time, gender dynamics and structural inequalities continue to shape judicial outcomes, as women often face implicit biases within family law systems influenced by patriarchal traditions.<sup>5</sup> These dynamics indicate that guardianship adjudication is not

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*Mawaddah: Jurnal Hukum Keluarga Islam* 3, no. 1 (2025): 21–42, <https://doi.org/10.52496/mjhki.v3i1.4>.

<sup>2</sup> S Torrecuadrada García-Lozano, “The Best Interest of the Child,” *Anuario Mexicano de Derecho Internacional* 16 (2016): 131–57, <https://doi.org/10.22201/ijj.24487872e.2016.16.523>; Jean Zermatten, “The Best Interests of the Child Principle,” *International Journal of Children’s Rights*, 2010; Ahmad Nabil Amir, Tasnim Abdul Rahman, Seyed Mohammad Houshisadat, and Musa Adebayo Badrudeen, “Muhammad Abduh and the Conception of Science: The Framework of Maqasid and Sharia,” *Al-Battar: Jurnal Pamungkas Hukum*, 2, no. 2 (2025): 175–186, <https://doi.org/10.63142/al-battar.v2i2.167>.

<sup>3</sup> F N Nazah, R Gustiana, and T Saadah, “Gender Justice in Child Custody Disputes: The Maqāsid Al-Sharī’ah Approach in Contemporary Judicial Practice,” *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 1328–58, <https://doi.org/10.32332/milrev.v4i2.10790>; S Ropiah, “Contextualized Islamic Family Law in Practice: Divorce and Child Custody Disputes in Cikarang, Indonesia,” *Jurnal Ilmiah Mizani* 13, no. 1 (2026): 42–61, <https://doi.org/10.29300/mzn.v13i1.9058>.

<sup>4</sup> S Ishaque and M M Khan, “The Best Interests of the Child: A Prevailing Consideration within Islamic Principles and a Governing Principle in Child Custody Cases in Pakistan,” *International Journal of Law, Policy and the Family* 29, no. 1 (2015): 78–96, <https://doi.org/10.1093/lawfam/ebu015>; A Kadarisman, A Fedro, and Z Arifin, “best interest of the child in islamic family law: integrating maqāsid al-sharī’ah and double movement theory in ḥaḍānah cases,” *Jurnal Al-Dustur* 8, no. 2 (2025): 155–74, <https://doi.org/10.30863/aldustur.v8i2.10459>.

<sup>5</sup> F Raday, “Sacralising the Patriarchal Family in the Monotheistic Religions: ‘To No Form of Religion Is Woman Indebted for One Impulse of Freedom,’” *International Journal of Law in Context* 8, no. 2 (2012): 211–30,

merely a doctrinal application of law, but a contested arena where normative principles, judicial interpretation, and social realities intersect.<sup>6</sup>

However, existing studies fail to provide a longitudinal socio-legal mapping of judicial reasoning while simultaneously integrating child protection and gender justice within Islamic legal frameworks.<sup>7</sup> Much of the current scholarship remains either doctrinal focusing on normative prescriptions or fragmented, addressing child welfare and gender justice separately without examining how these frameworks interact in judicial decision-making over time.<sup>8</sup> Moreover, empirical studies on religious court decisions are often limited in scope and lack temporal depth, thereby failing to capture evolving patterns of judicial reasoning, particularly in periods of social disruption such as the COVID-19 pandemic.<sup>9</sup>

The central problem lies in the absence of standardized judicial reasoning, resulting in inconsistent guardianship outcomes despite a

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<https://doi.org/10.1017/S1744552312000055>; Wahyudi, Muhammad Husni Abdulah Pakarti, and Diana Farid, "Peran Tradisi dan Norma Gender dalam Penyelesaian Sengketa Hukum Keluarga," *An-Nisa: Journal of Islamic Family Law*, 1, no. 3 (2024): 1–11, <https://doi.org/10.63142/an-nisa.v1i3.50>.

<sup>6</sup> J Carbone, "Legal Applications of the 'Best Interest of the Child' Standard: Judicial Rationalization or a Measure of Institutional Competence?," *Pediatrics* 134 (2014): S111–20, <https://doi.org/10.1542/peds.2014-1394G>; J Collinson, "Making the Best Interests of the Child a Substantive Human Right at the Centre of National Level Expulsion Decisions," *Netherlands Quarterly of Human Rights* 38, no. 3 (2020): 169–90, <https://doi.org/10.1177/0924051920940167>.

<sup>7</sup> A H Abdullah et al., "Effectiveness of Islamic Law in Protecting The Rights of The Child," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 330–54, <https://doi.org/10.29240/jhi.v10i1.12586>; Wahyudi, Muhammad Husni Abdulah Pakarti, Diana Farid, Husain, and Sofia Gussevi, "Pergeseran Konsep Perwalian Anak dalam Perkembangan Hukum Keluarga di Indonesia," *An-Nisa: Journal of Islamic Family Law* 1, no. 4 (2024): 64–74, <https://doi.org/10.63142/an-nisa.v1i4.46>.

<sup>8</sup> H Mahaseth and S Khatoun, "Jordan's Child Custody Law: A Blueprint for Progress," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 1 (2025): 355–59, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-1050057379712&partnerID=40&md5=ef88d0892f1146b2546f6007e73deb86>; Kadarisman, Fedro, and Arifin, "Best Interest Of The Child In Islamic Family Law: Integrating Maqāsid Al-Sharī'Ah And Double Movement Theory In Ḥaḍānah Cases."

<sup>9</sup> L.-M. Burhai et al., "A Qualitative Exploration of the Impact of the COVID-19 Pandemic on Parents' Experiences of Parental Alienation in the United Kingdom," *Partner Abuse* 15, no. 3 (2024): 337–61, <https://doi.org/10.1891/PA-2023-0006>;

shared normative framework.<sup>10</sup> While statutory and religious legal norms provide a common basis for adjudication, judges exercise significant discretion in interpreting and applying these norms. This discretionary space leads to variations in legal reasoning and outcomes, raising critical questions regarding consistency, fairness, and the extent to which judicial decisions genuinely reflect the principles of child welfare and gender justice.<sup>11</sup>

To address this issue, this study adopts a multi-layered theoretical framework grounded in three major perspectives. First, *maqāṣid al-sharī‘ah* serves as the core analytical lens, emphasizing the protection of fundamental human interests such as the preservation of life, lineage, and intellect (*ḥifẓ al-nafs*, *ḥifẓ al-nasl*, and *ḥifẓ al-‘aql*) as the ultimate objective of Islamic law.<sup>12</sup> Second, the *best interest of the child doctrine* is employed as a global normative standard guiding child protection in legal systems.<sup>13</sup> Third, *feminist legal theory* provides a critical perspective for examining gender bias, power relations, and structural inequalities embedded in judicial practices.<sup>14</sup> The integration of these

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<sup>10</sup> Ropiah, “Contextualized Islamic Family Law in Practice: Divorce and Child Custody Disputes in Cikarang, Indonesia”; Amar Yusuf Abdurrohman, Misbahuzzulam, Muhammad Husni Abdulah Pakarti, Imran Ahmad Sajid, and Fateema Muslihatun Najihah, “The Law of Adoption of Children Out of Wedlock in the Perspective of Islamic and Indonesian Law,” *An-Nisa: Journal of Islamic Family Law* 2, no. 4 (2025): 299–314, <https://doi.org/10.63142/an-nisa.v2i4.347>.

