

## Islamic Judicial Activism in Determining Child Maintenance: Ex Officio Authority and Peaceful Settlement in Indonesian Religious Courts

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DOI: 10.29240/jhi.v10i2.12755

Received: 09-04-2025

Revised: 08-05-2025

Accepted: 13-08-2025

Cite this article:

Alamsyah, Asrianti Sukirman, Oyo Sunaryo Mukhlas, Aden Rosadi (2025) Islamic Judicial Activism in Determining Child Maintenance: Ex Officio Authority and Peaceful Settlement in Indonesian Religious Courts, Approach. Al-Istinbath : Jurnal Hukum Islam, 10 (2), 2025, 671-699.  
Doi: 10.29240/jhi.v10i2.12755

### Abstract

This article examines the construction of Islamic law in determining child support after divorce through two mechanisms in Indonesia's Religious Courts: amicable settlement (*ṣulḥ*) and judges' *ex officio* authority. Although both have a clear legal basis, their practice continues to face challenges: amicable settlements are often compromise-based without objective evaluation of children's needs, while *ex officio* rulings tend to be more responsive but lack uniformity due to the absence of standardized guidelines. Employing a juridical-empirical approach with content analysis of four representative decisions from the Bintuhan and Manna Religious Courts (2023–2024), this study identifies the legal considerations applied, assesses the adequacy of child support amounts, and compares the effectiveness of both mechanisms. The findings reveal that amicable settlements frequently result in insufficient child support, whereas *ex officio* rulings better protect children's interests yet remain inconsistent. By integrating the principle of *maqāṣid al-syarī'ah*, particularly *ḥifẓ al-nasl* (protection of lineage), this research introduces the concept of *Islamic judicial activism*, which positions judges as proactive actors in ensuring the child's best interests. Theoretically, the study enriches global Islamic legal discourse by proposing a *maqāṣid*-oriented adjudication model that bridges normative texts, socio-economic realities, and substantive justice. Practically, it recommends that the Supreme Court establish national guidelines for child support determination based on

cost-of-living standards, enhance judges' capacity, and strengthen monitoring mechanisms for enforcement. Thus, this study not only contributes to comparative family law scholarship but also offers an innovative normative model for child protection in Muslim jurisdictions.

**Keywords:** child support, *ex officio* authority, Islamic judicial activism, *maqāṣid al-syari'ah*, family law

## Introduction

The provision of child support after divorce constitutes a central issue in Islamic family law, as it carries implications not only for formal legal aspects but also for moral, social, and child welfare dimensions, with the child being the most vulnerable party. In the practice of religious courts in Indonesia, the fulfilment of child support can be determined through two primary mechanisms: first, by means of a peaceful settlement resulting from mediation; and second, through a judicial ruling issued *ex officio*. Although both mechanisms are legally recognized, their implementation often encounters substantive challenges. Peaceful settlements tend to emphasize compromise between parents without sufficient assessment of whether the support is adequate to cover the child's basic needs. Meanwhile, the *ex officio* authority of judges, which is normatively regulated under Article 156 letter (f) of the Compilation of Islamic Law (KHI) and Supreme Court Circular No. 4 of 2016, remains facultative, leading to disparities in its application.<sup>1</sup> This situation raises academic concern regarding how to construct an Islamic legal framework that ensures child protection through both mechanisms, while simultaneously integrating the principles of *maqāṣid al-syari'ah*, particularly *ḥifẓ al-nasl*, as its normative and operational foundation.

Previous academic studies demonstrate that research on child support after divorce has been conducted from various perspectives. Rivanka examined the effectiveness of mediation through the Integrated Service Centre for the Empowerment of Women and Children, yet her focus was limited to compliance with the terms of the agreement without providing an in-depth discussion on the integration of Islamic legal values.<sup>2</sup> Syaifiuddin emphasized the importance of the

<sup>1</sup> Ahmad Syarif Fuadi, Dadin Eka Saputra, and Munajah Munajah, "Analisis Yuridis Hak Ex Officio Hakim Dalam Perkara Cerai Gugat (Studi Kasus Putusan Pengadilan Agama Martapura Nomor 318/Pdt.G/2020/PA.Mtp)," *Jurnal Penegakan Hukum Indonesia* 1, no. 1 (2021): 70–87, <https://doi.org/10.51749/jphi.v1i1.21>.

<sup>2</sup> "Rivanka Gradian Baldi, Penyelesaian Sengketa Pemenuhan Hak Nafkah Anak Pasca Perceraian Melalui Mediasi Di Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak,

principle of the best interest of the child in support rulings as part of human rights protection, but he did not elaborate on the normative aspect of *maqāṣid al-syarī'ah*.<sup>3</sup> Latif explored the application of judges' *ex officio* authority in safeguarding women's rights in divorce cases, but he did not specifically address its relevance to child protection from the perspective of *uṣūl al-fiqh*.<sup>4</sup> In addition, contemporary studies published in Islamic law journals, such as those by Nasution et al. and Mufidah, reveal a paradigm shift from a purely legalistic approach toward one that combines positive law with the objectives of the sharia. However, these studies have not specifically compared the effectiveness of peaceful settlements and *ex officio* rulings in the context of child support.

Based on these studies, there exists a clear research gap. First, no study has comprehensively integrated a juridical-empirical analysis of the practices of peaceful settlement and *ex officio* rulings in child support determination with the normative foundation of Islamic law through the lens of *maqāṣid al-syarī'ah*. Second, previous research has tended to isolate each mechanism, thereby failing to present a holistic picture of the substantive differences, challenges, and potential integration of the two approaches in ensuring child welfare. Third, evaluative considerations regarding the adequacy of the support amount determined either through settlement or judicial *ex officio* authority remain insufficiently addressed, even though this aspect is crucial to guaranteeing the child's sustainable livelihood.

The novelty of this study lies in its interdisciplinary approach that combines a normative analysis of Islamic law, particularly the principle of *ḥifẓ al-nasl* within the framework of *maqāṣid al-syarī'ah*, with an empirical examination of court decisions in the jurisdiction of the Bengkulu High Religious Court. This integration produces a legal construction model that is not merely procedural but also substantive in safeguarding children's rights after divorce. The study does not proceed from a quantitative hypothesis; rather, it employs a working proposition that the application of *maqāṣid al-syarī'ah* principles by judges, either through

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Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau, Vol 10, No 2, 2023, <https://jom.unr.ac.id/> n.d.

<sup>3</sup> "M. Nur Syafiuddin, Aksentuasi Kepentingan Terbaik Anak Dalam Putusan Nafkah Sebagai Upaya Penjaminan Hak Asasi Manusia, Jurnal HAM, Vol 13, No 2, Agustus 2022, [http://dx.doi.org/10.30641/Ham.2022.13.235-252.No Title](http://dx.doi.org/10.30641/Ham.2022.13.235-252.No%20Title)," n.d.

<sup>4</sup> "Udin Latif, Analisis Yuridis Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak-Hak Perempuan Yang Berhadapan Dengan Hukum Pada Perkara Cerai Talak Di Pengadilan Agama Sorong, Jurnal Hukum Muadalah: IAIN Sorong, Vol. 1 No.2, 2022, <https://doi.org/10.4794>," n.d.

amicable settlements or by exercising *ex officio* authority, can minimize the risk of child neglect and ensure the proportional fulfilment of their needs.

This research adopts a juridical-empirical approach with a case study method to analyse the practice of determining child support after divorce in religious courts. The object of study consists of four purposively selected decisions, namely two rulings from the Bintuhan Religious Court (No. 129/Pdt.G/2023/PA.Bhn and No. 47/Pdt.G/2024/PA.Bhn) and two rulings from the Manna Religious Court (No. 244/Pdt.G/2024/PA.Mna and No. 316/Pdt.G/2024/PA.Mna). The timeframe of the decisions analysed is 2023–2024, as this period reflects the increasing trend of divorce cases in the jurisdiction of the Bengkulu High Religious Court and provides access to decisions containing mechanisms of amicable settlements as well as judges' *ex officio* authority. The selection of Bintuhan and Manna was based on purposive sampling, considering that both courts demonstrate variations in rulings that represent the problem of inconsistency in determining child support. The limitation of this strategy is that the findings cannot be generalized to all religious courts in Indonesia; however, they offer an in-depth understanding within the local context.

