

Reforming Islamic Family Justice: Integrating Legal and Psychological Perspectives in Handling Polygamy and Divorce Cases in Indonesia

**Farida Nurun Nazah^{1*}, Wirda Garizahaq², Dwi Nur Fauziah Ahmad³,
Restia Gustiana⁴, Hashim Balas⁵**

¹Universitas Esa Unggul, Indonesia

²Universitas Dharma Indonesia, Indonesia

³Universitas Muhammadiyah Tangerang, Indonesia

⁴Universitas Pamulang, Indonesia

⁵Ajloun National University, Jordan

*Corresponding Author: farida.nurun@esaunggul.ac.id

|| Received: 30-04-2026 || Revised: 01-07-2026 || Accepted: 05-08-2026 || Published On: 12-08-2026

Abstract: This research examines the application of legal and psychological integration in polygamy and divorce cases at the Tigaraksa Religious Court, Indonesia. The focus of this study is to assess the extent to which the psychological considerations of the parties (wives and children) are accommodated in the case examination process and the judges' decisions. This study uses a socio-legal approach with data derived from an analysis of annotations of polygamy and divorce case rulings (2022–2024), interviews with judges and mediators, and documentation of laws and regulations. The analysis was conducted thematically to identify patterns of normative and psychological considerations. The results show that the case resolution process is still dominated by a legalistic normative approach, with the use of psychological aspects not yet institutionalized systematically. The psychological perspective is limited to the mediation stage and is not an integral part of judicial considerations in decisions. Consequently, the psychosocial welfare dimension of the family is often not a primary consideration. The novelty of this research lies in the formulation of a problem-solving, justice-based psychological law integration model in the context of the Religious Court by encouraging the application of structured psychological assessments as an instrument for judges' consideration in polygamy and divorce cases. The main contribution of this research is to provide a conceptual framework and practical recommendations for family court reform in Indonesia, particularly to improve the quality of case examination, ensure the protection of women and children, and realize substantive justice oriented towards the welfare of the family.

Keywords: Divorce Litigation; Islamic Family Justice; Polygamy Cases; Problem Solving Justice.

INTRODUCTION

The increase in family cases in Indonesian religious courts, particularly divorce cases and requests for permission to practice polygamy, shows that marital conflict is becoming an increasingly complex social phenomenon. Divorce is no longer simply the result of ordinary domestic disharmony but is often related to deep psychological factors, such as emotional abuse, unstable affective relationships, trauma due to infidelity, and failed communication between spouses.¹ Meanwhile, the practice of polygamy, although normatively recognized in Islamic and national law, often triggers psychosocial tensions that have a significant impact on wives and children.² This condition confirms that family issues cannot be reduced solely to legal procedural matters but rather to multidimensional problems of family relations and mental health.³

In judicial practice, the settlement of polygamy and divorce cases in the Religious Court is still dominated by a normative legal approach.⁴ Judges' considerations generally focus on fulfilling the formal aspects as stipulated in the Marriage Law and the Compilation of Islamic Law. This positivistic framework treats family conflicts primarily as a matter of whether or not a legal action is valid, so that the psychological dimensions of the parties are not yet an integral part of judicial considerations.⁵ As a result, the decisions often only resolve disputes in a legalistic manner without touching on the emotional roots of the

¹ Ismail Shaiful Bahari et al., "Psychological Impact of Polygamous Marriage on Women and Children: A Systematic Review and Meta-Analysis," *BMC Pregnancy and Childbirth* 21, no. 1 (December 2021): 823, <https://doi.org/10.1186/s12884-021-04301-7>.

² Firdaus Firdaus et al., "The Protection of Islamic Women in Indonesia: Evaluation of Polygamy Sanctions and Its Implications," *KARSA Journal of Social and Islamic Culture* 31, no. 1 (June 2023): 79–108, <https://doi.org/10.19105/karsa.v31i1.10611>.

³ Durotun Nafisah et al., "Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024), <https://doi.org/http://dx.doi.org/10.22373/sjhk.v8i2.16825>; Ramdani Wahyu Sururie, Mohammad Athoillah, and Muhammad Iqbal Zia Ulhaq, "Strategies to Prevent Increasing Divorce Rates for Muslim Families in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 2023): 734, <https://doi.org/10.22373/sjhk.v7i2.14819>.

⁴ Hotnidah Nasution and Ahmad Rifqi Muchtar, "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 2020), <https://doi.org/10.15408/ajis.v20i2.15702>; Farida Nurun Nazah and Muslimin Muslimin, "The Judges Legal Reasoning on Child Welfare's Perspective in the Hadanah Cases at Banten Religious Courts," *Jurnal Hukum* 40, no. 1 (June 2024): 14, <https://doi.org/10.26532/jh.v40i1.36621>.

⁵ Kholidah et al., "Violation of Women's Rights on Divorce: Study on Religious Court Decision," *Journal of Law and Sustainable Development* 11, no. 6 (September 2023): e1230, <https://doi.org/10.55908/sdgs.v11i6.1230>.

conflict that underlie the breakdown of family relationships, even leaving lasting psychological trauma for women and children as the most vulnerable groups.

From an Islamic law perspective, this approach still leaves unresolved problems. The principle of *maqāṣid al-sharīʿah* (the objectives of Islamic law) affirms that the main objectives of sharia include the protection of life (*ḥifẓ al-nafṣ*), intellect (*ḥifẓ al-ʿaql*), and offspring (*ḥifẓ al-nasl*), all of which have strong psychological dimensions in the context of family life.⁶ In addition, the concept of *maslahah* provides a normative basis for the development of laws oriented towards the real interests of society, not limited to normative texts alone.⁷ Thus, legal considerations in family cases should move beyond legal formalism towards a paradigm of substantive justice that can guarantee the psychological well-being of all family members.⁸ However, at the level of judicial practice, the normative mandate of *maqāṣid* and *maslahah* has not been articulated systematically in the decision-making process.⁹

From the perspective of modern legal studies, the therapeutic jurisprudence approach views law and judicial institutions not merely as mechanisms for dispute resolution, but also as instruments that can have a therapeutic or destructive impact on the mental health of individuals involved in legal proceedings.¹⁰ In the context of family courts, this theory views judges, mediators, and court proceedings as psycholegal actors who have the capacity to influence the emotional recovery process of victims of family conflict. The integration of therapeutic principles in the settlement of family cases has been

⁶ Nur Solikin and Moh. Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 27, no. 1 (June 2023): 315–340, <https://doi.org/10.20414/ujis.v27i1.708>.

⁷ Mukhamad Suharto et al., "Marriage Registration as a Legal-Political Arena in Islamic Family Law: Reinterpreting Maṣlaḥah Mursalah within Modern Legal Systems," *Legitima: Jurnal Hukum Keluarga Islam* 8, no. 1 (December 2025): 27–46, <https://doi.org/10.33367/legitima.v8i1.7891>.

⁸ Fauzan Arrasyid, Pagar Pagar, and Dhiauddin Tanjung, "Islamic Family Law Reform in Indonesia Through Supreme Court Circulars: A Maqasid Sharia Perspective," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 2 (May 2024): 208, <https://doi.org/10.30659/jua.v6i2.29236>.

⁹ Khairil Anwar Al Jufri, Mohd Soberi Awang, and Mualimin Mochammad Sahid, "Maqasid Syariah Menurut Imam Al-Ghazali Dan Aplikasinya Dalam Penyusunan Undang-Undang Islam Di Indonesia: Maqasid Syariah According To Imam Al-Ghazali And Its Application In The Compilation Of Islamic Law In Indonesia," *Malaysian Journal of Syariah and Law* 9, no. 2 (December 2021): 75–87, <https://doi.org/10.33102/mjsl.vol9no2.315>.