<sup>11</sup> Carbone, “Legal Applications of the ‘Best Interest of the Child’ Standard: Judicial Rationalization or a Measure of Institutional Competence?”; Collinson, “Making the Best Interests of the Child a Substantive Human Right at the Centre of National Level Expulsion Decisions”; Mala Hayati, Fakhurrrazi M. Yunus, and Gamal Achyar, “Child Rights Fulfilment in Families Practicing Early Marriage: A Juridical-Empirical Analysis of Child Protection Law Implementation in Blangkejeren, Gayo Lues Regency,” *An-Nisa: Journal of Islamic Family Law* 2, no. 4 (2025): 361–376, <https://doi.org/10.63142/an-nisa.v2i4.474>.

<sup>12</sup> Auda, J, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach. International Institute of Islamic Thought.*, 2008; Mohammad Hashim Kamali, *Shariah Law: An Introduction* (Oneworld Publications, 2019).

<sup>13</sup> J Zermatten, “The Best Interests of the Child Principle: Literal Analysis and Function,” *International Journal of Children’s Rights* 18, no. 4 (2010): 483–99, <https://doi.org/10.1163/157181810X537391>; Torrecuadrada García-Lozano, “The Best Interest of the Child.”

<sup>14</sup> Raday, “Sacralising the Patriarchal Family in the Monotheistic Religions: ‘To No Form of Religion Is Woman Indebted for One Impulse of Freedom’”; J Long, “Equal and Not. A Feminist Perspective on Italian Family Law,” *Italian Law Journal* 9, no. 2 (2023): 533–55, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85193366416&partnerID=40&md5=db6654e7a46f2040472cb12bc940cdcc>.

frameworks enables a comprehensive socio-legal analysis that situates guardianship adjudication within both Islamic legal philosophy and contemporary human rights discourse.

In the Indonesian context, religious courts operate within a hybrid legal system that combines classical Islamic jurisprudence, national legal provisions, and socio-legal considerations. Judicial decisions often emphasize continuity of care, emotional stability, and the socio-economic capacity of guardians, reflecting a pragmatic application of the best interest principle.<sup>15</sup> However, inconsistencies in the application of these principles persist, indicating the absence of coherent judicial standards. Comparative studies from jurisdictions such as Jordan and Pakistan further demonstrate that legal reforms can reconcile traditional doctrines with progressive child-centered approaches.<sup>16</sup>

Furthermore, gender justice remains a critical concern in guardianship adjudication. Despite formal legal recognition of equality, women frequently encounter structural disadvantages in custody disputes, including higher evidentiary burdens and implicit judicial bias.<sup>17</sup> Feminist legal theory underscores the need for gender-sensitive judicial reasoning that acknowledges caregiving roles and addresses systemic inequalities.<sup>18</sup> Incorporating this perspective is essential for ensuring that guardianship decisions not only protect children but also uphold the rights and dignity of women.

This study aims to analyze the transformation of guardianship decisions in Indonesian religious courts between 2020 and 2025 by examining patterns of judicial reasoning, the role of judicial discretion, and the integration of child protection and gender justice considerations. It seeks to examine how judges interpret legal norms in practice, assess the extent to which women's rights are incorporated into judicial decisions, and map the evolving dynamics of guardianship law within a socio-legal context.

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<sup>15</sup> Nazah, Gustiana, and Saadah, "Gender Justice in Child Custody Disputes: The Maqāṣid Al-Sharī'ah Approach in Contemporary Judicial Practice."

<sup>16</sup> Ishaque and Khan, "The Best Interests of the Child: A Prevailing Consideration within Islamic Principles and a Governing Principle in Child Custody Cases in Pakistan"; Mahaseth and Khatoun, "Jordan's Child Custody Law: A Blueprint for Progress."

<sup>17</sup> Long, "Equal and Not. A Feminist Perspective on Italian Family Law."

<sup>18</sup> Raday, "Sacralising the Patriarchal Family in the Monotheistic Religions: 'To No Form of Religion Is Woman Indebted for One Impulse of Freedom.'"

The novelty of this research lies in several key contributions. First, it provides a longitudinal analysis (2020–2025) of guardianship decisions, capturing temporal dynamics in judicial reasoning.<sup>19</sup> Second, it situates the analysis within the context of the COVID-19 pandemic, which significantly affected family structures, caregiving patterns, and legal disputes.<sup>20</sup> Third, it offers an integrative analytical framework that combines *maqāṣid al-sharī‘ah*, *gender justice theory*, and *socio-legal analysis*, thereby bridging normative Islamic legal theory with empirical judicial practice.<sup>21</sup>

Unlike previous studies, this research does not merely describe legal doctrines or isolated cases but systematically examines the transformation of guardianship law through the lens of judicial behavior, contributing to both theoretical development and practical reform in Islamic family law.

The scope of this study is limited to guardianship cases adjudicated by Indonesian religious courts, with data derived from official court decisions and relevant academic literature. The analysis focuses on identifying patterns of legal reasoning, examining the influence of socio-cultural factors, and evaluating the implications of these trends for the development of family law.

## RESEARCH METHODS

This study employs a normative-empirical (socio-legal) research design to analyze the transformation of guardianship decisions in Indonesian Religious Courts between 2020 and 2025. Unlike purely doctrinal approaches, this design integrates legal text analysis with empirical examination of judicial practices, enabling the identification of patterns in judicial reasoning within their socio-legal context.<sup>22</sup> The

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<sup>19</sup> Nazah, Gustiana, and Saadah, “Gender Justice in Child Custody Disputes: The Maqāṣid Al-Sharī‘ah Approach in Contemporary Judicial Practice.”

