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Restoration of Maternal Giving and Children's Relational Rights: A Critical Doctrinal Analysis of Decision Number 165 K/Ag/2022

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Abstract

This study analyzes the legal boundary between the return of the mother's gift and the obstruction of the child's relationship with the mother in post-divorce custody cases. This problem is important because actions against giving have the potential to be considered as a violation of parental access without adequate testing of the best interests of the child. The study uses normative legal methods through legislative, conceptual, and case-based approaches, by analyzing Supreme Court Decision Number 165 K/Ag/2022, Decision Number 110 K/AG/2007, and appellate decisions in the same series of cases. The analysis was carried out doctrinally critically by distinguishing between hadhanah authority, parental access rights, children's relational rights, and gift ownership. The results of the study showed that refunds or clothing are not automatically an obstacle to access. The legal qualification as a barrier requires contextual evidence regarding the relational function of the grant, the control of the caregiver, the impact on the child-mother relationship, and the absence of justifiable reasons for protection. Hadhanah, harm prevention, and maqasid sharia affirm the orientation of the best interests of the child, but do not justify automatic transfer of custody. The study recommends the application of a proportional legal test that considers proven obstruction, the child's view, the legitimacy of the caregiver's actions, and the form of remedy that best protects the child's interests. The comparison of judgments shows the continuity of the orientation of child protection, not the birth of a new jurisprudence paradigm. The contribution of the research lies in the formulation of a doctrinal framework to distinguish ownership disputes from violations of children's relational rights. A limitation of the study is that a complete copy of the cassation decision is not available to verify the overall ratio decidendi.

Keywords: *Hadhanah; Children's Relational Rights; Parental Access Rights; Return of Gifts; Children's Best Interests; Maqasid Shariah.*

Abstrak

Penelitian ini menganalisis batas hukum antara pengembalian pemberian ibu dan penghalangan hubungan anak dengan ibunya dalam perkara pengasuhan pascaperceraian.

Permasalahan ini penting karena tindakan terhadap pemberian berpotensi dinilai sebagai pelanggaran akses orang tua tanpa pengujian memadai terhadap kepentingan terbaik anak. Penelitian menggunakan metode hukum normatif melalui pendekatan perundang-undangan, konseptual, dan kasus, dengan menganalisis Putusan Mahkamah Agung Nomor 165 K/Ag/2022, Putusan Nomor 110 K/AG/2007, serta putusan banding dalam rangkaian perkara yang sama. Analisis dilakukan secara doktrinal kritis dengan membedakan kewenangan hadhanah, hak akses orang tua, hak relasional anak, dan kepemilikan pemberian. Hasil penelitian menunjukkan bahwa pengembalian uang atau pakaian tidak secara otomatis merupakan penghalangan akses. Kualifikasi hukum sebagai penghalangan mensyaratkan bukti kontekstual mengenai fungsi relasional pemberian, kendali pengasuh, dampak terhadap hubungan anak dan ibu, serta ketiadaan alasan perlindungan yang dapat dibenarkan. Hadhanah, pencegahan mudarat, dan maqasid syariah menegaskan orientasi kepentingan terbaik anak, tetapi tidak membenarkan perpindahan pengasuhan secara otomatis. Penelitian merekomendasikan penerapan uji hukum proporsional yang mempertimbangkan penghalangan yang terbukti, pandangan anak, legitimasi tindakan pengasuh, dan bentuk pemulihan yang paling melindungi kepentingan anak. Perbandingan putusan menunjukkan kesinambungan orientasi perlindungan anak, bukan lahirnya paradigma yurisprudensi baru. Kontribusi penelitian terletak pada perumusan kerangka doktrinal untuk membedakan sengketa kepemilikan pemberian dari pelanggaran hak relasional anak. Keterbatasan penelitian ialah belum tersedianya salinan lengkap putusan kasasi untuk memverifikasi keseluruhan ratio decidendi.

Kata Kunci: Hadhanah; Hak Relasional Anak; Hak Akses Orang Tua; Pengembalian Pemberian; Kepentingan Terbaik Anak; Maqasid Syariah.