¹⁰ David Wexler and Bruce Winick, *Essays in Therapeutic Jurisprudence* (United States: Carolina Academic Press, 1991).

proven to minimize re-traumatization, increase acceptance of decisions, and encourage more sustainable conflict resolution.¹¹

In line with this, family psychology studies through Family Systems theory show that marital conflict never stands alone, but always has a systemic impact on all family members.¹² Divorce and polygamy create relational disruptions that affect the emotional stability of couples and the psychological development of children. Meanwhile, Attachment Theory asserts that children's attachment patterns to parental figures are formed from the quality of emotional relationships within the family; prolonged conflict and relational uncertainty have the potential to give rise to attachment disorders that have long-term psychosocial impacts. These psychological findings emphasize the importance of psychological considerations as a fundamental element in every family case resolution.¹³

However, previous research in Indonesia has tended to focus on normative analysis of Islamic family law and the consistency of judges' decisions with legislation.¹⁴ Existing studies have relatively failed to integrate a family psychology approach, either empirically or theoretically, as part of the analysis of religious court practices.¹⁵ Similarly, the study of therapeutic jurisprudence is still very limited in its application in the context of Islamic law and religious courts in Indonesia. In other words, there is a research gap between the complexity of psychological issues in family cases and the legalistic approach that dominates judicial practice and existing academic studies.¹⁶

Over the past decade, a review of family law literature shows that the increase in divorce and polygamy cases is a global phenomenon closely related to the social,

¹¹ Jennifer E. McIntosh et al., "Child-Focused and Child-Inclusive Divorce Mediation: Comparative Outcomes From A Prospective Study of Postseparation Adjustment," *Family Court Review* 46, no. 1 (January 2008): 105–124, <https://doi.org/10.1111/j.1744-1617.2007.00186.x>.

¹² Anna Garriga and Fulvia Pennoni, "The Causal Effects of Parental Divorce and Parental Temporary Separation on Children's Cognitive Abilities and Psychological Well-Being According to Parental Relationship Quality," *Social Indicators Research* 161, nos. 2–3 (June 2022): 963–987, <https://doi.org/10.1007/s11205-020-02428-2>.

¹³ Masrina Masrina, Ahmad Muzayyin, and Muhamad Ammar Muhtadi, "The Influence of Mediation Approaches, Social Factors, and Psychological Factors on Family Dispute Resolution at the Ministry of Religious Affairs in West Java," *West Science Interdisciplinary Studies* 1, no. 12 (December 2023): 1371–1379, <https://doi.org/10.58812/wsis.v1i12.482>.

¹⁴ Arip Purkon, Ahmad Hidayat Buang, and Mohd. Hafiz Jamaludin, "The Role of Supreme Court Jurisprudence in Development of Islamic Family Law in Indonesia," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 9, no. 2 (September 2022): 362–376, <https://doi.org/10.32505/qadha.v9i2.4111>.

¹⁵ Arrasyid, Pagar, and Tanjung, "Islamic Family Law Reform in Indonesia Through Supreme Court Circulars."

¹⁶ Mustopa Mustopa, "Qira'at Diversity in Islamic Family Law Verses: Implications for Indonesian Marriage Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (July 2024): 1257, <https://doi.org/10.22373/sjhk.v8i2.23513>.

economic, and psychological transformation of modern families. Studies in the context of family courts emphasize that marital conflict cannot be understood solely as a formal legal dispute, but also as a relational crisis that has a long-term impact on the psychological well-being of spouses and children¹⁷. In contemporary developments, *maqāṣid* is emphasized as a dynamic value system that is open to interdisciplinary approaches.¹⁸ Family psychology research confirms that failure to understand the dynamics of the family system can lead to relational dysfunction and ongoing conflict after a court decision.¹⁹ In the context of Muslim countries, Islamic-based family courts face a double challenge: maintaining conformity with Sharia norms while responding to the complexity of contemporary family problems. Several socio-legal studies also confirm that religious courts in Indonesia still tend to place divorce and polygamy cases within a legal-positivistic framework, with a focus on fulfilling normative requirements and formal evidence. At the same time, the psychological impact on the family has not been systematically integrated into the considerations of the verdict.²⁰

Furthermore, within the framework of therapeutic jurisprudence, developed by Wexler and Winick as leading figures in this field, law is viewed as a social agent that can produce therapeutic or anti-therapeutic effects. In the context of family courts, this approach emphasizes that the trial process, the role of judges, and legal decisions must be designed to minimize psychological suffering and support the emotional recovery of the parties.²¹ Based on the above literature review, it can be concluded that the academic discourse on divorce and polygamy is divided into three main clusters: (1) normative studies of Islamic family law, (2) socio-legal studies of religious courts, and (3) research on family and child psychology. However, the intersection between these three clusters is still relatively weak, especially in the context of religious court practices in Indonesia. Therefore, this research is important because it fills a gap in the literature by developing an integrative framework that combines *maqāṣid al-sharīʿah*, therapeutic jurisprudence, and family psychology in analyzing the settlement of divorce and polygamy cases. With a case study at the Tigaraksa Religious Court, this research is

¹⁷ Michelle J. Budig and Misun Lim, "Cohort Differences and the Marriage Premium: Emergence of Gender-Neutral Household Specialization Effects," *Journal of Marriage and Family* 78, no. 5 (October 2016): 1352–1370, <https://doi.org/10.1111/jomf.12326>.

¹⁸ Jasser Auda, *Maqashid Al-Shariah as Philosophy of Islamic Law, A System Approach* (London: The International Institute of Islamic Thought, 2007).

¹⁹ Alan Carr, "Family Therapy and Systemic Interventions for Child-focused Problems: The Current Evidence Base," *Journal of Family Therapy* 41, no. 2 (April 2019): 153–213, <https://doi.org/10.1111/1467-6427.12226>.

²⁰ Farida Nurun Nazah, Restia Gustiana, and Tobibatus Saadah, "Gender Justice in Child Custody Disputes: The *Maqāṣid al-Sharīʿah* Approach in Contemporary Judicial Practice," *MILRev: Metro Islamic Law Review* 4, no. 2 (November 2025): 1328–1358, <https://doi.org/10.32332/milrev.v4i2.10790>.

²¹ Vicki Lens, "Therapeutic Jurisprudence in Family Law: The Role of Due Process," Singapore Academy of Law, June 25, 2021.

expected to enrich the scientific knowledge of Islamic family law while providing a conceptual basis for family court reform that is more just, humane, and responsive to contemporary social challenges.

Based on these problems and gaps, this article aims to critically analyze the practice of handling polygamy and divorce cases in Indonesian Religious Courts through the integration of legal and psychological perspectives²². By combining the frameworks of *maqāṣid al-sharī'ah*, *maslahah mursalah*, therapeutic jurisprudence, as well as Bowen's family psychology theory and Attachment Theory, this study not only examines the limitations of the prevailing legal-formal approach but also offers a model for Islamic family court reform that is integrative, restorative, and oriented towards psychological recovery.²³ The main contribution of this article lies in the development of the Islamic Therapeutic Jurisprudence paradigm as a new conceptual approach to strengthening substantive justice in religious courts and responding to the mental and relational protection needs of Muslim families in Indonesia.

METHOD

This study uses a qualitative approach with a socio-legal approach. The socio-legal approach was chosen because this study not only examines the normative aspects of Islamic family law governing divorce and polygamy, but also examines its practical application in the social and psychological context of religious courts. Within this framework, law is understood as a social practice (law in action) that cannot be separated from the relational, cultural, and psychological contexts of the parties involved in the judicial process. The research was conducted at the Tigaraksa Religious Court, Banten Province, which was purposively selected as a representative of an area with a relatively high number of family cases and diverse complexities of domestic conflicts. This location provided empirical opportunities to observe in depth the dynamics of divorce and polygamy permit cases, particularly in terms of the implementation of the mediation approach and the judges' considerations in their decisions.

This study uses two types of data, namely: Primary data, obtained from the annotation and analysis of 25 Tigaraksa Religious Court decisions related to divorce cases (divorce by lawsuit and divorce by repudiation) and requests for polygamy permits in the period 2022–2024. Semi-structured interviews with key

²² Hikmal Akbar and M. Nabil Syauqi, "The Dynamics of Family Life in Polygamous Practices: An Islamic Legal Perspective on Contemporary Indonesian Society," *El-Aqwal: Journal of Sharia and Comparative Law*, June 2, 2025, 35–50, <https://doi.org/10.24090/el-aqwal.v4i1.13022>.

