

| Research Article |

Adjudicating Children's Rights after Divorce: Ḥaḍānah, Maintenance, and Relational Continuity in Three Rulings of the Palu Religious Court

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Abstract: Divorce terminates the marital bond between two spouses, yet it does not extinguish the legal relationship that binds parents to their children. This study examines how the Palu Religious Court constructs protection for the rights of children after divorce, how the bench reasons toward that protection, and whether the resulting rulings conform to Islamic law and to Indonesian positive law. The research adopts a normative legal design combined with a case approach, and it analyses three first-instance rulings handed down between 2024 and 2026, namely Decision No. 841/Pdt.G/2024/PA.Pal, Decision No. 182/Pdt.G/2025/PA.Pal, and Decision No. 4/Pdt.G/2026/PA.Pal. Primary legal materials comprise the Marriage Law, the Child Protection Law, the Compilation of Islamic Law, and the three rulings themselves, while interviews with a sitting judge and a court registrar supply supporting information. The analysis shows that protection is assembled from components recurring in varying combinations, namely the allocation of ḥaḍānah to the caregiver assessed as most capable, the imposition of a maintenance obligation on the father calibrated to his earning capacity, and the preservation of the child's access to the non-custodial parent. Two rulings attach an annual escalation of ten per cent to the award, which extends protection beyond the moment of adjudication. Judicial reasoning consistently weighs the needs established at trial against the paternal capacity proved in evidence, and that method matches the standard laid down in Supreme Court Circular Letter No. 3 of 2018. No substantive divergence from Islamic law or positive law was found in any ruling. The study nevertheless identifies a residual weakness, because none of the awards is secured through the guarantee mechanism available under Circular Letter No. 5 of 2021.

Keywords: child protection, ḥaḍānah, child maintenance, best interests of the child, religious court



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Introduction

Divorce remains one of the most frequently litigated matters within the Indonesian religious court system, and its volume has stayed high throughout recent years. Figures compiled by Statistics Indonesia from the Religious Judicature Body of the Supreme Court record 463,654 divorce cases in 2023, a decline to 394,608 cases in 2024, and a renewed increase to 438,168 cases in 2025 (Badan Pusat Statistik, 2025). Numbers of that magnitude mean that a very large cohort of children passes each year through the legal consequences of parental separation.

Islamic jurisprudence treats divorce as a permitted but strongly disfavoured remedy, available only after reconciliation has genuinely been attempted and has failed (Mappasessu et al., 2024; Sholihah et al., 2024). Article 113 of the Compilation of Islamic Law provides that a marriage may end through death, through divorce, or through a decision of the court. Article 39 of Law No. 1 of 1974 on Marriage requires that divorce be pronounced before a court, and only once judicial efforts at reconciliation have proved unsuccessful (Yulianti & Hamzah, 2022). The procedural machinery therefore concentrates on the two spouses, whose dispute defines the boundaries of the case. Children are affected profoundly by the outcome, yet they hold no procedural standing of their own in the proceedings that determine their future.

This asymmetry gives the judgment itself an unusual weight. Whatever the court writes into the dictum becomes the operative instrument through which a child's post-divorce entitlements are recognised and made enforceable. Indonesian law states those entitlements in several places at once. Article 41 of Law No. 1 of 1974, as amended by Law No. 16 of 2019, preserves the duty of both parents to rear and educate their children on the basis of the child's interest, and it places the cost of maintenance and education primarily on the father. Article 105 of the Compilation of Islamic Law allocates custody of a child below the age of twelve to the mother, while Article 156 governs the transfer of that right where the holder cannot guarantee the physical and mental safety of the child. Law No. 35 of 2014 on Child Protection then supplies the governing principle, since it requires the best interests of the child to be treated as a primary consideration in every decision that concerns a child.

The same principle also carries authority under international human rights law. Article 3 of the Convention on the Rights of the Child, which Indonesia ratified in 1990, obliges courts to treat the best interests of the child as a primary consideration in all actions concerning children. General Comment No. 14 of the Committee on the Rights of the Child clarifies that the principle operates simultaneously as a substantive right, as an interpretive rule, and as a procedural requirement (Committee on the Rights of the Child, 2013). Under the procedural limb, a decision-maker must explain what has been considered to be in the child's interests and how those interests were weighed against competing considerations. Indonesian religious court practice has absorbed the principle steadily, and the Supreme Court has reinforced it through successive circular letters addressed to the religious chamber.

Those circular letters deserve attention because they translate an abstract principle into working instructions for judges. Circular Letter No. 3 of 2015 restricts the bench from determining custody *ex officio* where no party has asked for it. Circular Letter No. 4 of 2016 authorises the court to fix child maintenance against the father on its own initiative when the child is in fact living with the mother. Circular Letter No. 3 of 2018 directs judges to set past maintenance, *iddah* maintenance, consolation payment, and child maintenance by reference to fairness and propriety, and by inquiring into both the capacity of the husband and the basic needs of the wife and the child. Circular Letter No. 5 of 2021 goes further still, since it allows a wife to request that property belonging to the husband be charged as security for the maintenance owed to the children. Read together, these instruments form a graduated framework that moves from recognition of the right toward its practical enforcement.

Scholarship on post-divorce child protection in Indonesia has grown considerably, although it has tended to advance along separate tracks. One body of work concentrates on custody as a doctrinal question and traces how classical *fiqh* positions have been reshaped by welfare-oriented reasoning (Multazam, 2024; Mera et al., 2024; Joni & Iman, 2025). A second body of work concentrates on maintenance and on the difficulty of translating monetary awards into actual payment (Nasution et al., 2024; Syahrin, 2022; Zuhdi et al., 2024). A third line of inquiry examines the participation of children in the proceedings that decide their placement, and it reports that judicial practice still relies heavily on adult testimony (Saraswati, 2021). A further strand looks upstream at marriage formation itself, and it examines the conditions under which unions are contracted below the statutory minimum age. Work of that kind records how economic pressure and interrupted schooling shape the household that a court may later be asked to dissolve (Ramadhan & Ahmad, 2023). Comparative studies place Indonesian practice alongside neighbouring jurisdictions and identify shortcomings in the guarantee mechanisms available to claimants (Musaddad et al., 2025).