INTRODUCTION

Custody disputes after divorce combine adult authority with the child's need to maintain family relationships. The problem becomes more complicated when the action in question appears to be material, such as returning money or clothes sent by the mother. Refusal of goods can have many reasons. Therefore, the judgment that the action prevents access requires an explanation of the disturbed legal importance and the relationship between the material action and the child's relationship. This question cannot be answered simply by repeating the importance of affection.

Article 14 of the Child Protection Act places the child as the holder of the right to have contact with both parents after separation. Meanwhile, Article 41 letter a and Article 45 of the Marriage Act maintain parental responsibility even if the marriage ends. This framework provides a basis for assessing the behavior of the caregiver, but does not contain a provision that any gift must

be accepted. A construction is needed that explains how the refusal of goods can relate to the fulfillment or abandonment of relational obligations.[12]

The excerpt from the consideration of Decision No. 165 K/Ag/2022 published by MARINews mentions the return of the mother's money and clothes by the father by mail as an act that can be categorized as obstructing the child's access to the mother. This excerpt presents a specific doctrinal problem. However, a publication review is not identical to a copy of the full judgment. This article therefore does not consider all of the review's conclusions to be the Supreme Court's stance, nor does it consider the return of the gift as the sole basis for determining custody.[3]

In the debate over the best interests of the child, Freeman criticizes a framework that limits the understanding of the child and his or her rights. Eekelaar proposes a reconciliation of interests and rights through space for the child to determine his or her interests in a developmental way. This idea is relevant as a warning against the determination of the child's interests solely according to the will of the adult. This article uses the idea in the open sections of both works on a limited basis; its application to the denial of giving is an author's analysis, not the empirical findings of the two studies.[4]

The analytical gap addressed by this study is that the mechanism of change in qualifications has not been unraveled: from the rejection of objects to the possibility of interference with the child's relational rights. The contribution offered is not a discovery of the principle that children should be protected or that parents remain responsible after divorce. The contribution is to formulate the conditions of legal relevance, justification limits, and proportional consequences, and then test them against Indonesian norms, decision materials, and Islamic legal doctrines. This claim of novelty is

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[1] Republik Indonesia, Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak sebagaimana diubah dengan Undang-Undang Nomor 35 Tahun 2014, terutama Pasal 2, 10, dan 14;

[2] Republik Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, sebagaimana diubah dengan Undang-Undang Nomor 16 Tahun 2019, Pasal 41 huruf a, 45, dan 49;

[3] M. Khusnul Khuluq, "Yurisprudensi: Putusan Kasasi Nomor 165 K/Ag/2022, Mengembalikan Pemberian Sebagai Bentuk Penutupan Hak Akses," MARINews Mahkamah Agung, 1 September 2025, paragraf kutipan pertimbangan; Sumber ini merupakan ulasan yang mereproduksi kutipan, bukan salinan lengkap putusan; Michael Freeman, "The Best Interests of the Child? Is the Best Interests of the Child in the Best Interests of Children?," International Journal of Law, Policy and the Family 11, no. 3 (1997): 360–88, Pembacaan terbatas pada abstrak dan bagian pembuka yang tersedia terbuka.

[4] Michael Freeman, "The Best Interests of the Child? Is the Best Interests of the Child in the Best Interests of Children?," International Journal of Law, Policy and the Family 11, no. 3 (1997): 360–88, Pembacaan terbatas pada abstrak dan bagian pembuka yang tersedia terbuka.

conceptual and bound to a limited corpus, not a claim as the first research on all issues of child access.

Three research questions were asked. First, through what legal construction can the return of maternal giving be considered as an interference with the child's independent right to maintain family relationships? Second, to what extent can this construction be justified by hadhanah, maslahah, and maqasid al-shari'ah without ignoring the proof and protection of the child? Third, what is the limit of the significance of Decision Number 165 K/Ag/2022 if placed together with the comparative decision and the judicial guidelines that preceded it? The thesis of the article is that the qualification of obstruction is contextual and conditional, while the change in parenting requires a separate assessment.