<sup>20</sup> Burhai et al., “A Qualitative Exploration of the Impact of the COVID-19 Pandemic on Parents’ Experiences of Parental Alienation in the United Kingdom”; C Houston et al., “Ontario Family Justice in ‘Lockdown’: Early Pandemic Cases and Professional Experience,” *Family Court Review* 60, no. 2 (2022): 241–58, <https://doi.org/10.1111/fcre.12640>.

<sup>21</sup> Abdullah et al., “Effectiveness of Islamic Law in Protecting The Rights of The Child”; Raday, “Sacralising the Patriarchal Family in the Monotheistic Religions: ‘To No Form of Religion Is Woman Indebted for One Impulse of Freedom’”; J, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. *International Institute of Islamic Thought*.

<sup>22</sup> Reza Banakar et al., *Theory and Method in Socio-Legal Research, Qualitative Research in Psychology*, vol. 3 (Hart Publishing, 2005),

study is longitudinal and analytical, focusing on how judicial discretion operates over time, particularly during the COVID-19 period, which significantly influenced family dynamics and legal disputes.

The primary data consist of 120 guardianship decisions obtained from the Indonesian Supreme Court's official database (*Direktori Putusan Mahkamah Agung*). These cases were selected through purposive sampling based on four criteria: (1) relevance to guardianship disputes (*ḥaḍānah/wilāyah*), (2) completeness of judicial reasoning (*ratio decidendi*), (3) representation across five major jurisdictions (e.g., West Java, Central Java, East Java, South Sulawesi, and Jakarta), and (4) decisions issued between 2020–2025. Secondary data include Scopus-indexed journal articles, books on Islamic family law, and policy reports, particularly those addressing legal developments during the pandemic period.<sup>23</sup>

Data analysis was conducted using a qualitative coding framework combining open coding and axial coding. Open coding was applied to identify recurring themes in judicial reasoning, while axial coding was used to establish relationships between categories. The analysis employed three core analytical indicators: (1) child interest (e.g., emotional attachment, welfare considerations, continuity of care), (2) gender reasoning (e.g., recognition of women's rights, presence of bias, caregiving roles), and (3) economic factors (e.g., financial capacity, employment status, post-divorce stability). These variables were systematically coded and analyzed using content analysis and legal reasoning analysis to uncover patterns, inconsistencies, and shifts in judicial interpretation over time.<sup>24</sup>

To ensure methodological rigor, the study applies data triangulation and inter-coder reliability testing. Triangulation is conducted by comparing judicial decisions with statutory provisions, classical Islamic legal doctrines, and contemporary academic literature. Inter-coder reliability is ensured through independent coding and cross-validation of selected cases to maintain consistency in interpretation. Ethical considerations are addressed by utilizing publicly accessible data

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<https://doi.org/10.1191/1478088706qp0630a> ; Roger Cotterrell, *Sociology of Law* (Routledge, 2017).

<sup>23</sup> T Bradley, "COVID-19 and Family Law: Challenges and Responses," *Journal of Social Welfare and Family Law* 42, no. 3 (2020).

<sup>24</sup> Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology* (Sage Publications, 2018).

and anonymizing sensitive information.<sup>25</sup> This methodological framework positions the study as a fully socio-legal empirical inquiry, capable of capturing the dynamic interaction between legal norms, judicial discretion, and socio-cultural realities in guardianship adjudication.

## **RESULTS AND DISCUSSION**

### **Child Protection Orientation in Guardianship Decisions**

The analysis of religious court decisions from 2020 to 2025 demonstrates that the *best interest of the child* has evolved into the dominant normative orientation in guardianship adjudication. Judges no longer treat guardianship merely as a question of formal legal authority but increasingly conceptualize it as a protective mechanism aimed at ensuring the child's physical safety, emotional stability, social environment, and continuity of care. Although judicial reasoning continues to reference formal legal sources such as the Compilation of Islamic Law and the Child Protection Law, the analytical emphasis has shifted from textual compliance toward a substantive evaluation of the child's lived conditions.<sup>26</sup> This indicates a transition from formalistic legality to welfare-oriented adjudication.

This transformation reflects a broader reconfiguration of judicial reasoning. Whereas classical guardianship models relied heavily on hierarchical custodial doctrines derived from Islamic jurisprudence, contemporary decisions reveal a more context-sensitive approach in which judges assess caregiving history, emotional bonds, economic capacity, and environmental stability.<sup>27</sup> Such reasoning signals a shift from rule-based adjudication toward principle-based adjudication, where legal norms function as flexible guidelines rather than rigid determinants. This shift, however, risks excessive judicial subjectivity due to the absence of measurable standards, potentially leading to

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<sup>25</sup> David B Resnik, "What Is Ethics in Research and Why Is It Important?" (National Institute of Environmental Health Sciences, 2020).

<sup>26</sup> Kadarisman, Fedro, and Arifin, "Best Interest Of The Child In Islamic Family Law: Integrating Maqāṣid Al-Sharī'ah And Double Movement Theory In Ḥaḍānah Cases"; Nazah, Gustiana, and Saadah, "Gender Justice in Child Custody Disputes: The Maqāṣid Al-Sharī'ah Approach in Contemporary Judicial Practice."

<sup>27</sup> Mohd et al., "Protecting Children from Labour: Muslim Scholar's Viewpoint and Legal Provisions in Selected Muslim Countries"; Mahaseth and Khatoon, "Jordan's Child Custody Law: A Blueprint for Progress."

inconsistent and unpredictable guardianship outcomes across similar cases.<sup>28</sup>

The predominance of the best interest principle aligns with international child protection jurisprudence, where the doctrine operates simultaneously as a substantive right, an interpretative principle, and a procedural rule.<sup>29</sup> Indonesian religious court decisions thus reflect a broader global convergence toward child-centered justice, as similarly observed in custody, foster care, and migration cases where courts assess the concrete implications of legal decisions on children’s welfare and development.<sup>30</sup> Nevertheless, comparative scholarship consistently highlights a structural limitation of this doctrine: its inherent indeterminacy, which allows judges broad interpretive discretion and may produce divergent outcomes.<sup>31</sup>

From the perspective of Islamic family law, this transformation remains normatively grounded in the framework of *maqāsid al-sharī‘ah*. The prioritization of children’s welfare corresponds directly to the protection of life (*hifz al-nafs*) and lineage (*hifz al-nasl*), which constitute core objectives of Islamic law.<sup>32</sup> However, the operationalization of these principles in judicial practice raises a critical concern: while maqāsid provides a strong ethical and teleological foundation, it does not inherently offer standardized legal indicators. Consequently, its

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<sup>28</sup> N Glenn-Levin Rodriguez, “Translating ‘Best Interest’: Child Welfare Decisions at the US–México Border,” *Political and Legal Anthropology Review* 39 (2016): 154–68, <https://doi.org/10.1111/plar.12177>; N Flayyih et al., “The Specificity Of Execution In Personal Status Matters: A Study On The Enforcement Of National And Foreign Judgments Before The Execution Judge,” *Access to Justice in Eastern Europe* 8, no. 2 (2025): 1–20, <https://doi.org/10.33327/AJEE-18-8.2-c000107>.