What remains comparatively rare is an integrated reading of a single court's output, in which custody, maintenance, and continued parental contact are examined as elements of one protective structure rather than as isolated topics. Studies that adopt a purely conceptual method also risk overlooking how much of the protective work is done by facts established at trial. The Palu Religious Court offers a productive setting for that kind of reading. Its recent docket contains rulings that differ sharply in the type of claim brought, in the number of children involved, and in the financial circumstances of the parties, while the same bench applies a common body of law across all of them.

This article therefore pursues three connected questions about that judicial output. It first asks how protection for children's rights is constructed in Decision No. 841/Pdt.G/2024/PA.Pal, Decision No. 182/Pdt.G/2025/PA.Pal, and Decision No. 4/Pdt.G/2026/PA.Pal. It then asks whether the legal reasoning in those rulings reflects the principle of the best interests of the child in a demonstrable way. It finally asks

how far the rulings conform to, or depart from, the requirements of Islamic law and Indonesian positive law. By pursuing the three questions together, the study aims to describe the protective architecture that a first-instance religious court actually builds, rather than the architecture that the statutes alone would suggest.

The contribution of this study operates on two distinct levels. Substantively, the article shows that protection in these rulings is not uniform and was never intended to be uniform, since its shape follows the claim before the court and the evidence adduced at trial. Methodologically, the article tests the rulings not only against statutory text and classical doctrine but also against the Supreme Court's own chamber formulations, which are the instruments that most directly govern how religious court judges are expected to reason. That second step brings into view an enforcement gap that a purely statutory reading would leave invisible.

Method

This study is normative legal research conducted through a case approach. Normative legal research treats written norms as the principal object of inquiry and works primarily from secondary materials assembled through documentary study (Efendi & Ibrahim, 2021; Marzuki, 2021). The case approach directs the analysis toward court decisions and, more specifically, toward the ratio decidendi that a bench constructs in order to justify its dictum (Zamroni, 2024). Recent work on Indonesian religious court practice applies the same procedure to a single certified decision, and it shows how close reading of one judgment can recover the layered authority on which a panel relies (Tohir et al., 2026). Because the object of study is the internal reasoning of judgments rather than the behaviour of a population, no sampling in the statistical sense was required. Case selection was purposive and was guided by the analytical value of each ruling.

Three first-instance rulings of the Palu Religious Court were selected. Decision No. 841/Pdt.G/2024/PA.Pal concerns a custody claim over four children following divorce. Decision No. 182/Pdt.G/2025/PA.Pal concerns custody together with a claim for child maintenance in respect of three children. Decision No. 4/Pdt.G/2026/PA.Pal concerns a divorce petition filed by a wife, coupled with claims for iddah maintenance, past maintenance, and maintenance for two children. The three rulings were chosen because they cover the principal ways in which children's interests reach a religious court after marital breakdown, and because the same court decided them within a short and continuous period.

The Palu Religious Court itself was established on 10 February 1965 and exercises jurisdiction over the eight sub-districts of Palu City. As a first-instance court within the religious judicature, it hears matters of marriage, inheritance, bequest, endowment, and Islamic economic law for the Muslim population of its territory, under Law No. 7 of 1989 as amended by Law No. 3 of 2006 and Law No. 50 of 2009. Divorce and its consequences form a substantial share of its caseload.

Legal materials for the analysis were organised into three standard categories. Primary materials comprise Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, Law No. 35 of 2014 on Child Protection, Government Regulation No. 9 of 1975, the Compilation of Islamic Law promulgated through Presidential Instruction No. 1 of 1991, the relevant Supreme Court circular letters, and the three rulings under study. Secondary materials comprise classical and contemporary works of fiqh, together with scholarly books and journal articles addressing custody, maintenance, and child protection. Tertiary materials comprise legal dictionaries and encyclopaedic references used to clarify terminology.

Supporting information was obtained through interviews with two officials of the Palu Religious Court on 13 May 2026. A sitting judge was interviewed about the legal basis for maintenance awards, about the way capacity and need are balanced, and about the operation of the best interests principle. A member of the registry staff was interviewed about the consistency with which maintenance and custody appear in the dictum of divorce judgments. These interviews function strictly as supporting rather than primary data. They were used to corroborate patterns already visible in the rulings, and they were not treated as an independent basis for any finding.

The analytical procedure moved through six stages, which are set out in Figure 1. The first stage framed the legal issue and selected the rulings. The second assembled the legal materials and conducted the supporting interviews. The third reduced each ruling to a set of coded observations under three analytical categories, namely custodial disposition, financial obligation, and continuity of parental contact. The fourth reconstructed the ratio decidendi of each ruling and identified the authority cited for each element of the dictum. The fifth compared the three rulings in order to separate the stable pattern from case-specific variation. The sixth tested each ruling against Islamic law and positive law, and verified the resulting findings across the rulings, the interview material, and the secondary literature.