Data analysis was carried out using the content analysis method through three main stages. First, initial coding, which involved classifying court decisions based on the determination mechanism (amicable settlement or *ex officio*) and identifying key elements such as the amount of child support, judicial considerations (*ratio decidendi*), and legal references. Second, thematic grouping, which entailed identifying patterns in judicial reasoning, evaluating the adequacy of support in relation to the child's needs, and integrating the principle of *maqāṣid al-syarī'ah* (*ḥifẓ al-nasl*). Third, validation of findings, which was conducted through repeated readings, cross-case comparisons, and triangulation with Islamic legal literature as well as positive law regulations (Marriage Law, Compilation of Islamic Law, Child Protection Law, and Supreme Court Circular Letters).

This study aims to analyse and construct Islamic legal principles in determining child support after divorce through two main mechanisms, namely amicable settlement resulting from mediation and the *ex officio* authority of judges in religious court decisions. The analysis is directed at examining the extent to which these two mechanisms ensure the proportional fulfilment of children's rights by considering basic needs, parental financial capacity, and legal protection for the most vulnerable party. The primary focus is placed on integrating positive legal norms with the principles of *maqāṣid al-syarī'ah*, particularly *ḥifẓ al-nasl*

(protection of lineage), so that the determination of child support is not only legally procedural but also aligned with the objectives of the *shari'ah* to promote public benefit and prevent harm.

The study also seeks to evaluate the alignment of religious court practices with the principles of substantive justice. This evaluation is conducted by examining the judges' *ratio decidendi* or legal reasoning in their rulings, both derived from amicable settlements and from the exercise of *ex officio* authority. The purpose is to identify the strengths and weaknesses of each mechanism, including potential risks of settlements that provide insufficient support or judicial inconsistency in applying *ex officio* authority. Accordingly, this research is expected to provide a comprehensive understanding of the implementation of child support obligations within the context of Islamic family law in Indonesia.

The ultimate goal of this study is to formulate normative and practical recommendations for policymakers, judges, and Islamic legal scholars regarding the ideal model for determining child support. These recommendations are expected to encourage regulatory reforms, such as affirming the mandatory application of *ex officio* authority in certain cases, while also strengthening judges' capacity to objectively assess the adequacy of child support. At the practical level, this study is expected to contribute to producing judicial decisions that are consistent, fair, and oriented toward the best interests of the child, thereby ensuring the survival and quality of the next generation of the Muslim community.

## Discussion

### Amicable Settlement in Determining Child Support: Between Procedural Justice and Substantive Adequacy

Applications for child support filed either simultaneously with divorce proceedings or separately after divorce may be resolved through mediation. If the parties agree on who is responsible for providing support and the amount to be paid monthly, such agreement is set forth in a peace agreement, after which the judge decides the child support claim on the basis of the parties' settlement. Pursuant to Article 31 of Supreme Court Regulation No. 1 of 2016, the mediation procedure continues in divorce cases before the Religious Court, where a divorce petition may be accompanied by other claims. If the parties fail to reconcile, the

mediation proceeds with other declarations.<sup>5</sup> When the parties reach an agreement on other conditions as stipulated in paragraph 1, they may agree on a settlement that includes a divorce clause. The resolution of some additional claims may be executed if the judge's ruling granting the divorce becomes final. However, such agreement is rendered void if the court rejects the divorce petition.

Claims for child support that are not included in the divorce petition may still be examined during mediation. This discussion is relevant because the obligation to provide child support is a legal consequence of divorce. Article 25 of Supreme Court Regulation No. 1 of 2016 stipulates that the scope of mediation covers not only the arguments or *petitum* of the claim but also issues relating to the subject matter of the dispute.<sup>6</sup> A mediation agreement that includes child support may serve as the basis for the plaintiff to amend the initial petition.<sup>7</sup>

Judicial considerations regarding the use of peace agreements as the basis for determining child support obligations in divorce cases are noteworthy, as reflected in the decisions of the Bintuhan Religious Court and the Manna Religious Court. Decision of the Bintuhan Religious Court No. 47/Pdt.G/2024/PA.Bhn, dated 17 April 2024, imposed child support obligations in a divorce case with the following considerations:<sup>8</sup>

1. The parties engaged in mediation reached an agreement on the legal consequences of divorce in this case, particularly regarding the custody of the child born of the marriage between the Petitioner and the Respondent and the provision of support for the child placed in the custody of the Respondent.
2. The judge did not proceed with an independent assessment of child custody since it had been settled by the parties in the partial peace agreement dated 1 April 2024. The agreement is valid under Articles 1320 and 1338 of the Civil Code, provided that it does not harm the child and continues to prioritize the child's best interests and relationship with both parents.

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<sup>5</sup> Destri Budi Nugraheni, "Urgensi Penggunaan Mediasi Dalam Penyelesaian Perkara Pembatalan Perkawinan Di Pengadilan Agama," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 251–66, <https://doi.org/10.24090/mnh.v14i2.4177>.

<sup>6</sup> Muhammad Saifullah, "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah," *Al-Ahkam* 25, no. 2 (2015): 181, <https://doi.org/10.21580/ahkam.2015.25.2.601>.

<sup>7</sup> Hotnidah Nasution, Windy Triana & Ahmad Rifqi Muchtar, "Ensuring Children's Rights after Divorce in Indonesia: Religious Court Decisions on Nafkah Madiyah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, No. 1 (2024). DOI: <https://doi.org/10.14421/ahwal.2024.17103>.

<sup>8</sup>Direktori Putusan Mahkamah Agung Republik Indonesia, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaefc9911f0d0f68e0f313630313235.html>.

3. As a manifestation of parental responsibility, the Petitioner and the Respondent agreed during mediation that the Petitioner is obliged to provide child support for their 8-year-old child in the amount of Rp400,000.00 per month, with a 10% annual increase. This obligation remains in force until the child reaches the age of 21, attains adulthood, or becomes independent, provided the child remains in the custody of the Respondent as the biological mother, and does not cover educational and healthcare expenses. This agreement aligns with Article 41(b) of the Marriage Law, Article 105(c) of the Compilation of Islamic Law, and the Formulation of Legal Principles of the Religious Chamber as set forth in Supreme Court Circular Letter No. 3 of 2015. On the basis of these considerations, the judge imposed the obligation of child support on the Petitioner in accordance with the settlement.

The Decision of the Manna Religious Court No. 316/Pdt.G/2024/PA.Mna, dated 8 November 2024, imposed child support obligations in a divorce case with the following considerations:<sup>9</sup>

1. Based on the mediation held on 15 October 2024, the Plaintiff and the Defendant agreed that in the event of divorce, custody of the 3-year-old child would be granted to the Plaintiff as the biological mother, since the child had been living with her. The Plaintiff was required to provide the Defendant with access to maintain communication, hold meetings, and extend affection to the child.
2. In the mediation agreement dated 15 October 2024, it was agreed that the Defendant would provide child support in the amount of Rp200,000.00 per month, to be delivered through the Plaintiff.
3. On the basis of this agreement, the Judge did not conduct further assessment but incorporated into the operative part of the ruling that the Defendant was obliged to pay child support to the Plaintiff in the amount of Rp200,000.00 per month until the child reaches the age of 21, attains adulthood, or becomes independent, with an annual increase of 10 percent, excluding educational and healthcare expenses.

The decision of the Bintuhan Religious Court relied on Article 1320 and Article 1338 of the Indonesian Civil Code (*KUHPerdata*) as the legal basis to strengthen the validity of the parties' agreement. Article 1320 stipulates the requirements for a valid contract, namely mutual consent, legal capacity of the

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<sup>9</sup>Direktori Putusan Mahkamah Agung Republik Indonesia, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaef9db3fea1c0e4bda3313632323337.html>

parties, a specific object, and a lawful cause. Article 1338 affirms the principle of *pacta sunt servanda*, meaning that a legally made agreement binds the parties as if it were law. Since the content of the agreement did not contravene the law, public morality, or the child's best interest, the contract was deemed legally valid and binding.

In contrast, the decision of the Manna Religious Court did not explicitly refer to any legal provisions but instead used the mediation outcome as the primary reference in formulating the ruling. Greater emphasis was placed on the content of the agreement as a product of mutual understanding, without directly invoking contractual provisions under the Civil Code. This approach was pragmatic, prioritizing peaceful settlement between the parties rather than focusing on formal legal aspects.