<sup>29</sup> Torrecuadrada García-Lozano, “The Best Interest of the Child”; Zermatten, “The Best Interests of the Child Principle: Literal Analysis and Function”; M Abelungu, “The African Committee of Experts on the Rights and Welfare of the Child and the Principle of the Best Interest of the Child,” *Afrika Focus* 35, no. 1 (2022): 90–126, <https://doi.org/10.1163/2031356X-35010006>; I García-Muñoz, “Knowledge and Gender Equality: Fostering Change through Resources,” in *Proceedings of the International Conference on Gender Research*, 2021, 346–49, <https://doi.org/10.34190/IGR.21.068>.

<sup>30</sup> S.-C. Huang, H.-L. Shao, and R B Leflar, “Applying Decision Tree Analysis to Family Court Decisions: Factors Determining Child Custody in Taiwan,” in *Proceedings of the 18th International Conference on Artificial Intelligence and Law, ICAIL 2021*, 2021, 258–59, <https://doi.org/10.1145/3462757.3466076>.

<sup>31</sup> Glenn-Levin Rodriguez, “Translating ‘Best Interest’: Child Welfare Decisions at the US–México Border.”

<sup>32</sup> J, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. International Institute of Islamic Thought.; Kamali, *Shariah Law: An Introduction*.

application depends heavily on judicial interpretation, which may vary across cases and institutional contexts. This suggests that the integration of maqāṣid into contemporary adjudication requires further methodological clarification to ensure consistency.

The findings also reveal the emergence of substantive justice as a guiding paradigm in guardianship adjudication. Judges increasingly interpret guardianship as a protective instrument against vulnerability, particularly in cases involving divorce, parental death, domestic violence, and economic instability.<sup>33</sup> Comparable developments have been documented in other Muslim-majority jurisdictions, such as Tunisia and Saudi Arabia, where courts have incorporated welfare-based reasoning and human rights considerations into family law adjudication.<sup>34</sup> However, these comparative experiences also demonstrate that the expansion of judicial discretion, if not institutionally regulated, may generate disparities and reduce legal predictability.

In the Indonesian context, judicial discretion functions as the central mechanism for translating abstract legal norms into concrete child protection. This enables judges to prioritize relational and contextual factors such as emotional attachment and caregiving continuity, reflecting a welfare-oriented model of adjudication.<sup>35</sup> Yet, as socio-legal scholarship emphasizes, discretion without procedural safeguards risks undermining consistency, accountability, and legal certainty.<sup>36</sup> The absence of standardized interpretative frameworks may result in decisions that are highly dependent on individual judicial perspectives rather than coherent legal principles.

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<sup>33</sup> M H A Pakarti, "Perlindungan Hak Anak Dalam Perceraian Menurut Hukum Keluarga Islam," *Mawaddah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2023): 1–20, <https://doi.org/10.52496/mjhki.v1i1.1>.

<sup>34</sup> Z Almihtar, "Human Rights of Women and Children under the Islamic Law of Personal Status and Its Application in Saudi Arabia," *Muslim World Journal of Human Rights* 5, no. 1 (2009), <https://doi.org/10.2202/1554-4419.1158>; S Ben Achour, "Tunisia," in *Parental Care and the Best Interests of the Child in Muslim Countries*, 2017, 259–84, [https://doi.org/10.1007/978-94-6265-174-6\\_10](https://doi.org/10.1007/978-94-6265-174-6_10).

<sup>35</sup> Kadarisman, Fedro, and Arifin, "Best Interest Of The Child In Islamic Family Law: Integrating Maqāṣid Al-Sharī‘Ah And Double Movement Theory In Ḥaḍānah Cases."

<sup>36</sup> Carbone, "Legal Applications of the 'Best Interest of the Child' Standard: Judicial Rationalization or a Measure of Institutional Competence?"; Flayyih et al., "The Specificity Of Execution In Personal Status Matters: A Study On The Enforcement Of National And Foreign Judgments Before The Execution Judge."

Theoretically, this transformation represents an epistemological shift from formal legalism to purposive reasoning grounded in maqāsid al-sharī‘ah. While this shift strengthens the alignment between Islamic legal objectives and contemporary child protection norms, it simultaneously exposes a structural tension between flexibility and legal certainty. On one hand, flexibility enables context-sensitive and humane adjudication; on the other, it increases the risk of subjectivity and inconsistency in judicial outcomes.

Accordingly, while the rise of child-centered adjudication marks a significant advancement toward substantive justice, it also necessitates institutional and doctrinal responses. The findings highlight the urgent need for clearer interpretative guidelines, measurable indicators of child welfare, and specialized judicial training to reduce disparities in decision-making. Without such mechanisms, the expansion of judicial discretion despite its progressive orientation may inadvertently weaken the coherence and reliability of guardianship law in Indonesian religious courts.

### **Maternal Preference in Guardianship Decisions**

The findings reveal a strong and consistent tendency within religious court decisions during the 2020–2025 period to place children particularly those in early childhood under maternal care. Judges frequently justified this preference by emphasizing emotional closeness, caregiving continuity, and the psychological needs of the child. The reasoning often highlighted the mother’s role in providing daily nurturing, emotional support, and a stable caregiving environment, which were considered essential for the child’s development.<sup>37</sup> Although such considerations were not always explicitly framed as binding legal rules, they appeared repeatedly as decisive factors in judicial reasoning, indicating the presence of an implicit maternal preference within guardianship adjudication.

This phenomenon suggests that judicial practice has moved beyond formal legal provisions toward a more contextual and empirically grounded evaluation of caregiving capacity. Courts increasingly prioritize the continuity of care and the existing emotional bond between mother and child over rigid adherence to formal custodial

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<sup>37</sup> J Kaniuk, “The Applications of Attachment Theory in the Field of Adoption and Fostering,” in *The Routledge Handbook of Attachment: Implications and Interventions*, 2014, 147–65, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84955664867&partnerID=40&md5=5d50c893f3d5a9a10a8041d30c6c0fdd>.

hierarchies.<sup>38</sup> However, this development also raises a critical concern. The persistence of maternal preference may reflect not only caregiving realities but also latent gender bias embedded within judicial cognition, where mothers are implicitly assumed to be more suitable caregivers regardless of individual circumstances.<sup>39</sup> Such assumptions risk transforming a contextual evaluation into a de facto presumption.