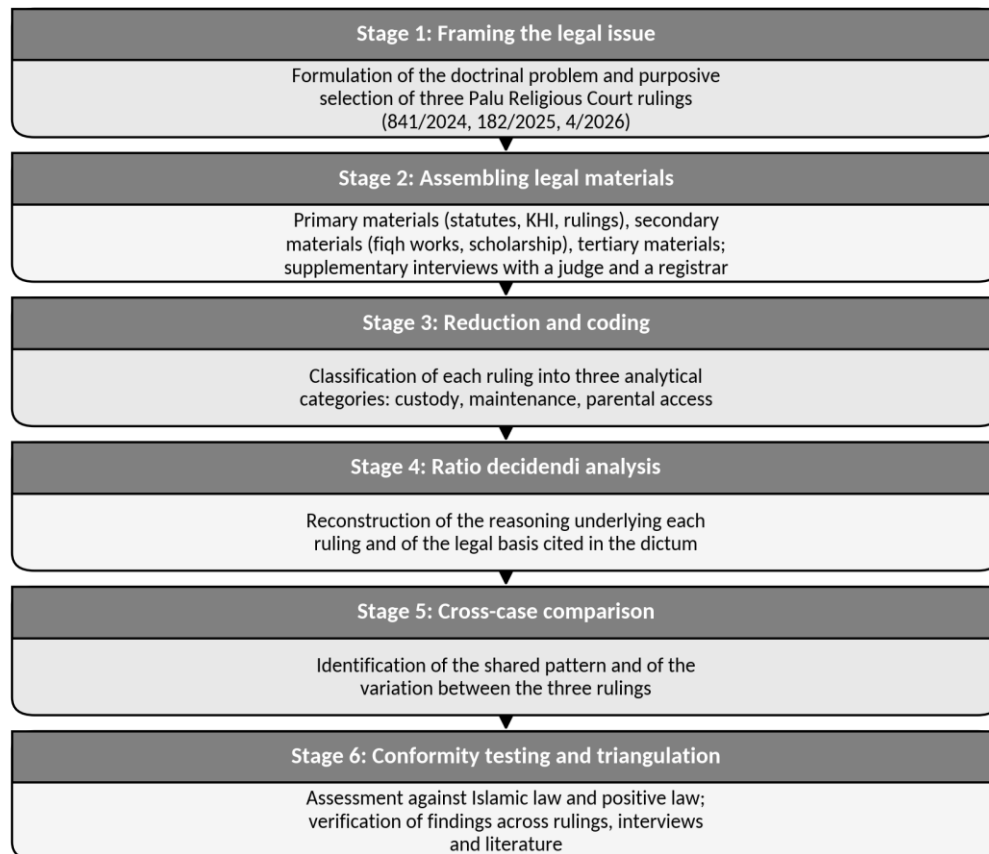


Figure 1: Stages of the analytical procedure

Validity of the analysis was pursued through the triangulation of sources. Each finding drawn from the text of a ruling was checked against the statutory or doctrinal authority cited within that ruling, and then against the accounts given by the two court officials. Where the interview material and the written reasoning diverged, the written reasoning was treated as controlling, since the dictum is the operative legal act. Comparison across several categories of legal material was also used to reduce the risk that a single reading of one document would drive the analysis (Sunggara et al., 2023).

Two limitations should be acknowledged at the outset. The design is doctrinal, which means that it examines what the court decided and why, and not whether the orders were subsequently obeyed. Claims about compliance therefore fall outside the evidentiary reach of this study and are treated as questions for later empirical work. The number of rulings is also small, so the findings describe a pattern within one court rather than a national tendency. Ethical handling of the material followed the practice of the court itself, since the published rulings anonymise the parties and the children, and no identifying particulars are reproduced here.

Results

Profile of the three rulings

The three rulings differ in the type of claim brought before the court, in the number and ages of the children concerned, and in the relief eventually granted. Table 1 sets out those particulars, drawn from the dictum and the recitals of each judgment. Two of the three cases were decided by default, because the respondent failed to appear despite proper and lawful summons. That procedural feature shaped what evidence was available to the bench, and it will be revisited in the discussion below.

Table 1: Particulars of the three rulings of the Palu Religious Court

Element	No. 841/Pdt.G/2024	No. 182/Pdt.G/2025	No. 4/Pdt.G/2026
Type of claim	Custody of children	Custody and child maintenance	Divorce petition by wife with ancillary claims
Mode of decision	Contested proceeding	Default judgment	Default judgment
Children involved	Four (aged 2y3m to 8y3m)	Three (aged 6y, 9y and 12y4m)	Two (aged 2y and 7y)
Custody disposition	Confirmed to the mother	Confirmed to the mother	Not part of the dictum
Child maintenance	Not claimed and not awarded	At least IDR 1,500,000 per child each month, at least IDR 4,500,000 in total	IDR 750,000 each month for both children
Excluded expenses	Not applicable	Education and health care	Education and health care
Escalation	Not applicable	Ten per cent each year	Ten per cent each year
Duration of obligation	Not applicable	Until adulthood, marriage, or the age of twenty-one	Until adulthood, independence, the age of twenty-one, or marriage
Parental access	Expressly reserved to the father	Expressly reserved to the father	Not expressly addressed
Other financial orders	None	None	Iddah maintenance and past maintenance of IDR 2,500,000 each
Case costs	IDR 775,000	IDR 289,000	IDR 198,000

Construction of protection in Decision No. 841/Pdt.G/2024/PA.Pal

The first ruling concerns a custody claim brought by a mother after the dissolution of a marriage contracted on 7 April 2016 and ended by divorce on 25 April 2024. Four children were born of that marriage, and at the time the claim was filed

they were aged eight years and three months, seven years, five years and one month, and two years and three months. All four had remained in the care of the claimant since the divorce, and the claim sought legal certainty for an arrangement that was already operating in practice.

