A MAQĀSID AL-SHARĪ`AH PERSPECTIVE ON THE REASONS FOR *GREY DIVORCE* AT THE SLEMAN RELIGIOUS COURT

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Munaqosyah
07 Agustus 2026

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By:

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Student ID: 22421014

THESIS

Submitted to the Ahwal Al-Syakhshiyah Study Program
Faculty of Islamic Studies, Islamic University of Indonesia
To Fulfill One of the Requirements for
Earning a Bachelor of Laws Degree

YOGYAKARTA
2026

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2026

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I hereby declare that this thesis is, in its entirety, the result of my own research and work, except for those sections where sources are cited. Should it be proven at a later date that this thesis is the result of plagiarism, I am prepared to have my degree revoked and to face sanctions in accordance with applicable regulations.

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After we have carefully reviewed the thesis and made the necessary revisions, we hereby determine that the undergraduate thesis meets the requirements to be submitted for the *munaqashah* (thesis defense) at the Faculty of Islamic Studies, Universitas Islam Indonesia. Accordingly, we hope that the thesis may be scheduled for the *munaqashah* in the near future.

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PENGESAHAN

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Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar sarjana dari Program Studi IP Hukum Keluarga (Ahwal Al-Syakhshiyah) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

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MOTTO

فَاِمْسَاكٌۢ بِمَعْرُوْفٍ اَوْ تَسْرِيْحٌۢ بِاِحْسَانٍ (٢٢٩)

“ Menahan dengan cara yang baik atau melepaskan dengan cara yang baik.”

(QS. Al-Baqarah [2]: 229)[1]

[1] “Surah Al-Baqarah Ayat 229 - Membaca, Mendengarkan, Terjemahan, tafsir,” Quran.com, accsssed on 28 August 2026, https://quran.com/id/sapi-betina/229.

ARABIC–LATIN TRANSLITERATION GUIDELINES
JOINT DECREE
OF THE MINISTER OF RELIGIOUS AFFAIRS AND THE MINISTER OF EDUCATION AND CULTURE
OF THE REPUBLIC OF INDONESIA

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Transliteration is intended as the conversion of characters from one script into another. Arabic–Latin transliteration, as referred to here, is the rendering of Arabic letters into Latin letters along with their accompanying diacritical marks.

A. Consonant

Arabic consonantal phonemes, which in the Arabic writing system are represented by letters. In this transliteration system, some of these phonemes are represented by letters, others by diacritical marks, and still others by a combination of letters and diacritical marks.

The following is a list of the relevant Arabic letters and their transliterations into Latin characters:

Table 1.1 Consonant Transliteration Table

Arabic Letters	Name	Latin Letters	Name
أ	Alif	Not denoted	Not denoted
ب	Ba	B	Be
ت	Ta	T	Te
ث	Ṡa	ṡ	es (with the dot above)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (with the dots below)
خ	Kha	Kh	ka dan ha
د	Dal	d	De
ذ	Żal	ż	Zet (with the dot above)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es
ش	Syin	sy	es dan ye

ص	Ṣad	ṣ	es (with the dots below)
ض	Ḍad	ḍ	de (with the dots below)
ط	Ṭa	ṭ	te (with the dots below)
ظ	Ẓa	ẓ	zet (with the dots below)
ع	`ain	`	inverted comma (above)
غ	Gain	g	ge
ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em
ن	Nun	n	en
و	Wau	w	we
ه	Ha	h	ha
ء	Hamzah	‘	apostrof
ي	Ya	y	ye

B. Vocal

Arabic vowels, like those in the Indonesian language, consist of single vowels (monophthongs) and double vowels (diphthongs).

1. **Single Vowels**

Arabic single vowels, which are represented by diacritical marks (ḥarakāt), are transliterated as follows:

Table 1.2 Single Vowel Transliteration Table

Arabic Letters	Name	Latin Letters	Name
ـَ	Fathah	a	a
ـِ	Kasrah	i	i
ـُ	Dammah	u	u

2. **Double Vocal**

Arabic diphthongs, which are represented by a combination of diacritical marks *(ḥarakāt)* and letters, are transliterated using the following combinations of letters:

Table 1.3 Double Vowel Transliteration Table

Arabic Letters	Name	Latin Letters	Name
...يَ	Fathah and ya	ai	a and u
...وَ	Fathah and wau	au	a and u

Example:

- كَتَبَ kataba
- فَعَلَ fa`ala
- سُئِلَ suila
- كَيْفَ kaifa
- حَوْلَ haula

C. *Maddah*

Maddah, or long vowels, which are represented by a combination of diacritical marks *(ḥarakāt)* and letters, are transliterated using letters and diacritical signs as follows:

Table 1.4 Maddah Transliteration Table

Arabic Letters	Name	Latin Letters	Name
ا...ى...	Fathah and alif atau ya	ā	a and garis di atas
...ِي	Kasrah and ya	ī	i and garis di atas
...ُو	Dammah and wau	ū	u and garis di atas

Example:

- قَالَ qāla
- رَمَى ramā
- قِيْلَ qīla
- يَقُوْلُ yaqūlu

D. Ta’ Marbutah

There are two transliterations for ta' marbutah, namely:

1. Ta’ marbutah live

   Living tā’ marbūṭah, or tā’ marbūṭah that carries the vowel signs fatḥah, kasrah, or ḍammah, is transliterated as “t”.

2. Silent Tā’ Marbūṭah

   Silent tā’ marbūṭah, or tā’ marbūṭah that carries the sukun diacritical mark, is transliterated as “h”.

3. Kalau pada kata terakhir dengan ta' marbutah diikuti oleh kata yang menggunakan kata sandang al serta bacaan kedua kata itu terpisah, maka ta' marbutah itu ditransliterasikan dengan "h".

Example:

- رَوْضَةُ الأَطْفَالِ raudah al-atfāl/raudahtul atfāl
- الْمَدِيْنَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/al-madīnatul munawwarah
- طَلْحَةْ talhah

E. Syaddah (Tasydid)

Shaddah (or tashdīd), which in Arabic script is represented by a diacritical sign known as the shaddah or tashdīd mark, is transliterated by doubling the consonant, that is, by writing the same letter as the one to which the shaddah is applied.