From a comparative perspective, this pattern aligns with the historical legacy of the “tender years doctrine,” which institutionalized maternal preference in custody decisions based on assumptions about women’s nurturing capacity.<sup>40</sup> Although modern legal systems formally adopt the gender-neutral *best interests of the child* standard, empirical evidence shows that maternal preference persists in practice, particularly in contexts where caregiving roles are socially gendered.<sup>41</sup> This continuity suggests that judicial reasoning may reproduce structural gender norms rather than purely reflecting objective assessments of child welfare, thereby raising concerns about implicit bias and the neutrality of adjudication.

The observed maternal preference is often justified through attachment theory, which emphasizes the importance of stable emotional bonds in early childhood development.<sup>42</sup> While this framework provides valuable insights, its application in legal contexts remains contested.

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<sup>38</sup> Kadarisman, Fedro, and Arifin, “Best Interest Of The Child In Islamic Family Law: Integrating Maqāṣid Al-Sharī‘Ah And Double Movement Theory In Ḥaḍānah Cases.”

<sup>39</sup> H Nouman, G Enosh, and P Niselbaum-Atzur, “The Role of Parental Communication, Child’s Wishes and Child’s Gender in Social Workers’ Custody Recommendations,” *Children and Youth Services Review* 70 (2016): 302–8, <https://doi.org/10.1016/j.childyouth.2016.09.034>; F Poggi, “Introduction,” *Notizie Di Politeia* 37, no. 143 (2021): 5–8, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85117263967&partnerID=40&md5=7e7f4a83d78fae7ecdb3c8dba108baf6>.

<sup>40</sup> W Michaels, “Child Custody and the Father Right Principle,” in *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies*, 2016, 1–5, <https://doi.org/10.1002/9781118663219.wbegss260>.

<sup>41</sup> R Kadir, R Abdullah, and S Mokhlis, “Understanding Why Mothers Can Lose Child Custody In Malaysia,” *UUM Journal of Legal Studies* 12, no. 2 (2021): 1–25, <https://doi.org/10.32890/uumjls2021.12.1.1>.

<sup>42</sup> A M Flores-Núñez, M Marino-Jiménez, and H C Rivas-Sucari, “Pucará’s Little Bull: A Symbol of Cultural Resistance and Identity Renegotiation in Peruvian Culture,” *Journal of Intercultural Studies*, 2025, <https://doi.org/10.1080/07256868.2025.2531772>; T Forslund, M Hammarlund, and P Granqvist, “Admissibility of Attachment Theory, Research and Assessments in Child Custody Decision-Making? Yes and No!,” *New Directions for Child and Adolescent Development* 2021, no. 180 (2021): 125–40, <https://doi.org/10.1002/cad.20447>.

Attachment theory does not prescribe exclusive maternal care, yet judicial interpretations frequently equate primary attachment with maternal custody. This overreliance risks simplifying complex caregiving dynamics and may marginalize fathers who are equally capable of providing stable and nurturing environments.<sup>43</sup> Consequently, the use of psychological reasoning, while appearing scientific, may inadvertently legitimize subjective judicial preferences.

In the context of Islamic family law, this trend introduces a nuanced tension between doctrinal structure and judicial practice. Classical jurisprudence distinguishes between maternal custody (*ḥadānah*) and paternal guardianship (*wilāyah*), with fathers traditionally retaining legal authority over the child's affairs.<sup>44</sup> Contemporary decisions, however, increasingly privilege caregiving roles over formal authority, reflecting a flexible interpretation aligned with child welfare principles.<sup>45</sup> While this shift can be seen as progressive, it also raises the question of whether the reconfiguration of roles is grounded in principled reasoning or influenced by socially embedded assumptions about gendered caregiving.

Feminist legal theory offers a dual perspective on this issue. On one hand, maternal preference may represent a form of substantive equality, recognizing the disproportionate caregiving burden borne by women and correcting formal legal neutrality that ignores structural inequalities.<sup>46</sup> On the other hand, feminist critiques also warn that reinforcing maternal roles without addressing broader gender structures

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<sup>43</sup> S N Levin et al., "Attachment Goes to Court in Sweden: Perception and Application of Attachment Concepts in Child Removal Court Decisions," *Attachment and Human Development* 26, no. 6 (2024): 521–44, <https://doi.org/10.1080/14616734.2024.2419589>.

<sup>44</sup> A Shahid and I A Khan, "Pakistan," in *Parental Care and the Best Interests of the Child in Muslim Countries*, 2017, 169–204, [https://doi.org/10.1007/978-94-6265-174-6\\_7](https://doi.org/10.1007/978-94-6265-174-6_7).

<sup>45</sup> S Afriyani, "Interdisciplinary Approach In The Study Of Marital Law (Study Of The Determination Of Child Custody)," *Nurani* 21, no. 2 (2021): 219–30, <https://doi.org/10.19109/nurani.v21i2.9738>; J Delgado and C Ibrahim, "Parents and Children in the Qur'an and Premodern Islamic Jurisprudence," in *The Oxford Handbook of Religious Perspectives on Reproductive Ethics*, 2024, 172–90, <https://doi.org/10.1093/oxfordhb/9780190633202.013.13>.

<sup>46</sup> M Minow, "Feminist Legal Theory: Justice Engendered," in *Contemporary Perspectives on Constitutional Interpretation*, 2018, 167–88, <https://doi.org/10.4324/9780429501364>.

may entrench traditional expectations rather than dismantle them.<sup>47</sup> Thus, maternal preference may simultaneously function as both a corrective mechanism and a reproducer of gendered norms, depending on how it is operationalized in judicial reasoning.

Importantly, this pattern also raises concerns regarding potential discrimination against fathers. When courts consistently prioritize maternal custody based on generalized assumptions, fathers may face a higher evidentiary burden to demonstrate caregiving competence. Such asymmetry risks undermining the principle of equality before the law and may discourage paternal involvement in child-rearing, despite growing recognition of shared parenting models in contemporary family law.<sup>48</sup> This suggests that the application of the best interest principle may not be entirely neutral but shaped by implicit normative expectations.

Therefore, the maternal preference observed in guardianship decisions should be understood as a complex and ambivalent phenomenon. It reflects an adaptive legal response to caregiving realities and supports child-centered justice, yet it also exposes underlying tensions related to gender bias, judicial subjectivity, and equality. While the shift toward caregiver-based adjudication represents a departure from rigid patriarchal hierarchies, it does not fully eliminate structural inequalities and may inadvertently create new forms of imbalance.