The pleadings alleged that the respondent had harassed the claimant with unfounded accusations after the separation. They further alleged that during the marriage the respondent had been unwilling to work, had used methamphetamine, and had gambled habitually. Those allegations went directly to the statutory ground on which custody may be withheld from a parent, since Article 156(c) of the Compilation of Islamic Law permits the court to transfer custody where the holder cannot guarantee the physical and mental safety of the child. The bench granted the claim and confirmed the claimant as the holder of custody over all four children.

Two features of the dictum are analytically significant. The court did not treat custody as a private entitlement won by one parent against the other, but as an instrument for securing the welfare of the children after the marriage had ended. It also expressly reserved to the respondent, as the biological father, the right to visit the children and to give them affection. Protection here therefore operates on two levels at once, since it settles the question of daily care while refusing to sever the children's relationship with the parent who did not obtain custody.

A judge of the court described this reasoning in similar terms during the supporting interview. He explained that a parent who does not obtain custody retains the right to visit the child, to give affection, and to instil good values, provided that the exercise of the right does not harm the child's interest. The written reasoning and the interview account converge on the same point, which is that the transfer of custody does not dissolve the parental bond.

No order for child maintenance appears anywhere in this dictum. The recitals show that maintenance was not part of the relief sought, since the claim was confined to the question of custody. The absence of a financial order in this case is therefore a consequence of the pleadings rather than an omission by the bench, and its doctrinal significance is examined later in this article.

Construction of protection in Decision No. 182/Pdt.G/2025/PA.Pal

The second ruling concerns a claim for custody combined with a claim for child maintenance. The parties had divorced in 2020, and their three children, aged twelve years and four months, nine years, and six years at the time of the hearing, had been living with the claimant at her parents' home. The claimant pleaded that the respondent contributed only two million rupiah each month toward the cost of a carer, while the remaining needs of the children were left substantially unmet. She therefore asked the court to confirm her custody and to order the respondent to pay maintenance together with educational costs.

The respondent did not attend the hearing despite proper and lawful summons, and the case was decided by default. The bench granted the claim in part after weighing the available evidence. It confirmed the claimant as the holder of custody

over the three children, and it expressly reserved the respondent's right to visit them and to give them affection. It then ordered the respondent to pay maintenance of at least one million five hundred thousand rupiah for each child every month, amounting to at least four million five hundred thousand rupiah in total, exclusive of educational and medical expenses. The obligation runs from the date on which the judgment becomes final until each child reaches adulthood, marries, or attains the age of twenty-one, and it increases by ten per cent each year. The dictum also specifies the bank account through which payment is to be made.

The reasoning rests on the continuing character of paternal obligation. The court held that the duty to maintain a child remains attached to the father even after the marriage between the parents has ended, and it grounded that holding in Article 41(b) of Law No. 1 of 1974 as amended by Law No. 16 of 2019. Under that provision the father bears responsibility for the costs of rearing and educating the children, while the mother may contribute where the father is unable to discharge the duty. The court then examined the economic position of both parties. Witness evidence showed that the claimant operated a culinary business and sold perfume, from which the bench concluded that she was able to contribute to the needs of the three children.

The escalation clause is the most distinctive element of this ruling. The bench reasoned that the cost of living tends to rise over time and that the needs of children expand as they grow older. It therefore fixed an annual increase of ten per cent so that the real value of the award would not decay over the many years for which the obligation runs. Protection in this ruling accordingly reaches forward in time rather than fixing a single figure at the date of judgment.

The judge interviewed for this study described the same balancing exercise. He explained that the bench looks at two sides, namely the needs of the child, which include schooling, food, health care, and daily living, and the economic capacity of the father who bears the obligation. He added that the award must not be set so high that it exceeds a limited capacity, nor so low that the needs of the child go unmet, and that an annual increase of ten per cent is applied in some cases so that the value of the award keeps pace with growing needs and rising costs.

Construction of protection in Decision No. 4/Pdt.G/2026/PA.Pal

The third ruling arose from a divorce petition filed by a wife, which the court granted by default after the respondent failed to appear. The couple had two children, a boy aged two years and a girl aged seven years. Beyond the dissolution itself, the claimant sought iddah maintenance, past maintenance, and maintenance for the two children. The court pronounced one irrevocable minor divorce and ordered the respondent to pay two million five hundred thousand rupiah as iddah maintenance and the same amount as past maintenance. It further ordered maintenance of seven hundred and fifty thousand rupiah each month for the two children, exclusive of medical and educational expenses, with an annual increase of ten per cent until the children reach adulthood, become independent, attain the age of twenty-one, or marry.

The reasoning again begins from the continuity of paternal duty after divorce. Evidence at trial showed that the respondent had ceased to support the claimant and the children during the period of separation. The bench relied on Article 34 and Article 41(b) of the Marriage Law together with Article 156 of the Compilation of Islamic Law, and it took into account that the respondent worked as a driver. It held that the nature of his occupation and the level of his income could not be used to displace the obligation, because he remained of working age and retained the capacity to earn. The award was consequently set at a figure the court considered realistic for a person in that position.

This ruling shows most clearly that the monetary figure is a function of proved capacity rather than of a fixed tariff. The amount ordered here is substantially lower than the amount ordered in the second ruling, and the difference tracks the difference in the economic position of the two respondents. The escalation clause nevertheless appears in both, which suggests that the mechanism is applied as a matter of practice rather than as a concession available only to wealthier households.

The comparative pattern across the three rulings

Read together, the three rulings assemble protection from a common set of components that appear in different combinations. Custodial disposition appears in the first two cases and settles who will care for the child. Financial obligation appears in the second and third cases and secures the material conditions of upbringing. Continuity of contact with the non-custodial parent appears across all three, either as an express reservation in the dictum or as an interest that the bench declines to extinguish. Table 2 sets out how these components are distributed.

