



## FEASIBILITY OF HADANAH FOR ACTIVE SMOKER MOTHERS: MAQASHID SYARIAH ANALYSIS OF ARTICLE 156(C) OF THE COMPILATION OF ISLAMIC LAW

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### Article Info

#### Article history:

Received :

Revised :

Accepted :

Available online

<http://jurnal.uinsu.ac.id/index.php/analytica>

E-ISSN: 2541-5263

P-ISSN: 1411-4380



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### ABSTRACT

*The transfer of child custody in Islamic family law may be granted when the holder of hadanah is unable to ensure the child's safety, as stipulated in Article 156(c) of the Compilation of Islamic Law (KHI). There is a gap in legal scholarship regarding the suitability of an active smoker as a custodial parent. This normative legal study aims to analyze Article 156(c) of the KHI through the perspective of maqashid syariah regarding cases involving mothers who are active smokers. The results of the study indicate that Article 156(c) of the KHI establishes hadanah as a conditional right. In judicial practice, judges have begun to apply a risk-based approach regarding the dangers of exposure to cigarette smoke. The novelty of this study emphasizes that active smoking by a caregiver is not a neutral condition, but rather a form of dharar that threatens *hifz al-nafs* (protection of life) and *hifz al-nasl* (protection of offspring) of the child. Thus, treating active smoking as a risk factor in custody and a basis for transferring custody is normatively valid and consistent with the maqashid of Sharia in protecting the best interests of the child.*

**Keywords:** *Child Custody, Article 156(c), Smoking Mother, Islamic Family Law, Maqashid Syariah*

## 1. INTRODUCTION

Divorce, from the perspective of Islamic family law, results in the termination of a marriage. However, upon closer examination, there are legal consequences arising from divorce in the form of child custody (hadanah). From a classical Islamic jurisprudence perspective, hadanah refers to the maintenance of minor children after the dissolution of a marriage (Syarifuddin, 2006, p. 327). This obligation is mandatory and includes meeting the child's physical, educational, and psychological developmental needs (Mahmudah, Juhriati, & Zuhrah, 2019). Therefore, hadanah is a crucial issue in Islamic family law and is understood as a parental right and a trust that must be exercised for the benefit of the child.

In Islamic family law, the obligation to maintain children (hadanah) is principally assigned to the mother after a divorce. This provision is affirmed in Article 105(a) of the

Compilation of Islamic Law (KHI), which states that children who are not yet mumayyiz (under the age of twelve) are under the care of the mother (Ministry of Religious Affairs of the Republic of Indonesia, 2011). This provision aligns with the Islamic view that places the mother as the party entitled to child custody (Ibn Hajar al-'Asqalānī, 2020). It also aligns with the fact that a child who has a good relationship and closeness with his mother can support his physical, cognitive, and socio-emotional development (Annisa, 2022).

However, the right to hadanah is not absolute. Article 156(c) of the Compilation of Islamic Law (KHI) provides an exception to child custody rights, which can be transferred if the custodial parent is proven unable to guarantee the child's physical and mental safety (Ministry of Religious Affairs of the Republic of Indonesia, 2011). This provision demonstrates that hadanah is essentially conditional and dependent on the caregiver's ability to safeguard the child's well-being. Therefore, child safety is the primary parameter in determining the sustainability of hadanah rights.

In the context of modern behavior, the behavior of mothers who actively smoke presents new issues related to the appropriateness of hadanah. Data from The Tobacco Atlas shows a significant increase in the prevalence of active smokers ("Indonesia in The Tobacco Atlas," n.d.). This behavior is relevant because children's exposure to cigarette smoke has the potential to cause health problems, particularly to the respiratory system and child development. In the context of hadanah, this behavior could potentially be categorized as an inability to guarantee the physical and spiritual safety of children as referred to in Article 156(c) of the Compilation of Islamic Law (KHI).

The maqasid sharia approach is crucial for assessing the appropriateness of hadanah more comprehensively. The principles of protecting life (hifz al nafs) and protecting offspring (hifz al nasl) place the safety and continued growth of children as the primary objectives of sharia. Therefore, the behavior of mothers who smoke actively needs to be examined not only from a positive legal perspective but also from the perspective of the objectives of Islamic sharia.