Accordingly, the findings highlight the need for clearer, gender-sensitive, and evidence-based standards in evaluating caregiving capacity. Without such standards, reliance on judicial discretion risks perpetuating implicit biases and producing inconsistent outcomes. A more balanced approach requires recognizing both maternal and paternal caregiving roles, ensuring that guardianship decisions genuinely reflect the child's best interest while upholding principles of gender justice and legal equality.

### **Social Dynamics and the Surge of Guardianship Cases (2020–2025)**

The findings indicate a significant increase in guardianship cases adjudicated by Indonesian Religious Courts during the 2020–2025 period, closely linked to broader socio-economic disruptions. This trend

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<sup>47</sup> A Diduck and K O'Donovan, *Feminist Perspectives on Family Law*, *Feminist Perspectives on Family Law*, 2006, <https://doi.org/10.4324/9780203945384>; K T Bartlett and R Kennedy, "Introduction," in *Feminist Legal Theory: Readings in Law and Gender*, 2018, 1–12, <https://doi.org/10.4324/9780429500480>.

<sup>48</sup> M R Bartolomei, "Legal Cultures in Transition: The Role of Italian Jurist Women," in *Women in Law and Lawmaking in Nineteenth and Twentieth-Century Europe*, 2016, 253–74, <https://doi.org/10.4324/9781315546766-17>.

can be contextually associated with rising divorce rates, increased parental mortality during the COVID-19 pandemic, economic instability, and the escalation of domestic violence cases. In the Indonesian context, data from the Supreme Court (*Mahkamah Agung*) and the Central Statistics Agency (*BPS*) show a notable rise in divorce cases during the pandemic years, particularly in 2020–2022, largely driven by economic hardship and marital conflict. This increase in divorce litigation logically contributed to a higher number of disputes over child custody and guardianship, as family dissolution often necessitates judicial intervention.

Empirical patterns further suggest that the pandemic acted as a structural shock that intensified vulnerabilities within Indonesian families. Financial instability, job loss, and reduced household income disproportionately affected lower- and middle-income groups, increasing marital tension and the risk of family breakdown.<sup>49</sup> At the same time, reports from Indonesia's National Commission on Violence Against Women (*Komnas Perempuan*) indicate a surge in domestic violence cases during the pandemic, reinforcing the link between crisis conditions and legal disputes over child protection. These contextual dynamics demonstrate that the rise in guardianship cases is not merely a legal phenomenon but a reflection of broader socio-economic stressors affecting Indonesian society.

The pandemic also disrupted co-parenting arrangements and caregiving structures in Indonesia. Movement restrictions (*PSBB* and *PPKM*) limited physical access between parents and children, particularly in separated families, while school closures increased the caregiving burden within households. Courts were therefore required to address new and complex issues, including parental relocation, health risks, and the continuity of child-parent relationships.<sup>50</sup> In many cases, judges had to evaluate not only legal entitlement but also the practical feasibility of caregiving under pandemic conditions. This resulted in

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<sup>49</sup> C Andrade et al., "The Social and Economic Impact of Covid-19 on Family Functioning and Well-Being: Where Do We Go from Here?," *Journal of Family and Economic Issues* 43, no. 2 (2022): 205–12, <https://doi.org/10.1007/s10834-022-09848-x>.

<sup>50</sup> A P Bufulin, M B Da Cunha Braz, and F M Da Vitória, "Coronavirus and Family Law: The Implications of Coping with the Public Health Emergency of International Importance Resulting from the Covid-19 Outbreak in the Family Life Regime," *Civilistica.Com* 9, no. 2 (2020), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85101914689&partnerID=40&md5=65b3d7dd1b5317b6fd5a90ebf1e0b05d>.

more context-dependent and flexible judicial reasoning, reflecting the adaptive function of religious courts in responding to crisis situations.

From a socio-legal perspective, these findings confirm that Indonesian family law operates as a responsive institution shaped by external conditions. However, this responsiveness is largely reactive rather than preventive, as legal intervention typically occurs only after family breakdown has already taken place.<sup>51</sup> In Indonesia, the absence of strong preventive family support systems such as accessible mediation services or social welfare interventions means that disputes frequently escalate to formal litigation. Consequently, religious courts bear a disproportionate burden in managing the social consequences of family instability.

At the same time, the increased reliance on judicial flexibility introduces significant challenges. While discretion enables judges to adapt legal norms to complex realities, it also risks producing disparities in outcomes and reducing legal certainty. The rapid transition to digital and semi-virtual court processes during the pandemic further complicated access to justice in Indonesia, particularly for litigants from rural areas or lower socio-economic backgrounds who face technological and infrastructural limitations.<sup>52</sup> This suggests that the expansion of access mechanisms did not uniformly translate into equitable access, thereby reproducing structural inequalities within the legal system.

The rise in domestic violence cases during the pandemic further intensified the complexity of guardianship adjudication. Indonesian courts increasingly had to consider allegations of abuse within the framework of the best interest of the child, balancing child protection with parental rights. However, the absence of standardized guidelines for assessing such cases often resulted in delays and inconsistent judicial responses. In some instances, protective measures such as restricting contact with abusive parents were contested and misinterpreted, complicating judicial evaluation and potentially undermining child

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<sup>51</sup> C Huntington, "FLOURISHING FAMILIES\*," *Family Court Review* 50, no. 2 (2012): 273–79, <https://doi.org/10.1111/j.1744-1617.2012.01450.x>; R George, "Family Law as Social Policy: Taking Family Problems Upstream," *Current Legal Problems* 78, no. 1 (2025): 1–27, <https://doi.org/10.1093/clp/cuaf010>.

<sup>52</sup> T Sourdin, B Li, and D M McNamara, "Court Innovations and Access to Justice in Times of Crisis," *Health Policy and Technology* 9, no. 4 (2020): 447–53, <https://doi.org/10.1016/j.hlpt.2020.08.020>; J Viglione, J H Peck, and J D Frazier, "COVID-19 and Courts: An Exploration of the Impacts of the Pandemic on Case Processing and Operations," *Victims and Offenders* 18, no. 5 (2023): 818–41, <https://doi.org/10.1080/15564886.2022.2133034>.

safety.<sup>53</sup> This highlights the need for trauma-informed and context-sensitive judicial approaches within Indonesian religious courts.

Analytically, the surge in guardianship cases during this period underscores the contingent and adaptive nature of guardianship law in Indonesia. Judicial reasoning is not solely determined by legal norms but is significantly shaped by socio-economic pressures, cultural expectations, and crisis dynamics. Socio-legal scholarship emphasizes that family law must evolve in response to such structural changes by integrating legal, social, and policy-based approaches.<sup>54</sup> In the Indonesian context, this implies the necessity of strengthening institutional coordination between courts, social services, and child protection agencies.