Table 2: Distribution of the protective components across the three rulings

Protective component	No. 841/Pdt.G/2024	No. 182/Pdt.G/2025	No. 4/Pdt.G/2026
Custodial protection through the determination of <i>ḥaḍānah</i>	Present and central to the dictum	Present, with the eldest child heard	Absent, since custody was not in dispute
Economic protection through a maintenance obligation	Absent, since maintenance was not claimed	Present, indexed and payable by transfer	Present and indexed, calibrated to a modest income
Relational protection through reserved parental access	Present and written into the dictum	Present and written into the dictum	Not expressly written into the dictum
Anticipatory protection against rising costs	Not applicable	Ten per cent annual escalation	Ten per cent annual escalation

Protective component	No. 841/Pdt.G/2024	No. 182/Pdt.G/2025	No. 4/Pdt.G/2026
Security for the performance of the obligation	Not applicable	Not sought and not ordered	Not sought and not ordered

The structural relationship between the components is represented in Figure 2. Each component rests on the principle of the best interests of the child, which supplies the criterion by which the bench chooses among available orders. Beneath that principle lie the facts established at trial, which determine how the criterion applies in a particular case. The architecture is therefore stable at the level of principle and variable at the level of application.

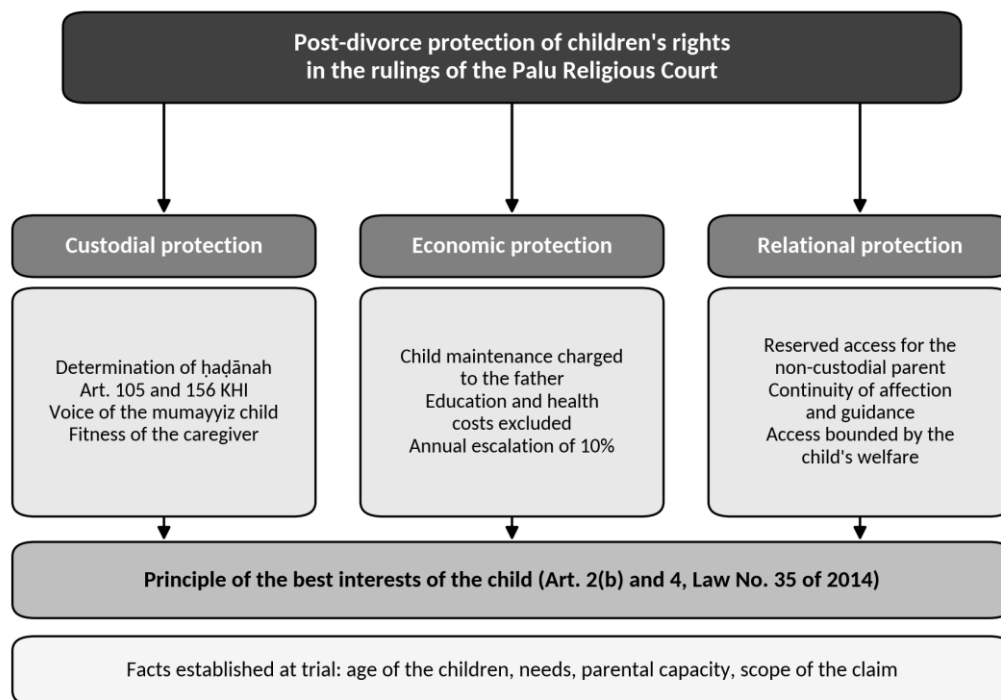


Figure 2: Architecture of post-divorce child protection in the rulings of the Palu Religious Court

A member of the registry staff confirmed the variability from an administrative vantage point. He explained that the form of protection recorded in a divorce judgment is not identical across cases, and that differences follow from the subject matter pleaded, from the facts revealed at the hearing, and from the way the bench assesses the child's interest in the concrete circumstances before it. He further noted that custody is entered in the dictum where it has been claimed or where the parents disagree about care, and that it may be left unaddressed where the parents have already reached an understanding.

Judicial reasoning and the best interests principle

Across the three rulings the bench applies a recognisable analytical sequence. It first establishes the factual position of the children, including their ages, their present living arrangements, and the needs generated by their stage of development. It then assesses the capacity of each parent, considering both the ability to provide daily care and the ability to meet financial obligations. It finally selects the order that best serves the child within the limits of what has been claimed and proved. The reasoning is thus neither purely textual nor purely discretionary, since it moves between the governing norms and the record of the case.

Age operates as an important threshold in the custodial analysis. In the second ruling the eldest child had passed the age of twelve, and the bench accordingly gave that child an opportunity to express a preference about the parent with whom she would live. The two younger children in the same case had not reached that threshold, so the bench applied the maternal presumption in Article 105(a) of the Compilation of Islamic Law after finding no ground that would extinguish the right. In the first ruling all four children were below twelve years of age, and the maternal presumption applied throughout. Participation therefore operated in exactly one of the three cases, and it did so because the statutory threshold had been crossed.

The financial side of the analysis follows a closely parallel logic. The court identifies the needs that must be met, records what the evidence shows about the father's occupation and income, and then fixes an amount that lies within his demonstrated reach. The exclusion of educational and medical costs from the monthly figure in both maintenance orders reinforces that logic, because it prevents two of the largest and least predictable expense categories from being absorbed into a fixed sum. The annual escalation performs a related function over a longer horizon.

Conformity with Islamic law and positive law

The custodial holdings align with the Compilation of Islamic Law. Article 105(a) allocates care of a child below the age of twelve to the mother, and Article 156 governs both the ordering of alternative caregivers and the circumstances in which the right may be moved. The bench applied those provisions directly, and in the one case involving a child above the threshold it also honoured the right of a *mumayyiz* child to choose. The financial holdings align with Article 80(4) and Article 156 of the same compilation, which place the cost of maintaining and educating a child upon the father according to his means.