Several previous studies have discussed hadanah from various perspectives. Kurniawan et al. (2023) found that Article 156(c) of the Islamic Law (KHI) has the potential to lead to multiple interpretations and emphasizes the importance of the child's welfare in determining hadanah and does not fully reflect the comprehensive maqashid sharia (Kurniawan, Zulfahmi Bustami, & Sofia Hardani, 2023). Meanwhile, Nurfadil (2023) examined the Cirebon Religious Court's decision regarding mothers who are active smokers and concluded that this behavior can be the basis for transferring child custody (Nurfadil, 2023). However, this research is still limited to a positive legal approach and has not integrated an analysis of maqashid sharia. Other studies generally discuss the best interests of the child, child transfer due to economic factors, psychological disorders, or remarriage (Avrilliandy & Zulfikar, 2025; Faizzati, 2024; Kamila, 2023; Khoiful Yasin, 2017; Mahmudah et al., 2019). However, these studies have not integrated the provisions of Article 156(c) of the KHI, child health due to active smoking behavior, and maqashid sharia in one analytical framework.

Although various previous studies have relevance to the issue of the feasibility of gifts, the existing studies are still partial. Research on article 156(c) KHI or the transfer of hadanah generally only highlights positive legal aspects, while maqashid sharia studies focus more on economic factors, morality, psychological disorders and remarriage status

as the basis for transfer of hadanah. In fact, the development of modern families presents new risks, such as the behavior of mothers who are active smokers, which has the potential to threaten children's health due to exposure to cigarette smoke. This condition shows that there are no legal parameters that specifically assess the mother's active smoking behavior as a threat to the child's physical and spiritual safety based on the maqashid sharia perspective. Thus, a more contextual and adaptive legal approach is needed to the development of contemporary family problems.

In this context, maqashid sharia has important relevance as an evaluative framework for assessing the appropriateness of hadanah. Through the principles of life protection (*hifz al nafs*) and offspring protection (*hifz al nasl*), maqashid sharia allows legal assessments to not only be oriented to the formal rights of care, but also to the extent to which care is able to protect the welfare of the child. Based on these conditions, a research gap exists, indicating the absence of studies specifically integrating Article 156(c) of the Compilation of Islamic Law (KHI), child health issues resulting from active maternal smoking, and the maqasid sharia approach within a single analytical framework. Therefore, this study aims to analyze the application of Article 156(c) of the Compilation of Islamic Law (KHI) through the maqasid sharia approach in assessing the eligibility of active maternal smoking as a holder of hadanah. It also assesses the extent to which smoking behavior can be positioned as a form of inability to guarantee the physical and mental health of children from a contemporary Islamic family law perspective.

The novelty of this research lies in the integration of Article 156(c) of the Compilation of Islamic Law (KHI), maqasid sharia, and a child health perspective within a single analysis of Islamic family law. This study positions active smoking behavior as a public health issue and a parenting risk factor that influences the eligibility of hadanah. Thus, this research is expected to enrich the study of Islamic family law and establish parameters for the eligibility of hadanah that are more contextual, adaptive, and oriented toward the best protection of children.

## 2. RESEARCH METHOD

This research is a normative (juridical-normative) legal study focusing on doctrinal aspects with the aim of discovering legal rules and principles to address the problems encountered (Efendi & Ibrahim, 2018, p. 124). The approach used is statute, conceptual, case, and maqashid sharia. Primary data are sourced from the Compilation of Islamic Law (KHI) and the Cirebon Religious Court Decision No. 61/Pdt.G/2023/PA.CN. This decision was selected purposively because it is one of the precedent references that explicitly considers active smoking as a basis for transferring child custody. Secondary data were obtained from classical fiqh literature, scientific articles, and health sources related to the impact of cigarette smoke.

