

Living Under the Same Roof Before the Date of Separation: The Relevance of *Maqāṣid al-Shari'ah* and Minangkabaunese Custom in A New Direction for Families

Nofiardi^{1*}, Fahmil Samiran¹

¹Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, Indonesia

*Corresponding Author: nofiardi@uinbukittinggi.ac.id

| *Received: 21-03-2023* | *Revised: 05-11-2023* | *Accepted: 13-11-2023*

Abstract: Minangkabau community is known for its matrilineal kinship, in which a husband after the marriage lives with his wife's family. If there are constant quarrels in the marriage and it is difficult to continue the marriage, the husband who leaves his wife's house will not return unless he is taken back according to custom by his wife's family. Yet, if divorce should be the final decision, then the husband must also leave the house until the judge decides it. This research aimed at exploring the notion of living together under the same roof before the date of separation or divorce process, a new direction for families in the Minangkabau community with *maqāṣid al-shari'ah* approach. A qualitative approach was used to conduct this study. The data were obtained through documentation and interviews. The documents were the decision of the Batusangkar Religious Court that were appealed to the West Sumatra High Religious Court. Meanwhile, the interviewees were the judges of the courts. The *maqāṣid al-shari'ah* approach was used to analyze a very interesting decision made for a divorce case occurred in Luhak Tanah Datar area. The results showed that differences in the understanding of *Maqāṣid al-shari'ah* influenced decisions and indicated new directions in the families of the Minangkabau community.

Keywords: Divorce; *Maqāṣid al-Shari'ah*; Custom; Family; Minangkabaunese society.

Introduction

In general, a family or household always experiences difficult times, and it really depends on the family or household to solve them. If the husband and wife cannot solve the family problems, they usually ask their respective extended families for opinions, suggestions, or the best solutions, especially in Minangkabau families, the role of each extended family is regulated by custom. However, given the shifts and changes that occur, it is not uncommon for husbands and wives to find solutions to their problems without the knowledge and mediation of their extended family (Ramadhan & Suryani, 2021).

Disputes between husbands and wives often culminate in one of the partners, usually the husband, leaving their residence and going to his matrilineal home or village, or even going to another place and not returning to the house he shares with his wife. If the husband leaves the house where he previously lived with his wife, this indirectly indicates a serious problem and the *ninik mamak* of the wife's family must determine and pick up the husband (*sumando*) who has left the house (Nofiardi, 2018). However, a wife leaves the shared residence rarely occurs in the matrilineal realm especially at the same time she files an appeal to the High Religious Court after previously filed a divorce case in the religious court.

Studies on divorce today can generally be categorized into three categories. First, the increase in divorce lawsuits (Saadah, 2020) with various factors behind it, both biological, psychological and sociological (Novitasari et al., 2019). In Samarinda, according to Lilik Andaryuni, the causal factors are disharmonious households, third wheel interference, economics, and irresponsibility (Andaryuni, 2017; Hanapi & Risma, 2018), while in Bekasi it is due to early marriage (Saadah, 2020). According to Isnawati Rais, the dominant factor is because women unchilderstand their rights as wives, economic independence

(Gazdar & Al-Khairabadi, 2022; Nelli et al., 2023), education, the easier it is for women to access information, and the concern of several institutions for women (Devy & Firdaus, 2019; Rais, 2014) as well as understanding gender (Andaryuni, 2017) so that it must receive legal protection (Abubakar, 2020; Sururie & Yuniardi, 2018). Ali Trigiyatno explains that a husband's imprisonment is also a factor in divorce, but it is different in terms of how long the husband is in prison. Indonesia stipulates that a wife can file for divorce if her husband is imprisoned for 5 years, Morocco and Jordan with a minimum of 3 years in prison, and Qatar stipulates 2 years (Trigiyatno, 2021).

Second, the position of the wife and children after the divorce, and the resolution in court (Athief & Juwanti, 2020; Harjanto et al., 2022). Fajri M. Kasim explains the protection of women and children after divorce (Kasim et al., 2022), Abd Rahman Dahlan compares the rights of wives after divorce between the decisions of the Religious Court in Indonesia and the Malaysian Sharia Court (Dahlan et al., 2023), and Siti Nurjanah sees it in terms of the impact of divorce on the care of minor children (Nurjanah, 2022). Meanwhile, in resolving divorce cases, according to Mulida, the panel uses *ex officio* rights (Andaryuni, 2021; Hayati & Ali, 2022), in contrast to Khairani who focuses on understanding the rule of No Fault Divorce in the Religious Courts which is linked to school of law fiqh (Mukdin et al., 2022), and Nofiardi who focused on examining *testimonium de auditu* witnesses in the resolution of the divorce case in question (Nofiardi, 2023). Third, government and community efforts to reduce the divorce rate by limiting the age of marriage (Darussamin et al., 2023), building family resilience (Saidah & Fahmi, 2023) through marriage guidance in Aceh and South Sumatra (Djawas et al., 2022), and instilling traditional values (Zainuddin et al., 2022).

Previous research has discussed many factors that cause divorce, including lawsuits filed by wives, which are generally more numerous than those filed by husbands (Zuhrah, 2019: 322). However, this paper differs from previous studies because the focus of this research is not on the factors that cause divorce, but on the analysis of the decision of the Batusangkar Religious Court, which was appealed by the original plaintiff to the West Sumatra High Religious Court. The analysis of this decision is even more interesting because both decisions were made in the territory of Minangkabau, which has a matrilineal system where the husband usually leaves the house when there are problems in the family. However, in certain case, a husband and wife were still under the same roof during the process of filing a divorce suit at the religious court. The *maqāṣid al-shari'ah* approach was used in analyzing this case (Yubsir, 2013), as well as its relation to communities whose family relations are based on a matrilineal system (Nuroniyah & Maula, 2022; Warman et al., 2023).