Example:

- نَزَّلَ nazzala
- البِرُّ al-birr

F. Definite Article

In the Arabic writing system, the definite article is represented by the letters ال (al-). In this transliteration system, however, the definite article is classified into two types:

1. Definite article followed by sun letters (ḥurūf shamsiyyah)

The definite article followed by sun letters is transliterated according to its pronunciation, in which the letter "l" is assimilated and replaced by the letter that immediately follows the definite article.

2. Definite article followed by moon letters (ḥurūf qamariyyah)

   The definite article followed by moon letters is transliterated in accordance with the rules previously outlined and according to its pronunciation.

Whether followed by sun letters or moon letters, the definite article is written separately from the word that follows and is connected without a hyphen.

Example:

- الرَّجُلُ ar-rajulu
- الْقَلَمُ al-qalamu
- الشَّمْسُ asy-syamsu
- الْجَلاَلُ al-jalālu

G. Hamzah

Hamzah is transliterated as an apostrophe (’). However, this applies only to hamzah occurring in the middle or at the end of a word. Hamzah at the beginning of a word is not transliterated, as it is represented by alif in Arabic script.

Example:

- تَأْخُذُ ta’khużu
- شَيئٌ syai’un
- النَّوْءُ an-nau’u
- إِنَّ inna

H. Word Writing

Basically, every word—whether a fā‘il (verb), ism (noun), or ḥarf (particle)—is written separately. Only certain words, which in Arabic script are conventionally connected to the following word due to the omission of letters or vowel marks, are also written connected to the word that follows in transliteration.

Example:

- وَ إِنَّ اللهَ فَهُوَ خَيْرُ الرَّازِقِيْنَ Wa innallāha lahuwa khair ar-rāziqīn/ Wa innallāha lahuwa khairurrāziqīn
- بِسْمِ اللهِ مَجْرَاهَا وَ مُرْسَاهَا Bismillāhi majrehā wa mursāhā

I. Capital Letters

Although capital letters are not used in the Arabic writing system, they are employed in this transliteration system. The use of capital letters follows the rules of standard Indonesian orthography (EYD), including the capitalization of the initial letter of proper names and the beginning of sentences. If a proper name is preceded by a definite article, the capital letter is applied to the first letter of the proper name, not the initial letter of the definite article.

Example:

- اَلْحَمْدُ للهِ رَبِّ الْعَالَمِيْنَ Alhamdu lillāhi rabbi al-`ālamīn/
  Alhamdu lillāhi rabbil `ālamīn
- الرَّحْمنِ الرَّحِيْمِ Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

The use of an initial capital letter for "Allah" applies only when the Arabic script is complete. If the word is combined with another word, resulting in the omission of letters or vowel marks, the capital letter is not used.

Example:

- اللهُ غَفُوْرٌ رَحِيْمٌ Allaāhu gafūrun rahīm
- لِلّهِ الأُمُوْرُ جَمِيْعًا Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwed

For those who wish to achieve fluency in recitation, this transliteration guideline is an integral part of the Science of Tajwīd. Therefore, the formal implementation of this transliteration guideline should be accompanied by the Tajwīd guidelines.

ABSTRAK

ANALISIS TINJAUAN MAQASHID AL-SHARIAH TERHADAP PERCERAIAN *GREY DIVORCE* DI PENGADILAN AGAMA SLEMAN

Rifqi Mamduh

Fenomena grey divorce atau perceraian pada pasangan usia lanjut semakin banyak terjadi di lingkungan Peradilan Agama dan menjadi persoalan hukum keluarga yang perlu dikaji tidak hanya dari aspek hukum positif, tetapi juga dari perspektif maqāṣid al-syarī'ah. Penelitian ini bertujuan untuk mengetahui alasan terjadinya grey divorce di Pengadilan Agama Sleman, menganalisis pertimbangan hakim dalam memutus perkara, serta meninjaunya berdasarkan perspektif maqāṣid al-syarī'ah kontemporer Jasser Auda.Penelitian ini merupakan penelitian hukum empiris dengan pendekatan yuridis sosiologis dan maqāṣid al-syarī'ah. Data primer diperoleh melalui wawancara mendalam dengan hakim Pengadilan Agama Sleman, sedangkan data sekunder diperoleh dari peraturan perundang-undangan, Kompilasi Hukum Islam, putusan pengadilan, buku, dan jurnal ilmiah. Analisis data dilakukan secara deskriptif-kualitatif. Hasil penelitian menunjukkan bahwa faktor utama penyebab grey divorce meliputi perselisihan yang berkepanjangan, hilangnya keharmonisan rumah tangga, masalah ekonomi, menurunnya kualitas komunikasi, serta perubahan kondisi fisik dan psikologis pasangan usia lanjut. Dalam memutus perkara, hakim mempertimbangkan ketentuan hukum positif, fakta persidangan, hasil mediasi, dan prospek keberlangsungan rumah tangga. Ditinjau dari perspektif maqāṣid al-syarī'ahJasser Auda, perceraian dapat dibenarkan apabila menjadi sarana mewujudkan kemaslahatan dan mencegah kemudaratan yang lebih besar. Dengan demikian, perceraian dipandang sebagai jalan terakhir (ultimum remedium) ketika tujuan perkawinan tidak lagi dapat diwujudkan, sehingga putusan hakim mencerminkan kepastian hukum, keadilan substantif, serta perlindungan terhadap hak dan martabat para pihak.

Kata Kunci: *Grey Divorce*, Perceraian Usia Lanjut, Pengadilan Agama Sleman, *Maqashid Al-Shariah*, Jasser Auda, kemaslahatan.

ABSTRACT

ANALYSIS OF THE MAQASHID SHARIA PERSPECTIVE ON *GREY DIVORCE* IN THE SLEMAN RELIGIOUS COURT

Rifqi Mamduh

The phenomenon of "gray divorce" - divorce among older couples - is becoming increasingly common in the Religious Courts and has emerged as a family law issue that requires to be examined not only from the perspective of positive law but also from the perspective of maqashid sharia. The objective of this study is to identify the factors contributing to "gray divorce" at the Sleman Religious Court, analyze the judges' considerations in making decisions, and examine these cases from the perspective of Jasser Auda's contemporary interpretation of maqashid sharia. This study is an empirical legal research project employing a sociological-juridical approach and the principles of maqashid sharia. Primary data was obtained through in-depth interviews with judges at the Sleman Religious Court, while secondary data was obtained from laws and regulations, compilation of Islamic law, court rulings, books, and academic journals. Data analysis was conducted through descriptive-qualitative method. The research findings indicate that the primary factors contributing to "gray divorce" include prolonged disputes, the loss of marital harmony, economic problems, a decline in the quality of communication, and changes in the physical and psychological conditions of elderly couples. In deciding cases, judges consider provisions of positive law, trial evidence, mediation outcomes, and the prospects for the continuation of the marriage. From the perspective of Jasser Auda's maqashid sharia, divorce may be justified if it serves to achieve the public interest and prevent greater harm. Thus, divorce is viewed as a last resort (ultimum remedium) when the purposes of marriage can no longer be fulfilled, so that the judge's decision reflects legal certainty, substantive justice, and the protection of the rights and dignity of the parties.