The analysis of the legal materials was conducted using descriptive-analytical techniques through three operational steps. First, identifying the legal facts and the judges' considerations in the selected decisions. Second, evaluating these facts using the parameter of "physical and spiritual safety" in Article 156(c) of the KHI. Third, analyze the findings using the maqashid sharia approach. Specifically, the principles of *hifz al-nafs* (protection of life), *hifz al-nasl* (protection of offspring), and the concept of *dharar* (harm) are constructed as analytical instruments to assess whether the behavior of mothers who

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actively smoke meets the standards for revoking custody rights to ensure the benefit of al-mahdhun (children). This is achieved by collecting data in its raw form and conducting analysis to draw conclusions that can be generalized to the wider population (Soekanto, 1981).

### 3. RESULT AND ANALYSIS

#### **Article 156(c) of the Compilation of Islamic Law and the Concept of the Eligibility of Hadanah in Islam**

The Compilation of Islamic Law, as a legal product enacted under Presidential Instruction Number 1 of 1991, constitutes a uniform fiqh guideline and is interpreted as a form of positive Islamic law for implementing legislation and serving as a reference for all Indonesian Muslims (Asriati, 2012). In the context of Islamic family law, the Compilation of Islamic Law serves as the primary reference for Religious Courts in resolving marital disputes, including those concerning hadanah. Therefore, each provision in the Compilation of Islamic Law has normative consequences that form the basis for the considerations of Religious Court judges ("The Position of the Compilation of Islamic Law (khi) as Normative Considerations for Religious Court Judges," n.d.).

In the context of Article 156(c), the protection of children is the responsibility of all holders of hadanah rights. Therefore, if one party is deemed negligent, the other party can submit a request for transfer of child custody to the Religious Court. This is based on the principle of the best interests of the child, in which the obligation to care for and educate the child remains the responsibility of both parents (Mahmudah et al., 2019).

This provision demonstrates that the right to custody is not an absolute right, as implied by Article 105 of the Compilation of Islamic Law (KHI). Article 156(c) instead demonstrates that the right to custody is a conditional right dependent on the fulfillment of child protection standards (Nurfadil, 2023). Therefore, the legitimacy of the holder of the right to custody depends on their ability to safeguard the physical and mental safety of the child, the primary subject of legal protection.

Regarding negligence in the implementation of custody, the KHI does not explicitly regulate the revocation of a mother's custody rights. The same normative pattern can be traced to the provisions for the revocation of guardianship rights, as stipulated in Article 109 of the Compilation of Islamic Law (Kurniawan et al., 2023). This article authorizes the court to transfer guardianship rights if the guardian is proven to have neglected his/her obligations or abused his/her authority (Ministry of Religious Affairs of the Republic of Indonesia, 2011). These two articles provide a harmonious meaning regarding the transfer of both child custody and guardianship rights based on the best interests of the child. Structurally, this provision contains the following elements: (1) the holder of hadanah, (2) the alleged inability to guarantee the child's physical and mental health, (3) a request from an interested party, and (4) the authority of the Religious Court to decide on the transfer of child custody.

In Islam, hadanah linguistically means embracing or caring for a child (Faizzati, 2024). Terminologically, hadanah is defined as caring for someone who is unable to care for themselves and educating them in a way that is beneficial for them (Wizārah al-Awqāf, 1989). Hadanah is obligatory because a small child will perish if left without care (At-

Turkī, 2024). This obligation is not only based on social behavior but is also normative in sharia, because its existence is directly related to the survival of the mahdhūn (the person being cared for) (Ubaidillah Ibn Mas'ud, 2025). Therefore, hadanah exists as a form of sharia consideration of the mahdhūn's rights to benefit and a form of protection and proper care so that the child grows up healthy and safe (At-Turkī, 2024). Thus, it can be understood that the consequence of the responsibility of hadanah is the obligation to physically care for the mahdhūn, provide education, protection, and fulfill the child's living needs (Farghalī, 2019). All actions taken during the hadanah period must be based on the mahdhūn's benefit, so if a caregiver is unable to fulfill these demands, their custody rights can be revoked.