RESEARCH METHODS

This research is a normative or doctrinal legal research with a legislative, case, and conceptual approach. The goal is to reconstruct legal reasons and test their coherence and boundaries, not to measure family behavior. No interview, observation, or psychological examination data are used. The formulation of methods follows the transparency demands of doctrinal research described by Hutchinson and Duncan: the material read, the reasoning process, and the limits of the claim need to be stated in order for the argument to be examined.[5]

Normative materials include the parenting provisions in the Marriage Law, the Child Protection Law, KHI, and SEMA No. 1 of 2017. The Convention on the Rights of the Child and General Comment No. 14 are used to sharpen the construction of rights, participation, and best interests assessment procedures. The General Comment is an interpretive guide for the Committee on the Rights of the Child, not a national law or procedural rules that automatically replace Indonesian law. Islamic legal materials include al-Baqarah [2]: 233, the hadith of Abu Dawud number 2276, the hadhanah section in Rawḍat al-ṭālibīn, and the framework of the maqasid Auda.

The case material was selected purposively according to the similarity of the issue of parenting and the sustainability of the child relationship. Decision of PTA Palangka Raya Number 16/Pdt.G/2021/PTA. Plk is read in a complete copy to trace the case and distinguish the majority opinion from the different opinions. The Supreme Court Decision Number 110 K/AG/2007 is read through a complete reproduction in the 2008 Supreme Court Jurisprudence Association of the Republic of Indonesia as an independent comparator. Decision of PA Nanga Bulik Number 60/Pdt.G/2021/PA. Ngb is

[5] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," Deakin Law Review 17, no. 1 (2012): 83–119,

only used insofar as the statement is reproduced in the appeal decision; the copy is not treated as a separate examined material.

For Decision Number 165 K/Ag/2022, the verifiable material in this revision is the excerpt of consideration in Khuluq's article in MARINews, September 1, 2025. The excerpt is reproduced through institutional secondary sources. A complete copy of the cassation has not been obtained. Therefore, the reconstruction below is limited to the reasons contained in the excerpt, not confirming the entire chronology or the cassation in the original manuscript. The search for public sources for the revision will be carried out on November 2, 2026. This limitation affects the strength of the conclusion regarding the ratio decidendi, not just the completeness of the bibliography.

The analysis is carried out through four steps. First, separating the facts stated by the court, the parties' postulates, differing opinions, and the comments of the source author. Second, mapping the norms according to the subject of rights, obligations, exceptions, and legal consequences. Third, testing the reasoning bridge between the return of the grant and the obstruction of the relationship, including alternative explanations that can abort the inference. Fourth, juxtapose the results with the hadhanah and the comparative decision to formulate a conditional test. The test results are the author's analytical proposal; they are not claimed to be an explicit formulation of the assembly.

Comparisons between levels in a single case are separated from comparisons between cases. The first reveals differences in reasons and procedural issues; the second tests whether general principles have emerged first. This corpus is not a systematic survey of judgments, does not measure the consistency of all trials, and does not prove the psychological impact of actions on children. Paid literature that is available only in abstracts is used to the extent of the ideas expressed in the section. Conclusions about national developments are therefore limited to the demonstrable argumentative continuity.

RESULTS AND DISCUSSION

Parental Access Rights and Children's Independent Relational Rights

The term access rights need to be separated according to their holders and functions. From the parent's side, access allows for meetings and involvement in parenting. From the child's side, the personal relationship with both parents is a stand-alone legal interest. The child's right is not born because one of the parents allows it, and it is not lost just because the other parent wins a parenting dispute. The authority to determine the daily residence is therefore not the same as the authority to terminate the entire relationship of the child.

Article 14 paragraph (2) letter a of the Child Protection Law specifically places the child as the subject of a personal relationship after separation. Article 9 paragraph (3) of the Convention on the Rights of the Child recognizes

regular relationships and contact, with exceptions where it is contrary to the best interests of the child. Access cannot be positioned as an absolute right of an adult. The arrangement of contact must bring together family continuity with the safety of the child; if the two are in conflict, the restriction requires an examineable reason.[6]

Relational rights in this article are an analytical term for the right of children to maintain meaningful personal relationships with their parents. The term is not intended as a new legal category or a guarantee that any expression of affection is acceptable. The giving of goods can be a means of communication, but the existence of a relationship cannot be reduced to a multitude of goods. Caregivers who are able to finance all the needs of the child must still consider relationships with other parents; conversely, the delivery of goods does not in itself prove the quality of the sender's care.