Literature Review

Maqāṣid al-shari'ah in the realization of benefits

Maqāṣid al-shari'ah consists of two words, *Maqāṣid* and *Sharia*. *Maqāṣid* means purpose or intention, while *Sharia* means the path to a source (Al-Munawwar, 2014, p. 42), which has related meanings in terms of means and ends. *Sharia* is a way or path, and water is something to be sought. The association between *Sharia* and water emphasizes the importance of *Sharia* in achieving something considered very important, which is described by water. This description is quite appropriate because water is a very important element in life, as confirmed by Allah in His words, "And We have created everything from water."

Based on the term, *maqāṣid al-shari'ah* is *al-ma'ani wa al-hikam* (meanings and wisdom) desired by the *Sharia* in every general legal provision. Alal al-Fasiy states it as *al-ghayah* (ultimate goal) and *al-asrar* (secrets) which is desired by the *Sharia* in every law that he established. Manshur al-Kalifiy explains it as *al-ma'ani* (meanings) and *al-hikam* (wisdom) which is required by the *sharia* in every legal enactment to realize human benefit in this world and the hereafter. (Busyro, 2015, p. 40).

The substance of *maqāṣid al-shari'ah* is benefit, which can take two forms. The first is the essential form, in the form of direct benefit in the sense of causality, and the second is the *majazi* form, which is the reason or cause that leads to benefit. According to Al-Syatibi, benefit can be realized when the five main elements such as religion, soul, heredity, reason, and wealth are well maintained (Saputra & Busyro, 2018).

The efforts to realize and maintain the five main elements are divided into three levels, they are *al-dharuriyat*, *al-hajiyat*, and *tahsiniyat*. (Busyro, 2017).

In the science of fiqh, *dharuriy* means something very important in a person's life, as explained by Muhammad Rawwas Qal'ahjiy. He explains that *dharuriy* is a very important need to avoid harming one of the five basic elements. If the elements of *dharuriy* are not fulfilled, a state of *dharurah* will arise, a state that is very necessary and difficult to avoid. *Al-hajiyah* is a necessity that must exist because its existence makes life easier and avoids difficulties. For someone who does not understand it, it will not make his life unstable, but he will have difficulty in carrying out his daily activities (Ahmad & Wan Abdullah, 2023; Ni'ami & Bustamin, 2021).

Al-tahsiniyah is a refinement to become better. If the needs of *al-tahsiniyah* are not met, it will not damage the foundations of life and will not cause difficulties, but its existence will make life complete. *Tahsiniyah* needs include *al-mukarim al-akhlaq* (noble character), maintenance of worship, customs, and *muamalah* (Koto, 2014). For someone who wants to explore it further, there will be an effort to achieve perfect maintenance of the five basic elements, the three levels of *Maqāṣid* mentioned above cannot be separated, because for Al-Syatibi, the level of *hajiyat* is a complement to the level of *daruriyat*. The level of *tahsiniyat* is a complement to *hajiyat*, while *daruriyat* is the main point of *hajiyat* and *tahsiniyat* (Pelu et al., 2022).

In general, the *maqāṣid al-shari‘ah* exists for the realization of human benefit. Benefits can be achieved when religion, soul, offspring, mind, and wealth (Mulia, 2020; Yusuf et al., 2023), each of which is divided into *dharuriyat*, *hajiyat*, and *tahsiniyah*, are present in life. The maintenance of religion from a *dharuriyat* perspective is, for example, the performance of the five daily prayers. If it is ignored, the existence of the religion is threatened. *Hajiyat*, on the other hand, aims at avoiding difficulties, such as performing *jama* and *qasar* prayers for people who are traveling. Covering one's private parts, keeping one's clothes and places clean, involves maintenance in the form of *tahsiniyat*. If it is not done, it does not threaten the existence of the religion and does not cause difficulties.

The *dharuriyat* aspect of preserving the soul can be accomplished, among other things, by meeting basic needs in the form of food. If food needs are not met, life is threatened. Meanwhile, enjoying halal food according to taste involves the *hajiyat* aspect, and finally, the *tahsiniyat* aspect in the form of eating and drinking procedures recommended in Islam.

Maintaining mind in terms of its needs can also be divided into the groups of *dharuriyat*, *hajiyat*, and *tahsiniyat*. *Dharuriyat* includes the prohibition of alcohol, which will affect a person's mind if it is drunk. An example of preserving the mind in *hajiyat* is the recommendation to study or seek knowledge, which will not result in damage to the mind if it is not done but will cause slight difficulties in living. Finally, avoiding delusions and avoiding things that are not useful are a complement to *tahsiniyat*.

In preserving offspring, Islam regulates marriage, including determining what kind of women can and cannot be married to, explaining marriage procedures, pillars, and conditions for the marriage to be valid. The example of *dharuriyat* in caring for offspring is the law of marriage and the prohibition of adultery. If it is violated, it will threaten the existence of offspring. Meanwhile, caring for offspring in *hajiyat* includes determining the amount of dowry at the time of the marriage contract and the issue of *talak*. A husband will face difficulties if he does not use his *talak* rights even though his household situation is not harmonious. An example of caring for offspring in *tahsiniyat* is the provision of marriage or *walima* as a supplement to a series of marriages, because it does not cause difficulties for people who do not do it.