Meanwhile, the revocation or transfer of custody rights in Islam and classical fiqh literature has provisions in the form of conditions for the fulfillment of Hadanah. Essentially, these conditions serve as indicators of the extent to which the benefit of the mahdhūn can be guaranteed within the scope of classical fiqh. The inability to fulfill these conditions, as mentioned by Musthafa Al-Khin, has an impact on the reasons for the transfer of child custody rights. Among these conditions are being sane, being Muslim, being trustworthy, residing close to the mahdhūn's residence, not being married to another man, and not being in a state of persistent illness or having habits that could affect the mahdhūn (al-Khin, al-Bugā, & ash-Syirbajī, 2012). The principles above serve as important benchmarks for observing how positive legal provisions, particularly in the Compilation of Islamic Law, relate to fiqh in adopting and formulating standards for the appropriateness of child care. Therefore, a comparative review reveals a similar normative orientation between classical Islamic jurisprudence and Article 156(c) of the Compilation of Islamic Law (KHI) in placing children at the center of considerations regarding the eligibility of hadanah (Baidawi & Sunarto, 2020). In Islamic jurisprudence, the eligibility of hadanah rests on the fulfillment of conditions based on the benefit of the mahdhūn (the guardian), and the revocation of this right also depends on the inability to meet these conditions. Meanwhile, Article 156(c) does not specify this, but instead establishes a general standard of ensuring physical and spiritual safety as the basis for maintaining or transferring child custody.

This difference suggests that Islamic jurisprudence prioritizes a casuistic approach by establishing concrete requirements for hadanah. Article 156(c) of the Compilation of Islamic Law, on the other hand, adopts a normative-abstract approach, granting the judge discretion in the courtroom to assess the eligibility of hadanah (Prajā, 2024). Nevertheless, both agree on the principle of child protection, where the inability to meet the standard of benefit is the primary reason for transferring hadanah rights to another party. However, it should be emphasized that the "maintaining physical and spiritual safety" characteristic of the KHI can create such broad interpretative opportunities that an evaluative framework is needed to assess and interpret these standards more substantively (Fanggi & Wahyuliana, 2026).

In the context of the need to find an evaluative framework, the concept of maqashid sharia can provide a solution to better understand the meaning of "physical and spiritual safety" as stipulated in Article 156(c) of the KHI in a more practical way (Muniroh & Nasution, 2021, p. 94). Through this approach, a more in-depth interpretation of the meaning can be conducted using parameters such as protection of the soul (hifz an-nafs), protection of the mind (hifz al-aql), and protection of offspring (hifz an-nasl). Thus, the

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assessment is no longer abstract but rather measured by the caregiver's actual ability to fulfill the objectives of Islamic law (Fadhilah Khairul Anam & Musyafi Usman, 2025, p. 374).

Based on this, the assessment of the suitability of hadanah cannot be separated from risk factors that have the potential to affect the safety and development of al-mahdhūn both physically and psychologically. In practice, these factors underlie the judge's considerations in deciding cases of transfer of child custody in the religious court environment with a multidisciplinary approach, so that it does not always adhere to the normative principles of article 105 of the KHI (Khoiful Yasin, 2017). Therefore, it is important to further examine how certain risk factors are considered in religious court decisions and to what extent these considerations are in line with the principles of child protection in fiqh and KHI.

### **Judges' Consideration of Custody Risk Factors in Custody Transfer Decisions**

Research shows that in court practice, judges' considerations in the practice of hadanah, specifically regarding the transfer of child custody, are no longer solely based on the textual norms stipulated in Articles 105(a) and 156(c) of the Compilation of Islamic Law (KHI). Judges' considerations also encompass concrete evaluations of the child's caregiving situation. Research indicates that judges use a multidimensional approach encompassing psychological aspects, the social environment, and the behavior of caregivers in determining the eligibility for hadanah, while prioritizing the principle of the child's best interests (Najla Aisya Athifa, Muhammad Arief Al Hakim, & Achmad Farouq Abdullah, 2025). This demonstrates that the normative concept of eligibility for hadanah has shifted to functional and practical parameters.