²³ Fitriyani Fitriyani et al., "The Judges' Legal Consideration on Divorce of Nushūz Cases at the Kupang High Religious Court: Gender Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (November 2023): 1971, <https://doi.org/10.22373/sjhk.v7i3.14425>.

informants, including Tigaraksa Religious Court judges and certified mediators. Secondary data includes: Laws and regulations related to marriage law and religious courts; Compilation of Islamic Law (KHI); Supreme Court guidelines related to mediation and case examination; Scientific literature relevant to Islamic family law, therapeutic jurisprudence, and family psychology. Data collection was carried out using the following three main techniques: First, content analysis of court decisions, which were examined and analyzed textually using content analysis techniques to identify patterns of legal argumentation and the presence or absence of psychological considerations in the decisions. Second, analysis of the legal considerations used by judges in deciding cases and confirming them. Third, analysis of considerations regarding the best interests of the child, both implicitly and explicitly, in relation to the psychological impact of family conflict. Artificial intelligence was used in the writing of this research as a tool to assist in language correction and reference management.

RESULTS AND DISCUSSION

The Dominance of Normative-Legal Formal Approaches in Divorce and Polygamy Rulings

Based on the results of the analysis, the study found that there is a tendency for legal considerations in the rulings of the Tigaraksa Religious Court (PA.Tgrs) for the period 2022–2025 to show a tendency toward normative and legal formal approaches. The discussion will focus on how judges consider the reasons for divorce and polygamy by referring to relatively uniform rules, as well as the extent to which the psychological considerations of the parties (wife and children) can be integrated into the ratio decidendi of the decision. An analysis of existing decisions, both on divorce and polygamy, shows a consistent tendency to refer to Article 39 paragraph (2) of Law No. 1 of 1974 in conjunction with Article 19 of Government Regulation No. 9 of 1975 in conjunction with Article 116 of the Compilation of Islamic Law (KHI). This condition was confirmed through interviews with judges at the Tigaraksa Religious Court, who stated that:

"Our considerations must first comply with the KHI and the law. Psychological aspects are indeed important, but there is no official format that can be used as a basis for incorporating them into the decision."

These findings show that judicial practice still operates within a procedural legalism paradigm, where legal certainty is more dominant than considerations of the psychological well-being of the family. Several variations of reasons for divorce relatively follow the patterns of "continuous conflict" and "one spouse abandoning the other." Even in polygamy cases, judges also use Article 4 paragraph (2) and Article 5 paragraph (1) of the Marriage Law as well as Articles

55-58 of the KHI. The following are the results of the annotation of the Tigaraksa Religious Court (PA.Tgrs) decisions for the 2022-2025 period.

Table 1. Normative-Legal Formal Approach in Divorce and Polygamy Decisions

No	Case Number	Type	Dominant Facts	Main Legal Reference	Approach Notes
1.	9/Pdt.G/2022	Divorce Suit	Alimony not provided, separation, no communication	Article 39 of Law 1/1974 in conjunction with Government Regulation 9/1975 in conjunction with Article 116 of the Islamic Family Law	Legal-formal, minimal psychological
2.	22/Pdt.G/2022 (Verstek)	Divorce Suit	Another ideal woman (WIL), dispute	Article 19 (f) PP 9/1975, Article 116 (f) KHI	Verstek, normative
3.	23/Pdt.G/2022 (Verstek)	Divorce Suit	Gambling, temperamental, economic	Article 39 paragraph (2) in conjunction with Article 116 (f) of the KHI	Normative formulaic
4.	25/Pdt.G/2022 (Verstek)	Divorce Suit	Separated for more than 2 years, 1 child	Article 19 (b) PP 9/1975, Article 116 (b) KHI	Legalistic
5.	1213/Pdt.G/2022 (Verstek)	Divorce Suit	Disputes, economics	Article 39 paragraph (2), Article 116 (f) KHI	Normative + <i>mafsadat</i> rule
6.	2963/Pdt.G/2022	Polygamy	13 years without children, wife's consent	Articles 4 & 5 of Law 1/1974 in conjunction with KHI	Normative requirements for polygamy
7.	6139/Pdt.G/2023 (Verstek)	Divorce	Jealousy, alimony	Article 19 (f) PP 9/1975	Legal-formal

8.	6364/Pdt.G/2023 (Verstek)	Divorce Suit	Debt, economic conflict	Article 39 (2) in conjunction with Article 116 (f) of the KHI	Normative + <i>maslahat</i>
9.	6541/Pdt.G/2024 (Verstek)	Divorce Suit	Concerns about adultery, 2 children	Law 1/1974 in conjunction with KHI	Normative argument
10	4720/Pdt.G/2024	Polygamy	Other ideal woman (WIL), domestic violence, separation	Article 39 (2), Article 116 (f) KHI	Broken marriage

Source: annotated and processed by the author

Table 1 shows that there is a standardization of judges' considerations that is highly dependent on the positive legal framework (legal-formal reasoning). The pattern of argumentation constructed in the decisions includes: (1) proof of ongoing disputes, (2) conclusions of broken marriages, and (3) normative legitimacy through Article 39 of the Marriage Law and Article 116 of the KHI. The findings of this study indicate that the practice of resolving polygamy and divorce cases in the Tigaraksa Religious Court is still dominated by a positivistic legal-formal approach that emphasizes the fulfillment of normative requirements as stated in the Marriage Law and the Compilation of Islamic Law (KHI). In fact, in several decisions, the considerations are arranged syllogistically:

Figure 1. Syllogistic Reasoning in Judgments

Fact of domestic conflict → fulfills legal grounds → divorce

Source: compiled by the author

Thus, based on Figure 1, there is a tendency toward syllogistic reasoning in decisions. The high number of cases also reinforces this tendency toward decisions in absentia (without the defendant present), which procedurally and substantively limits the judge's exploration of the circumstances of each party. In default cases, when the defendant is absent, judges tend to prioritize formal arguments and minimal evidence (at least two pieces of evidence) without delving into the emotional and psychological aspects of the wife and children. This condition can be seen in decisions numbers 22/Pdt.G/2022, 23/Pdt.G/2022, 6139/Pdt.G/2023, to 6540/Pdt.G/2025, in which all of the decisions use a uniform normative-legal construction, even though the facts of the trial are different and varied, such as the existence of another man/woman, gambling, debt, domestic violence, and neglect of financial support.

In addition, the use of fiqh principles such as "rejecting mafsadat is more important than achieving maslahat" in several decisions shows a normative-religious touch, which has indeed become a consistent pattern of consideration for judges in deciding cases. However, this consideration is still a formal legitimization, not yet touching on a deep psychological analysis of the emotional condition of the wife and children. In other words, the use of terminology such as "maqāṣid" or "maslahat" is positioned more as a normative justification than a framework for evaluating the psychological well-being of the family. This is in line with Cammack's findings that religious courts in Indonesia tend to interpret family law normatively with a focus on legal compliance rather than holistic family welfare.²⁴

In addition, although some decisions mention "physical and emotional suffering" or the loss of emotional bonds (*mitsāqan ghalẓan*), these phrases are still more normative rhetoric than comprehensive empirical assessment-based psychological analysis. In several rulings, there were no indications of the use of psychologist reports, evaluations of the impact of divorce on children, or considerations of trauma due to domestic violence or emotional neglect, even though the facts of the case contained these elements (e.g., WIL, domestic violence, and prolonged conflict). However, other findings show that divorce decisions that do not consider psychological aspects risk worsening the long-term impact on mental health and social relationships.²⁵

Furthermore, in polygamy cases (2963/Pdt.G/2022 and 4720/Pdt.G/2024), the judges' decisions focused only on normative facultative and cumulative requirements, such as economic capacity, the wife's consent, and the potential for adultery, without any psychological analysis of the impact of polygamy on the emotional stability of the first wife and children. In fact, psychosocially, polygamy often triggers jealousy, emotional conflict, and family instability. In the context of polygamy, findings show that judges in religious courts often prioritize optional and cumulative requirements (the wife's consent and economic capacity) over an analysis of the psychological impact on the wife and children,²⁶ resulting

²⁴ Mark Cammack, "Indonesia's 1989 Religious Judicature Act: Islamization of Indonesia or Indonesianization of Islam?," *SSRN Electronic Journal*, ahead of print, 1997, <https://doi.org/10.2139/ssrn.2568348>.