The same holdings align equally well with the requirements of positive law. Article 41 of Law No. 1 of 1974 as amended by Law No. 16 of 2019 preserves parental duties after divorce and assigns the primary financial burden to the father. Law No. 35 of 2014 on Child Protection requires the best interests of the child to guide every decision affecting a child, and it guarantees the child's right to be heard according to age and maturity. The reservation of access in the first two rulings gives effect to the

child's interest in maintaining a relationship with both parents, which the same statute protects.

Alignment extends to the Supreme Court's chamber formulations. Circular Letter No. 3 of 2018 directs judges to fix maintenance by reference to fairness and propriety, and to do so by examining the capacity of the husband alongside the basic needs of the wife and the child. The balancing exercise visible in the second and third rulings reproduces that instruction closely. Table 3 maps each component of protection onto the authority that supports it in the two legal orders.

Table 3: Normative basis of each protective component in Islamic law and positive law

Protective component	Basis in Islamic law	Basis in positive law
Determination of ḥaḍānah	Article 105(a) and Article 156 of the Compilation of Islamic Law; the doctrine of ḥaḍānah in classical fiqh	Article 41(a) of Law No. 1 of 1974 as amended by Law No. 16 of 2019; Article 2(b) of Law No. 35 of 2014
Right of a mumayyiz child to state a preference	Article 105(b) of the Compilation of Islamic Law	Article 10 of Law No. 35 of 2014; Article 12 of the Convention on the Rights of the Child
Maintenance obligation of the father	Article 80(4) and Article 156(f) of the Compilation of Islamic Law	Article 41(b) of Law No. 1 of 1974 as amended; Circular Letter No. 4 of 2016
Balancing of need against capacity	The principle of maṣlaḥah within maqāṣid al-sharī'ah	Circular Letter No. 3 of 2018, Religious Chamber Formulation
Continuity of the parental relationship	The objective of ḥifẓ al-nasl	Article 41(a) of Law No. 1 of 1974 as amended; Article 14 of Law No. 35 of 2014
Security for a maintenance award	The principle of preventing harm to the vulnerable party	Circular Letter No. 5 of 2021 read with Supreme Court Regulation No. 3 of 2017

No substantive conflict was found between the reasoning of the bench and the requirements of either legal order. The variation between the rulings concerns the amount awarded and the components included, and in each instance that variation is traceable to the claim advanced and the evidence received. Differences of that kind reflect the individualised treatment of cases rather than any inconsistency in the application of law.

Discussion

Ḥaḍānah as a right of the child rather than a claim of the parent

The most consequential feature of these rulings is the way the bench characterises custody. In classical fiqh the discussion of ḥaḍānah is often framed

through the ordering of eligible caregivers, which invites the impression that the institution distributes an entitlement among adults (Az-Zuhaili, 2020). The Palu rulings do not read that way. Custody is described as an instrument for securing the growth and welfare of the child, and the identity of the caregiver is settled by asking who can actually deliver that outcome. The shift is doctrinally significant, because it converts a question about parental standing into a question about child welfare.

Recent scholarship reports the same movement across Indonesian practice more broadly. Studies of custody adjudication find that the maternal presumption survives as a starting point while yielding to evidence about who can better secure the child's development (Multazam, 2024; Firdaus & Sayuti, 2026). Work reading custody through *maqāṣid al-sharī'ah* reaches a similar conclusion by a different route, since it treats the welfare of the child as the objective that the rule was designed to serve (Mera et al., 2024; Joni & Iman, 2025). The Palu material adds a first-instance illustration of that reorientation, and it does so in cases where the reorientation carried practical consequences for several children at once.

The reservation of parental access strengthens that point considerably further. In both custody rulings the bench refused to treat the transfer of care as a severance of the parental relationship, and it wrote the access right into the dictum itself. Placing the right in the operative part rather than in the recitals gives it a different legal character, because it becomes an element of the order rather than a comment upon it. That drafting choice matters for a parent seeking to enforce contact later, and it also matters for the child, whose interest in continuity is what the provision ultimately serves (Erdianti, 2020; Munib & Hitaminah, 2026). Qualitative work on father absence supports that emphasis, because it finds the paternal role to reach past provision into guidance and example, so that a father who pays but never appears leaves part of the child's interest unmet (Aziman & Alsayd, 2026).

The escalation clause as anticipatory protection

The annual increase of ten per cent is the element that most clearly distinguishes these rulings from a conventional maintenance order. A fixed monthly figure loses purchasing power steadily, and an obligation that may run for nineteen years, as it does for the youngest child in the third case, would be substantially eroded by the time it ends. By indexing the award the bench converts a static figure into an instrument that tracks the changing cost of raising a child. Protection of this kind is anticipatory rather than merely responsive.

The reasoning that supports the clause is worth isolating. The bench did not justify the increase by reference to any tariff or schedule, but by reference to two observable tendencies, namely the rise in living costs over time and the expansion of a child's needs as the child grows. Both tendencies are matters of ordinary experience rather than contested fact, which makes the clause defensible without expert evidence. Scholarship examining inflation in the context of child maintenance has argued for precisely this kind of adjustment, on the ground that a nominal award without indexation delivers diminishing real protection (Zuhdi et al., 2024).

The clause also illustrates how the best interests principle operates as an interpretive rule rather than a decorative phrase. Nothing in the Marriage Law or the Compilation of Islamic Law requires the indexation of a maintenance award, yet the bench treated the child's continuing interest as a reason to choose the more protective of two available formulations. That is precisely the interpretive function described in General Comment No. 14, and it shows judicial creativity operating within the norm rather than against it (Sunggara et al., 2023).