One of the main indicators in this assessment is the ability to carry out the caregiving function. Research shows that child custody can be transferred to the father when the mother is deemed unable to optimally meet the child's needs (Salma Saimima, 2020). Kamila's (2023) research also shows that courts consistently prioritize custody status over a mother's status (Kamila, 2023). This finding supports the indication that judges are no longer rigidly adhering to normative principles as outlined in Article 105, but are instead transforming to an approach based on the appropriateness of the custody function.

In addition to custody factors, the caregiver's psychological condition is also a consideration in hadanah decisions. For example, in the case of a mentally ill mother, the court decided to transfer custody of the child because it was deemed incapable of ensuring the child's safety (Amelia, Purba, & Sembiring, 2024). Similarly, in the case of a bipolar mother, the court decided to transfer custody of the child based on the mother's behavioral patterns that tended to endanger the child (Avrilliandy & Zulfikar, 2025). Both decisions demonstrate that health, particularly mental health, has been recognized as an indicator of revocation of hadanah rights in judicial practice. Furthermore, behavior and social environment are also important variables in judges' considerations. Research shows that the influence of social environmental stability, moral track record, and lifestyle significantly influence the assessment of hadanah eligibility (Fauzan, 2025). This means that the eligibility of hadanah is no longer measured solely by formal aspects, but also by the quality of the caregiving environment.

However, analysis of decisions reveals inconsistencies in judges' reasoning. In cases with similar characteristics, judges can reach different decisions due to the lack of standard parameters for hadanah (Tania, 2023). This situation indicates that the flexibility of the norms contained in Article 156(c) of the Compilation of Islamic Law (KHI) is not supported by a systematic evaluative framework, thus opening up room for subjectivity on the part of judges. More specifically, Cirebon Religious Court Decision No. 61/Pdt.G/2023/PA.CN is a notable example of the use of risk factors for custody as a basis for transferring hadanah.

In Cirebon Religious Court Decision No. 61/Pdt.G/2023/PA.CN, the judge transferred custody of the child to the father after considering several legal facts indicating that the mother was unable to guarantee the child's physical and mental safety. The child, who was 1 year and 4 months old at the time, was known to live in a smoke-filled environment because his mother and grandmother were active smokers. Furthermore, the house was deemed cramped and uninhabitable, while the child appeared thin, exhausted, and frequently hungry. The judge considered these conditions to be potentially harmful to the child's development, thus contradicting the principle of child protection in hadanah. In his consideration, the judge emphasized that the provisions of Article 105(a) of the Compilation of Islamic Law (KHI), which places the mother as the holder of hadanah rights, are not absolute if the child's safety is not guaranteed. Therefore, Article 156(c) of the Compilation of Islamic Law (KHI) was used as the legal basis for transferring custody of the child to the father, as he is considered more capable of guaranteeing the child's safety and development (Nurfadil, 2023).

The judge's considerations are in line with various health studies showing that exposure to cigarette smoke in children has implications for serious health problems. The Centers for Disease Control and Prevention (CDC) emphasizes that there is no minimum safe level of cigarette smoke exposure for children because it can cause respiratory disorders, asthma, and problems with child development (CDC, 2025). Research by Lubis (2023) and Ramadhani (2025) also shows that exposure to cigarette smoke in the family environment is closely related to the risk of acute respiratory infections in children (Lubis, 2023; Ramadhani, Sitanggang, Wisudariani, Butar, & Ibnu, 2025). Exposure to cigarette smoke also has serious implications for children's health, including respiratory disorders, infections, and long-term risks to children's physical and cognitive development. It also poses a risk of harm/danger for pregnant women, which indirectly affects the quality of parenting (Hermaliana, Suhrawardi, Hapisah, & Isnaniah, 2025). Based on these findings, active smoking is no longer viewed solely as an individual issue, but has also evolved into a risk factor in parenting that directly impacts a child's physical and mental well-being.