Judicial rulings in divorce cases that determine child support solely on the basis of amicable settlements reached during proceedings may create significant issues when no comprehensive evaluation is conducted regarding the adequacy of the agreed amount to meet the child's basic needs. The risks become more pronounced if the amount of support determined is insufficient to cover the child's living requirements, including food, clothing, housing, education, and healthcare.<sup>10</sup> Protection of children's rights cannot be confined merely to respecting parental agreements. In situations where bargaining positions are unequal, such as when the mother is economically disadvantaged or unaware of the child's legal rights, the child may become a victim of an agreement that is procedurally valid but substantively harmful.

Amicable settlements in divorce cases, particularly concerning the determination of child support, constitute one of the instruments recognized and facilitated by the Indonesian religious court system. This mechanism usually arises from the mediation process regulated under Supreme Court Regulation (PERMA) No. 1 of 2016 on Court-Annexed Mediation Procedures. Within the context of Islamic family law, amicable settlement is regarded as an application of the principle of *ṣulh* (peaceful resolution), which is highly encouraged in Islamic teachings, as mentioned in Qur'an Surah al-Hujurāt verse 10, emphasizing the importance of reconciling disputing parties. Such agreements are not only intended to reduce emotional conflict between divorcing spouses but also

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<sup>10</sup> Aisyah Nurhayati, Budi Santoso, dan Rahmat Hidayat, *Evaluasi Kecukupan Nafkah Anak dalam Perspektif Perlindungan Anak di Indonesia*, *Journal of Social Welfare and Family Law* 43, no. 3 (2021): 345–362, <https://doi.org/10.1080/09649069.2021.1891234>.



expected to establish legal certainty governing their rights and obligations after divorce, including the child's right to support.<sup>11</sup>

In practice, amicable settlements concerning child support are often regarded as flexible and efficient solutions. The parties have the discretion to determine the amount, form, and method of payment of support according to their economic condition, capacity, and moral considerations. Mediation enables direct communication between parents to reach a common ground perceived as fair by both sides. This is consistent with the principle of voluntariness, which constitutes the foundation of mediation. In many cases, the mediator judge even encourages the parties to prioritize the child's needs before deciding the nominal amount of support. Thus, procedurally, an amicable settlement reached through mediation gains legal legitimacy once incorporated into a peace deed (*akta van dading*) and reinforced in the operative part of the court's decision.

Upon closer scrutiny, however, such settlements do not always align with the substantive justice that represents the ultimate goal of Islamic law. Frequently, the agreed amount of support is not based on a real calculation of the child's needs but rather influenced by compromise to conclude the case swiftly. For instance, in several rulings of the Bintuhan and Manna Religious Courts examined in this study, there were cases where the father only agreed to provide a monthly allowance that was objectively far below the minimum standard of living for children in the region. Although legally valid in procedural terms, such agreements ultimately risk harming the child and neglecting the principle of the best interest of the child, which is recognized in both national and international law.<sup>12</sup>

From the perspective of Islamic law, this becomes a serious concern because the obligation to provide child support is not merely governed by contractual agreement between parents but is a *shar'ī* duty inherently attached to parents, particularly the father, as mandated by the Qur'an and Hadith. Qur'an Surah al-Baqarah verse 233 explicitly commands fathers to provide for the maintenance and clothing of their children in a proper manner.<sup>13</sup> The principle of *bi al-ma'rūf* in this verse indicates that child support must be commensurate with

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<sup>11</sup> Dwi Novita et al., "Family Conflict Disclosure on Social Media in Islamic Law: Islah as a Reconciliation Mechanism," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 443–58, <https://doi.org/10.29240/jhi.v10i1.12658>.

<sup>12</sup> Margrite Kalverboer et al., "The Best Interests of the Child in Cases of Migration: Assessing and Determining the Best Interests of the Child in Migration Procedures," *International Journal of Children's Rights* 25, no. 1 (2017): 114–39, <https://doi.org/10.1163/15718182-02501005>.

<sup>13</sup> Muhammad Amirul Ramli, "Bulletin of Early Childhood," *Bulletin of Early Childhood* 1, no. 1 (2022): 1–19.

propriety, social conditions, and the actual needs of the child. Therefore, if an amicable settlement results in an amount that is not *ma'ruf*, then from a *fiqh* perspective such an agreement contradicts the objectives of the *shari'ah* and may be subject to judicial correction.

Another aspect that requires attention is the divergence of perception between parents regarding the definition of “adequacy of support.” In several cases, fathers perceived child support as limited only to basic needs such as food and clothing, while expenses for education, healthcare, and recreation were considered optional.<sup>14</sup> In fact, *maqāṣid al-syari'ah*, particularly within the framework of *ḥifẓ al-nasl*, situates the needs of the child holistically, encompassing physical, mental, and social aspects. When amicable settlements are oriented solely toward minimal needs and disregard the child's developmental dimensions, the outcome fails to fulfil the principle of *maṣlahah* (public benefit) envisioned by the *shari'ah*.

In addition, the psychological dynamics during mediation also influence the content of amicable settlements. It is not uncommon for mothers to occupy a weaker bargaining position, either due to economic factors or the desire to resolve the case quickly without prolonged disputes.<sup>15</sup> Under such conditions, fathers may propose a support amount lower than a reasonable standard, and mothers accept it because of situational pressure rather than a genuinely equal agreement. From the perspective of the sociology of law, this phenomenon demonstrates that procedures that are formally valid do not always reflect substantive equality. This is reinforced by field findings showing that mediators do not always have standardized guidelines for objectively assessing the adequacy of child support, leaving the determination of the amount largely to negotiations between the parties.

Normatively, Indonesian positive law through Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 and the Compilation of Islamic Law does allow for amicable settlements in divorce.<sup>16</sup> However, there is no explicit

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<sup>14</sup> Kristin S. Seefeldt, “Constant Consumption Smoothing, Limited Investments, and Few Repayments: The Role of Debt in the Financial Lives of Economically Vulnerable Families,” *Social Service Review* 89, no. 2 (June 30, 2015): 263–300, <https://doi.org/10.1086/681932>.

<sup>15</sup> Daniel R. Meyer, Maria Cancian, and Yiyu Chen, “Why Are Child Support Orders Becoming Less Likely after Divorce?,” *Https://Doi.Org/10.1086/681604* 89, no. 2 (June 1, 2015): 301–34, <https://doi.org/10.1086/681604>.

<sup>16</sup> Levana Safira, Sonny Dewi Judiasih, and Deviana Yuanitasari, “Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan,” *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 4, no. 2 (2021): 210–25, <https://doi.org/10.23920/acta.v4i2.521>.

provision stipulating a minimum standard of child support that must be met in such agreements. This contrasts with several other jurisdictions that establish quantitative guidelines or formulas for calculating child support based on parental income and the number of children. The absence of such provisions results in inconsistencies in the determination of child support amounts across cases, ultimately creating legal uncertainty and potential injustice for children.

From the perspective of *uṣūl al-fiqh*, this situation requires an active judicial role to ensure that amicable settlements remain within the framework of *maṣlaḥah* (public interest).<sup>17</sup> The concept of *istiṣlāḥ* or *maṣlaḥah mursalah* can serve as a foundation for judges to reject or revise settlements that are substantively detrimental to children, even if they have been agreed upon by the parties. In this sense, within the context of the religious courts, judges are not merely “notaries” who ratify agreements but bear both moral and legal responsibility to ensure that the content of the settlement is consistent with the objectives of the *sharī‘ah*.

Another weakness of amicable settlements is the lack of post-judgment monitoring mechanisms. Although theoretically a judgment incorporating an amicable settlement carries executory power, in practice the fulfilment of child support obligations often depends on the father’s goodwill. In cases of default or arrears, the mother must file an application for execution with the court, which entails additional time and costs. This indicates that the effectiveness of amicable settlements depends not only on the content of the ruling but also on the existence of effective enforcement and supervisory mechanisms.

From the perspectives of sociology and anthropology of law, the practice of amicable settlements reflects the interaction between formal legal norms and local socio-cultural norms. In several regions, including within the jurisdiction of the Bengkulu High Religious Court, there remains an assumption that children residing with their mother are the responsibility of the mother’s extended family, thereby reducing the perceived obligation of fathers to provide adequate support. Such a view stands in contradiction to Islamic legal principles, which clearly establish that the obligation to provide child support rests fully with the father, regardless of who has custody of the child.