General Comment No. 14 understands the best interests as substantive rights, interpretive principles, and procedural principles. The use of that principle in grant disputes therefore demands the identification of the child's interests, an examination of the available options, and the reasons why a restriction or remedy is more appropriate. The phrase "for the sake of the child" without an assessment step is insufficient. This principle limits the discretion of parents and judges, rather than providing an open justification for any decision that is judged to be favorable by the adult.[7]

The right to be heard is also not synonymous with leaving the entire decision to the child. Article 12 of the Convention and Article 10 of the Child Protection Act demand attention to the child's views according to his or her age and maturity. Within the author's assessment framework, the child's refusal to the goods needs to be heard without pressure to take sides. The judge needs to consider the child's reasons, possible conflicts of loyalty, as well as relevant safety information. The child's opinion is not automatic evidence of manipulation by the caregiver, nor is it an excuse to ignore an objective examination.

Case and Limited Reconstruction Grounds for Cassation

The appeal decision reproduces PA Nanga Bulik's amar dated May 31, 2021 which placed the care on the mother and ordered access for the father. The majority of the PTA then stipulated the parenting of the father with the mother's access order; the reconvention was declared unacceptable because the grandmother who took care of the daily was not withdrawn as a party. There are different opinions in favor of parenting by the mother. Thus, the

[6] United Nations, Convention on the Rights of the Child (1989), arts. 3(1), 9(3), 12, and 18; teks konvensi pada UNICEF,

[7] United Nations Committee on the Rights of the Child, General Comment No. 14 (2013), CRC/C/GC/14, 29 May 2013, paras. 6, 52–79, and 85–99;

differences between the levels include procedural and parenting issues, not just an assessment of the provision.[8]

A different opinion in the appeal decision should not be presented as a finding or majority ratio. Its existence actually shows that the way of reading the interests of the child has been debated in the case. Critically, the issue of the custodian factually needs to be distinguished from the analogy of an object dispute. The child is the subject of rights, so the objection of the lesser party must be explained through the needs of the hearing of the parties and the implementation of the decision, not the assumption that the child is a controlled item. This assessment is the author's criticism of the structure of the argument, not a statement that all procedural problems can be ignored.

The cassation excerpt reproduced by MARINews links the return of money and clothing by mail to the obstruction of the mother's attention to the child. The formulation "categorical" is important because it indicates a qualification process, not a universal equation between rejecting an object and rejecting a relationship. The available text does not elaborate on the entire evidence, the father's defense, or the weight of each of the reasons in the amar. Therefore, what can be reconstructed is the core of the reasoning in the passage, while the overall ratio decidendi still requires a complete copy of the cassation.

The essence can be read in three stages. The factual premise is the action of the father to return the gift that the mother is intended for the child. The connecting premise is that the function of giving is the delivery of the mother's attention, not merely the transfer of economic value. The conclusion of the qualification is that control of the means of attention can be a disruption of the child's access. This separation of three stages is a reconstruction of the author. The quotation itself does not formulate a general test for all rejections of gifts, and does not prove that the receipt of goods is an obligation without exception.

The most vulnerable point is in the connecting premise. If any rejection of an item is automatically considered a denial of affection, legitimate grounds of protection find no place. Conversely, if the law recognizes only physical barriers to encounter, the filtering of communication through objects can escape scrutiny. A stronger construct lies somewhere between the two possibilities: the relational value needs to be proven from the context, and then compared to the reason for the limitation. A return by mail only indicates the way in which the action takes place; it itself does not explain its intention, effect, or reasonableness.