Thus, religious courts are beginning to recognize health and social factors as important indicators in assessing the suitability of hadanah. In the context of mothers who smoke actively, this behavior has been considered a factor threatening the child's safety, although it has not yet been formulated as a separate legal parameter. This situation demonstrates the need for a more systematic evaluative framework to integrate legal norms, court practice, health science, and the principles of maqashid sharia. Through the principles of *hifz al-nafs* and *hifz al-nasl*, maqashid sharia can be used to assess the suitability of hadanah more comprehensively and oriented towards the best protection for children.

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### **Evaluation of the Feasibility of Hadanah from the Maqashid Syariah Perspective**

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Maqashid sharia according to Izzuddin Ibn Abdissalam or better known as Al-Izz is a conceptual framework that explains the objectives set by the Law Maker (Allah Subhanahu wata'ala) to realize benefits and prevent mafsadat in human life (bin 'Umar, 2003, p. 89). In this approach, law is not understood as a mere textual norm, law is also understood as an instrument to protect fundamental human interests (Faizzati, 2024). Based on the level of human needs at the level of a maslahat, maqashid sharia is divided into 3 parts which include *Ḍarūriyyāt* (primary), *Ḥājiyyāt* (secondary), and *Taḥsīniyyāt* (tertiary). This division is the result of the formulation of scholars across generations who emphasize Islam's attention to prioritizing the value of maslahat and preventing mafsadat or damage (Fadhilah Khairul Anam & Musyafi Usman, 2025).

Among the main objectives of the Shari'a in the classification of *Ḍarūriyyāt* there are objectives in the form of *hifz ad-din* (protection of religion), *hifz an-nafs* (protection of the soul), *hifz al-aql* (protection of the mind), *hifz al-mal* (protection of property), and *hifz an-nasl* (protection of descendants), of which the five main aspects of the aim of the Shari'a are found to be the protection of the soul (*hifz an-nafs*) and descent (*hifz an-nasl*) have direct relevance to family institutions and *hadanah* (al-Yūbī, 1998). In the context of *hifz an-nasl*, maqashid sharia not only emphasizes the continuity of the nasab, but also emphasizes the quality of the generation produced. This protection also covers health, environmental and moral aspects that support children's overall growth and development. Studies related to the protection of offspring (*hifz al-dzurriyah*) emphasize that parental responsibilities include physical care and safe and healthy conditions for children (Āl Mad'aş, 2023).

In addition, the approach of maqashid sharia according to Al-Izz is centered on efforts to obtain benefits and also emphasizes the aspect of preventing harm (*dharar*), this is based on a well-known principle in classical fiqh where "preventing harm (*al-mafasid*) is prioritized over pursuing benefits (*al-mashalih*)" (bin 'Umar, 2003). This principle states that any form of action that has the potential to cause damage and harm must be avoided rather than taking the potential benefits that exist. This principle is in accordance with the concept of fiqh related to the lapse of *hadanah* which is casuistic but still emphasizes the aspect of preventing risks to children (*al-mahdhūn*) that may occur (Wizārah al-Awqāf, 1989). So that maqashid sharia basically strengthens and provides philosophical legitimacy to the normative provisions of fiqh.

The findings in the previous sub-chapter indicate that judges and religious courts have used a risk-based approach in determining the eligibility of *hadanah*, taking into account psychological, health, and environmental aspects. However, these considerations have not been formulated within a systematic conceptual framework. In this context, the maqasid of sharia serves as an evaluative instrument to measure whether judges' considerations align with the objectives of sharia in upholding child protection (Kurniawan et al., 2023). When linked to the classical fiqh concept explained in the previous sub-chapter, maqasid of sharia affirms the classical fiqh principles regarding the conditions and lapse of *hadanah*. Classical fiqh mentions certain conditions and circumstances that can endanger a child because the failure to meet the conditions for *hadanah* leads to the lapse of child custody. Meanwhile, from a maqasid perspective, these categories constitute danger/*dharar*/*mafasid*, further reinforcing that the eligibility of *hadanah* is measured based on the presence or absence of the potential for *dharar* in the child (*al-mahdhūn*). In