Keywords: *Grey Divorce*, Sleman Religious Court, *Maqashid Sharia,* Jasser Auda, welfare.

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PREFACE

بِسْمِ ٱللَّهِ ٱلرَّحْمَٰنِ ٱلرَّحِيمِ

إِنَّ الْحَمْدَ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِيْنُهُ وَنَسْتَغْفِرُهُ، وَنَعُوْذُ بِاللهِ مِنْ شُرُوْرِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا. مَنْ يَهْدِهِ اللهُ فَلَا مُضِلَّ لَهُ، وَمَنْ يُضْلِلْ فَلَا هَادِيَ لَهُ. وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللهُ وَحْدَهُ لَا شَرِيْكَ لَهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُوْلُهُ. اَللَّهُمَّ صَلِّ وَسَلِّمْ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِيْنَ. أَمَّا بَعْدُ.

All praise and gratitude are due to Allah SWT for His abundant mercy, blessings, guidance, and grace, through which the author has been able to complete this undergraduate thesis. There is no power nor strength except by His will and assistance. May peace and blessings be upon Prophet Muhammad SAW, along with his family, companions, and all those who faithfully follow his teachings until the Day of Judgment. Alhamdulillah, by the permission and grace of Allah SWT, the author has successfully completed this undergraduate thesis entitled "A Maqashid Al-Shariah Perspective on The Reasons for Grey Divorce At the Sleman Religious Court ." This thesis is submitted in partial fulfillment of the requirements for the degree of Bachelor of Laws (S.H.) in the Ahwal Syakhshiyah (Islamic Family Law) Study Program, Faculty of Islamic Studies, Universitas Islam Indonesia.

Throughout the process of completing this thesis, the author has come to realize that its successful completion would not have been possible without the prayers, unwavering support, guidance, encouragement, and invaluable assistance of many individuals. Therefore, with profound gratitude and sincere appreciation, the author would like to express heartfelt thanks and deepest respect to the following:

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16. All parties whom the author cannot mention one by one, who have contributed either directly or indirectly to the completion of this thesis.

Yogyakarta,07 August 2026



Rifqi Mamduh

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CHAPTHER I

INTRODUCTION

A. Background of the Problem

Marriage in Islam is a sacred bond aimed at establishing a family characterized by sakinah, mawaddah, and rahmah. This objective is not merely understood as a legal relationship between a man and a woman, but also as a means to achieve the well-being of married life spiritually, socially, and economically. From the perspective of Islamic law, the purpose of marriage aligns with the principles of maqshid shariah, namely safeguarding and protecting religion (hifz ad-din), life (hifz an-nafs), reason (hifz al-aql), progeny (hifz an-nasl), and property (hifz al-mal). These five principles form the primary foundation for every ruling in Islamic law, including the institution of marriage, as they are fundamentally aimed at realizing the common good and preventing harm (mafsadah) in life.[2]

he first of the maqashid shariah principles, hifz ad-din (preserving the religion), is realized in the context of marriage through the nurturing of a family grounded in the values of faith and piety. Marriage serves as a means of spiritual education for husbands, wives, and children to maintain their religious commitment and consistently practice the teachings of Islam in daily life. Thus, the family functions as the primary unit in preserving the presence of religion in life. Second, hifz an-nafs (preserving the soul) is not interpreted narrowly as merely the protection of physical life but also encompasses the protection of the psychological

[2] "View of Konsep Maqasid Syari'ah dan Implikasinya Pada Pendidikan Islam," accessed on 4 Mey 2026, https://ejournal.unisnu.ac.id/JPIT/article/view/2138/pdf.

and spiritual aspects of human beings. In marriage, this is reflected in the creation of a sense of security, love, and protection from violence and destructive conflicts..

In fact, academic studies show that the concept of hifz an-nafs has a broad scope, including spiritual purification and mental well-being, so the ideal family must be able to serve as a space that is emotionally and spiritually nurturing.[3] Third, hifz al-aql (preserving reason) relates to intellectual development and rationality within the family. Marriage fosters an environment that supports education, dialogue, and wise decision-making. Through healthy communication and a good education within the family, the function of reason as the primary tool for understanding the truth can be optimally preserved.

The next principle, hifz an-nasl (preserving the lineage), is the most explicit purpose of marriage: to ensure the continuity of the human race in a lawful and dignified manner. However, this principle is not limited to biological reproduction; it also encompasses the moral responsibility to educate and nurture a generation of high moral and social character. Therefore, the family becomes the primary institution in the process of regenerating values and civilization. Finally, hifz al-mal (preserving wealth) is reflected in marriage through fair, transparent, and responsible management of family finances. Islam views the family as an economic unit that must be managed according to the principles of justice and balance, so as not to lead to exploitation or inequality.

[3] Muhammad Mustaqim Roslan dan Anwar Osman Zainuri, "Teori Hifz Al-Nafs Dalam Maqasid Syariah: Analisis Pendalilan: The Theory of Hifz Al-Nafs In Maqasid Syariah: Argumentation Analysis," *Journal of Muwafaqat* 6, no. 1 (2023): 1–13, https://doi.org/10.53840/muwafaqat.v6i1.121.

Research shows that this dimension can even be measured using economic well-being indicators based on the maqāsid syari'ah, which emphasize the importance of managing wealth in a productive and ethical manner.[4]

Nevertheless, Islamic law and Indonesian positive law still allow for divorce as a last resort when the purpose of marriage can no longer be fulfilled. Divorce is understood as a form of rukhsah (concession) to avoid greater suffering when married life gives rise to conflict, injustice, and ongoing harm. Under national law, the grounds for divorce are set forth in Law No. 1 of 1974 on Marriage, which prescribes the grounds for divorce in a normative manner.[5] However, the regulation does not yet explicitly distinguish between marriages among people of working age and divorces among older couples.