In essence, all property belongs to Allah SWT, but Islam also recognizes a person's personal rights to the property he or she controls. This is because people really like material possessions, thus they want to use them in different ways. Islam is there to establish rules so that there are no disputes between people, such as buying and selling, renting, pawning, etc., and prohibits fraud and usury.

From the point of view of the importance of property maintenance, it can be divided into three levels. The maintenance of property at the *dharuriyat* level, such as the Sharia regarding the procedures for owning property and the prohibition of taking other people's property inappropriately or in an illegal manner. If

these rules are violated, the existence of the assets is threatened. Maintaining assets at the level of *hajiyat*, as prescribed by the buying and selling of *salam*. If such buying and selling is not used, it will not threaten the existence of assets, but it will make things difficult for people who need capital, while an example of maintaining assets at the level of *tahsiniyat* is avoiding fraud.

Method

A qualitative approach was used in conducting this research (Moleong, 2005; Usman, 2008). It was conducted by analyzing the decision of the Batusangkar Religious Court Number 110/Pdt.G/2021/PA.Bsk that was appealed to the West Sumatra High Religious Court Number 23/Pdt.G/2021/PTA.Pdg. The *maqāṣid* approach was used to analyze a very interesting decision when this case occurred in Luhak Tanah Datar as the origin and main area of Minangkabau community tradition. The data were obtained through documentation and interviews.

Results and Discussion

Decision of the Religious Courts and the Status of Case

The Batusangkar Religious Court once considered, heard, and decided a divorce case brought by a woman which is the focus of this article. Among the arguments or reasons for the case presented by the plaintiff was that the plaintiff and the defendant had been married for more than 30 years. The plaintiff also stated that the marriage between the plaintiff and the defendant went well, even according to the Sharia guidelines.

After the plaintiff conveyed the condition of her household or family, starting with the date and year of her marriage, where she lived after marriage, and the number of children, even grandchildren, the plaintiff then talked about the current state of her household. In this case, the plaintiff stated that the defendant had recently often been prejudiced and did not respect the plaintiff as a wife. In fact, in the last 3 years, the defendant often had negative thoughts, especially when his wife was late coming home from work because she was busy, such as at the end of the year.

In addition, the plaintiff stated that the defendant also limited the plaintiff's social interactions with her friends, while the plaintiff stated that she did not do anything wrong with her friends. The plaintiff also stated that the defendant was irresponsible with the family's finances, so the plaintiff relied on her income to finance the family's basic needs.

Interestingly, although the plaintiff had given various reasons to support her claim, the plaintiff and the defendant were still living together in the same house, which was of course very different from divorce cases in general that occur in Minangkabau. In fact, when a household starts to become unstable or there are frequent quarrels, a husband leaves their residence, especially until the filing of a case in court, but this did not happen in this case.

The plaintiff and the defendant were present on the appointed day of the trial, and they could even leave from the same house to attend the trial scheduled by the religious court. The panel of judges in this first trial continued to try to reconcile (Daud & Saputra, 2017) so that their household could be harmonious again, and ordered the parties to conduct mediation accompanied by a mediating judge. However, the mediation efforts through the mediators of the religious courts were unsuccessful in achieving peace.

The defendant basically admitted all the legal facts presented by the plaintiff, such as the date of marriage, place of residence, and children, including the defendant's admission that they were still living in the same house. Meanwhile, there were some legal incidents that the defendant partially admits and partially denies. In the ensuing replication and rejoinder, the plaintiff stuck to her original arguments, almost the same as the defendant, who also stuck to his answers in his rejoinder.

The plaintiff submitted a photocopy of the marriage certificate with sufficient stamps, nazegelen, and 2 witnesses to support her claim. The first witness gave her testimony under oath which basically stated that she did not know the current household situation of the plaintiff and the defendant, she only knew based on the stories from the plaintiff to the witness who had previously lived next door to the

plaintiff and the defendant about the state of their household which was less harmonious because the defendant was emotional and liked to fight. On the other hand, the second witness stated that the household condition of the plaintiff and the defendant was harmonious, meanwhile according to the plaintiff, her family was less harmonious.

In its review, the panel of judges stated that the plaintiff's lawsuit based on Article 73 (1) of Law No. 7 of 1989 and other regulations regarding the formal requirements for litigation had been fulfilled, so that the plaintiff's lawsuit could be accepted for review. The panel had also tried to reconcile the parties in the trial and had previously conducted a mediation process (Taufiqurohman, 2021), but both had not been successful (Mustika, 2015).

The plaintiff stated in her argument that her household with the defendant had not been harmonious for the last 3 years because the defendant did not provide enough support and relied on the plaintiff's income, and the defendant often had negative thoughts when the plaintiff was late coming home from work, which the defendant denied and he objected to divorce her.

Meanwhile, the two witnesses presented by the plaintiff explained their knowledge based on the plaintiff's information and that both of them still lived in the same house. The panel of judges also emphasized that the plaintiff and the defendant were still living in the same house due to the lack of peaceful efforts by the families of both parties, and if there was a quarrel or a final dispute, no one knew about it and the plaintiff could not prove the arguments for her lawsuit.

The panel of judges at the Religious Court dismissed the case on the grounds that the situation of the plaintiff and the defendant's household had not yet reached the stage of breaking up the household, even though there were disputes, they could still reconcile and still live in the same house, and the defendant promised to change his attitude so as not to become emotional and to allow the plaintiff flexibility to be with her friends.