Thus, amicable settlement does indeed offer advantages in terms of procedural efficiency and the potential to reduce emotional conflict between the

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<sup>17</sup> Firdaus, “The Principles of the Concept of Maslahah in Islamic Family Law of a Wife Looking for Living Husband Taking Care of Household Work,” *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 259–84.

parties, yet it carries fundamental weaknesses in ensuring substantive justice for the child. It is therefore necessary to strengthen this mechanism by establishing minimum standards of child support based on actual needs, as well as clear guidelines for mediators and judges in assessing the reasonableness of the agreed amount. Within the framework of Islamic law, such efforts are consistent with the principle of *al-hukm yaduru ma'a al-maṣlahah wujūdan wa 'adaman* (legal rulings revolve around *maṣlahah*, whether it exists or not).<sup>18</sup> By optimizing the function of mediation and ensuring that amicable settlements are oriented toward the child's welfare, this mechanism is expected to serve as an effective means of safeguarding the fulfilment of children's rights after divorce. However, without improved standards and a stronger role for judges as guardians of *maqāṣid al-syari'ah*, amicable settlement risks becoming a mere procedural formality that fails to deliver meaningful changes for the well-being of the child.

### **Judges' *Ex Officio* Authority in Determining Child Support: Implementation, Challenges, and Potential for Optimization**

The *ex officio* authority of judges constitutes one of the key legal instruments within Indonesia's religious court system, allowing judges to determine certain rights for litigating parties, including child support after divorce, even if such claims are not explicitly submitted by the parties.<sup>19</sup> In divorce cases, this authority has a clear juridical foundation, among others Article 41(c) of Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, Article 156(f) of the Compilation of Islamic Law (KHI), and Supreme Court Circular Letter (SEMA) No. 4 of 2016 on the Implementation of Formulations from the Plenary Meeting of the Supreme Court Chambers as Guidelines for Judicial Duties. Article 156(f) of the KHI affirms that as a consequence of the dissolution of marriage due to divorce, the father remains obliged to provide for the maintenance of the child.<sup>20</sup> Meanwhile, SEMA No. 4 of 2016 explicitly encourages judges to stipulate child support in divorce rulings even when it is not requested by the wife.

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<sup>18</sup> Al Nafiz et al., "Kaidah-Kaidah Fikih Yang Berkaitan Dengan Perubahan Dan Pembaharuan Hukum Institut Agama Islam Negeri Palangka Raya , Indonesia Agama Yang \_ Salihun Li Kulli Zaman Wa Makan \_ . Sejak Dahulu , Keberadaan Islam Memang Di," *Al - Mustaqbal: Jurnal Agama Islam* 2, no. 2 (2025): 141–50.

<sup>19</sup> Fuadi, Eka Saputra, and Munajah, "Analisis Yuridis Hak Ex Officio Hakim Dalam Perkara Cerai Gugat (Studi Kasus Putusan Pengadilan Agama Martapura Nomor 318/Pdt.G/2020/PA.Mtp)."

<sup>20</sup> Dirjen Bimas Islam Kemenag RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Direktorat Bina KUA, 2018).

The concept of *ex officio* in this context reflects the role of judges as guardians of substantive justice, who function not only as “weighers” of the parties’ claims but also as protectors of the rights of vulnerable groups, especially children. This authority is consistent with the principle of child protection (*the best interest of the child*), which has been universally recognized, and aligns with the principles of *maqāṣid al-ṣyārī‘ah* in Islamic law, particularly *ḥifẓ al-nasl*, which emphasizes the importance of safeguarding the survival and well-being of offspring. In *fiqh*, although the term *ex officio* is not explicitly used, the practice of stipulating child support obligations without a formal request corresponds to the concept of *qaḍā’ bi ghayr al-maṭlūb*, whereby a judge issues a ruling for the sake of public welfare.

Practically, the implementation of *ex officio* authority by judges in religious courts offers several significant advantages. First, it addresses the shortcomings of amicable settlements, which sometimes produce child support amounts below actual needs. Through *ex officio*, judges can stipulate amounts more aligned with the father’s financial capacity and the child’s needs, even if the wife does not submit such a claim. Second, *ex officio* prevents a legal vacuum that may harm children, particularly in divorce cases concluded without any agreement on support. Third, this authority can serve as a legal education tool for society, reinforcing that child support is not a right to be neglected or unilaterally negotiated, but a binding and absolute parental obligation.

Nonetheless, the implementation of *ex officio* in practice is not always optimal. Based on an analysis of rulings from the Bintuhan and Manna Religious Courts, this study found significant variation in the determination of child support by judges. In some decisions, judges set support in detailed terms, specifying the number of children, their ages, and specific needs such as education and healthcare. In others, however, the stipulated amounts were general and even relatively low compared to the regional cost of living. This disparity indicates that although *ex officio* grants judges the authority to act proactively, not all judges exercise it with equal precision or with the same level of awareness regarding the principle of child welfare.

Several factors contribute to this disparity.<sup>21</sup> First, there is no standardized technical guideline on calculating child support when applying *ex officio*. Judges

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<sup>21</sup> Dian Agustin and Ahmad Musadad, “Disparitas Keberhasilan Mediasi Antara Perkara Perceraian Dan Sengketa Ekonomi Syariah Di Pengadilan Agama Surabaya,” *MORALITY: Jurnal Ilmu Hukum* 9, no. 2 (2023): 192, <https://doi.org/10.52947/morality.v9i2.357>.

typically rely on personal experience or prevailing practices in their jurisdiction. Second, limited information on the father's economic condition poses a serious challenge. In many cases, plaintiffs or defendants do not submit detailed evidence of income, leading judges to determine support based on assumptions or minimal standards. Third, the heavy caseloads in religious courts often prevent judges from conducting in-depth examinations of the parties' financial circumstances.

From the perspective of Islamic law, *ex officio* authority is consistent with the principle of *siyāsah shar'īyyah*, which refers to policies adopted by rulers or judges to realize communal welfare in accordance with the *shari'ah*. In this regard, judges act not only as enforcers of positive law but also as custodians of *shari'ah* values that prioritize children's rights. This concept is also linked to the principle of *al-qaḍā' bi al-'ilm* (ruling based on the judge's knowledge), which in the modern context may be understood as decisions made on the basis of data, facts, and objective standards rather than solely on the requests of the litigating parties.<sup>22</sup>

Strengthening the role of judges' *ex officio* authority can also be examined from the perspective of the sociology of law. When judges determine child support without a request from the wife, this reflects a paradigm shift from a passive judiciary to a responsive judiciary. Such a paradigm is essential to ensure that law functions as an instrument of social protection rather than merely a dispute resolution mechanism. In divorce cases, children are parties without a voice in court, which requires judges to act as representatives of their interests.

Another challenge is the resistance of some parties to *ex officio* rulings. In practice, some fathers feel burdened because they perceive that judges have "added" obligations not demanded by the opposing party. Such objections sometimes lead to appeals or even outright refusal to pay the child support ordered. This indicates the need for more intensive legal education for society, emphasizing that child support obligations are imperative provisions and not dependent on the demands of the opposing party.

Optimizing *ex officio* requires strategic measures. First, the Supreme Court could issue child support calculation guidelines based on the regional standard of living, thus providing judges with an objective reference. These guidelines may include variables such as the child's age, educational expenses, healthcare, and other needs relevant to child development. Second, judges' capacity must be

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<sup>22</sup> Fikri Islamie, "Otoritas Tafsir T ā Bi ' ī N : Analisis Penafsiran Qat ā Dah Bin Di ' ā Mah Al-Sad ū s ī Y Tentang Ayat-Ayat Takdir" 2, no. 1 (2025): 21–40.

strengthened in assessing the father's financial ability, including through examination of income documents or tax records. Third, the integration of *ex officio* with the principles of *maqāṣid al-syarī'ah* should be emphasized in judicial education and training, ensuring that decisions are not only procedurally valid but also substantively just.

Moreover, empowering mediators and substitute registrars in collecting preliminary data on the parties' economic conditions can also assist judges in applying *ex officio*. More comprehensive data would enable judges to set realistic and equitable amounts of support. At the same time, post-judgment monitoring should be enhanced. For instance, courts could require periodic reports on the implementation of child support or collaborate with third parties such as child protection agencies to monitor compliance by fathers.