The *maqasid syariah* approach in the context of marriage also emphasizes that the continuity of a household is not absolute, but rather contingent upon the achievement of the public interest. When a marriage actually results in harm whether in the form of violence, prolonged conflict, or psychological damage Islam allows for a resolution through divorce as a means of safeguarding those Sharia objectives.

Recently, within the religious court system, a phenomenon has emerged involving the divorce of older couples, known as *grey divorce* the term "*gray"* referring to gray or white hair, a symbol of old age. This phenomenon refers to the divorce of older couples, generally aged 50 and above, after decades of marriage.

[4] Muhammad Nooraiman Zailani dkk., "A Review Of Indicators For The Presevation Of Wealth (Hifz Al-Mal) Based On Maqasid Sharih," *Journal Islamic Philanthrophy and Social Finance* 4, no. 1 (2022): 23–29, https://doi.org/10.24191/jipsf.v4i1.3429.

[5] "UU Nomor 1 Tahun 1974," t.t.

Socially, older couples are often perceived as a group that is more emotionally stable and capable of handling domestic conflicts with maturity. However, empirical research shows that *grey divorce* still occurs and has its own distinct characteristics regarding its underlying causes.

A study found that divorce among older adults is triggered by various factors, including prolonged conflict, disharmony, and the couple's inability to maintain their relationship after enduring various life stresses over the years. The study's findings indicate the main factors behind divorce among older couples; although judges attempted mediation, these efforts failed to resolve the conflict.[6]

At the Sleman Religious Court, in 2025 there were 307 cases in which the parties were over 50 years old, while 163 cases were classified as "grey divorce" cases.[7] The phenomenon of *grey divorce* is also observed, with various reasons cited by the parties involved, such as prolonged domestic conflicts, a loss of harmony, financial problems, and changes in physical and psychological health. Divorce in old age has more complex consequences because couples are generally in declining physical health, have greater social dependence, and face financial constraints. The impact of divorce is felt not only by the couple but also by the extended families on both sides.

Legally speaking, the grounds for *grey divorce* are still processed in accordance with the normative provisions of the Marriage Law and the Indonesian Compilation of Islamic Law (KHI). However, a legal approach that places too much

[6] Ellis Lindini Putri dkk., "Grey divorce at Palembang Religious Court 2022: Factors Associated with Old Age Divorce," *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 2 (2023): 205–25, https://doi.org/10.14421/al-mazaahib.v11i2.3231.

[7] Data was obtained from the Sleman Religious Court on Monday, July 28, 2026.

emphasis on formal aspects often fails to address the substantive issues faced by older couples. In this context, a divorce ruling should not be evaluated solely based on the fulfillment of legal requirements; it must also consider whether the divorce is truly the best solution for safeguarding the couple's well-being and preventing greater harm.

The phenomenon of grey divorce has complex psychological, social, and economic dimensions, particularly because older couples are more vulnerable to physical limitations and social dependence. In this regard, a legal approach that is merely formal and normative is often insufficient to capture the dynamics and substantive impacts of such divorces. Such an approach risks overlooking the values of public interest that are central to Islamic law. The maqāsid syari'ah approach provides a more comprehensive analytical framework for evaluating divorce, as it not only assesses legal validity but also considers the objectives of Islamic law specifically, whether the divorce decision can preserve public interest and minimize harm in a proportionate manner. *A maqāṣid* analysis of divorce rulings and grounds has been used in various studies to assess judges' considerations in deciding divorce cases.

The phenomenon of grey divorce has complex psychological, social, and economic dimensions, particularly because older couples are more vulnerable to physical limitations and social dependence. In this regard, a legal approach that is merely formal and normative is often insufficient to capture the dynamics and substantive impacts of such divorces. Such an approach risks overlooking the values of public interest that are central to Islamic law. In Indonesian positive law,

the grounds for divorce are basically not distinguished based on the age of the couple. However, divorce at an advanced age has more complex conditions, such as economic dependence, physical and psychological conditions, relationships with adult children, and the consequences for family life after divorce.

Therefore, the academic problem of my research is how the reasons for divorce among elderly couples are understood and considered by judges, and whether these considerations are in accordance with the objectives of Islamic law to achieve *maslahah* and prevent *mafsadah*. This is also the reason why I use Jasser Auda's *maqāṣid al-sharī'ah* approach, because this approach allows me to examine the issue more comprehensively, not only based on whether the formal grounds for divorce are fulfilled or not.

The maqāsid syari'ah approach provides a more comprehensive analytical framework for evaluating divorce, as it not only assesses legal validity but also considers the objectives of Islamic law specifically, whether the divorce decision can preserve public interest and minimize harm in a proportionate manner. *A maqāṣid* analysis of divorce rulings and grounds has been used in various studies to assess judges' considerations in deciding divorce cases.[8]

The *Maqāṣid Sharī'ah* approach is relevant for examining the grounds for "*grey divorce,"* as it provides a more contextual analytical framework, *Maqāṣid Sharī'ah* allows for the assessment of divorce not merely based on legal validity, but also in terms of its impact on the protection of the parties' lives, intellect, and

[8] Yangto dkk., "Perceraian Dalam Perspektif Kaidah Fikih dan Aplikasinya," *Jurnal Ilmiah Ahwal Syakhshiyyah (JAS)* 7, no. 2 (2025): 295–308, https://doi.org/10.33474/jas.v7i2.24621.

property. Various studies have employed the *Maqāṣid Sharīʻah* approach to analyze judicial reasoning in divorce rulings, particularly in cases involving unique characteristics.[9]

From on the foregoing, it can be concluded that the phenomenon of "*grey divorce*" at the Sleman Religious Court represents a complex issue within Islamic family law that warrants in-depth study; divorce among older couples possesses characteristics and issues distinct from divorce in general. I intend to examine the reasons behind such divorces through the lens of *Maqāṣid Sharīʿah* specifically the framework of Jasser Auda to determine whether divorce can serve as a means to realize the public interest (maṣlaḥah) and avert harm (mafsadah).

A study employing the *Maqāṣid Sharīʿah* approach is crucial for evaluating the grounds for grey divorce in a substantive rather than merely normative manner one that is oriented toward justice and the common good. Consequently, this research is expected to make an academic contribution to the development of Islamic family law, as well as a practical contribution to religious courts in handling divorce cases involving older couples in a manner that is humane, just, and consistent with *Sharīʿah* principles..