Furthermore, variations in family resilience across Indonesia shaped by cultural norms, economic conditions, and access to support systems play a crucial role in determining both the emergence of disputes and their resolution.<sup>55</sup> This reinforces the argument that guardianship law cannot be understood in isolation but must be situated within a broader socio-cultural and economic framework.

In conclusion, the increase in guardianship cases in Indonesian Religious Courts during 2020–2025 reflects the profound impact of the COVID-19 pandemic and related socio-economic disruptions on family structures. While the legal system has demonstrated adaptive capacity through flexible judicial reasoning, this adaptability remains uneven and structurally constrained. Therefore, strengthening institutional frameworks, improving access to justice, and developing more context-sensitive and standardized approaches are essential to ensure that guardianship adjudication in Indonesia remains both responsive and equitable in times of crisis.

### **Implicit Integration of Women’s Rights in Judicial Reasoning**

The findings indicate that the protection of women’s rights in guardianship decisions within Indonesian Religious Courts is rarely

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<sup>53</sup> A R Ferreira and A I Sani, “Domestic Violence and Custody Proceedings: An Analysis of Judicial Decisions in Portugal,” *Journal of Family Violence* 41, no. 1 (2026): 195–207, <https://doi.org/10.1007/s10896-024-00739-3>.

<sup>54</sup> M Maclean, “Sociological Research in Family Law: International Perspectives within the Policylandscape,” in *Research Handbook on the Sociology of Law*, 2020, 283–94, <https://doi.org/10.4337/9781789905182.00031>.

<sup>55</sup> B Boers, T Henschel, and M Stellmacher, “The Resilience of Family Firms During Crisis,” in *Management for Professionals*, vol. Part F2445, 2024, 83–106, [https://doi.org/10.1007/978-3-031-50836-3\\_5](https://doi.org/10.1007/978-3-031-50836-3_5).

articulated explicitly in judicial reasoning, yet it is consistently present in an implicit and indirect form. Judges frequently acknowledge the mother's role as the primary caregiver, recognize women's vulnerability within family structures, and incorporate considerations of fairness in familial relationships. However, these elements are almost always framed through the ostensibly neutral language of the *best interest of the child*, rather than through explicit references to gender equality or women's rights.<sup>56</sup> As a result, while many decisions substantively benefit women particularly mothers this protection emerges as a derivative outcome of child-centered reasoning rather than as an independently recognized legal principle.

The implicit integration of women's rights indicates a structural limitation of religious court reasoning, where gender justice is subordinated under child welfare, rather than recognized as an autonomous legal principle. This pattern suggests that judicial reasoning operates within a constrained normative framework in which gender considerations are embedded but not formally legitimized. Judges tend to emphasize caregiving capacity, emotional attachment, and psychological stability factors that often align with women's lived realities yet they avoid articulating these considerations in terms of rights, equality, or structural disadvantage. Consequently, the legal narrative remains anchored in a child-centered paradigm that obscures the underlying gender dimension of the dispute.

From a theoretical perspective, this phenomenon reflects a broader tension within family law systems, particularly those influenced by religious and cultural traditions, in reconciling patriarchal legal structures with contemporary human rights standards. Although reforms have expanded the scope of family law to address issues such as caregiving and domestic violence, gender equality is often not explicitly embedded in judicial reasoning.<sup>57</sup> Instead, it is mediated through general principles such as welfare and fairness, which may depoliticize gender inequality and limit the transformative potential of legal discourse.

Empirical studies further demonstrate that this implicit approach does not eliminate structural inequalities but may instead conceal them.

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<sup>56</sup> Kadarisman, Fedro, and Arifin, "Best Interest Of The Child In Islamic Family Law: Integrating Maqāṣid Al-Sharī'ah And Double Movement Theory In Ḥaḍānah Cases."

<sup>57</sup> "Envisioning and Striving towards Gender Justice," *Economic and Political Weekly* 52, no. 40 (2017): 12–14, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85031096059&partnerID=40&md5=693606bf79b3e1694c71a481a76c912b>.

Women in custody and guardianship disputes frequently face systemic barriers, including higher evidentiary burdens, economic disadvantage, and limited institutional support.<sup>58</sup> In certain cases, custody frameworks may even reinforce unequal power relations, particularly when legal authority remains formally vested in fathers despite the mother's caregiving role.<sup>59</sup> Moreover, in cases involving domestic violence, courts may inadequately recognize the gendered nature of harm, resulting in decisions that fail to fully protect women and children.<sup>60</sup> These patterns underscore that implicit recognition is insufficient to achieve substantive gender justice.

Feminist jurisprudence provides a critical lens for understanding these limitations. It challenges the assumption that formally neutral reasoning leads to equitable outcomes, emphasizing instead the need for substantive equality that accounts for social, economic, and relational disparities.<sup>61</sup> Feminist scholars argue that judicial reasoning often reproduces gender norms through implicit assumptions about caregiving, vulnerability, and parental roles.<sup>62</sup> In this context, the consistent yet implicit recognition of women's roles in guardianship decisions can be interpreted as both an acknowledgment of social reality and a failure of the legal system to explicitly confront and address gender inequality.

Within Islamic legal discourse, the integration of gender justice remains an evolving and contested field. While classical interpretations assign differentiated roles to men and women, contemporary approaches increasingly emphasize justice (*ʿadl*) and equity (*qisṭ*) as core principles

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<sup>58</sup> Nazah, Gustiana, and Saadah, "Gender Justice in Child Custody Disputes: The Maqāṣid Al-Sharī'ah Approach in Contemporary Judicial Practice."

<sup>59</sup> V Elizabeth, N Gavey, and J Tolmie, "... He's Just Swapped His Fists for the System' The Governance of Gender through Custody Law," *Gender and Society* 26, no. 2 (2012): 239–60, <https://doi.org/10.1177/0891243211434765>.

<sup>60</sup> R Tweedale, "A Radical Feminist Legal Analysis of Child Arrangements and Domestic Violence," in *Understanding Gender-Based Violence: An Essential Textbook for Nurses, Healthcare Professionals and Social Workers*, 2021, 241–55, [https://doi.org/10.1007/978-3-030-65006-3\\_15](https://doi.org/10.1007/978-3-030-65006-3_15).

<sup>61</sup> Bartlett and Kennedy, "Introduction"; R West and C G Bowman, *Research Handbook on Feminist Jurisprudence, Research Handbook on Feminist Jurisprudence*, 2019, <https://doi.org/10.4337/9781786439697>.