Appellate Jurisprudence: Differences in Decision

The panel of judges at the Padang Religious High Court agreed with the plaintiff's appeal and overturned the decision of the Batusangkar Religious Court because according to the panel there had been a dispute that had one-sided consequences for the plaintiff, even though both parties still lived in the same house and got along like a harmonious family.

The panel saw that one of the reasons the marriage began to fall apart was not physical violence, but mental violence, and that was the reason the panel considered this case. The mental violence in question was the plaintiff's statement that she could no longer live with the defendant and the defendant's statement that he was willing to change his attitude.

It seems that the main consideration of the appellate panel was that the appellant, in her memory, had left the shared residence and rented a house on her own, considering that the respondent did not want to leave the shared residence. Based on this, the panel believed that the two households had reached continuous disputes and a broken marriage.

Article 70 paragraph (1) of Law No. 7 of 1989 as amended by Law No. 3 of 2006 and subsequent amendments by Law No. 50 of 2009 on Religious Courts (Iskandar & Agustina, 2019; Nasrullah, 2017) in conjunction with Article 39 paragraphs (1) and (2) of Law No. 1 of 1974 on Marriage and the book of *Madaa Hurriyatū al-Zaujainī fi al-Thalaq* were taken into consideration and became the panel of judges' own opinion.

The book states that Islam chooses the institution of divorce when the household is considered shaky. Then counseling, including efforts at peace, are no longer useful, so that the relationship between husband and wife becomes empty without a soul. To continue such a marriage is like imprisoning the husband or wife for a long time, which is contrary to the sense of justice.

The panel of appellate judges disagreed with the decision of the first court, which did not grant the plaintiff's or appellant's request for divorce from her husband. The panel saw that the wife's hatred for her husband had reached its peak, even though the defendant or respondent in his counter-appeal still expressed his objection to divorce the plaintiff or appellant because he still loved the appellant as his wife.

Application of *Maqāṣid al-Shari'ah* in Divorce Cases: New Directions on the Importance of Custom in Matrilineal Families

Table 1. the Intersection of Custom and *Maqāṣid*

No.	Religious Court	High Court of Religious Affairs	Matrilineal Society	<i>Maqāṣid al-Shari'ah</i>
1.	<ul style="list-style-type: none"> ▪ 30 years of married life and already had grandchildren ▪ Being prejudiced when the plaintiff came home late, limiting her socialization, and lacking economic responsibility. 	<ul style="list-style-type: none"> ▪ Not physical violence, but mental violence, even though the family seemed like a harmonious family ▪ A signal that the plaintiff was no longer able to endure 	<ul style="list-style-type: none"> ▪ Their matrilineal families were unaware of household circumstances 	<ul style="list-style-type: none"> ▪ Maintaining religion ▪ Keeping the soul safe ▪ Maintaining mind ▪ Maintaining offspring ▪ Maintaining wealth
2.	<ul style="list-style-type: none"> ▪ Mediation was not successful ▪ According to the witness, the family was harmonious ▪ Still lived under the same roof ▪ No one was aware of the quarrel and could not prove the claim ▪ Divorce was denied 	<ul style="list-style-type: none"> ▪ There was a hint that the respondent wanted to change his attitude ▪ The household had broken up ▪ Husband objected to divorce ▪ Wife left the residence ▪ The divorce was granted 	<ul style="list-style-type: none"> ▪ There was no mediation process in matrilineal families 	<ul style="list-style-type: none"> ▪ <i>Maqāṣid Dharuriyah</i> ▪ <i>Maqāṣid Hajiyah</i> ▪ <i>Maqāṣid Tahsiniyyah</i>

Marriage is an internal and external bond between a man and a woman as husband and wife to form a family that is *sakinah*, *mawaddah*, and *rahmah* (Hidayat et al., 2019). Achieving this goal requires the understanding of both parties. If a husband or a wife or both no longer feel compatible, there is the possibility of separating the household through divorce whether sued by the wife or the husband.

The Marriage Law (hereinafter referred to as UUP in Indonesian abbreviation) explains that divorce can only be carried out through a trial process in court after one of the spouses, either the husband or the wife, files a divorce petition with the Religious Court. After going through the process of registering the case, appointing the panel of judges and substitute clerks, and setting the trial schedule, the first step that the panel of Religious Court judges must take in resolving the divorce case is to reconcile the parties. This reconciliation must not only take place in court, but must also go through a mediation process as explained in the Supreme Court Regulations (hereafter referred to as PERMA in Indonesian abbreviation). In this case, all stages of resolving the case have been completed.

Apart from mediation, generally in the lawsuit letter after the plaintiff conveyed the legal events in her lawsuit, she continued with the situation in her household after mediation was attempted that it was unsuccessful (Zaidah & Normas, 2021). With the failure of mediation by the families of both parties, the case moved to the next stage, but in this divorce suit case, there was no previous attempt at family mediation, especially considering the function and role of the extended family in the matrilineal community's area of the origin of Minangkabau.

Mediation from one side of the family is very important, especially for matrilineal societies where the role of the extended family is very determinant, and this is very much in line with *maqashid (dharuriyah)*

in caring for offspring. There are several aspects of mediation that do not take place in matrilineal families, especially in the divorce case above. First, the *mamak*'s role in the extended family has begun to diminish. In the past, *mamak* (uncles from mother's side) played a very important role with his nephews and nieces, even if his nieces were not yet married, he would participate in finding a husband for his niece with a man from outside the tribe. (Putriyah, 2016).