B. Research Questions

1. What are the grounds for *grey divorce* that are raised and considered by judges in divorce cases at the Sleman Religious Court?

[9] Lailatus Shofa, "Maqasid syariah in the Judge's Decision on the Divorce Case at the Amuntai Religious Court," *JOURNAL OF ISLAMIC AND LAW STUDIES* 9, no. 2 (2025): 127–37, https://doi.org/10.18592/jils.v9i2.17814.

2. What were the legal considerations of the judge at the Sleman Religious Court in ruling on a *grey divorce* case?
3. How does the Maqāsid Syari'ah framework view the grounds for *grey divorce* as ruled by the Sleman Religious Court?

C. Research Objectives and Research Benefits

1. Research Objectives
   a. Identifying and analyzing the grounds for "grey divorce" cited by the parties and considered by the judge in divorce cases at the Sleman Religious Court.
   b. To analyze the legal considerations of the judges of the Sleman Religious Court in adjudicating *grey divorce* cases, based on both positive law and Islamic law.
   c. Analyzing the reasons for "grey divorce" from the perspective of the maqāsid of Sharia, in order to assess its compatibility with the objectives of Islamic law, particularly in safeguarding the public interest and preventing harm to the parties involved.
2. Research Benefits
   a. Theoritical Benefits

      Theoretically, this research is expected to make an important contribution to the development of Islamic family law studies, particularly in the analysis of divorce among elderly couples (*grey divorce*) through the *Maqāsid Al-Sharīʿah* approach. This research broadens the understanding that divorce is not only perceived as a legal

event that is normative and procedural in nature, but also as a social phenomenon that has complex dimensions of public benefit (*maṣlaḥah*) and harm, especially during the later stage of life.

This research is also expected to enrich the development of the theory of *Maqāṣid al-Sharīʿah* in the context of contemporary Islamic family law by demonstrating how the principles of the preservation of life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), property (*ḥifẓ al-māl*), and progeny (*ḥifẓ al-nasl*) can be used as analytical instruments for examining the reasons underlying grey divorce. Thus, *Maqāṣid al-Sharīʿah* is not only positioned as a normative concept, but also as an applicable methodological framework for assessing the practice of the Religious Courts. Furthermore, this research contributes to bridging the gap between written legal norms and social realities, particularly in cases of divorce among elderly couples, which have not been extensively examined in depth. The findings of this research are expected to enrich the academic literature discussing the relevance and adaptability of Islamic law to modern social dynamics, as well as to provide a foundation for the development of a more contextual, humane, and substantively justice-oriented theory of Islamic family law.

b. Practical Benefits

Secara Practically, this research is expected to contribute to judges of the Religious Courts, particularly in handling grey divorce cases. The findings of this research may serve as a reference in assessing the reasons

for divorce and formulating judicial decisions that are not only based on formal juridical aspects, but also take into consideration the principle of public benefit (*maṣlaḥah*) as emphasized in *maqāsid al-sharīʿah*.

By integrating the principles of *maqāsid al-sharīʿah*, this research emphasizes the importance of substantive justice, considerations of public benefit (*maṣlaḥah*), as well as the protection of the social and psychological aspects of the parties in grey divorce cases. Therefore, the recommendations generated are expected to contribute to the development of Religious Court practices that are more responsive, just, and consistent with the objectives of Islamic family law within the context of Indonesian Muslim society.

D. Structure of Thesis

This thesis is organized into five chapters that are systematically arranged and interconnected to provide a comprehensive overview of the maqasid syari'ah perspective on the grounds for *grey divorce* at the Sleman Religious Court.

1. CHAPTER I INTRODUCTION

The introduction outlines the background of the issue, explaining the purpose of marriage in Islam from the perspective of maqaṣid syariah, as well as the emergence of the phenomenon of *grey divorce* as an increasingly prevalent issue in Islamic family law. This chapter also outlines the research problem, research objectives, theoretical and practical benefits of the study, a literature review, the theoretical framework, and the structure of the discussion, which serve as the

foundation and guide for conducting research on the reasons for divorce among elderly couples at the Sleman Religious Court.

2. CHAPTER II PRIOR RESEARCH, AND THEORETICAL FRAMEWORK

The Literature Review and Theoretical Framework discuss previous studies relevant to the phenomenon of grey divorce, including those examining the factors causing divorce among elderly couples, judges' considerations in divorce cases, as well as the social, economic, and psychological impacts arising from it. This chapter also identifies the novelty of the present research in comparison with previous studies, namely that there have been only limited studies examining the reasons for grey divorce from the perspective of *Maqāṣid al-Sharīʿah*. In addition, this chapter elaborates the theoretical framework used as the basis for the research analysis, including the theory of legal protection to assess the protection of the rights of elderly couples, the theory of substantive justice to examine the orientation of justice in judges' decisions, as well as the theory of *Maqāṣid al-Sharīʿah* from Jasser Auda's perspective to assess the conformity of the reasons for divorce with the objectives of Islamic law in realizing public benefit (*maṣlaḥah*) and preventing harm.

3. CHAPTER III RESEARCH METHODOLOGY

This chapter outlines a qualitative empirical legal research methodology using a sociological-juridical approach and Jasser Auda’s contemporary maqaṣid shariah. The research was conducted at the Sleman Religious Court by collecting data through in-depth interviews with judges selected through purposive sampling, as

well as a literature review of relevant legal documents. All data obtained was then validated and analyzed using descriptive-qualitative methods to evaluate the legal arguments and the public interest dimension in rulings on *grey divorce* cases.

4. CHAPTHER IV RESEARCH AND DISCUSSION

This chapter presents the findings of the study on the grounds for grey divorce at the Sleman Religious Court, based on data obtained through interviews with judges and an analysis of court decisions involving older couples. The discussion focuses on identifying the grounds for divorce submitted by the parties, examining the judges' legal considerations in deciding such cases, and analyzing these grounds from the perspective of Jasser Auda's contemporary maqāsid syarīʿah. All findings are analyzed using a descriptive qualitative approach by integrating juridical, sociological, and maslahah-oriented perspectives. This approach provides a comprehensive understanding of the extent to which the decisions of the Sleman Religious Court reflect the objectives of Islamic law in promoting substantive justice, protecting the rights of the parties, and preventing harm in grey divorce cases.