<sup>62</sup> C A MacKinnon, "Toward Feminist Jurisprudence," in *Living With Contradictions: Controversies In Feminist Social Ethics*, 2018, 34–39, <https://doi.org/10.4324/9780429499142-4>; M Duarte, "Is a Good Woman Hard to Find? Reflections on the 'Ideal Victim' in Criminal Law," *Ex Aequo*, no. 45 (2022): 31–43, <https://doi.org/10.22355/exaequo.2022.45.04>.

of Sharia.<sup>63</sup> Reform-oriented methodologies, such as *qirā'ah mubādalah*, seek to reinterpret Islamic texts in a reciprocal and egalitarian manner.<sup>64</sup> However, the limited explicit use of such frameworks in judicial reasoning suggests that religious courts have not yet fully operationalized gender equality as a normative standard, despite its compatibility with maqāṣid al-sharī'ah.

Another critical dimension is the role of implicit bias in judicial decision-making. Judges, like all decision-makers, are influenced by cognitive and social biases that shape their interpretations and judgments.<sup>65</sup> In guardianship cases, such biases may manifest in assumptions about gender roles and caregiving capacities, influencing outcomes even in the absence of explicit reasoning. The reliance on implicit reasoning, while appearing neutral, may therefore reproduce structural inequalities in a less visible but equally impactful manner.<sup>66</sup>

Furthermore, women's structural vulnerability within family law contexts reinforces the need for explicit legal recognition. Factors such as economic dependency, exposure to gender-based violence, and unequal access to legal resources disproportionately affect women's position in guardianship disputes.<sup>67</sup> These vulnerabilities are often

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<sup>63</sup> C Jones-Pauly, "Gender Relations," in *The Ashgate Research Companion to Islamic Law*, 2016, 137–49, <https://doi.org/10.4324/9781315613093-14>; St. Rahmawati, "Mainstreaming of Gender Equality in Islamic Family Law: Opportunities and Challenges," *Samarah* 4, no. 2 (2020): 360–74, <https://doi.org/10.22373/sjhc.v4i2.8110>.

<sup>64</sup> M Azik and A Syukri, "Critical Analysis of the Concept of Qirā'ah Mubādalah (Theory of Reciprocal Reading) in the Dynamics of the Development of Islamic Marriage Legal Theory," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 4 (2025): 209–22, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-105031089495&partnerID=40&md5=a2e966748f288d43a34efb95fa1faa05>.

<sup>65</sup> J Kang, "Little Things Matter a Lot: The Significance of Implicit Bias, Practically & Legally," *Daedalus* 153, no. 1 (2024): 193–212, [https://doi.org/10.1162/daed\\_a\\_02055](https://doi.org/10.1162/daed_a_02055).

<sup>66</sup> A.-H. Alhalalmeh and A Al-Tarawneh, "Exploring Cognitive Biases, Decision-Making, and Their Impact on the Legal System," in *Studies in Systems, Decision and Control*, vol. 226, 2024, 635–45, [https://doi.org/10.1007/978-3-031-73545-5\\_53](https://doi.org/10.1007/978-3-031-73545-5_53); C K Winter, "The Value of Behavioral Economics for EU Judicial Decision-Making," *German Law Journal* 21, no. 2 (2020): 240–64, <https://doi.org/10.1017/glj.2020.3>.

<sup>67</sup> D K Bekyashev and N A Sheremet, "International Legal Mechanisms for the Protection and Promotion of Women's Rights in Latin America and the Caribbean," *Kutafin Law Review* 10, no. 1 (2023): 179–98, <https://doi.org/10.17803/2713-0533.2023.1.23.179-198>; E Wood, *Gender Justice and the Law: Theoretical Practices of Intersectional Identity*, *Gender Justice and the Law: Theoretical Practices of*

intersectional, shaped by class, education, and social status, requiring a more nuanced and explicitly articulated legal response.<sup>68</sup>

In conclusion, the integration of women's rights in guardianship decisions within Indonesian Religious Courts remains implicit, instrumental, and structurally constrained. While judicial outcomes often align with the protection of women, the absence of explicit gender-based reasoning limits the capacity of the legal system to address inequality in a systematic and transformative manner. A shift toward explicit gender-sensitive adjudication, grounded in both feminist legal theory and maqāsid al-sharī'ah, is therefore essential. Without such a shift, gender justice will remain secondary and contingent, rather than a central and autonomous pillar of guardianship law.

### CONCLUSION

This study demonstrates that guardianship adjudication within Indonesian Religious Courts during 2020–2025 has undergone a significant transformation from a rigid, normatively driven framework toward a contextual and principle-based model of decision-making. The *best interest of the child* has become the dominant paradigm, shifting judicial reasoning from formal legal hierarchies to a holistic evaluation of children's welfare, including physical, emotional, and social dimensions. This reflects an epistemological transition from rule-based adjudication to discretion-driven, welfare-oriented adjudication. However, this transformation also reveals structural tensions, including persistent maternal preference and the implicit positioning of women's rights within child-centered reasoning, indicating that gender justice remains subordinated rather than recognized as an autonomous legal principle.

Theoretically, this study contributes to socio-legal and Islamic legal scholarship by demonstrating that *maqāsid al-sharī'ah* can function as a bridge between Islamic legal principles and contemporary human rights frameworks. Nevertheless, the findings also expose a critical limitation: the reliance on judicial discretion without standardized criteria risks producing subjectivity and inconsistency in guardianship decisions. From a policy perspective, this study

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*Intersectional Identity*, 2020, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-105018535387&partnerID=40&md5=ae513352c9bd9812c125f390896f3ee8>.

<sup>68</sup> M A Dona Shiroma and J Shirajanie Niriella, "Review On The International Legal Framework For The Protection Of Women And Girl Children In Non-International Armed Conflicts," in *Research in Political Sociology*, vol. 30, 2025, 47–60, <https://doi.org/10.1108/S0895-993520250000030005>.

underscores the urgent need for nationally standardized judicial guidelines, the explicit integration of gender justice in legal reasoning, and the reformulation of the Compilation of Islamic Law (KHI) or the issuance of more detailed Supreme Court guidelines to align guardianship law with contemporary socio-legal realities. Strengthening judicial capacity through gender-sensitive and child-centered training is also essential to ensure fairness and consistency.

Future research should expand this analysis through comparative and quantitative approaches, including cross-regional studies and examination of judicial behavior across different legal systems. Further investigation into judicial cognition, implicit bias, and institutional constraints is necessary to better understand variations in decision-making. Overall, while the evolution of guardianship law reflects progress toward substantive and child-centered justice, achieving a more equitable and coherent system requires deeper theoretical refinement and sustained institutional reform, ensuring that child welfare and gender justice are fully recognized as co-equal foundations of guardianship adjudication.

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