²⁵ Brian D'Onofrio and Robert Emery, "Parental Divorce or Separation and Children's Mental Health," *World Psychiatry* 18, no. 1 (February 2019): 100–101, <https://doi.org/10.1002/wps.20590>.

²⁶ Muhamad Andriyanto and Muhamad Fauzi Manarul Hidayah, "Ketika Izin Pengadilan Diabaikan: Studi Tentang Konflik Poligami Antara Praktik Sosial Dan Norma Hukum Keluarga Islam," *Usrotuna: Journal of Islamic Family Law* 2, no. 1 (2025), <https://journal.taskuliah.com/usrotuna/article/view/15>; Yenny Febrianty et al., "Answering the Challenges of Polygamy: Justice and Legal Protection in Islamic and Indonesian Law," *Jurnal*

in rulings that are more legalistic than substantive. This condition is mostly found in the Tigaraksa Religious Court decision dataset, which places the wife's consent as normative legitimacy without exploring the actual psychological conditions.

Thus, it can be seen that the dominance of the formal normative-legal approach in Religious Court decisions reflects the legal positivism paradigm that prevails in both the trial process and the formulation of court decisions. In this condition, the validity of a decision is primarily determined by its conformity with written norms (both substantive and formal law), rather than by a holistic evaluation of the psychological well-being of the parties. This condition will result in greater procedural efficiency, but will have an impact on the neglect of substantive justice,²⁷ which demands emotional and psychological protection for the family.

Similarly, the consideration of a "broken marriage" in court decisions is generally repeated. This consideration is actually a psychological indicator of relationship disintegration that can be further explored to create justice, but in practice it is reduced to the normative category of Article 19 letter (f) of Government Regulation No. 9 of 1975. This reduction shows the juridification of emotional experiences, where psychological suffering is translated into formal legal terminology without in-depth exploration. In the study of family law psychology, it is found that damaged marital conflicts, domestic violence, and neglect of financial support have a strong relationship with the emotional stress of the couple, including the children, so that decisions based solely on formal norms will have an impact on the neglect of the principle of the best interests of the child.²⁸

Thus, this practice reflects institutional path dependency, which is the tendency of judges to maintain standard patterns of argumentation (playing it safe) because they are legally stable and easily verifiable procedurally. Judges position family conflicts as individual legal disputes to be resolved through legal evidence alone, while the psychological dimensions of the parties tend to be left to informal mediation without professional assessment or further integration into the adjudication process.²⁹ This situation confirms that Islamic family law in practice has not yet fully moved from the paradigm of legal certainty to one of

Ilmiab Mizani: Wacana Hukum, Ekonomi Dan Keagamaan 12, no. 1 (April 2025): 15, <https://doi.org/10.29300/mzn.v12i1.6930>.

²⁷ John Rawls, *A Theory of Justice* (Cambridge: MA: Harvard University Press, 1971).

²⁸ Robert E. Emery, "Interparental Conflict and the Children of Discord and Divorce,," *Psychological Bulletin* 92, no. 2 (1982): 310–330, <https://doi.org/10.1037/0033-2909.92.2.310>; Nur Alifah and Roibin, "The Social and Philosophical Values of the Positivization of Islamic and Customary Law in Indonesia," *Istinbath: Jurnal Hukum* 22, no. 02 (December 2025): 263–285, <https://doi.org/10.32332/istinbath.v22i02.art02>.

²⁹ Renita Kamil, "Legal Positivism Influence on Law Enforcement and Judicial Practice in Indonesia," *JUSTISI* 11, no. 2 (May 2025): 542–569, <https://doi.org/10.33506/js.v11i2.4049>.

substantive justice.³⁰ The consequence is limited space for the integration of family psychology into the adjudication process.

In the study of Islamic law through *maqāṣid al-shari'ah*, this condition indicates a separation between the normative objectives of sharia and judicial practice. The objectives of protecting life (*ḥifẓ al-nafs*), protecting reason (*ḥifẓ al-'aql*), and protecting offspring (*ḥifẓ al-nasl*) actually intersect directly with the need for psychological recovery of the family. However, findings show that these aspects have not been translated into concrete parameters in judges' considerations. As a result, decisions tend to only maintain the formalities of marriage law without ensuring the achievement of the family's psychosocial welfare.³¹ With reference to the concept of *maslahah mursalah*, the law should function adaptively to the factual problems of society, including the phenomenon of increasing psychological trauma due to family conflicts. The use of welfare considerations in religious court decisions is often not accompanied by careful and holistic considerations.³² In fact, the reform of Islamic family justice requires a shift from mere legal validity to substantive justice based on the emotional well-being of the family. Thus, the integration of psychological perspectives in case examinations (for example, through psychological assessments, child impact assessments, and relational trauma evaluations) is an urgent need.

Limited Integration of Psychology in the Mediation Stage of Divorce and Polygamy

This section discusses the extent to which the psychological dimensions of the parties, particularly the wife and children, can be accommodated in the examination process of both divorce and polygamy cases at the Tigaraksa Religious Court (PA.Tgrs). The analysis was conducted by looking at the use of psychological-based approaches in the mediation and judicial counseling processes, which have not yet developed into a systematic and measurable psychological assessment in the consideration of decisions. The study found that psychological approaches are only limitedly present in the mediation stage as a

³⁰ Masalan Bainon et al., "The Role Of Islamic Law In The Equitable Division Of Joint Assets Post-Divorce Within Urban Society: A Descriptive Study Of Its Application In Bandung High Religious Court," *Akademika: Jurnal Pemikiran Islam* 29, no. 2 (October 2024): 255–272, <https://doi.org/10.32332/akademika.v29i2.9229>.

³¹ Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (December 2021): 347–374, <https://doi.org/10.14421/ajis.2021.592.347-374>.

³² Azni Azni et al., "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun* 13, no. 2 (May 2025): 1399–420, <https://doi.org/10.26811/peuradeun.v13i2.2047>; Rohmadi et al., "Judges' Considerations in Granting Marriage Dispensation Licenses in Indonesia: Islamic Family Law Perspective," *El-Ushrāh: Jurnal Hukum Keluarga* 7, no. 1 (2024): 326–345, <https://doi.org/http://dx.doi.org/10.22373/ujhk.v7i1.22597>.

prerequisite for litigation. Mediators generally attempt to use empathetic communication techniques, basic counseling, and persuasive approaches to encourage reconciliation between couples. However, these practices are informal, not based on clinical psychological assessments, and are not documented in the form of formal psychological reports. The results of interviews with mediators at the Tigaraksa Religious Court show that:

"We are limited to exploring the feelings and complaints of the parties. There are no psychological measurement tools or written recommendations from professionals."

After mediation is declared a failure, the trial process returns entirely to a normative legal approach. The psychological dimensions that arise in mediation are not integrated into the judge's considerations when handing down the final decision. Thus, the psychological function of the judicial system stops at the initial stage of dispute resolution, without continuity at the adjudication stage. Furthermore, in the analysis of three polygamy rulings, namely Number 1351/Pdt.G, 2724/Pdt.G, and 150/Pdt. G, based on the results of the analysis of these decisions, the psychological considerations of the parties are simple, and the narrative in the decision appears in the trial process. However, its existence is still limited to the level of providing normative and procedural advice, without any conventional or clinical psychological assessment results. The following are several aspects that appear in the decision related to the psychological aspects in the decision.