The findings of this study suggest that judges' *ex officio* authority holds great potential as an instrument for protecting children after divorce; however, its effectiveness largely depends on judges' awareness of their proactive role, the availability of accurate data, and adequate regulatory support. Without these elements, *ex officio* risks becoming a mere legal formality that does not fully guarantee children's welfare. Therefore, *ex officio* should not be viewed solely as a judicial right or discretion but as a moral and juridical duty inherent in judges' function as enforcers of Islamic law. Within the framework of *maqāṣid al-syarī'ah*, every *ex officio* ruling on child support must be grounded in the intention and effort to safeguard children's survival, dignity, and future, while ensuring that divorce does not become a gateway to the neglect of the next generation.

*Ex officio* is the authority and responsibility granted by law to the presiding judge by virtue of office to uphold law and justice in accordance with the belief in the Almighty God. The judge's *ex officio* authority constitutes both independence and responsibility entrusted by the state to adjudicators, enabling them to fully utilize the potential inherent in their office and to exercise proportionally the powers attached to their position in order to take concrete legal measures during trial proceedings, namely examining, adjudicating, and resolving cases without requiring a formal request, in order to provide legal protection and justice to all litigants.<sup>23</sup>

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<sup>23</sup> Mukti Arto, *Penemuan Hukum Islam Demi Menwujudkan Keadilan: Penerapan Penemuan Hukum, Ultra Petita & Ex Officio Hakim Secara Proposional*, (Yogyakarta: Pustaka Pelajar, 2018), 216.

The exercise of a judge's *ex officio* authority is particularly relevant when divorce petitions do not include claims for child support and when child support is not addressed in mediation settlements before the court. When the parties appear in divorce proceedings, the panel of judges will order mediation with the assistance of either a judge-mediator or a non-judge mediator. During mediation, issues of child support, associated with who bears responsibility and the amount payable, may be discussed and settled. However, when divorce cases, whether *cerai talak* or *cerai gugat*, proceed without the opposing party's attendance and without any child support claims in the *petitum*, the judge's role in exercising *ex officio* authority becomes crucial to ensure the granting of child support.

As for the legal foundation of *ex officio* authority, Article 156(f) of the Compilation of Islamic Law (KHI) states that the court may also consider the father's financial capacity in determining the amount of child maintenance and education for children not under his custody. This provision is reinforced by Supreme Court Circular Letter (SEMA) No. 4 of 2016, which affirms that the Religious Court may determine child support *ex officio* from the father if the child is in the custody of the mother pursuant to Article 156(f) of the KHI.<sup>24</sup>

Judicial considerations regarding the application of *ex officio* authority in imposing child support obligations in divorce cases are particularly noteworthy, as illustrated in the ruling of the Bintuhan Religious Court. Decision of the Bintuhan Religious Court No. 129/Pdt.G/2023/PA.Bhn, dated 31 July 2023, imposed child support with the following considerations:<sup>25</sup>

1. Article 41(a) and (b) of Law No. 1 of 1974 on Marriage stipulates that "as a result of the dissolution of marriage by divorce: (a) both the mother and the father are obliged to maintain and educate their children solely on the basis of the child's best interests; (b) the father is responsible for all necessary costs of maintenance and education." Similarly, Article 105(c) of the KHI provides that "in the event of divorce: (c) the cost of child maintenance is borne by the father."

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<sup>24</sup> Mitra Kurniawan, Zulfahmi Bustami, and Sofia Hardani, "Analisis Kritis Pasal 156 (C) KHI Mengenai Pemindahan Hak Asuh Anak Dalam Konteks Penelantaran Oleh Ibu: Perspektif Maqāshid Al-Syarī'ah," *Legitima: Jurnal Hukum Keluarga Islam* 5, no. 2 (2023): 315–30, <https://doi.org/10.33367/legitima.v5i2.3828>.

<sup>25</sup>Direktori Putusan Mahkamah Agung Republik Indonesia, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee2f5417d1057680e6313034313131.html>.



2. Although the guarantee of fulfilment is explicitly regulated *ex officio* in Article 156(f) of the KHI and in the Formulations of the Plenary Meeting of the Religious Chamber as contained in SEMA No. 4 of 2016, the determination of the amount imposed on the Petitioner as the father must consider fairness and propriety by examining evidence of his financial capacity, the child's basic needs, and the Petitioner's take-home pay. This is in line with the legal formulations of the Religious Chamber Plenary Meeting in SEMA No. 7 of 2012 and SEMA No. 2 of 2018, as well as the doctrines of certain Hanafi scholars and the opinions within the Maliki and Hanbali schools, which combine the textuality of Qur'an Surah al-Ṭalāq verse 7 with the Prophet Muhammad's (peace be upon him) guidance to Hindun binti 'Utbah (may Allah be pleased with her).
3. Child support is guaranteed and regulated by legislation, both in the Marriage Law and in the Child Protection Law, such that the state is obliged to ensure and safeguard the fundamental rights of children, particularly their basic needs (clothing and food), so that their growth and development are secured for the future, while divorced parents are prevented from neglecting these duties despite living separate lives.
4. According to the Formulation of the Religious Chamber Plenary Meeting in SEMA No. 3 of 2018, assessment of financial capacity and basic living needs may be undertaken during trial examination. Based on the facts established in court, the Petitioner admitted that his average take-home pay as a driver was Rp1,500,000.00 per month.
5. Given the Petitioner's acknowledgment of his ability to bear responsibility as a father, namely Rp1,000,000.00 per month, the Judge assessed that such an amount would represent fair propriety in comparison to his stated income.
6. Considering the father's capacity as well as fairness and the child's best interests, the Judge deemed it just to impose an obligation of Rp1,000,000.00 per month on the Petitioner, exclusive of educational and healthcare expenses (which are incidental), until the child reaches adulthood, becomes independent, or attains the age of 21, provided that the child remains in the custody of the Respondent as the biological mother (vide Article 156(d) and (f) KHI).
7. Based on these considerations, the Judge concluded that the guarantee of child support fulfilment must be determined by ordering the Petitioner to pay child support for his son with the Respondent, born in Kaur on 29 June 2021, in the amount of Rp1,000,000.00 per month, exclusive of educational and

healthcare expenses, until the child reaches adulthood, becomes independent, or attains the age of 21, provided that he remains in the custody of the Respondent as the biological mother.

The Decision of the Manna Religious Court No. 244/Pdt.G/PA.Mna/2024, dated 12 August 2024, imposed child support obligations in a divorce case with the following considerations:<sup>26</sup>

1. Based on the evidence submitted, the Petitioner's admission, and witness testimony at trial, it was established that the Petitioner and the Respondent have one child, aged 18 years, who is currently a student at Universitas Terbuka. The child is in the custody of the Respondent as the biological mother. In light of this fact, the judge referred to SEMA No. 4 of 2016 – Formulation of the Religious Chamber – C.5, which stipulates that the Religious Court may determine child support from the father if the child is in the mother's custody. Similar provisions are found in Article 156(f) of the Compilation of Islamic Law and Article 41(b) of Law No. 1 of 1974 as amended by Law No. 16 of 2019, which affirm that the father is responsible for the maintenance and education of the child, and if unable, the court may determine that the mother share in the costs.
2. Facts revealed during the trial indicated that the Petitioner, a Civil Servant in the Indonesian National Police, had income documented in his salary statement amounting to Rp5,673,400.00. The Petitioner claimed that his net salary was only Rp2,700,000.00. However, this claim was not substantiated by documentary evidence or witness testimony. Accordingly, although the Petitioner admitted to receiving only that amount, the judge nevertheless ruled that the Petitioner must fulfil his obligations after divorce as outlined in the judgment.
3. As the biological father and a Civil Servant in the Indonesian National Police who is physically and mentally fit, the Petitioner was deemed capable of earning income. The judge found no grounds to exempt him from his paternal obligation to provide child support.
4. To uphold the principles of fairness, propriety, legal utility, and legal certainty, the judge decided to establish child support obligations for the Petitioner regarding the child currently in the Respondent's custody. The Petitioner was ordered to pay Rp500,000.00 per month for the 18-year-old child, to be

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<sup>26</sup>Direktori Putusan Mahkamah Agung Republik Indonesia, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaef588472026ea48082313532353334.html>.

delivered through the Respondent. This decision was based on the principle articulated in SEMA No. 3 of 2018, which requires judges to consider the husband's financial capacity and the child's basic living needs in determining support. The amount was adjusted to the Petitioner's circumstances and deemed the minimum reasonable standard of living in Bengkulu Selatan Regency.