5. CHAPTHER V CONCLUSION

This chapter outlines the conclusions and recommendations based on the research findings regarding grey divorce at the Sleman Religious Court. The conclusions are formulated in response to the research questions, which include the grounds for grey divorce, the judges' legal considerations in adjudicating cases, and an examination of the maqaṣid syari'ah regarding these grounds for divorce. This chapter also contains recommendations addressed to the Religious Court,

elderly couples, the government and relevant institutions, as well as future researchers, aimed at achieving resolutions to grey divorce cases that are more oriented toward substantive justice, the protection of the parties' rights, and the public interest in accordance with the objectives of Islamic Sharia.

CHAPTER II

PRIOR RESEARCH, AND THEORETICAL FRAMEWORK

A. Prior Research

A study by Akbar Firmannulloh (2024) titled "Analysis of the Factors Contributing to Grey divorce at the Cialacap Religious Court" examines judicial practices and legal considerations in divorce cases within the Religious Court system, with a focus on the legal grounds for divorce as stipulated in -Law No. 1 of 1974 and the Compilation of Islamic Law.[10] This study employs a normative legal approach involving an analysis of court decisions and finds that judges generally cite ongoing disputes and conflicts as the primary basis for granting divorce petitions. Furthermore, this study indicates that judges' considerations remain predominantly oriented toward formal evidence and the fulfillment of the normative elements of divorce, while sociological and psychological considerations regarding the parties have not yet fully become the primary focus of the rulings.

The similarities with this study lie in the fact that both focus on divorce cases in Religious Courts and examine the judges' legal reasoning in adjudicating these cases. The differences lie in the perspective and scope of the analysis. Akbar Firmannulloh's study focuses on the validity of grounds for divorce from a normative perspective based on positive Islamic law and statutory regulations, without specifically examining the age characteristics of the parties or assessing the

[10] Akbar Firmannulloh, *PROGRAM STUDI HUKUM KELUARGA ISLAM FAKULTAS SYARI'AH UIN PROF. K. H. SAIFUDDIN ZUHRI PURWOKERTO 2024*, t.t.

impact of divorce from the perspective of the objectives of Islamic law. Meanwhile, this study specifically focuses on *grey divorce* and employs the maqāsid syari'ah approach to assess whether the grounds for divorce align with the objectives of protecting life, reason, lineage, and the well-being of elderly couples. Thus, this study fills a gap in previous research by presenting a substantive analysis oriented toward public interest and substantive justice.

A study by Ellis Lindini Putri, Rusmala Dewi, and Ari Azhari titled "*Grey divorce* at the Palembang Religious Court in 2022: Factors Associated with Divorce in Old Age" examines the phenomenon of *grey divorce* or divorce among the elderly at the Palembang Religious Court in 2022.[11] This study employed a qualitative approach using field research methods, including interviews with judges and an analysis of a number of divorce rulings. The results indicate that the primary factors leading to divorce among the elderly include long-standing domestic conflicts, unresolved discord, economic problems, domestic violence, and the loss of the husband's or wife's function and role in married life. This study also highlights the judges' perspectives, which generally prioritize the harm suffered by the parties as the basis for granting a divorce, while still adhering to the provisions of positive law and the principles of justice.

The similarity with this study lies in their shared focus on the phenomenon of *grey divorce* within the Religious Courts and their examination of the reasons for divorce in old age. The difference lies in the analytical approach used. The study

[11] Ellis Lindini Putri dkk., "Grey divorce at Palembang Religious Court 2022: Factors Associated with Old Age Divorce," *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 2 (2023): 205–25, https://doi.org/10.14421/al-mazaahib.v11i2.3231.

by Ellis Lindini Putri et al. places greater emphasis on identifying the social and legal factors causing divorce, as well as the judges' perspectives, in a descriptive manner, without deeply linking them to the normative framework of Islam. Meanwhile, this study specifically examines the reasons for *grey divorce* from the perspective of maqāṣid al-syarī'ah, by assessing whether the judges' considerations are in line with the objectives of protecting religion, life, reason, lineage, and property.

A study by Adriansyah titled "Factors Contributing to Divorce Among the Elderly at the Pekanbaru City Religious Court (A Case Study of 2019–2021)" examines divorce cases filed by married couples after a long-term marriage.[12] This study focuses its analysis on the factors causing divorce, the judges' legal considerations, and the conformity of divorce rulings with the provisions of positive Islamic law, particularly the Compilation of Islamic Law. Using an empirical-juridical approach, the study found that the grounds for divorce generally revolved around protracted domestic conflicts, the loss of marital harmony, and the parties' failure to fulfill their marital obligations. In adjudicating cases, judges place greater emphasis on the fulfillment of the normative grounds for divorce as stipulated in legislation, without significant consideration of the social and psychological dimensions of the parties involved. When compared to this study, there are significant similarities and differences.

[12] Yufri Adriansyah, *PROGRAM S1 PRODI HUKUM KELUARGA FAKULTAS SYARIAH DAN ILMU HUKUM UNIVERSITAS ISLAM NEGERI SULTAN SYARIF KASIM*, t.t.

The similarities lie in the focus of the study on divorces occurring after a long marriage and the attention paid to judges' legal considerations within the religious court system. The differences lie in the analytical approach and the research objectives. Adriansyah's study uses positive law as the primary analytical framework, so the assessment of judges' rulings tends to be normative-formal in nature. Meanwhile, this study broadens the perspective by using the Maqāṣid Syariah approach to assess the grounds for *grey divorce,* thereby not only examining the formal legality of the divorce but also weighing aspects of public interest, the prevention of harm, and the social and psychological impacts of divorce on elderly couples.

A study by Akhmad Sofyan and Robi Yatul (2025) titled "Factors Causing Divorce Among Elderly Couples in Society" examines the causes of divorce among elderly couples in the Kota Bangun area through a normative-empirical approach using field data.[13] The study's findings indicate that the primary factors contributing to divorce among the elderly are financial conflicts, accusations that the husband is unable to meet the household's needs, and a lack of trust that develops over time. This study confirms that these factors play a significant role in triggering the decision to divorce, even among couples who have been married for a long time.