the context of this research, the behavior of active smoking mothers can be categorized as a form of dharar because it empirically poses a risk to children's health both in the short and long term. As described in the previous sub-chapter, exposure to cigarette smoke that impacts respiratory disorders and child development is contrary to the principle of hifz an-nafs which demands protection of life safety (Faizzati, 2024). Meanwhile, in the review of hifz an-nasl there are two axes where offspring protection is emphasized, these axes are: (1) Dimension of Existence (Janib al-Wujud) which is centered on the formulation of hadanah sharia and hadanah rights over mothers, (2) Dimension of Prevention (Janib al-'Adam) this axis emphasizes the prohibition of anything that could potentially dharar or harm offspring, repeated and systematic exposure to health risks in the context of cigarette smoke can have implications for health risks that violate this principle (al-Majma'i, 2022). Hifz an-nasl demands guarantees for optimal child growth and development, so any form of parenting that consistently places a child at risk can be viewed as a violation of hifz an-nasl (Al Mad'aş, 2023).

Based on the results of the analysis of religious court practices, it appears that judges have actually used logic in line with the maqasid sharia in assessing the substance of the appropriateness of hadanah, specifically considering the child's health and safety factors as well as their moral track record and the parenting environment. This aligns with the concept of maqasid sharia Al-Izz in considering the principle of achieving benefit and preventing harm. In practice, the health and safety aspects of children from active smoking behavior meet the criteria of dharuriyat, so this behavior can be considered contrary to the principle of hifz an-nafs (bin 'Umar, 2003). The principles of hajiyyah and tahsiniyat can also be applied in efforts to place children in a positive environment and with good role models. In this case, smoking is considered to violate the principle of hifz an-nasl because the mother fails to provide a healthy growth and development environment and set a suitable moral example for the child's future (al-Majma'i, 2022). However, the judges' considerations, which appear to align with the maqasid sharia principle, remain implicit and have not been explicitly constructed as a form of dharar, thus failing to produce consistent assessment standards.

This situation indicates a gap between legal practice and the available theoretical framework. Judges have transformed their considerations toward benefit-based child protection, but lack conceptual parameters that are systematically understood and practiced in response to modern developments. In this regard, maqasid sharia can serve as a bridge between the textual norms of the Compilation of Islamic Law (KHI), Islamic jurisprudence (fiqh), and empirical reality within a coherent framework understood by religious court judges.

Thus, the appropriateness of hadanah in the context of an active smoking mother can be evaluated as a condition containing elements of dharar and contrary to the principles of maslahah in general and hifz an-nafs and hifz an-nasl in particular. The consequence is that the transfer of custody in this situation is not only normatively valid based on Article 156(c) of the Compilation of Islamic Law (KHI), but also has strong legitimacy from the perspective of maqashid sharia. This approach also emphasizes that maqashid sharia is intended to strengthen legal provisions and fiqh norms in the context of contemporary law and not replace them.

#### 4. CONCLUSION

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Article 156(c) of the Islamic Criminal Code (KHI) defines hadanah as a conditional right that requires guarantees of the child's physical and mental safety. Based on an analysis of Cirebon Religious Court Decision No. 61/Pdt.G/2023/PA.CN, religious court practice has adopted a functional, risk-based approach, making active smoking a criterion for revocation of custody. Theoretically, the behavior of mothers who smoke actively is intolerable because it constitutes a form of harm that contradicts the goal of protecting the child's welfare, particularly the principles of *hifz al-nafs* (protection of life) and *hifz al-nasl* (protection of offspring) within the *maqasid sharia*.

The practical implication of this research is the need for Religious Court judges to use *maqasid sharia* instruments as standardized evaluative guidelines in assessing the appropriateness of hadanah, in order to minimize disparities in decisions based solely on subjectivity or a purely casuistic approach. This research has limitations because it only analyzes one sample of decisions and focuses on normative studies. Therefore, further research is highly recommended to formulate guidelines or parameters for the feasibility of hadanah based on *maqasid sharia* that are more comprehensive, measurable, and can be implemented empirically in the Islamic Family Law system in Indonesia.

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