Table 2. Psychological aspects in the mediation process and judge's advice in the decision

No	Case Number	Psychological Context	Stage of Psychological Integration	Reference to Judge's Argument	Critical Notes
1.	1351/Pdt.G/2023/PA.Tgrs	Judge's advice on the consequences of polygamy	Mediation/ counseling	Future welfare	No psychological assessment of wife & children
2.	2724/Pdt.G/2023/PA.Tgrs	Family conflict, potential for prolonged conflict	Mediation + consideration of mafsadat	Prevention of ma'shiyat & domestic conflict	Psychology understood normatively, not clinically
3.	150/Pdt.G/2024/PA.Tgrs	The wife's psychological issues related to the husband's	Explicitly mentioned in the considerations	Relaxation of the principle of monogamy for the	Without evaluation by a professional psychologist

biological needs	sake of benefit
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Source: annotated and processed by the author

Table 2 shows that all decisions contain psychological elements, such as emotions, relational conflicts, and family conflicts, but there is no use of psychological reports or mental health assessments. Even when looking at decision number 150/Pdt.G/2024/PA.Tgrs, although the term "psychological problems" is explicitly mentioned in the decision, the judge only accepted the acknowledgment of the parties without any verification through a clinical psychology or family psychology approach. Thus, the integration of psychology in religious court practice appears to be symbolic-administrative rather than substantive-analytical. In fact, in family psychology studies, polygamy and divorce have a significant impact on the emotions of women and children, including increased anxiety, depression, loyalty conflicts, and a decrease in family security.³³

Furthermore, although simple, the integration of psychology in polygamy cases in the Tgrs Religious Court can be categorized into three forms: (1) judicial counseling on the consequences of polygamy, (2) mediation to reduce conflict, and (3) the use of the concepts of *mashlahat* and *mafsadat*. However, these approaches are procedural and persuasive in nature, rather than diagnostic. For example, in decision 1351/Pdt.G, the petitioner had one son (6 years old) with an income of around Rp24,006,000 per month. The panel of judges stated that they had provided advice on the consequences of polygamy, which substantively demonstrated awareness of the potential psychological impact, and had undertaken mediation. However, there was no description of the substance of the mediation or an evaluation of the psychological impact on the wife and child.³⁴ The legal considerations ended with a justification of "future benefit" and the determination of property, without any analysis of the family's emotional relationships. This shows that counseling served more as a procedural formality than a space for in-depth psychosocial evaluation.

Similarly, in Decision 2724/Pdt.G, which involved two children (aged 12 and 10) and a petitioner's income of Rp13,220,260 per month. The respondent stated that she did not object to polygamy, and the judge argued that refusing permission could potentially lead the petitioner to commit immoral acts and trigger prolonged conflict. However, there was a more explicit psychological integration through considerations of prolonged conflict and the potential for

³³ L. D. Shepard, "The Impact of Polygamy on Women's Mental Health: A Systematic Review," *Epidemiology and Psychiatric Sciences* 22, no. 1 (March 2013): 47–62, <https://doi.org/10.1017/S2045796012000121>.

³⁴ Putra Pandu Dinata Nurdiansyah et al., "Reconstructing Mediation Regulation in Contemporary Islamic Family Disputes: Reform Urgency in Indonesian Religious Courts," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 2 (June 2025): 53–72, <https://doi.org/10.33367/2kf5f656>.

domestic harm. However, family conflict, referred to as a psychosocial factor, was not analyzed as a psychological variable but reduced to a normative reason to avoid immoral acts (relationships prohibited by religion) and household disharmony. Thus, psychology was positioned as moral rhetoric rather than as a basis for evaluating the family's emotional well-being. In the context of polygamy, there is a correlation between anxiety, conflict, and emotional stress when consent is given.³⁵ Therefore, the use of the concept of *maslahah* without psychological evaluation risks producing decisions that are normatively valid but psychosocially problematic.

Then the most significant case is in decision 150/Pdt.G, where the wife's "psychological problems" are linked to her inability to fulfill her husband's biological needs. Although psychological terms were used explicitly, the judge's considerations were based only on the parties' statements without any assessment. This shows a simplification of psychological conditions that only serves as a justification for relaxing the principle of monogamy, rather than evaluating the wife's mental condition. Even studies in family court psychology show that the integration of professional psychological assessments can improve the quality of decisions and protect the best interests of the child.³⁶

Thus, based on this explanation, psychological terms are used as a language of legitimization, not as an instrument of proof and substantive consideration. This condition indirectly reflects the dominance of legal-formal considerations in Islamic family courts, especially in Indonesia, where compliance with the normative requirements of polygamy is considered sufficient to fulfill justice. However, other findings show that the practice of polygamy correlates with higher levels of psychological distress in first wives and children compared to monogamous families,³⁷ and can exacerbate long-term emotional conflict and reduce family well-being.³⁸

Nevertheless, the decisions described above show that religious courts have begun to recognize the psychological dimension, but have not yet institutionalized it in the framework of case examination. Psychology is only present as moral language (advice, benefit, conflict, harm), not yet as a measurable indicator. In other words, this can be referred to as "psychological normativization," which is the translation of emotional experiences into

³⁵ Shepard, "The Impact of Polygamy on Women's Mental Health."

³⁶ Edward F. Hennessey, "The Family, the Courts, and Mental Health Professionals.," *American Psychologist* 44, no. 9 (September 1989): 1223–24, <https://doi.org/10.1037/0003-066X.44.9.1223>; Andrew Schepard, *The Adolescent Mental Health Crisis: A Case Study in Family Court Planning*, 52, no. 2 (2024), <https://scholarlycommons.law.hofstra.edu/hlr/vol52/iss2/4>.

³⁷ Alean Al-Krenawi, "Women from Polygamous and Monogamous Marriages in an Out-Patient Psychiatric Clinic," *Transcultural Psychiatry* 38, no. 2 (June 2001): 187–199, <https://doi.org/10.1177/136346150103800203>.

³⁸ Emery, "Interparental Conflict and the Children of Discord and Divorce."

categories of fiqh and positive law without empirical psychological assessment.³⁹ Thus, without psychological assessment, consent to polygamy, for example, only reflects legal consent rather than psychological well-being. In fact, the use of psychological assessments and the involvement of experts in the litigation process can significantly improve the quality of judges' considerations, especially in custody and family restructuring cases.⁴⁰ Similarly, family court models in various countries even require psychosocial reports as part of the evidence before making decisions that affect children.⁴¹

In the context of religious courts, mediation often functions as a normative reconciliation mechanism, rather than a space for psychological counseling. According to Winslade and Monk, such mediation tends to only resolve conflicts formally without addressing the emotional trauma of the parties involved.⁴² Similarly, Nurlaelawati's findings show that religious court judges in Indonesia place more emphasis on normative and moral aspects in resolving family cases, while the psychological dimension of the family is rarely a primary consideration in their decisions. This is certainly in line with several P.A.Tgrs decisions which show that judges' advice is only normative and educational in nature, not therapeutic.⁴³

Thus, the integration of psychology in polygamy and divorce cases in the Tigaraksa Religious Court can be categorized as minimalist integration, as it is limited to the stages of mediation and moral advice, without methodological transformation in the process of evidence and legal consideration. This condition shows a gap between legal justice and psychological justice in the religious court system. Furthermore, in the framework of substantive justice, Islamic family law actually aims to protect the soul (*hifz al-nafs*) and offspring (*hifz al-nasl*), but when "public interest" is determined without real analysis, the concept has the potential to become vague. Family courts should emphasize the importance of a social approach by judges that is not solely based on assumptions of morality, but rather

³⁹ Aleksandra Kobyasheva, "Normativity, Psychology, and the Law," *Jurisprudence* 16, no. 4 (October 2025): 764–785, <https://doi.org/10.1080/20403313.2025.2464352>.

⁴⁰ Bryan Rodgers, Bruce M. Smyth, and Elly Robinson, "Mental Health and the Family Law System," *Journal of Family Studies* 10, no. 1 (April 2004): 50–70, <https://doi.org/10.5172/jfs.327.10.1.50>.

⁴¹ Joan B. Kelly and Judith S. Wallerstein, "The Effects of Parental Divorce: Experiences of the Child in Early Latency," *American Journal of Orthopsychiatry* 46, no. 1 (January 1976): 20–32, <https://doi.org/10.1111/j.1939-0025.1976.tb01224.x>.