The old proverb describes the role of a *mamak* as "*ka pai tampaik batanya, ka pulang tampaik babarito*" (when you want to wander, he is the one to ask how, when you come back home, he is the one you need to tell), over time this value has begun to diminish as this role has been taken over by a father or husband. The matrilineal relationship, which is beginning to change, has the effect among other things, as in the case of this lawsuit when there were problems between the husband and wife, they found it difficult to find a solution, even though the family had been built for 30 years. In the future, it is difficult to hope that this role can be restored unless good communication is established within the matrilineal family from the beginning.

The saying "*anak nan anak awak, kamanakan punyo mamak*" (even though the children belong to parents, but their *mamak* guides them) seems to be very much in line with *maqāṣid al-shari‘ah* and must be maintained in matrilineal families. The *mamak* not only participates in the search for a mate for his niece and manages the wedding ceremony, but most importantly, the *mamak* also plays a role when one of his nieces' family has problems. If a niece has problems in the family, it is not her father who solves them, but his *mamak*. If a *sumando* or niece's husband leaves home, the *mamak* consults to find a solution to the problem through family mediation (Saiin et al., 2023).

Second, some matrilineal communities, especially those in urban areas, are looking for a source of livelihood that no longer depends on the high-inherited lands left by the matrilineal family. They earn a living through various activities such as trading, self-employment, and other jobs. Since the work is not related to the matrilineal family, the strength of the matrilineal family and kinship relationships are becoming less powerful. In the past, *mamak* used to cultivate and develop existing inheritance lands and invite his nephews and nieces to work together on these matrilineal inheritance lands. During this time together, *mamak* would also pass on messages and life advice to his nieces and nephews, which, of course, could be resolved by the matrilineal family if there were problems faced by the nephews and nieces.

Changes in the role of *mamak*, nephews, and nieces in matrilineal families may be inevitable, but the Minangkabau philosophy of life remains a reference to "*adat basandi syara', syara' basandi kitabullah*". Religion teaches that when problems arise between a husband and wife, a *hakam* (peacemaker) from the wife's family and a *hakam* from the husband's family are sent. The two *hakams* will find the best solution to the problems of the husband and wife. This *hakamain* is indirectly very appropriate in matrilineal families and is very much in accordance with *maqāṣid al-shari‘ah*. Even in the future, *hakamain* in family mediation customs is very important or required before the case is submitted to the religious court (Rahman et al., 2023).

If matrilineal family mediation is unsuccessful, the judiciary, through PERMA, also requires a mediation process to be carried out, which at the beginning of the trial must also reconcile the parties. After the peace and mediation process has failed, the court must be able to find a reason to grant the proposed divorce, and in granting the divorce petition (filed by the husband or wife) must have the reason that the husband and wife really cannot live in harmony in the future.

A wife leaving a rented house or a shared residence for a matrilineal village with children as a result of an argument with her husband may still be acceptable according to custom and *maqāṣid al-shari‘ah* because the consequences are not too great. In the matrilineal village, there are still many relatives who can take care of the woman and her children, including their livelihood, which can be obtained from the results of cultivating the inherited land. On the other hand, when the wife goes home alone and leaves the children with her husband, the children are generally less well cared because their father does not know where to take his children to. Even the decision of the religious court will be difficult to implement in the matrilineal

region if the *hadhanah* is given to the father or husband, as stated by Dt. Pelmizar, Chairman of the High Religious Court of West Sumatra.

Even though the Religious Courts and the High Religious Courts examine and decide on the cases submitted by the parties and do not examine and decide on the cases that are not submitted, it is better to deviate from the general provisions of the Religious Court Procedural Law when a wife leaves the house and rents another house. If it is impossible to reconcile the proposed divorce case, then the husband is asked to leave the house where they live together, even if it is not stated in the lawsuit or appeal letter, so that *maqāṣid al-shari'ah* in preserving religion, soul, offspring, and property can be realized. These two things will not happen in matrilineal family life if their respective roles are properly maintained (Santoso et al., 2022).

In general, the author agrees in principle with the decision of the Religious Court, which did not grant the plaintiff's claim because the husband and wife still lived in the same house, including the evidence presented by witnesses, which could not strengthen the claim, as also stated by Yengki Irawan. Yet, the High Religious Court was of the opinion that there had been continuous quarrels. This reason gave rise to multiple interpretations and debates compared to other reasons such as one of the partners committing adultery, being a drunkard, an addict, a gambler who is difficult to cure, or leaving one's partner for two years in a row without permission and without a valid reason, receiving a prison sentence of five years or more, committing cruelty or serious abuse that endangers one's partner, and having a physical disability or illness that results in the inability to perform obligations as explained in (UUP) Article 39 (2) and Compilation of Islamic Law Article 116.

Fighting as a reason for divorce is explained not only in the UUP and KHI, but also in customary law. Customary reasons for divorce are childlessness, adultery, husbands abusing their wives, physical disabilities and/or illnesses that are difficult to cure, and feelings of hatred between husband and wife (Van Dijk, 1979). The hatred between husband and wife is almost mutual, as there are constant quarrels that are difficult to reconcile.