The similarity between this study and yours is that both examine the factors leading to divorce among older couples, thereby providing an empirical understanding of the phenomenon of *grey divorce.* The difference lies in the

[13] Akhmad Sofyan dan Robi Yatul, "FACTORS CAUSING DIVORCE FOR OLD AGE COUPLES IN SOCIETY," *Mitsaq: Islamic Family Law Journal* 1, no. 2 (2023): 175–93, https://doi.org/10.21093/jm.v1i2.7223.

normative analysis and research context: Sofyan and Yatul place greater emphasis on socioeconomic factors within the general population and do not comprehensively link their findings to the Islamic Sharia approach. In contrast, this study bridges empirical findings with an analysis of the Maqāṣid al-Sharī‘ah, thereby enabling an assessment of the objectives of Islamic law and the public interest in cases of *grey divorce* in religious courts.

A study by Ellis Lindini Putri, Ari Azhari, Ari Azhar, and Muhammad Husni titled "Power Relations and Structural Inequality in Late -Life Divorce: A Socio-Legal Analysis of the Palembang Islamic Court Decisions in 2022" examines late-life divorce in Indonesia using a socio-legal approach, analyzing the 2022 decisions of the Palembang Islamic Court as well as the social dynamics involved in late-life divorce.[14] This study found that divorce does not occur suddenly, but rather results from an accumulation of structural conflicts, including domestic violence, economic subordination, and inequalities in emotional and sexual relationships. Furthermore, the study also shows that the reasoning of Muslim judges in resolving such cases often reflects the internalization of social norms and institutional power relations that are gender-biased, thereby creating inequality in the context of divorce among older adults.

The research by Ellis Lindini Putri et al. and this study both highlight the phenomenon of divorce in old age and its connection to social realities and religious court rulings. The difference lies in the focus of the analysis, which centers more

[14] "View of Power Relations and Structural Inequality in Late-Life Divorce: A Socio-Legal Analysis of the Palembang Islamic Court Decisions in 2022," accessed on 6 February 2026, https://e-journal.elkuator.com/index.php/ijssls/article/view/16/1.

on social inequality and power relations in the context of divorce in old age, and does not emphasize an examination of the normative values of Islamic Sharia in judicial rulings. Meanwhile, this study will specifically evaluate the reasons for "grey divorce" through the maqāsid syari'ah framework, thereby producing an analysis that is not only sociological or empirically juridical but also normative-ethical, based on the objectives of Islamic Sharia in family law.

A study conducted by Hervin Yoki Pradikta and Maya Noviana Sari (2025), titled "Analysis of Factors Contributing to Divorce Among Elderly Couples (A Case Study of the Community in Teluk Betung Timur Subdistrict, Bandar Lampung City)," examines the factors leading to divorce among elderly couples in the Bandar Lampung community.[15] This study uses a qualitative approach to explore various causes of divorce, including minor conflicts that escalate into major ones, misunderstandings regarding roles within the household, and economic and emotional pressures that are inevitable even after couples have been married for decades. Conceptually, this study demonstrates that divorce among the elderly is a complex phenomenon not caused solely by a single formal factor, but rather by the accumulation of interpersonal dynamics that develop over the course of a long marriage.

The similarity between these studies is that they both highlight divorce among older couples (*grey divorce*) and its contributing factors within the context of Indonesian society. Pradikta and Sari's study provides an empirical overview of

[15] Hervin Yoki Pradikta dan Maya Noviana Sari, "ANALISIS FAKTOR PERCERAIAN SUAMI ISTRI DI USIA SENJA (Studi Kasus Pada Masyarakat Kec. Teluk Betung Timur Kota Bandar Lampung)," *ASAS* 11, no. 2 (2019): 117–33, https://doi.org/10.24042/asas.v11i2.5601.

the social and emotional factors that trigger divorce among older adults. The difference lies in the focus of the analysis and the research objectives. Pradikta and Sari's study is a descriptive empirical study aimed at identifying causal factors, whereas this study evaluates the reasons for such divorces from the perspective of maqāṣid al-syarī'ah, linking empirical findings to the objectives of Islamic law in preserving public interest and preventing harm within the context of Islamic family law.

A study by Fachrina and Nini Anggraini titled "Motives for Divorce among the Elderly in Padang City" examines the motives for divorce among elderly couples in Padang City who have been married for more than 25 years.[16] Using a qualitative approach through in-depth interviews with couples who divorced in old age, this study found that conflicts that were initially minor can develop into emotional disharmony, differing life expectations, and dissatisfaction with the dynamics of a long-term relationship. The motives for divorce among older adults are not only social in nature but are also related to psychological changes following the adulthood of their children and shifts in the meaning of marriage in old age.

The similarity between this study and the previous one is that both examine the motives for divorce among older couples; however, they differ in their theoretical approaches and analytical objectives. The study by Fachrina and Nini emphasizes psychological and relational motives from a social perspective, while this study examines those motives based on the principles of maqāsid al-sharī'ah.

[16] Fachrina Fachrina dan Nini Anggraini, "Motive for Divorce among The Elderly in Padang City," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 5, no. 4 (2023): 2556–64, https://doi.org/10.34007/jehss.v5i4.1511.

This study is significant as a basis for comparison, since previous studies generally only identified the causal factors of divorce among older couples (*grey divorce*) based on normative legal or descriptive empirical aspects, such as prolonged conflict, economic problems, and the loss of domestic harmony. However, these studies have not thoroughly assessed the reasons for such divorces from the perspective of the objectives of Islamic law (maqāṣid al-syarī‘ah), particularly in weighing the benefits and harms of divorce in old age.

The study conducted by Susan L. Brown and I-Fen Lin entitled "The Grey divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults, 1990–2010" explains that the divorce rate among couples aged 50 years and older in the United States doubled during the period from 1990 to 2010 and identifies the demographic characteristics of divorced couples..[17]

The similarity of this study is that both examine the phenomenon of *grey divorce* or divorce among older couples. Brown and Lin's study explains the increasing trend in divorce rates among couples aged 50 years and older, along with the demographic characteristics underlying this phenomenon. The difference is that their study employs a sociological and demographic approach to describe the development of *grey divorce* in the United States, whereas this study adopts an empirical legal approach by analyzing the reasons for divorce, judges' legal considerations, and reviewing them from the perspective of Jasser Auda's maqāsid sharī‘ah. Therefore, this study provides a new contribution by linking the

[17] S. L. Brown dan I. F. Lin, “The Gray Divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults, 1990-2010,” *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences*, advance online publication, 2012, https://doi.org/10.1093/geronb/gbs089.

phenomenon of grey divorce with the practice of the Religious Courts in Indonesia and the objectives of Islamic law in achieving maṣlaḥah (public welfare) for older couples.