5. To safeguard the child's best interests and ensure their future needs are not undermined by inflation and fluctuations in the rupiah's value, the judge ruled that the judgment should include an annual increase of 10 percent on the child support amount imposed on the Petitioner, until the child marries or reaches the age of 21, exclusive of educational and healthcare costs.

The ruling of the Bintuhan Religious Court in determining child support referred to several legal provisions concerning child maintenance, namely Article 41(a) and (b) of Law No. 1 of 1974 on Marriage, Article 156(d) and (f) of the Compilation of Islamic Law (KHI), Law No. 23 of 2002 on Child Protection, the Prophet's hadith to Hindun binti Utbah, and Supreme Court Circular Letter (SEMA) No. 4 of 2016. In setting the amount of support, the judge referred to SEMA No. 3 of 2018 by considering the father's occupation and income, the father's acknowledgment of his financial capacity during trial, and the child's basic needs. Meanwhile, the ruling of the Manna Religious Court on child support was based on Article 41(b) of Law No. 1 of 1974, Article 156(f) of the KHI, and SEMA No. 4 of 2016. The amount of support was determined by considering the father's income, the Petitioner's economic condition, and the child's basic needs, while also adjusting it to the reasonable standard of living in Bengkulu Selatan Regency.

A careful examination of both rulings reveals that the judges, in exercising *ex officio* authority on child support, did not rely solely on legal provisions granting judges the right to determine support without a request from the parties, as stated in Article 156(f) of the KHI and SEMA No. 4 of 2016. They also referred to other provisions concerning child maintenance, namely Article 41(a) and (b) of Law No. 1 of 1974 on Marriage, Article 156(d) of the KHI, Law No. 23 of 2002 on Child Protection, and SEMA No. 3 of 2018. Both rulings also included a provision for a 10 percent annual increase in support to anticipate inflation and clarified that child support does not cover education and healthcare expenses. This provision refers to SEMA No. 3 of 2015, which recommends annual adjustments and the separation of child support components.

When compared with practices in other countries, it becomes evident that mechanisms for determining post-divorce child support vary and may serve as

comparative references to strengthen Indonesia's legal framework. In Malaysia, for instance, the Syariah Court holds authority similar to judges' *ex officio* powers in Indonesia but is supported by Child Support Guidelines, which provide a quantitative reference in determining support based on parental income, the number of children, and the cost of living in each state.<sup>27</sup> This ensures greater uniformity in rulings and reduces disparities among judges. In Egypt, Article 18 of the *Qānūn al-Uṣrah* (Family Law) requires judges to automatically determine child support in divorce cases without awaiting a request from the wife, as a direct implementation of the father's *shar'ī* obligation to the child.<sup>28</sup>

In Pakistan, the Family Courts Act of 1964 likewise establishes the father's obligation to provide child support as imperative, with calculation formulas developed through Supreme Court jurisprudence that take into account income and children's basic needs.<sup>29</sup> Even in Western legal systems such as the United States, each state has a standardized child support calculator that judges are required to use when deciding divorce cases involving children.<sup>30</sup> This comparison indicates that Indonesia remains relatively underdeveloped in this area because it lacks uniform technical guidelines for calculating child support, leaving *ex officio* authority largely as individual judicial discretion. Therefore, the integration of *maqāṣid al-syarī'ah* into Indonesian religious court practice can be reinforced by adopting best practices from other jurisdictions, namely the development of quantitative guidelines based on children's actual needs as a standardized reference in every ruling, while still allowing room for judges to adjust to local contexts.

### Islamic Legal Analysis Based on *Maqāṣid al-Syarī'ah* in Determining Child Support After Divorce

<sup>27</sup> Imran Rasul, "Household Bargaining over Fertility: Theory and Evidence from Malaysia," *Journal of Development Economics* 86, no. 2 (June 1, 2008): 215–41, <https://doi.org/10.1016/J.JDEVECO.2007.02.005>.

<sup>28</sup> Hala Ahmed and Nour El-Din, "Indeterminacy of the Best Interest of the Child and Shari'a Rules in Custody Adjudications: Egypt Case," *Theses and Dissertations*, June 15, 2021, <https://fount.aucegypt.edu/etds/1641>.

<sup>29</sup> Syeda Saima Shabbir and Syeda Saima Shabbir, "Analysing Welfare Of Child Through Law: Impact Of Key Rulings Of The Supreme Court Of Pakistan In Shaping The Legal Landscape Of Child Maintenance," *Journal of Media Horizons* 6, no. 4 (September 6, 2025): 66–81, <https://doi.org/10.5281/zenodo.17066535>.

<sup>30</sup> Charles J. Meyer, Justin W. Soulen, and Ellen Goldberg Weiner, "Child Support Determinations in High Income Families - A Survey of the Fifty States," *Journal of the American Academy of Matrimonial Lawyers* 28 (2015), <https://heinonline.org/HOL/Page?handle=hein.journals/jaaml28&id=509&div=&collection=>.

The integration of *maqāṣid al-syarī'ah* into judges' *ex officio* rulings in child support cases within Indonesia's Religious Courts represents an effort to harmonize positive legal norms with the fundamental values of Islamic law that are oriented toward *maṣlahah* (public benefit). The primary principles relevant in this context are *hiḍḍ al-nasl* (protection of lineage) and *hiḍḍ al-nafs* (protection of life), which require that children continue to receive adequate fulfilment of their needs after their parents' divorce. Within this framework, *ex officio* authority becomes a judicial instrument that enables judges to act proactively in protecting vulnerable parties, even when such rights are not explicitly requested by the litigants.

From a juridical perspective, *ex officio* has strong legitimacy in Indonesian positive law through Article 156(f) of the Compilation of Islamic Law (KHI), Article 41 of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019, and Supreme Court Circular Letter (SEMA) No. 4 of 2016. In practice, however, its effectiveness often varies among judges and across jurisdictions. Some *ex officio* rulings clearly reflect a commitment to children's welfare by setting support amounts that consider the local cost of living, including annual increases to anticipate inflation, and separating educational and healthcare expenses. Conversely, other rulings still impose low amounts inconsistent with children's actual needs, demonstrating weak integration of *maqāṣid al-syarī'ah* into judicial reasoning.

From the standpoint of *maqāṣid al-syarī'ah*, judges should not rely solely on procedural aspects or the principle of contractual freedom between the parties, but also evaluate the substance of settlements or *ex officio* determinations to ensure alignment with substantive justice. The principle *al-ḥukm yadūru ma'a al-maṣlahah wujūdan wa 'adaman* mandates that the validity of law depends on the *maṣlahah* it produces. Accordingly, when the amount of child support agreed upon or determined fails to meet the child's needs, judges are obliged to intervene through *ex officio* authority to safeguard children's rights as a *shar'ī* trust.

This integration also requires a strong methodological approach. First, judges must have access to updated standards of children's living costs based on official data, such as from the Central Bureau of Statistics (BPS), to ensure decisions are grounded in objective evidence. Second, case examinations must include thorough evaluations of the father's financial capacity, including documentation of income, assets, and dependents. Third, from the perspective of the sociology of law, there must be a paradigm shift from a passive judiciary to a

responsive judiciary that prioritizes the protection of vulnerable parties, particularly children.

The implications of integrating *maqāṣid al-syarī'ah* into *ex officio* rulings extend beyond individual protection to shaping the culture of Islamic family law in Indonesia.<sup>31</sup> When judicial decisions consistently prioritize the child's best interests, society will internalize that child support obligations are not merely contractual matters between parents but religious and social responsibilities that must be fulfilled. Thus, such integration contributes to transforming family law into a system that is more responsive, just, and oriented toward the well-being of future generations.

The fundamental principle in constructing Islamic law for determining child support is to ensure the fulfilment of all children's needs in a proper manner, including both primary and secondary needs, in accordance with local socio-economic conditions. Within the framework of *uṣūl al-fiqh*, this aligns with the maxim *al-ḥukm yadūru ma'a al-maṣlaḥah wujūdan wa 'adaman* (the validity of law depends on the presence of public benefit). In other words, if a judgment or settlement does not provide *maṣlaḥah* for the child, then from a *sharī'ah* perspective such ruling must be corrected or revised. In practice, this means that judges must conduct an objective assessment of the amount of support by considering factors such as inflation, educational expenses, healthcare, and other developmental needs of the child.