The boundary of ex officio power and the silence in the first ruling

The absence of a maintenance order in the first ruling requires careful handling, since it could easily be misread as a failure of protection. Circular Letter No. 3 of 2015 provides that a court may not determine custody on its own initiative where custody has not been claimed. Circular Letter No. 4 of 2016 then provides that a religious court may fix child maintenance against the father ex officio where the child is in fact living with the mother, by reference to Article 156(f) of the Compilation of Islamic Law. The two instruments therefore treat the two questions differently, and the second leaves a genuine avenue open in a case where custody has been awarded to a mother who already has the children in her care.

The first ruling did not take that avenue. The claim was confined to custody, the respondent was alleged to be unwilling to work, and the dictum records no financial obligation of any kind. Four children were consequently placed in a household that received no court-ordered contribution toward their upkeep. The registry official interviewed for this study described the general practice in terms that account for the outcome, since he explained that the court examines and decides according to what the parties have requested, and that matters left out of the claim are often not addressed in detail in the judgment.

There is a defensible justification for that restraint. A court that grants relief nobody asked for risks deciding without argument, and it also risks fixing a figure without evidence about capacity, which is the very evidence that Circular Letter No. 3 of 2018 requires. The passivity nevertheless carries a cost that falls on the children rather than on the litigants. Research on Indonesian religious court practice has documented the same tension in other jurisdictions and has found that a large share of divorce judgments contains no provision at all for the children (Saraswati, 2021; Nasution et al., 2024). The finding here is consistent with that literature and locates the problem at the level of pleading rather than at the level of judicial attitude.

A practical implication follows directly from that reading of the evidence. If the protective deficit originates in how claims are drafted, then the most effective intervention lies upstream of the hearing, in the assistance available to claimants when they file. Strengthening the legal aid post attached to the court, and equipping registry staff to flag omitted heads of relief at the point of filing, would address the deficit without asking judges to abandon the principle that they decide what has been put before them (Arto, 2021; Dahwadin & Hasanudin, 2020).

Reading the rulings through maqāṣid al-sharī'ah

Viewed through the objectives of Islamic law, the protective structure in these rulings serves the preservation of progeny. Ḥifẓ al-nasl is sometimes read narrowly as the protection of lineage and biological continuity, yet the classical formulation extends to the conditions under which a child can actually reach maturity in sound condition (Az-Zuhaili, 2020; Rofiq, 2021). Care, sustenance, schooling, and health are the practical content of that objective, and each of them appears somewhere in the three dicta examined here. The rulings can therefore be read as an applied statement of the objective rather than as a formal compliance exercise.

The maqāṣid reading also explains why variation between the rulings is not a defect. If the objective is the welfare of a particular child, then identical orders across dissimilar households would defeat rather than serve the objective. A driver with irregular earnings and a respondent able to pay four and a half million rupiah each month do not present the same problem, and treating them alike would either impose an unpayable obligation or under-protect the children of the wealthier household. Individualised adjudication is thus a requirement of the objective rather than a departure from consistency (Izzah, 2025; Rohman, 2026).

The enforcement gap

The clearest weakness in the three rulings is not doctrinal but instrumental. Every maintenance award examined here is unsecured, which means that its effectiveness depends entirely on the willingness of the respondent to comply. Two of the three cases were decided by default, and in the third the claimant pleaded that support had been withheld for a considerable period. Those are precisely the circumstances in which voluntary compliance is least likely, and in which an unsecured order is most vulnerable.

Indonesian law has already responded to this problem. Circular Letter No. 5 of 2021 provides that, in order to satisfy the best interests principle and to implement Supreme Court Regulation No. 3 of 2017 on the adjudication of cases involving women before the law, a wife may apply for property belonging to the husband to be charged as security for the maintenance owed to the children. The circular further requires the object of the security to be described in detail in the pleadings, whether by way of claim, counterclaim, or a separate action. The mechanism exists, and it is available in exactly the situations presented by these cases.

None of the three rulings examined here makes use of it. Figure 3 maps the two normative layers onto the three decisions and identifies that omission as the residual gap. The consequence is that protection remains declaratory at the point where it most needs to be executable. Studies of maintenance enforcement in Indonesia report low rates of voluntary payment and considerable practical difficulty in execution proceedings, including the problem of locating a respondent whose address is unknown (Syahrin, 2022; Nasution et al., 2024). Comparative work has drawn

attention to the same weakness by contrasting Indonesian practice with jurisdictions that provide firmer guarantees (Musaddad et al., 2025).