Islamic courts in deciding cases are in line with the Hadith: "I (Rasulullah) have been ordered by Allah to resolve a case according to its *zahir*, while in *sir* (essence) only Allah knows best." In this case, the reason that there was a continuous dispute could not be proved beyond all reason because the panel saw it implicitly in the reasons and answers. There were two signals that the Religious High Court had granted the divorce petition filed by the original plaintiff or appellant: first, a signal that the respondent wanted to change his attitude, and second, a statement from the respondent that he objected to divorcing his wife. The Panel believed the respondent's or appellee's statement that he wanted to change his attitude meant that there had been an ongoing dispute.

Differences in how cases are resolved, both explicitly (*zahir*) and implicitly (hint), have an impact on Minangkabau society, at least within the families and tribes of each couple. The husband, as head of the family and *mamak* to his nephews and nieces, and the wife, as *bundo kanduang* in her matrilineal family, bear quite heavy burdens and responsibilities. Indirectly, the burden and responsibility will become heavier if a person cannot resolve personal and family problems, especially since the reason for divorce does not reach the level of *dharuriyat*. Regardless of the considerations of the panel of judges in rejecting or granting this case, it would be wise to pay attention to the customs or traditions that apply in a place, even in the matrilineal realm, such as the implementation of *Qanun* in the Aceh Sharia Court (Nur Aziz et al., 2023).

Conclusion

Ijtihad using the *maqāṣid al-shari'ah* approach combined with matrilineal customs is a solution in resolving cases in the Religious Courts, especially in divorce cases on the grounds that there have been continuous arguments. Apart from that, divorce cases on the grounds that there have been continuous arguments should be required to have been mediated by the matrilineal family before being submitted to the religious courts, so that the divorce case or household conditions are known and a solution is sought

within the family. Apart from this, the research results also showed that divorce due to continuous disputes had multiple interpretations in its resolution, while sometimes the condition of some households do not reach the level of *dharuriyat* for divorce, when the highest is at the level of *hajiyat*, and it is very likely that such families can be reunited over time for matrilineal societies.

Conflict of Interest

This article has not a conflict of interest.

References

Abubakar, M. (2020). Meningkatnya Cerai Gugat Pada Mahkamah Syar'iyah. *Kanun Jurnal Ilmu Hukum*, 22(2), 302–322. <https://doi.org/10.24815/kanun.v22i2.16103>

Ahmad, S., & Wan Abdullah, W. S. (2023). Falsafah Maqasid al-Quran Imam al-Ghazali dan Faham Ilmu. *International Journal of Islamic Thought*, 23(1), 144–154. <https://doi.org/10.24035/ijit.23.2023.262>

Al-Munawwar, S. A. (2014). *Maqashid al-Syariah*. Pascasarjana IAIN Imam Bonjol.

Andaryuni, L. (2017). Pemahaman Gender Dan Tingginya Angka Cerai Gugat Di Pengadilan Agama Samarinda. *Fenomena*, 9(2), 155. <https://doi.org/10.21093/fj.v9i2.946>

Andaryuni, L. (2021). The use of ex officio to fulfill women's post-divorce rights at the Samarinda Religious Court. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 21(2), 135–154. <https://doi.org/10.18326/ijtihad.v21i2.135-154>

Athief, F. H. N., & Juwanti, R. H. (2020). Court decisions on post-divorce children's livelihood: Islamic law analysis on their practices in Indonesia and Malaysia. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 20(2), 151–173. <https://doi.org/10.18326/ijtihad.v20i2.151-173>

Busyro. (2015). *Fiqh Maqashid Mengukur Aplikasi Maqashid al-Syari'ah Dalam Fatwa Kontemporer*. Adelina Bersaudara.

Busyro, B. (2017). Menyoal Hukum Nikah Misyar dalam Potensinya Mewujudkan Maqasid al-Asliyyah dan al-Tab'iyyah dalam Perkawinan Umat Islam. *Al-Manahij: Jurnal Kajian Hukum Islam*, 11(2), 215–232. <https://doi.org/10.24090/mnh.v11i2.1297>

Dahlan, A. R., Fathinuddin, F., Azizah, A., Yunus, N. R., Shapiulayevna, A. P., & Ali, Y. (2023). Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions. *Ahkam: Jurnal Ilmu Syariah*, 23(1), 191–212. <https://doi.org/10.15408/ajis.v23i1.27967>

Darussamin, Z., Armansyah, A., & Zikri, A. (2023). The Urgency of Maturity to Get Married and Its Relevance to Family Life Goals. *Al-Istinbath: Jurnal Hukum Islam*, 8(1), 215–236. <https://doi.org/10.29240/jhi.v8i1.5324>

Daud, M. K., & Saputra, R. (2017). Problematika penyelesaian perkara kumulasi gugatan perceraian dan harta bersama (Studi kasus di Mahkamah Syar'iyah banda aceh). *Samarah*, 1(2), 435–458. <https://doi.org/10.22373/sjhk.v1i2.2377>

Devy, S., & Firdaus, M. (2019). Cerai Thalaq di Kalangan Isteri Karier (Studi Kasus di Mahkamah Syar'iyah Banda Aceh). *Samarah*, 3(2), 378–399. <https://doi.org/10.22373/sjhk.v3i2.4401>

Djawas, M., Nadhiran, H., A. Samad, S. A., Mubarak, Z., & Abrar Azizi, M. (2022). Creating Family Resilience in Indonesia: A Study of "Marriage Guidance" Program in Aceh and South Sumatera. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 17(1), 299–324. <https://doi.org/10.19105/al-lhkam.v17i1.6150>