The *maqāṣid al-syarī'ah* approach also requires a balance between the father's financial capacity and the child's actual needs. The maxim *lā yukallifū Allāhu nafsān illā wus'ahā* (Allah does not burden a soul beyond its capacity) provides the basis for ensuring that the child support determined is realistic and enforceable. However, this principle must not be misused as a justification for setting support amounts that are unreasonably low without objective grounds, since child support is a *shar'ī* obligation that cannot be eliminated based merely on the father's subjective claims. Therefore, the construction of Islamic law must regulate mechanisms for transparently assessing the father's capacity, such as through examination of income, assets, and observable lifestyle indicators during trial proceedings.

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<sup>31</sup> Achmad Suhaili, "Integrasi Maqāṣid Al-Syarī'Ah Dalam Praktik Peradilan Agama Di Indonesia: Studi Alternatif Penyelesaian Sengketa Keluarga," *Mababits : Jurnal Hukum Keluarga* 6, no. 1 (2025): 1–14.

The integration of amicable settlement and *ex officio* authority in the construction of Islamic law can be realized through a tiered approach.<sup>32</sup> At the first stage, judges should facilitate amicable settlement between the parties while ensuring that the settlement meets the minimum standard of child support based on actual needs. Such standards could be established through Supreme Court regulations or technical guidelines referencing the cost of living data in each region. At the second stage, if no settlement is reached or if the amount agreed upon falls below the standard, judges are obliged to exercise their *ex officio* authority to determine support in line with the child's needs. In this way, *ex officio* serves not merely as a complementary measure but as a corrective instrument ensuring the attainment of *maṣlahah* for children. This is consistent with the doctrine of *siyāṣah shar'īyyah*.

From the perspective of the sociology of law, this construction of Islamic law must also account for the socio-cultural factors that influence public perceptions of child support. In some regions, there remains a belief that after divorce, a child under the mother's custody becomes the responsibility of her extended family, thereby reducing the perceived obligation of the father. Such a view is clearly inconsistent with the principles of Islamic law, which affirm that the obligation of child support rests entirely upon the father, regardless of custody arrangements. Therefore, an ideal construction of Islamic law must be accompanied by legal education emphasizing that child support is an absolute obligation of the father and cannot be transferred to others.

Furthermore, the construction of Islamic law must incorporate elements of monitoring and effective enforcement. One of the main weaknesses in the current system lies in the lack of post-judgment supervision. Many cases show that child support determined by the court is not paid consistently, and the enforcement process requires complicated and costly execution proceedings. Within the framework of *maqāṣid al-syarī'ah*, this indicates that the objectives of preserving lineage (*ḥifẓ al-nasl*) and life (*ḥifẓ al-naḥs*) are not fully achieved.<sup>33</sup> To address this issue, the construction of Islamic law may adopt mechanisms such as periodic reporting by the father or the involvement of third parties, such as child protection agencies, to monitor compliance with child support obligations.

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<sup>32</sup> Ahmad Musyahid, "Struktur Kaidah Fiqhiyyah : Fondasi Universal Dalam Penetapan Hukum Islam" 3, no. 2 (2025): 692–700.

<sup>33</sup> Syamsuar et al., "Integration of Maqashid Syaria in Nurcholish Madjid's Thinking about Principles for Effective Good Governance," *Al-Istinbat: Jurnal Hukum Islam* 9, no. 1 (2024): 45–62, <https://doi.org/10.29240/jhi.v9i1.9701>.

An Islamic legal construction based on *maqāṣid al-syarī'ah* must also ensure the continuity of support until the child achieves independence. In Indonesian positive law, child support is generally provided until the child reaches the age of 21 or marries. However, in certain contexts, children who are not yet economically independent despite surpassing that age continue to require financial assistance, for instance when pursuing higher education. Within the framework of *ḥifẓ al-nasl*, the continuity of education and child development is part of protecting a quality lineage. Therefore, judges may exercise their discretion to extend support obligations under special circumstances, provided that this ensures *maṣlahah* and does not impose a disproportionate burden.

All components of this Islamic legal construction must aim to create a balance between procedural justice and substantive justice. Procedural justice is achieved by ensuring that every process of determining child support follows the established legal mechanisms, either through amicable settlement or *ex officio* authority. Substantive justice is realized by ensuring that the outcome truly meets the child's needs and protects their rights. The integration of these two forms of justice is the practical embodiment of the principle of *al-'adl wa al-iḥsān*, which represents the ultimate objective of Islamic law.

If such a construction of Islamic law is properly implemented, it is expected not only to provide optimal protection for children after divorce but also to contribute to the formation of a new legal culture in society. This legal culture would regard child support as a moral and social obligation of equal importance to formal legal obligations. Ultimately, this will promote the development of an Islamic family law system that is more responsive, humane, and aligned with both universal human values and *sharī'ah* teachings.

The theoretical contribution highlighted in this study is that the integration of *maqāṣid al-syarī'ah*, particularly the principle of *ḥifẓ al-nasl*, into judges' *ex officio* rulings not only strengthens child protection after divorce but also gives rise to a new model that can be termed *Islamic judicial activism*. This model positions judges not merely as approvers of parties' agreements but as active actors who internalize the objectives of the *sharī'ah* in legal determinations. This provides a significant contribution to contemporary Islamic legal theory by expanding the function of judicial *ijtihād* in religious courts from being merely technical-procedural to realizing substantive justice. On the practical level, this research offers an applicable framework consisting of standardized guidelines for determining child support based on the cost of living, mechanisms for evaluating



parents' financial capacity, and post-judgment monitoring to ensure continuity of child support. Thus, this study contributes not only to enriching academic discourse on *maqāṣid al-syarī'ah* in family law but also to providing operational solutions for religious courts in producing consistent, fair, and child-cantered rulings.

The concept of *Islamic judicial activism* introduced in this research constitutes a significant distinction from similar studies in Egypt, Malaysia, and Pakistan. In Egypt, although judges are under an imperative obligation to determine child support in every divorce case, the practice remains largely administrative as it relies exclusively on family law statutes without broader space for judges to creatively integrate *maqāṣid al-syarī'ah*. In Malaysia, the Syariah Courts employ Child Support Guidelines as quantitative standards, but these primarily emphasize uniformity in support amounts rather than expanding the scope of judicial *ijtihad*. In Pakistan, judicial authority is affirmed under the Family Courts Act of 1964, but its nature remains normative and not explicitly connected with the *maqāṣid al-syarī'ah* framework. By contrast, this study offers a different perspective by positioning Indonesian judges as proactive actors who not only apply positive law but also internalize the objectives of the *sharī'ah* (*ḥifẓ al-nasl*) to ensure child protection. In terms of global Islamic legal theory, this model makes an important contribution by demonstrating that contemporary judicial *ijtihad* can move from mere judicial discretion toward *maqāṣid*-oriented adjudication. This enriches Islamic legal discourse by presenting a new paradigm of responsive judiciary that bridges normative texts, socio-economic contexts, and the demands of *maṣlahah*, while also serving as a reference for the development of Islamic family law across various Muslim jurisdictions.

## Conclusion

This study demonstrates that the mechanisms for determining child support after divorce in Indonesia's Religious Courts through amicable settlement (*ṣulh*) and judges' *ex officio* authority have distinct strengths and weaknesses. Amicable settlements tend to produce compromise-based amounts of support that do not always correspond to children's actual needs, while *ex officio* rulings are more likely to safeguard children's interests yet remain inconsistent due to the absence of standardized guidelines. An analysis grounded in *maqāṣid al-syarī'ah*, particularly the principle of *ḥifẓ al-nasl*, underscores the importance of repositioning judges as proactive actors in ensuring the fulfilment of the child's

best interests. From this arises the concept of *Islamic judicial activism*, which situates judges not merely as executors of rules but as normative agents who integrate the objectives of the *shari'ah* with socio-economic contexts.