⁴² Kelly and Wallerstein.

⁴³ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Netherlands: Amsterdam University Press, 2010), <https://www.jstor.org/stable/j.ctt46msj2>.

on an understanding of family dynamics.⁴⁴ Thus, the transformation of family law from normative mediation to therapeutic mediation based on family psychology needs to be carried out so that decisions not only meet legal requirements but also protect the emotional well-being of vulnerable parties.

The Absence of Professional Psychological Assessments in Divorce and Polygamy Proceedings: Empirical Analysis and Implications for Substantive Justice

The next finding shows the absence of systemic collaboration between the Religious Court and psychological professionals. There is no referral mechanism to clinical or forensic psychologists, including in cases involving indications of domestic violence, depression, or trauma to children. Several divorce and polygamy decisions in the Tigaraksa Religious Court show a generally consistent pattern, namely that the psychological dimensions of the parties are acknowledged through narratives in the decisions. However, it is never specifically explained how these dimensions were assessed through indicators or assessments. Thus, in this case, the court only uses the terminology without a sufficient or even adequate basic evaluation framework.

Table 3. Absence of Psychological Assessment in Case Examination

No	Case Number	Type	Psychological Indications	Professional Collaboration	Decision Pattern
1.	0019/Pdt.G/2022	Divorce Suit (Verstek)	Loss of happiness, <i>mitsaq ghaliz</i>	No professional psychologist	Normative Article 39 jo 116 KHI
2.	1414/Pdt.G/2023	Divorce (Verstek)	Physical and emotional suffering, conflict of trust	No clinical assessment	Broken marriage
3.	150/Pdt.G/2024	Polygamy	Wife's psychological issues, husband's biological needs	No psychological evaluation	Relaxation of the principle of monogamy
4.	3927/Pdt.G/2024	Divorce (Verstek)	Drunkenness, another woman, emotional suffering	No psychological examination	Reason: Article 39 (2) (f)

⁴⁴ Mavis Maclean and John Eekelaar, "The Obligations and Expectations of Couples Within Families: Three Modes of Interaction," *Journal of Social Welfare and Family Law* 26, no. 2 (July 2004): 117–130, <https://doi.org/10.1080/0141803042000236060>.

5.	3928/Pdt.G/ 2024	Divorce (Verstek)	Loss of spiritual bond, <i>milsāq</i> <i>ghaliḡ</i>	No assessment	Legal- formal standard
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Source: annotated and processed by the author

Table 3 shows that psychological dimensions in several of the above verdicts do appear in the wording, such as "physical and mental suffering," "loss of happiness," "psychological problems," and "no emotional bond." However, the case examinations do not show the use of any psychological measurement instruments, such as psychologist reports, clinical examinations, or family psychosocial evaluations. Even in cases that explicitly mention psychological conditions (polygamy case 150/Pdt.G), the court still did not present experts to test the validity of these claims. Furthermore, in the polygamy case, for example, in decision No. 150, the wife's "psychological problems" were used as a reason for the polygamy request. However, this was not supported by clinical examinations or expert examination results. The acknowledgments of the parties and witnesses were accepted as legal facts without detailed verification. Scientifically, the psychological condition of women after giving birth (children aged 2 years and 1.5 months) can be correlated with postpartum depression (chronic psychosocial), thus requiring professional evaluation before being used as a basis for legal consideration.⁴⁵

This condition is also exacerbated by the large number of default judgments (without the presence of the defendant) in several cases (0019/2022, 1414/2023, 3927/2024, and 3928/2024). Although default judgments are considered valid because they fulfill the legal requirements, they indicate a condition that further narrows the space for exploring the psychological conditions of the parties. The absence of the defendant causes the judge to prioritize unilateral arguments and formal indicators such as separation of residence, continuous disputes, and loss of harmony. As a result, the emotional and psychological dynamics in marriage are reduced to the normative category of "broken down marriage" as in Article 39 paragraph (2) of the Marriage Law in conjunction with Article 19 letter (f) of Government Regulation No. 9 of 1975 and Article 116 letter (f) of the KHI. Within this framework, the psychological experiences of the parties are translated into legal norms without going through an objective interdisciplinary assessment process.

Thus, these findings indicate an epistemic gap between law and psychology in religious court practice. Judges substantively recognize the emotional and psychological dimensions, but procedurally do not yet have institutional mechanisms to verify these conditions through professionals. The judge at the

⁴⁵ Zaituna Khamidullina et al., "Postpartum Depression Epidemiology, Risk Factors, Diagnosis, and Management: An Appraisal of the Current Knowledge and Future Perspectives," *Journal of Clinical Medicine* 14, no. 7 (April 2025): 2418, <https://doi.org/10.3390/jcm14072418>.

Tigaraksa Religious Court acknowledged the absence of official instruments in the judicial system:

"If the case is psychologically difficult, we can only give advice. There is no expert support to ascertain the mental condition of the parties or children."

This situation means that decisions are not based on objective psychological data, but solely on the judge's perception of the parties' statements. Court procedures that are limited to verifying legality narrow the scope of the court as an arena for the emotional recovery of victims of family conflict⁴⁶. The absence of professional psychologists and clinical assessments results in the potential for secondary victimization, which is when victims experience new mental stress due to legal processes that are insensitive to their psychological condition.⁴⁷ This shows that the Indonesian religious court system tends to be oriented towards normative compliance in resolving family conflicts.⁴⁸ Similarly, there is limited involvement of experts (psychologists) in assisting the court before deciding on legal relationships.⁴⁹ Without this support, decisions may fulfill legal and formal requirements but do not necessarily guarantee the long-term emotional well-being of the parties.

The absence of this assessment can have serious consequences for vulnerable groups, especially wives and children. For example, in polygamy cases, the reason for "psychological problems" of the wife can occur in the context of relational pressure, economic dependence, or unequal power relations. Without an independent assessment, the court risks institutionalizing structural inequality as the basis for legal welfare. In the context of modern family courts, collaboration between judges and professionals (psychologists) is considered an important prerequisite for producing comprehensive and family welfare-oriented decisions. Schepard's research confirms that the integration of professionals (psychologists) into the family court system can improve the quality of judges' decision-making, particularly in cases involving emotional conflict and children.⁵⁰

Thus, the use of "psychological problems" as a legal justification without professional assessment has the potential to exacerbate women's psychosocial

⁴⁶ Sage Wilde, Nicola Sheeran, and Heather Douglas, "The Psychological Impact on Mothers Who Have Experienced Domestic Violence When Navigating the Family Court System: A Scoping Review," *Psychiatry, Psychology and Law* 31, no. 4 (July 2024): 764–791, <https://doi.org/10.1080/13218719.2023.2214927>.

⁴⁷ Echo A. Rivera, Cris M. Sullivan, and April M. Zeoli, "Secondary Victimization of Abused Mothers by Family Court Mediators," *Feminist Criminology* 7, no. 3 (July 2012): 234–252, <https://doi.org/10.1177/1557085111430827>.

⁴⁸ Cammack, "Indonesia's 1989 Religious Judicature Act."

⁴⁹ Saul V. Levine, "The Role of the Mental Health Expert Witness in Family Law Disputes," *The Canadian Journal of Psychiatry* 28, no. 4 (June 1983): 255–258, <https://doi.org/10.1177/070674378302800403>.

⁵⁰ Hennessey, "The Family, the Courts, and Mental Health Professionals."

vulnerability. In the context of Islamic law, the protection of life (*hifz al-nafs*) and offspring (*hifz al-nasl*) requires attention to the mental health and emotional stability of the family. When the reason of "maslahat" (public interest) is decided without a clear assessment, the maslahat in question will tend to be assumptive. Therefore, an interdisciplinary approach is needed so that the court does not get caught up in normative symbolism, but is able to integrate findings from social sciences and psychology in its legal considerations.⁵¹ Therefore, the reform of Islamic family law in Indonesia needs to be directed towards collaboration between the Religious Court and clinical psychologists or family psychologists, as well as the use of psychosocial assessments in cases that mention mental conditions. Thus, the verdict will not only meet formal standards but also reflect justice that is sensitive to the psychological reality of the family.