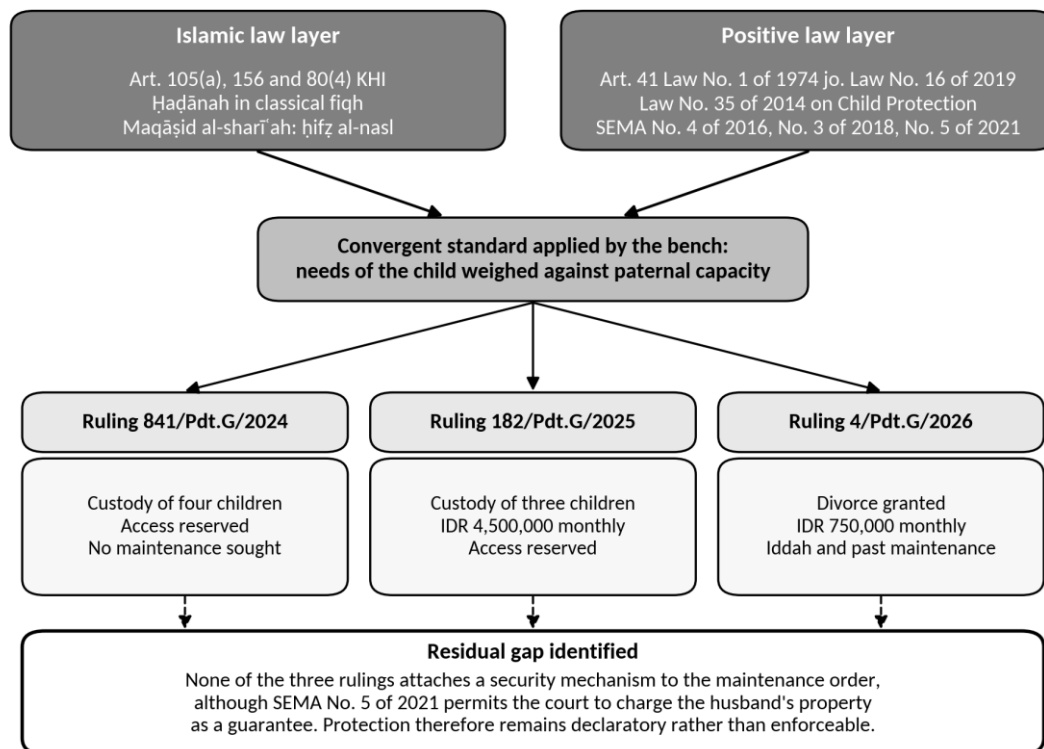


Figure 3: Normative alignment of the three rulings and the residual enforcement gap

The omission is again traceable to pleading rather than to judicial reluctance, since the circular requires the security to be sought and described by the claimant. That observation reinforces the earlier point about assistance at the filing stage, and it suggests a concrete addition to the standard repertoire of a post-divorce claim. Where a respondent has already defaulted on support, an application for security is a proportionate and lawful response rather than an unusual one.

Situating the findings

The results converge with existing scholarship on several points and diverge on one. Convergence appears in the finding that Indonesian religious courts now reason from child welfare rather than from parental entitlement, which is the pattern reported across a range of recent studies (Multazam, 2024; Asikin & Sugiono, 2025; Khairina & Farkhani, 2023). Convergence also appears in the finding that normative protection is comparatively strong while enforcement remains weak, which is a recurring theme in the literature on post-divorce rights (Saleh et al., 2025; Pakarti et al., 2023). Divergence appears in relation to indexation, since the routine use of an annual escalation clause in this court is more protective than the practice described in several earlier studies.

The finding about participation deserves a separate word of comment. Saraswati (2021) reports that the voices of children are not consistently accommodated in Indonesian custody disputes, and the material examined here is consistent with that observation. A child was heard in one case out of three, and the reason was that she had passed the twelve-year threshold rather than that the bench had made an independent assessment of her capacity to form a view. General Comment No. 14 treats the right to be heard as integral to the best interests assessment, and it does not tie that right to a fixed age (Committee on the Rights of the Child, 2013). A gap therefore remains between the international standard and the age-based rule applied domestically, and it is a gap that Article 105 of the Compilation of Islamic Law creates rather than one that individual judges have chosen.

Three limitations bound the conclusions offered in this article. The study examines three rulings from one court, so the pattern described may not extend to other regions with different economic conditions. The analysis is doctrinal, so it cannot say whether any of the orders was in fact obeyed. The interview material was supplementary and drawn from two officials, so it corroborates the documentary analysis without supporting independent claims about institutional practice. Future work could address all three limitations by tracking a cohort of maintenance orders through the execution stage across several religious courts.

Conclusion

Protection for children's rights in the three rulings of the Palu Religious Court is built from components that the bench combines according to the claim before it. Custody is allocated to the parent assessed as better able to secure the child's development, financial obligation is placed on the father in an amount calibrated to his proved capacity, and the child's access to the non-custodial parent is preserved as an element of the order rather than as an aspiration. The combination is not uniform across the three cases, and the variation follows the relief sought and the evidence received at trial. That answers the first question posed by this study.

The legal reasoning reflects the principle of the best interests of the child in a way that can be traced through the text of the judgments. The bench establishes the factual position of the children, assesses parental capacity on both the caregiving and the financial side, and then selects the order that serves the child within the limits of the pleadings. The annual escalation of ten per cent attached to two of the awards is the clearest expression of that orientation, because it protects the value of the award over the whole period during which the obligation runs. That reasoning answers the second question posed by this study.

On the third question, no substantive divergence from Islamic law or positive law was identified. The custodial holdings follow Article 105 and Article 156 of the Compilation of Islamic Law, the financial holdings follow Article 41 of the Marriage Law together with Article 80(4) of the same compilation, and the balancing method matches the instruction given in Supreme Court Circular Letter No. 3 of 2018. Read

through maqāṣid al-sharī'ah, the rulings give practical content to ḥifẓ al-naṣl by attending to care, sustenance, schooling, and health rather than to lineage alone.

Two weaknesses nevertheless emerge from the analysis, and both originate at the pleading stage rather than in judicial reasoning. Maintenance was neither claimed nor awarded in the custody case involving four children, which left that household without any court-ordered contribution. None of the awards was secured under Circular Letter No. 5 of 2021, which leaves protection declaratory at the point where enforcement matters most. Strengthening assistance to claimants at the point of filing would address both weaknesses without disturbing the principle that a court decides what has been put before it.

Three directions for further work follow from these findings. Empirical study of compliance would establish whether indexed awards are honoured more or less reliably than fixed ones. Comparative study across religious courts in regions with different income profiles would show whether the escalation clause is a local practice or a wider trend. Doctrinal work on the relationship between the age threshold in Article 105 of the Compilation of Islamic Law and the participation right under the Convention on the Rights of the Child would address the one point at which domestic practice and international standards do not fully meet.

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