Two questions must remain separate: whether an act interferes with a protected relationship, and whether the disturbance is sufficient to change

[8] Pengadilan Tinggi Agama Palangka Raya, Putusan Nomor 16/Pdt.G/2021/PTA.Plk, 30 Juli 2021, terutama hlm. 2, 24–25, dan 33–34;

parenting. A positive answer to the first question has not yet decided the second question. The determination of parenting requires an examination of the caregiver's ability, safety, continuity of care, the child's condition, and alternative feasibility. Without a complete copy, this study does not state that one action is a single reason, an always determining reason, or the definitive basis for the entire Judgment Number 165 K/Ag/2022.

From Object Rejection to Relationship Obstruction: Conditional Testing

The following framework is a doctrinal proposal for making inference testable. This test distinguishes the elements of the obstruction qualification from the restorative determination stage. It does not establish a new standard of proof or a list of requirements that the Supreme Court has imposed. The use of each element remains subject to applicable evidentiary laws and procedures. The purpose is to show what facts must be explained before a material action is given effect in a custody case.

First, the identification of the recipient and the function of giving. It is necessary to ascertain whether the goods are addressed to the child, contain messages or attention that the child can understand, and are in the context of the relationship that is still to be maintained. Refusal of gifts for ex-spouses is not the same as screening child shipments. Disputes about the mother's belongings are also not automatically a problem of access. The relational function can be demonstrated through delivery communication, relationship history, and relevant information, rather than assuming the identity of the sender alone.

Second, examine the perpetrator and control. It must be clear who returns, whether he or she controls the delivery channel, and whether the decision is the will or rejection of the child that needs to be understood separately. Status as a father, mother, or grandmother does not in itself prove an action. The use of the term caregiver here is functional and does not equate factual parenting with the legal determination of a guardian. Responsibility needs to be attached to proven behavior, not to mere kinship relationships.

Third, prove a link to the relationship barrier. The decisive question is whether the act reduces the child's chances of receiving safe communication and attention from the other parent. Repeated refusal accompanied by a ban on phone calls or meetings, for example, can strengthen the inference. This example is hypothetical. An event can also be relevant if the context is strong; repetition is not the absolute element that this article creates. Rather, the return of an item with a reasonable explanation and preserved communication weakens the conclusion of obstruction.

Fourth, test the justifiing reasons and milder alternatives. Dangerous goods, the child's health needs, the threat load, or violations of legitimate protection restrictions may justify certain refusals. These examples are not stated as facts of the case. The caregiver needs to be able to explain why the

restriction is necessary as well as whether attention can be conveyed through substitutes, intermediaries, or secure communication channels. Dislike of the former spouse is different from the risk that can be demonstrated. This assessment applies to both parents.

Fifth, include the child's view and distinguish the types of consequences. Disorders of the relationship channel can be evidenced through events and communication without always waiting for a diagnosis of psychological damage. However, claims of trauma, alienation, or developmental disorders require a separate basis of expertise and evidence. This article does not make such a diagnosis. The child's views should be heard safely according to maturity, without forcing the child to choose between accepting things and being loyal to the caregiver. Relational needs should not be used to mask experiences of fear or insecurity.

Sixth, determine a proportionate recovery after the qualifications are formed. The options can be in the form of arrangements for the delivery of goods, communication times, the use of agreed intermediaries, or the affirmation of the obligation of access in the decision according to the court's authority. Detailed arrangements are the author's recommendations, not claims regarding the appeal of the appeal. If serious obstacles persist, the review of custody requires a separate process and examination. The goal is to restore the rights of the child, not to punish the parents through the transfer of the child.