Gazdar, M. A., & Al-Khairabadi, M. A. (2022). Debate between Classical and Contemporary Scholars about the Ruling for a Muslim Woman on being confined at Home. *Journal of Al-Tamaddun*, 17(2), 257–264. <https://doi.org/10.22452/JAT.vol17no2.20>

Hanapi, A., & Risma, B. (2018). Penelantaran isteri oleh suami sebagai sebab perceraian (Studi kasus di Mahkamah Syar'iyah Tapaktuan). *Samarah*, 2(2), 403–415. <https://doi.org/10.22373/sjhk.v2i2.4744>

Harijanto, A., Hatikasari, S., & Musabula, J. (2022). The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice. *Journal of Human Rights, Culture and Legal System*, 2(2), 100-112. <https://doi.org/10.53955/jhcls.v2i2.33>

Hayati, M., & Ali, N. (2022). Ex-Officio Rights in Talak Divorce: Study on Judges' Considerations in the Compliance of Ex-Wife's Rights. *Mazahib Jurnal Pemikiran Hukum Islam*, 21(1), 93-116. <https://doi.org/10.21093/mj.v21i1.4219>

Hidayat, I., Yaswirman, Y., & Mardenis, M. (2019). Problems Arising from Talak Divorce Outside the Court. *International Journal of Multicultural and Multireligious Understanding*, 6(10), 138. <https://doi.org/10.18415/ijmmu.v6i10.919>

Iskandar, M., & Agustina, L. (2019). Penerapan Asas Peradilan Sederhana, Cepat dan Biaya Ringan dalam Kumulasi Cerai Gugat dan Harta Bersama di Mahkamah Syar'iyah Banda Aceh. *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam*, 3(1), 241-265. <https://doi.org/10.22373/sjhk.v3i1.4403>

Kasim, F. M., Nurdin, A., Muthalib, S. A., Syarifuddin, S., & Samad, M. (2022). The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective. *Ahkam: Jurnal Ilmu Syariah*, 22(2), 411-432. <https://doi.org/10.15408/ajis.v22i2.28747>

Koto, A. (2014). *Filsafat Hukum Islam*. Rajawali Pers.

Moleong, L. J. (2005). *Metodologi Penelitian Kualitatif*. Remaja Rosdakarya.

Mukdin, K., Bawady, Z., M.Djakfar, T., & Riza Nurdin, M. (2022). Application of No-Fault Divorce Legal Rules As a Basis for Judges Considerations: a Case Study of Indonesia. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 7(2), 80-90. <https://doi.org/10.22373/petita.v7i2.149>

Mulia, R. (2020). Marital beslag outside divorce lawsuit in the Maqashid Syari'ah perspective. *Samarah*, 4(2), 398-415. <https://doi.org/10.22373/sjhk.v4i2.7052>

Mustika, D. (2015). Efektivitas Mediasi Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Pasuruan. *Al-Risalah Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 15(2), 297-308. <https://doi.org/10.33474/hukum.v9i1.7492>

Nasrullah, I. A. (2017). Eksistensi Hak Ex Officio Hakim dalam Perkara Cerai Talak. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 1(2), 459-478.

Nelli, J., Mansur, A., Zulkifli, Z., Maghfirah, M., Hardani, S., & Aida, I. N. (2023). The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia. *JURIS (Jurnal Ilmiah Syariah)*, 22(1), 119-132. <https://doi.org/10.31958/juris.v22i1.7392>

Ni'ami, M. F., & Bustamin. (2021). Maqāṣid Al-Syārī'ah Dalam Tinjauan Pemikiran Ibnu 'Āṣyūr Dan Jasser Auda. *Juris: Jurnal Ilmiah Syariah*, 20(1), 91-102. <https://doi.org/10.31958/juris.v20i1.3257>

Nofiardi. (2018). Perkawinan dan Baganyi: Analisis Sosiologis Kultural dalam Penyelesaian Perselisihan di Kecamatan Banuhampu Kabupaten Agam. *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, 13(1), 49-72. <https://doi.org/10.19105/al-lhkam.v13i1.1613>

Nofiardi, N. (2023). Testimonium de Auditu Witness: Comparison of Maṣlāhah in the Settlement of Syiqāq in the Religious Court of the Border Regions. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(2), 1016. <https://doi.org/10.22373/sjhk.v7i2.11493>

Novitasari, C. N., Latifiani, D., & Arifin, R. (2019). Analisis hukum islam terhadap faktor putusnya tali perkawinan. *Samarah*, 3(2), 322-341. <https://doi.org/10.22373/sjhk.v3i2.4441>

Nur Aziz, D. A., Khanif, A., Hartono, M. D., & Yusniar Marbun, A. A. (2023). Examining Qanun in Aceh from a human rights perspective: status, substance and impact on vulnerable groups and minorities. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23(1), 37-56. <https://doi.org/10.18326/ijtihad.v23i1.37-56>

Nurjanah, S. (2022). Divorce and Its Impact on Custody of Minors Using Islamic Law Perspectives. *Al-Istinbath : Jurnal Hukum Islam*, 7(1), 119. <https://doi.org/10.29240/jhi.v7i1.4156>

Nuroniyah, W., & Maula, B. S. (2022). Muslim women adhering to Minangkabau's bajapuik tradition

in Cirebon, West Java: compromizing a gendered culture in Islamic law. *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 22(2), 135–154. <https://doi.org/10.18326/ijtihad.v22i2.135-154>