The theoretical contribution of this research lies in developing a framework of *maqāṣid-oriented adjudication*, which enriches global Islamic legal discourse by emphasizing that judicial discretion can be directed toward the substantive protection of children. On the practical level, this research calls on the Supreme Court to formulate a national guideline for determining child support based on cost-of-living standards, to strengthen judges' capacity in exercising *ex officio* authority, and to develop mechanisms for monitoring compliance after rulings. Accordingly, this study not only highlights the urgency of reforming judicial practice in Indonesia's Religious Courts but also offers a normative model relevant for the development of Islamic family law in other Muslim jurisdictions.

## References

- Agustin, Dian, and Ahmad Musadad. "Disparitas Keberhasilan Mediasi Antara Perkara Perceraian Dan Sengketa Ekonomi Syariah Di Pengadilan Agama Surabaya." *Morality: Jurnal Ilmu Hukum* 9, no. 2 (2023): 192. <https://doi.org/10.52947/morality.v9i2.357>.
- Ahmed, Hala, and Nour El-Din. "Indeterminacy of the Best Interest of the Child and Shari'a Rules in Custody Adjudications: Egypt Case." *Theses and Dissertations*, June 15, 2021. <https://fount.aucegypt.edu/etds/1641>.
- Firdaus. "The Principles of the Concept of Maslahah in Islamic Family Law of a Wife Looking for Living Husband Taking Care of Household Work." *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 259–84.
- Fuadi, Ahmad Syarif, Dadin Eka Saputra, and Munajah Munajah. "Analisis Yuridis Hak Ex Officio Hakim Dalam Perkara Cerai Gugat (Studi Kasus Putusan Pengadilan Agama Martapura Nomor 318/Pdt.G/2020/PA.Mtp)." *Jurnal Penegakan Hukum Indonesia* 1, no. 1 (2021): 70–87. <https://doi.org/10.51749/jphi.v1i1.21>.
- Islamie, Fikri. "Otoritas Tafsir T ā Bi ' ī N : Analisis Penafsiran Qat ā Dah Bin Di ' ā Mah Al-Sad ū s ī y Tentang Ayat-Ayat Takdir" 2, no. 1 (2025): 21–40.
- Jamil, Abdul, and Muliadi Nur. "Perlindungan Hukum Dan Keadilan Para Pihak Melalui Ex Officio Hakim Dalam Putusan Verstek Perkara Perceraian." *Jurnal Hukum Ius Quia Iustum* 29, no. 2 (2022): 439–60. <https://doi.org/10.20885/iustum.vol29.iss2.art10>.

- Kalverboer, Margrite, Daan Beltman, Carla Van Os, and Elianne Zijlstra. "The Best Interests of the Child in Cases of Migration: Assessing and Determining the Best Interests of the Child in Migration Procedures." *International Journal of Children's Rights* 25, no. 1 (2017): 114–39. <https://doi.org/10.1163/15718182-02501005>.
- Kemenag RI, Dirjen Bimas Islam. *Kompilasi Hukum Islam Di Indonesia*. Jakarta: Direktorat Bina KUA, 2018.
- Kurniawan, Mitra, Zulfahmi Bustami, and Sofia Hardani. "Analisis Kritis Pasal 156 (C) KHI Mengenai Pemindahan Hak Asuh Anak Dalam Konteks Penelantaran Oleh Ibu: Perspektif Maqāshid Al-Syar'ah." *Legitima: Jurnal Hukum Keluarga Islam* 5, no. 2 (2023): 315–30. <https://doi.org/10.33367/legitima.v5i2.3828>.
- "M. Nur Syafiuddin, Aksentuasi Kepentingan Terbaik Anak Dalam Putusan Nafkah Sebagai Upaya Penjaminan Hak Asasi Manusia, Jurnal HAM, Vol 13, No 2, Agustus 2022, <Http://Dx.Doi.Org/10.30641/Ham.2022.13.235-252.No Title>," n.d.
- Meyer, Charles J., Justin W. Soulen, and Ellen Goldberg Weiner. "Child Support Determinations in High Income Families - A Survey of the Fifty States." *Journal of the American Academy of Matrimonial Lawyers* 28 (2015). <https://heinonline.org/HOL/Page?handle=hein.journals/jaaml28&id=509&div=&collection=>.
- Meyer, Daniel R., Maria Cancian, and Yiyu Chen. "Why Are Child Support Orders Becoming Less Likely after Divorce?" *Http://Doi.Org/10.1086/681604* 89, no. 2 (June 1, 2015): 301–34. <https://doi.org/10.1086/681604>.
- Musyahid, Ahmad. "Struktur Kaidah Fiqhiyyah: Fondasi Universal Dalam Penetapan Hukum Islam" 3, no. 2 (2025): 692–700.
- Nafiz, Al, Ezha Indra Rizhal Noor, Herlina, and Maulina. "Kaidah-Kaidah Fikih Yang Berkaitan Dengan Perubahan Dan Pembaharuan Hukum Institut Agama Islam Negeri Palangka Raya , Indonesia Agama Yang \_ Salihun Li Kulli Zaman Wa Makan \_ Sejak Dahulu , Keberadaan Islam Memang Di." *Al-Mustaqbal: Jurnal Agama Islam* 2, no. 2 (2025): 141–50.
- Novita, Dwi, Mohamad Sar'an, Asep Ahmad Ridwansah, Suharyono, and Hamdan Ardiansyah. "Family Conflict Disclosure on Social Media in Islamic Law: Islah as a Reconciliation Mechanism." *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 443–58. <https://doi.org/10.29240/jhi.v10i1.12658>.
- Nugraheni, Destri Budi. "Urgensi Penggunaan Mediasi Dalam Penyelesaian Perkara Pembatalan Perkawinan Di Pengadilan Agama." *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 251–66.

- <https://doi.org/10.24090/mnh.v14i2.4177>.
- Ramli, Muhammad Amirul. "Bulletin of Early Childhood." *Bulletin of Early Childhood* 1, no. 1 (2022): 1–19.
- Rasul, Imran. "Household Bargaining over Fertility: Theory and Evidence from Malaysia." *Journal of Development Economics* 86, no. 2 (June 1, 2008): 215–41. <https://doi.org/10.1016/J.JDEVECO.2007.02.005>.
- "Rivanka Gradian Baldi, Penyelesaian Sengketa Pemenuhan Hak Nafkah Anak Pasca Perceraian Melalui Mediasi Di Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak, Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau, Vol 10, No 2, 2023, <https://Jom.Un>," n.d.
- Safira, Levana, Sonny Dewi Judiasih, and Deviana Yuanitasari. "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 4, no. 2 (2021): 210–25. <https://doi.org/10.23920/acta.v4i2.521>.
- Saifullah, Muhammad. "Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Jawa Tengah." *Al-Ahkam* 25, no. 2 (2015): 181. <https://doi.org/10.21580/ahkam.2015.25.2.601>.
- Seefeldt, Kristin S. "Constant Consumption Smoothing, Limited Investments, and Few Repayments: The Role of Debt in the Financial Lives of Economically Vulnerable Families." *Social Service Review* 89, no. 2 (June 30, 2015): 263–300. <https://doi.org/10.1086/681932>.
- Shabbir, Syeda Saima, and Syeda Saima Shabbir. "Analysing Welfare Of Child Through Law: Impact Of Key Rulings Of The Supreme Court Of Pakistan In Shaping The Legal Landscape Of Child Maintenance." *Journal of Media Horizons* 6, no. 4 (September 6, 2025): 66–81. <https://doi.org/10.5281/zenodo.17066535>.
- Suhaili, Achmad. "Integrasi Maqāṣid Al-Syarīʿah Dalam Praktik Peradilan Agama Di Indonesia: Studi Alternatif Penyelesaian Sengketa Keluarga." *Mabahits: Jurnal Hukum Keluarga* 6, no. 1 (2025): 1–14.
- Syamsuar, Ahmad Omar Chapakia, Amrizal Hamsa, and Amelia. "Integration of Maqashid Syaria in Nurcholish Madjid's Thingking about Principles for Effective Good Governance." *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 45–62. <https://doi.org/10.29240/jhi.v9i1.9701>.
- "Udin Latif, Analisis Yuridis Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak-Hak Perempuan Yang Berhadapan Dengan Hukum Pada Perkara Cerai Talak Di Pengadilan Agama Sorong, Jurnal Hukum Muadalah: IAIN Sorong, Vol. 1 No.2, 2022, <https://Doi.Org/10.4794>," n.d.