The limit of legal consequences appears in SEMA Number 1 of 2017: not providing access can be a reason to file a lawsuit for revocation of hadhanah. This formulation is not the same as revocation which works automatically after the accusation of refusal of goods. Article 156 letter c of the KHI also links the transfer of hadhanah with the inability to guarantee the physical and spiritual safety of the child. The revocation of parental power in Article 49 of the Marriage Law is an institution that needs to be distinguished from the regulation of access and change of caregivers; the basis and consequences should not be exchanged just like that.[9]

Hadhanah, Maslahah, and the Limits of Maqasid Reasoning

Hadhanah regulates the care of children in need of assistance, while authority over property and financing responsibilities has its own problems. This separation of functions prevents the custodian holder from treating the child and all his or her relationships as exclusive territory.[10] At the same time,

[9] Supreme Court of the Republic of Indonesia, Circular Letter No. 1 of 2017, Appendix C, Legal Formulation of the Religious Chamber, number 4, p. 18;

[10] Hayatusyifa, Noor Fadillah, Fakhrurrazi M. Yunus, Aulil Amri, Manuel Beltrán Genovés, and Nur Syahirah Binti Mohammad Nasir. 2026. "Children's Rights Fulfillment in Families of Female Migrant Workers: An Islamic Law Perspective from Aceh Tenggara". An-Nisa: Journal of Islamic Family Law 3 (1): 65-82. https://doi.org/10.63142/an-nisa.v3i1.496.

concern for the rights of the child does not remove the legitimate interests of the caregiver. The necessary argument is how authority is exercised to meet the needs of the child and protect him or her from harm, not an absolute conflict between the entitled parent and the child who does not.[11]

Article 105 letter a of the KHI gives priority to the mother's care for children who are not yet mumayyiz or have not yet reached the age of twelve. Article 156 letter c provides the basis for transfer when physical and spiritual safety is not guaranteed. Both need to be read together as normative priorities and safeguards for their implementation. Maternal priority does not justify the termination of the relationship with the father, while the parenting by the father does not erase the relationship with the mother. The feasibility assessment also cannot be completed by comparing the income level of the parents alone.[12]

Abu Dawud's hadith number 2276 contains an answer that gives the mother priority over the child on the condition mentioned in the narration. This narration shows an important basis for discussing hadhanah, but it does not contain an age limit of twelve years or a rule regarding the delivery of clothes. The age limit in the KHI should not be directly attributed to the text of the hadith. Its use here is limited to explaining the tradition of reasoning on parenting priorities; contemporary application still requires a joint reading of the legal provisions and the conditions for child safety.[13]

In Rawḍat al-ṭālibīn, al-Nawawi discusses differences of opinion regarding the requirements of breastfeeding and its implications for parenting, and then mentions that mothers are not prevented from visiting children in the circumstances discussed. This particular context should not be extended to the rule that all objects from the mother must be accepted. Its analytical value is more limited but important: the placement of the care and the sustainability of the visit are not always identical issues. The distinction helps explain why the parenting by one party does not necessarily close the relationship between the other.[14]

Al-Baqarah [2]: 233 prohibits the mother or father from being harmed through the child in the context of breastfeeding and its arrangements. The

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[11] Djafar, Nurfadilah, Rusdiyanto Puluhulawa, Irl an Puluhulawa, and Rasham Armab Saikhu. 2026. "Legal Certainty and Legal Protection For Victims of Catcalling In Indonesia: A Critical Analysis of The Sexual Violence Crime Law And Maqāṣid Al-Sharī'ah". An-Nisa: Journal of Islamic Family Law 3 (2): 132-51. https://doi.org/10.63142/an-nisa.v3i2.547.

[12] Kompilasi Hukum Islam (KHI), disebarluaskan melalui Instruksi Presiden Nomor 1 Tahun 1991, Pasal 105, 106, 156, dan 212; teks digital JDIH Universitas Sumatera Utara,

[13] Abū Dāwūd, Sunan Abī Dāwūd, Kitāb al-Ṭalāq, Bāb man aḥaqqu bi-al-walad, no. 2276;

[14] Yaḥyā ibn Sharaf al-Nawawī, Rawḍat al-ṭālibīn wa-ʿumdat al-muftīn, Kitāb al-Nafaqāt, al-bāb al-khāmis fī nafaqat al-ḥaḍānah, bagian syarat pengasuh, jilid 9, hlm. 101 pada reproduksi digital Islamweb;

application of the principle of harm prevention in post-divorce conflict is the author's argumentative development, not the literal provision of the verse about gifts. This development demands an explanation of the similarity of the problem: the child and his or her care channel should not be used as a tool of parental animosity. This principle also protects the caregiver who rejects dangerous goods; harm prevention does not only work for the sender.[15]