Lack of Psychological Protection for Children in Court Decisions: Between Normative Formulation and Absence of Analysis of Children's Psychosocial Welfare

The presence of children in divorce, contested divorce, repudiation, and polygamy cases in the Tigaraksa Religious Court (PA.Tgrs) rulings almost always records the number and age of the children, but this is not followed by in-depth consideration of the children's psychological condition, emotional needs, or psychosocial impact. In other words, the best interests of the child are only mentioned in the decision as administrative information, indicating that no consideration was given to the specific circumstances of the child. The decision prioritizes the age and economic capacity of the guardian over the mental health of the child. There are no recommendations for psychosocial recovery or psychological assessment of the child after the decision. From the perspective of Family Systems Theory (Bowen) and Attachment Theory, this condition shows the failure of the judicial system to understand that parental conflict has a systemic impact on the child's psychological development and the quality of long-term attachment.⁵²

Table 4. Summary of Case Data Involving Children and Psychological Considerations for Children

Case Number	Type of Case	Number & Age of Children	Judge's Considerations Regarding Children	Psychological Analysis of Children
1347/Pdt.G/2022/PA.Tgrs	Polygamy	3 children (born in	Focus on economic capacity and material	None

⁵¹ Catherine H. Stein, "Ties That Bind: Three Studies of Obligation in Adult Relationships with Family," *Journal of Social and Personal Relationships* 9, no. 4 (November 1992): 525–547, <https://doi.org/10.1177/0265407592094004>.

⁵² Murray Bowen, *Family Therapy in Clinical Practice* (United States: J. Aronson, 1978).

		1996, 2000, 2006)	justice between wives	
1412/Pdt.G/2022/PA.Tgrs	Polygamy/ resulting in divorce	4 children (born in 2003, 2004, 2006, 2009)	Consideration shifted to divorce, not the welfare of the children	None
1412/Pdt.G/2023/PA.Tgrs	Divorce (Verstek)	3 daughters (14, 7, 3 years)	Focus on disharmony and separation of residence	None
2383/Pdt.G/2024/PA.Tgrs	Polygamy	3 children (born in 2010, 2015, 2018)	It is stated that the husband can provide for the children's needs	Weak and normative
6532/Pdt.G/2024/PA.Tgrs	Divorce Suit (Verstek)	2 children (born in 2012, 2015)	Focus on alimony and domestic conflict	None
6538/Pdt.G/2024/PA.Tgrs	Divorce Suit (Verstek)	3 children (born in 1996, 1998, 2001)	Emphasis on the loss of emotional bond	None
6541/Pdt.G/2024/PA.Tgrs	Divorce Suit (Verstek)	3 children (born in 2016, 2021)	Divorce is considered to be in the best interests of the parties	None

Source: annotated and processed by the author

Table 4 shows that judges' considerations in divorce and polygamy cases are still dominated by a normative framework focused on formal indicators such as economic capacity, household disharmony, and loss of emotional bonds, without systematic exploration of the psychological condition of children as directly affected subjects. For example, in case 1347/Pdt.G (polygamy case), the panel of judges emphasized the economic capacity of the Petitioner (Rp30 million/month) and advised him to be fair to his wives, but there was no consideration of the psychological impact of polygamy on the three children born from his first marriage. Similarly, in case 2383/Pdt.G, the panel did mention the guarantee of the livelihood of the wife and children as a cumulative requirement for polygamy. However, this guarantee was reduced to economic aspects and material justice, without any evaluation of the affective relationship, the children's anxiety about changes in the family structure, or the risk of family conflict after polygamy.

Furthermore, in the default divorce cases (6532/2024, 6538/2024, and 6541/2024), the existence of children was even further marginalized due to the absence of the defendant in the trial process, thereby narrowing the scope for

exploring the factual and comprehensive conditions of the family. In this case, the panel of judges in their legal considerations used the constructs of "broken marriage" and "loss of emotional bond" as the basis for their decision, without linking it to the psychological impact of divorce on children who are still in their developmental years. In this case, divorce is considered to be more beneficial for the parties, but this benefit is not analyzed from the perspective of the psychological well-being of the children.

Analytically, this data shows a reduction in the best interests of the child. Children are recognized in the structure of the decision, but they are not positioned as legal subjects with independent psychological needs. The interests of children are only implicitly understood through economic indicators (alimony) and legal certainty, not through emotional well-being, a sense of security, or continuity of care. Children who live in families with conflict, infidelity, or domestic violence are vulnerable to anxiety, emotional instability, and social relationship disorders. From a child development perspective, the age of 10–12 years is a crucial phase for the formation of self-esteem and social stability, while toddlers are very sensitive to changes in the caregiving structure.⁵³ Therefore, the absence of psychological evaluations of children in such cases indicates that the principle of "the best interests of the child" has not been comprehensively operationalized and remains merely normative rhetoric.⁵⁴

Thus, this condition shows that the orientation of the examination is still centered on the legal status of marriage, rather than on the psychosocial welfare of the family. This condition also reflects structural bias in religious court practices, where the main focus remains on the legal grounds for divorce (Article 39 of the Marriage Law, Government Regulation No. 9 of 1975, and Article 116 of the Islamic Family Law) and the fulfillment of normative requirements for polygamy, while the dimension of child welfare has not been institutionalized as a primary evaluative variable. In fact, in developmental psychology studies, parental conflict and changes in family structure (including polygamy and divorce) have a significant impact on increasing children's emotional stress.⁵⁵ In fact, children who grow up in conflicted households are at greater risk of maladjustment than children who live in stable, albeit incomplete, families. This shows that the justice achieved is still at the level of legal validity, not yet reaching psychological justice as part of substantive justice.

⁵³ John Santrock, *Life-Span Development* (New York: McGraw-Hill Education, 2010).

⁵⁴ Michael S. Wald, "State Intervention on Behalf of 'Neglected' Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights," *Stanford Law Review* 28, no. 4 (April 1976): 623, <https://doi.org/10.2307/1228098>.

⁵⁵ Patrick T. Davies and E. Mark Cummings, "Marital Conflict and Child Adjustment: An Emotional Security Hypothesis," *Psychological Bulletin* 116, no. 3 (1994): 387–411, <https://doi.org/10.1037/0033-2909.116.3.387>.

Another study on families experiencing polygamy found that children in polygamous families often experience identity conflicts, jealousy, and emotional instability.⁵⁶ Therefore, judges' considerations that focus only on economic capacity and administrative justice are not sufficient to guarantee the substantive psychological well-being of children. Family court decisions should not only resolve legal disputes, but also minimize negative psychological impacts on family members, especially children.⁵⁷ In this context, the absence of psychological assessments of children, social reports, or evaluations of child welfare in PA.Tgrs decisions show that the integration of psychological perspectives in Islamic family justice is still minimal. Thus, the absence of psychological considerations for children in divorce and polygamy cases shows that adjudication practices are still oriented toward legal sufficiency rather than child-centered justice, so that the protection of the best interests of the child has not been institutionalized operationally in the judges' considerations.⁵⁸

The Urgent Need for Reform of the Integrated Family Court System (Psychological Perspective) in Handling Polygamy and Divorce Cases in Indonesia

Based on the findings presented earlier, there is a tendency toward a normative-legal formal approach in judges' legal considerations in divorce (divorce by repudiation and divorce by litigation) and polygamy cases. The pattern of argumentation constructed in the decisions shows the same tendency, namely referring to the provisions of Article 39 of the Marriage Law, Government Regulation No. 9 of 1975, and Article 116 of the Compilation of Islamic Law (KHI), with reasons for divorce that are used repeatedly, such as continuous disputes, separation, unfulfilled financial obligations, the existence of another woman, and the terminology of broken marriage. However, despite this adherence to regulations and procedures, there appears to be a lack of analysis of the psychological condition of the parties, especially the wife and children as vulnerable groups affected by the legal decision. A judge at the Tigaraksa Religious Court stated:

"The decision is legally final, but the conflict often continues after the trial. This shows that there is something unresolved from a humanitarian perspective."