Pelu, I. E. A. S., Asfia, H., Tarantang, J., & Supriadi, A. (2022). Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia. *Al-Istinbath : Jurnal Hukum Islam*, 7(1), 39. <https://doi.org/10.29240/jhi.v7i1.4204>

Putriyah, N. (2016). Perkawinan Eksogami: Larangan Perkawinan Satu Datuak Di Nagari Ampang Kuranji, Sumatera Barat. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 8(2), 175. <https://doi.org/10.14421/ahwal.2015.08205>

Rahman, M. A., Roibin, R., & Nasrulloh, N. (2023). Dayak Ngaju Customary Fines in Pre-Marriage Agreement to Minimize Divorce in The Perspective of Maslahah Mursalah Ramadhan Al-Buthi. *El-Mashlahah*, 13(1), 57–75. <https://doi.org/10.23971/el-mashlahah.v13i1.5623>

Rais, I. (2014). Tingginya Angka Cerai Gugat ('Khulu') di Indonesia: Analisis Kritis terhadap Penyebab dan Alternatif Solusi Mengatasinya. *Al-'Adalah*, 12(1), 191–204.

Ramadhan, A., & Suryani, I. (2021). CERAI TALAK YANG TERINDIKASI KDRT PERSPEKTIF UU NOMOR 23 TAHUN 2004 TENTANG KDRT DAN HUKUM ISLAM (Studi Putusan Nomor 70/Pdt.G/2020/PA.Pyk) Adriantito. *Jisrah: Jurnal Integrasi Ilmu Syariah*, 2(2), 1–13. <http://www.nber.org/papers/w16019>

Saadah, M. (2020). PEREMPUAN DAN PERCERAIAN: Kajian tentang Cerai Gugat di Pengadilan Agama Bekasi. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 11(2), 14. <https://doi.org/10.14421/ahwal.2018.11202>

Saidah, F. R., & Fahmi, M. Z. (2023). Management of Long Distance Marriage for Overseas Female Worker Profession on Family Resilience in Kendal Regency. *El-Mashlahah*, 13(1), 93–106. <https://doi.org/10.23971/el-mashlahah.v13i1.6095>

Saiin, A., Kholidah, K., Zulfahmi, Z., M. Radiamoda, A., & Gemilang, K. M. (2023). The Property Rights Regulation, Semenda Marriage, and Exploring the Determinants in ASEAN Countries. *Journal of Human Rights, Culture and Legal System*, 3(2), 134–159. <https://doi.org/10.53955/jhcls.v3i2.68>

Santoso, D., Jafar, W. A., Nasrudin, M., Asmara, M., & Fauzan. (2022). Harmony of religion and culture: fiqh munâkahat perspective on the Gayo marriage custom. *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 22(2), 199–218. <https://doi.org/10.18326/IJTIHAD.V22I2.199-218>

Saputra, E., & Busyro. (2018). Kawin Maupah: An obligation to get married after talak tiga in the tradition of binjai village in Pasaman district a maqâsid al- Sharî'ah review. *Quodus International Journal of Islamic Studies*, 6(2), 181–219. <https://doi.org/10.21043/qjis.v6i2.3738>

Sururie, R. W., & Yuniardi, H. (2018). Perceraian dalam Keluarga Muslim di Jawa Barat. *Al-Manahij: Jurnal Kajian Hukum Islam*, 12(2), 263–280. <https://doi.org/10.24090/mnh.v12i2.1361>

Taufiqurohman, T. (2021). Implementasi Mediasi Pada Proses Perceraian TKI Di Pengadilan Agama Ponorogo. *JURIS (Jurnal Ilmiah Syariah)*, 20(1), 115. <https://doi.org/10.31958/juris.v20i1.2826>

Trigiyatno, A. (2021). Suami Dipenjara sebagai Alasan Cerai Gugat: Perspektif Fikih dan Legislasi Negeri Muslim. *Arena Hukum*, 14(2), 390–411. <https://doi.org/10.21776/ub.arenahukum.2021.01402.10>

Usman, H. (2008). *Metodologi Penelitian Sosial* (cet. Ke-1). PT Bumi Aksara.

Van Dijk, R. (1979). *Pengantar Hukum Adat Indonesia*. Sumur Bandung.

Warman, A. B., Zulkifli, Yustiloviani, Nabilah, W., & Hayati, R. F. (2023). Strengthening Family Resilience Through Local Wisdom: Pulang Ka Bako Type of Marriage in Minangkabau. *Al-Istinbath: Jurnal Hukum Islam*, 8(1), 253–268. <https://doi.org/10.7454/ai.v34i2.3966.5>

Yubsir. (2013). Maqashid Al-Syariâah Sebagai Metode Interpretasi Teks Hukum: Telaah Filsafat Hukum Islam. *Al-'Adalah*, 11(2), 242.

Yusuf, N., Sarib, S., Willy, E., & Bukido, R. (2023). The Difficulty of Finding Halal Food for Muslim

Minorities: Analysis of Maqasid Sharia. *Al-Istinbath: Jurnal Hukum Islam*, 8(2), 325–346.
<https://doi.org/10.29240/jhi.v8i2.8182>

Zaidah, Y., & Normas, M. R. (2021). Mediasi Online Dalam Penyelesaian Perkara. *Journal of Islamic and Law Studies*, 5(3), 334–348.

Zainuddin, M., Mansari, & Filzah, N. (2022). Divorce Problems and Community Social Capital in Realizing Family Resilience in Aceh. *Samarah*, 6(2), 914–933.
<https://doi.org/10.22373/sjhk.v6i2.15080>