Maslahah is not enough to state by assuming that the acceptance of goods always nourishes the relationship. The claimed benefits need to be detailed: the maintenance of communication, the continuity of attention, or the fulfillment of the child's needs. The harms of restriction must also be distinguished from the conjecture. If the goods contain a proven risk, the rejection may be more beneficial than the acceptance. Conversely, the reason that all economic needs have been met does not answer the loss of the opportunity of connection. The assessment of benefits and harms requires relevant facts, not the personal preferences of the interpreter.

The approach of maqasid Auda emphasizes the purpose and interconnectedness of the various dimensions of legal judgment. In the author's application, the protection of the soul directs attention to safety; the protection of offspring guides the consideration of family continuity; the protection of property reminds of the material interests of the child. These dimensions can support or limit the receipt of gifts depending on the circumstances. Meaningful family relationships are not simply equated with the classical concept of the maintenance of the nasab. This is a contemporary normative elaboration, not a claim that the term maqasid from the beginning contains details of modern access rules.[16]

The issue of the grant must be separated from the termination of communication. Article 212 of the KHI deals with the withdrawal of the grant, while the rejection of the submission by the caregiver can occur before the status of the receipt and ownership is clear. A return by a party that is not a giver cannot be directly equated with the withdrawal of a grant by the giver. If the goods have become the property of the child, Article 106 of the KHI directs attention to the obligation to manage it for the benefit of the child. This article does not establish the validity or cancellation of the grant in the case because the facts of the contract, receipt, and possession are not available.

Thus, Islamic legal reasoning functions on three levels: explaining parenting as a responsibility, testing the benefits and harms concretely, and

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[15] Al-Qur'an, al-Baqarah [2]: 233; teks dan terjemahan pada Konteks ayat adalah penyusuan, nafkah, dan musyawarah orang tua.

[16] Jasser Auda, Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach (London: International Institute of Islamic Thought, 2008), pengantar pendekatan tujuan dan multidimensionalitas;

limiting consequences through the purpose of child protection. It does not replace the examination of evidence, does not turn any conflict into a religious offense, and does not automatically approve of harmful contacts. Conformity with maqasid should be seen in the reasons for choosing the action, including safer alternatives and the impact of parenting changes, not just in the inclusion of Arabic terms in the conclusion.

Comparison of Judgments and Renewal Claim Limits

The Supreme Court's Decision Number 110 K/AG/2007 provides an independent comparator that precedes the main case. In its consideration, the Supreme Court prioritizes the interests of the child based on the circumstances of parenting which are considered less detrimental. Even though the child is placed with the father, the communication relationship with the mother should not be severed. Amar also contains the opportunity to meet and be with the mother on school holidays or agreed times. Thus, the separation of parenting and the sustainability of the relationship already has a basis for the decision before 2022.[17]

The similarity between the comparator and the main case passage lies in the protection of the relationship with the mother when the upbringing is on the father's side. The difference is an object of reasoning: the comparator explicitly regulates communication and meetings, while the main case passage gives relevance to the action in relation to the object. This difference opens up the question of the means of relationship, but has not proved the extension that is consistently applied to other cases. Moreover, the information on the whole grounds of the main cassation is incomplete.

The appellate decision in the main series of cases also contains an order on the child's personal relationship with the mother. Although the outcome of the parenting differs from the description of the cassation in the original text, the basis for the protection of the relationship cannot be described as emerging at the cassation level. The comparison between levels shows disputes about application and parenting; it does not count as some independent precedent. The existence of different opinions reinforces the need to read the reasoning of each judge, rather than constructing a linear story from a ruling that is considered traditional to a decision that is considered progressive.