This condition shows that the religious court system still positions family disputes or conflicts within the formal juridical framework of reasons for divorce, without reaching the psychosocial aspects of the family. This condition is

⁵⁶ Shaiful Bahari et al., "Psychological Impact of Polygamous Marriage on Women and Children."

⁵⁷ Lens, "Therapeutic Jurisprudence in Family Law: The Role of Due Process."

⁵⁸ John Eekelaar, "The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determinism," *International Journal of Law, Policy and the Family* 8, no. 1 (1994): 42–61, <https://doi.org/10.1093/lawfam/8.1.42>.

exacerbated by the large number of default judgments, in which the case is examined without the presence of one of the parties, so that re-exploration of the emotional impact or psychological condition of the children is rarely considered in the legal deliberations. In fact, cases of polygamy and divorce have strong psychological dimensions that cannot be separated. Polygamy cases not only have legal implications related to polygamy permits, but also have an impact on the mental health of the first wife and children.⁵⁹

Therefore, there is a need for reform of the religious courts through a therapeutic jurisprudence approach, which emphasizes that the law and the judicial process have a real psychological impact on the parties, so that judges' decisions should consider the emotional consequences and mental well-being as part of substantive justice.⁶⁰ In this case, psychological assessments, counseling-based mediation, and consideration of the emotional impact on children should be possible before a decision is made. In modern family court practice, psychologists, family mediators, and child welfare assessments have been integrated as an integral part of the adjudication process.⁶¹ The absence of similar mechanisms in Indonesian religious courts indicates an institutional gap between legal procedures and the psychosocial reality of families.

However, this integrative reform of the religious courts still faces challenges related to the many cases that are decided in absentia. Decisions in absentia directly limit the psychological exploration of the absent party, so that the decision will be more oriented towards formal evidence without any psychological dialogue. In the case of non-participatory court proceedings, this increases the risk of ignoring the emotional condition of vulnerable parties, especially women and children.⁶² In fact, divorce cases that are processed without a psychological approach risk prolonging post-divorce conflict and impacting the long-term welfare of children.⁶³ Thus, the integration of a psychological perspective is not merely a procedural complement, but a structural necessity to achieve substantive justice in family cases.

⁵⁹ Davies and Cummings, "Marital Conflict and Child Adjustment."

⁶⁰ David B. Wexler and Robert F. Schopp, "Therapeutic Jurisprudence: A New Approach to Mental Health Law," in *Handbook of Psychology and Law*, ed. Dorothy K. Kagehiro and William S. Laufer (New York, NY: Springer New York, 1992), 361–381, https://doi.org/10.1007/978-1-4757-4038-7_18.

⁶¹ J. Eekelaar, "Family Justice: Ideal or Illusion?: Family Law and Communitarian Values," *Current Legal Problems* 48, no. Part 2 (January 1995): 191–216, https://doi.org/10.1093/clp/48.Part_2.191.

⁶² Mavis Maclean and John Eekelaar, eds., *Managing Family Justice in Diverse Societies* (Oxford: Hart Publishing, 2015).

⁶³ Paul R. Amato, "The Consequences of Divorce for Adults and Children," *Journal of Marriage and Family* 62, no. 4 (November 2000): 1269–1287, <https://doi.org/10.1111/j.1741-3737.2000.01269.x>.

In the Indonesian context, this reform can be operationalized through several strategic steps: (1) mandatory psychological assessment in polygamy and divorce cases involving children, (2) strengthening of family counseling-based mediation, (3) involvement of psychologists as expert witnesses in the examination process, and (4) reconstruction of judges' considerations to include analysis of the emotional impact and psychosocial welfare of the parties. Although this operationalization will face challenges, particularly in the framework of substantive and formal law, at least an effort has been made, considering that various countries are moving towards an integrative court model that combines law, psychology, and social welfare in a single adjudication framework.⁶⁴ Therefore, the integration of psychological perspectives in family courts is not only a methodological necessity, but also an ethical and *maqāṣid*-oriented justice requirement that places human welfare as the primary objective of law. This reform is urgent given the complexity of contemporary family cases, which can no longer be adequately resolved through a normative approach alone, but require a holistic, humanistic, and interdisciplinary approach oriented toward restoring family welfare after conflict.

CONCLUSION

This study concludes that the adjudication of divorce and polygamy cases at the Tigaraksa Religious Court remains predominantly grounded in a formal normative-legal approach, with judges relying primarily on Article 39 of the Marriage Law, Government Regulation No. 9 of 1975, and Article 116 of the Compilation of Islamic Law to establish the legal basis for decisions. Although considerations such as persistent marital conflict, separation, failure to fulfill household responsibilities, economic capacity, and the breakdown of marriage are examined, the psychological conditions of wives and children have not yet been systematically incorporated as substantive considerations in judicial reasoning. Children, in particular, tend to be treated as objects of administrative consideration concerning age, number, and financial support rather than as subjects whose emotional well-being, developmental needs, and vulnerability to family conflict, divorce, or polygamy require specific protection. This finding reveals a gap between procedural or normative justice and substantive justice within Islamic family law, particularly because high rates of default proceedings may further limit opportunities for judges to explore the psychosocial realities of families. The study therefore proposes an Integrative Islamic Family Justice framework that brings together normative-legal, socio-legal, and psychological

⁶⁴ Rosemary Hunter, "Adversarial Mythologies: Policy Assumptions and Research Evidence in Family Law," *Journal of Law and Society* 30, no. 1 (March 2003): 156–176, <https://doi.org/10.1111/1467-6478.00251>.

perspectives, consistent with the objectives of *maqāṣid al-shari'ah*, especially *hifẓ al-nafs* and *hifẓ al-nasl*, as well as the principles of child-centered justice and the best interests of the child.

Future reforms should move beyond the formal resolution of marital status toward a more holistic model of family justice that considers the emotional and psychosocial consequences of judicial decisions. This can be pursued through the involvement of family psychology professionals where appropriate, emotionally responsive mediation, and judicial guidelines requiring greater attention to the psychological circumstances and long-term welfare of children and other vulnerable family members. The study contributes theoretically by offering the Integrative Islamic Family Justice framework, empirically by identifying patterns of limited psychological consideration in religious court decisions, and practically by providing a basis for strengthening family court policies and judicial practices. Nevertheless, further research is needed to test and refine this framework through comparative studies involving multiple religious courts, larger samples of divorce and polygamy decisions, and empirical research involving judges, litigants, children, mediators, and psychological professionals. Future studies could also examine the long-term psychosocial outcomes of court decisions and develop measurable indicators for assessing the best interests of children within Islamic family adjudication. Such research would strengthen the empirical foundation for reconstructing religious court practices toward a model of justice that is not only legally valid, but also substantively protective of family dignity, emotional well-being, and children's long-term development.

ACKNOWLEDGEMENT

The authors would like to express their sincere gratitude to the Rector and the entire academic community of Universitas Esa Unggul, Indonesia, for their valuable support, encouragement, and institutional assistance throughout the completion of this research. The authors also appreciate the contributions of colleagues and academic staff who provided constructive insights and administrative support during the research and publication process.

AUTHOR CONTRIBUTIONS STATEMENT

FN and WG conceptualized the study and designed the research framework; FN, WG, and DF conducted data collection and analysis; DF and RG contributed to the interpretation of findings and literature review; FN drafted the manuscript, while WG, DF, and RG critically revised it for important intellectual content; all authors approved the final version of the manuscript.

AI USAGE STATEMENT

The authors declare that the use of Artificial Intelligence (AI) tools in this work was strictly limited to language support, including grammar correction, editing, and improving clarity and readability. AI was not used to generate research ideas, conduct analysis, interpret data, or produce scholarly conclusions. The authors take full responsibility for the originality, accuracy, and academic integrity of the manuscript, and no AI tools are credited as authors or contributors.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interest associated with the publication of this article. No financial, personal, professional, or institutional relationships have influenced the research design, data analysis, interpretation of findings, or preparation of the manuscript. All authors have contributed to the work independently and have no competing interests that could have affected the objectivity or integrity of the research.

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