SEMA Number 1 of 2017 further limits innovation claims: the obligation of access and the possibility of lawsuits for the revocation of hadhanah have been formulated before the main case. Therefore, the term "new direction of Indonesian family law" is not supported by this corpus. A more measurable significance is an example of the association of material

[17] Mahkamah Agung Republik Indonesia, Putusan Nomor 110 K/AG/2007, diucapkan 7 Desember 2007, dalam Yurisprudensi Mahkamah Agung RI 2008, hlm. 219–22; reproduksi dokumen pada Komisi Yudisial,

means of attention with the right of a child's relationship in a concrete context. This can be considered as the application or concretization of existing principles, while still testing the adequacy of the reasons and the proof.

A follow-up study that seeks to prove jurisprudence bias must determine the period, the basis of the search, the case criteria, and the manner in which the judgment is read in line with and in dissent. Relevant evidence includes how the judge distinguishes between protective refusal and deterrence, and whether the consequence is a contact arrangement or a change in parenting. Without such tracing, claims about national impact, family compliance, or the effectiveness of the recovery cannot be drawn from a single judgment.

The contribution of this research lies in the separation of three questions that are often mixed: the material status of the giving, the qualification of relationship disturbances, and the selection of the consequences of parenting. The conditional framework shows that the legal value of action depends on the relationship between the child's function, control, impact, justification, and voice. Thus, the article moves from reporting the outcome of the case to the assessment of the reasons that allow the outcome to be justified or limited. This test can be used to organize the argument of similar cases, but is not a substitute for the evidentiary provision.

The main limitation is that there is no complete copy of Decision No. 165 K/Ag/2022 available in the material examined. Therefore, the attribution of the cassation ratio is limited to traceable excerpts. To determine the reasons that really determine the overall amar, it is necessary to examine the relationship between considerations, other cassation reasons, and considerations of the appeal decision. This study also did not examine the evidentiary file, did not interview the family, and did not assess the psychological state of the child. The normative framework remains useful, while conclusions about facts and impact must wait for adequate materials.

CONCLUSION

This study found that the return of the mother's gift cannot be automatically qualified as an obstruction of the child's relationship with his mother. This qualification only has legal relevance if there is contextual evidence showing that the act of returning the gift is related to the restriction of the child's relationship with the mother that should be protected. The assessment must include the relational function of the gift for the child, the purpose and control of the party making the return, the causal relationship between the act and the barrier to access, and whether or not there is a justifiable reason for protection. This finding confirms that the legal issue does not lie solely in the status of the returned object, but in the consequences of the action on the child's relational rights. The child's view according to the level of maturity needs to be considered, while the claim of psychological

damage must be supported by independent evidence and cannot be assumed only from the disruption of communication.

Hadhanah, the principles of harm prevention, and maqasid sharia provide a normative basis for judgments that are oriented towards the best interests of the child while limiting the use of parenting authority to control the child's relationship with other parents. However, these principles cannot be used as a basis for requiring the acceptance of all gifts without exception or automatically transferring custody rights. This study recommends the application of a proportionate legal test that distinguishes between disputes over the ownership or validity of grants and actions that actually impede the child's relational rights. Judges need to examine the evidence of obstruction, consider the child's views and safety, assess the continuity of custody, and choose the most effective form of remedy and least restrict the rights of the parties. Thus, changes in access or custody arrangements must be based on the level of violation and the need for child protection, not solely on the act of restitution.

A comparison of Decision No. 110 K/AG/2007, SEMA No. 1 of 2017, and excerpt from the consideration of Supreme Court Decision No. 165 K/Ag/2022 shows the continuity of the orientation of protecting children's relationships with their parents in the development of Islamic family law in Indonesia. Therefore, the 2022 decision is more appropriately understood as a concretization of the principle of child protection that requires contextual testing, rather than as evidence of the formation of a new jurisprudence paradigm. The main contribution of this research is the formulation of a doctrinal qualification framework to distinguish the return of gifts as a civil action from the obstruction of children's relationships as a matter of protection of relational rights. The research recommends that judges develop more explicit considerations regarding the relationship between parental actions, evidence of obstruction, the best interests of the child, and the proportionality of recovery. To ensure the accuracy of the ratio decidendi construction, further research needs to use a complete copy of Decision Number 165 K/Ag/2022 so that the entire legal considerations of the Supreme Court can be comprehensively verified.

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