The study conducted by Susan L. Brown and I-Fen Lin entitled *"The Graying of Divorce: A Half Century of Change"* reviews the development of grey divorce over the past fifty years and the changing characteristics of older couples who experience divorce.[18] The similarity of this study is that both discuss the phenomenon of *grey divorce* among older couples. However, Brown and Lin's study focuses more on changes in divorce patterns over five decades, the characteristics of older adults who divorce, and the social factors that influence them.

Meanwhile, this study not only identifies the reasons for divorce but also examines how judges consider those reasons in the decisions of the Sleman Religious Court and analyzes them using the perspective of Jasser Auda's *maqāsid sharī'ah*. Thus, this study complements previous research through a more comprehensive analysis of Islamic law concerning the phenomenon of *grey divorce*.

The study conducted by Anna M. Hammersmith et al. entitled *"Antecedents of Grey divorce: A Life Course Perspective"* analyzes the factors that contribute to grey divorce using a life course approach, such as marital quality, duration of marriage, homeownership, and economic conditions.[19]

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[18] Susan L. Brown dan I.-Fen Lin, "The Graying of Divorce: A Half Century of Change," *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences* 77, no. 9 (2022): 1710–20, https://doi.org/10.1093/geronb/gbac057.

[19] I.-Fen Lin dkk., "Antecedents of Gray Divorce: A Life Course Perspective," *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences* 73, no. 6 (2018): 1022–31, https://doi.org/10.1093/geronb/gbw164.

The similarity of this study is that both examine the factors that cause *grey divorce* among older couples. Meanwhile, Hammersmith's study employs the *life course perspective* to analyze the influence of retirement, health, wealth, marital quality, and the duration of marriage on the risk of divorce. This study places greater emphasis on the reasons for divorce considered by judges and the analysis of *maqāsid sharī'ah* regarding those judicial decisions.

The study conducted by Lawrence E. Ugwu et al. entitled *"Grey divorce After 50: A Scoping Review of Antecedents, Consequences, and Family-Theoretical Gaps"* examines the phenomenon of grey divorce among couples aged 50 years and older using the scoping review method.[20] This study aims to identify the factors underlying the occurrence of grey divorce, the impacts it has on individuals and families, as well as the theoretical gaps that still require further development in research on later-life divorce. The findings indicate that *grey divorce* is influenced by various factors, such as changing expectations of marriage, increased life expectancy, economic conditions, health, and changes in family structure and dynamics. In addition, divorce in later life also affects the psychological well-being, economic conditions, family relationships, and social lives of divorced couples.

The similarity of this study is that both examine the phenomenon of *grey divorce* among older couples and investigate the factors that contribute to the occurrence of divorce. Both studies also seek to provide an understanding of the dynamics of divorce in later life as a continuously increasing phenomenon. The

[20] "Gray Divorce After 50: A Scoping Review of Antecedents, Consequences, and Family-Theoretical Gaps," https://doi.org/10.1111/jftr.70078.

difference is that Ugwu et al.'s study is a literature review (*scoping review*) that focuses on synthesizing international research findings regarding the causes, consequences, and theoretical gaps of grey divorce. Meanwhile, this study is an empirical legal study that examines the reasons for grey divorce based on the analysis of judicial decisions and judges' considerations, and reviews them using the perspective of Jasser Auda's *maqāsid sharī'ah*. Thus, this study not only identifies the causes of divorce but also evaluates the extent to which judges' decisions reflect the objectives of Islamic law in achieving *maslaḥah* (public welfare) for older couples.

On the other hand, religious court practice in adjudicating *grey divorce* cases still tends to focus on fulfilling the formal elements of grounds for divorce as stipulated in legislation and the Compilation of Islamic Law, without employing A maqāṣid analytical framework. This situation reveals a research gap that this study aims to address, namely, to formulate and analyze the grounds for *grey divorce* in the rulings of the Sleman Religious Court through A maqāṣid al-syarī'ah approach, so that the legal considerations for divorce are not only normatively valid but also oriented toward substantive justice and the welfare of the parties involved.

B. Theoritical Framework

1. The Theory of Legal Protection

The theory of legal protection in legal studies essentially explains that the law must guarantee certainty, justice, and protection of the rights of individuals as legal subjects, both preventively and repressively. In general, legal protection is understood as the state's obligation to protect the rights of citizens through existing

legal provisions so that those rights are not infringed upon or harmed by the actions of others or by biased legal provisions. Within the context of Islamic law and national law in Indonesia, legal protection is also regarded as the fulfillment of human rights and human dignity as social beings a duty that must be fulfilled by both the positive legal system and the legal norms embedded in society. This concept emphasizes that the law functions not only as an instrument of order but also as a means to realize justice and the protection of human rights within society.[21]

In the context of this study, the theory of legal protection is used to assess how the family law system including judges' considerations in granting grounds for divorce is able to provide protection for the rights of vulnerable parties, such as elderly spouses, alimony rights, protection of dignity, and security of livelihood after divorce. Effective legal protection in divorce cases should not rely solely on formal procedures but also on outcomes that provide security, certainty of livelihood, and protection of rights for parties facing socioeconomic and psychological implications, so that the law truly serves as a guarantee of substantive justice.

2. The Theory of Substantive Justice in Judicial Decisions

The theory of substantive justice is rooted in the ideas of John Rawls, particularly his concept of "justice as fairness," which emphasizes that justice cannot be judged solely by adherence to formal procedures, but rather by the actual impact of a decision on the parties involved, especially those in vulnerable

[21] Achmad Musyahid Idrus, "CONCEPTION OF LEGAL PROTECTION IN ISLAMIC LAW," *Al-Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan* 8, no. 2 (2019): 185–96, https://doi.org/10.24252/ad.v8i2.11141.

positions. Rawls asserts that the law must provide greater protection to the most vulnerable groups in order to achieve a balance of justice in society.[22]

In the context of *grey divorce*, substantive justice requires that judges not only examine whether the grounds for divorce under the Marriage Law and the Compilation of Islamic Law have been met, but also consider the social and humanitarian impacts of the divorce. Elderly couples often face economic dependence, physical limitations, and difficulties adapting after divorce. Therefore, the theory of substantive justice serves as a crucial foundation for assessing whether a judge's ruling in a *grey divorce* case truly reflects justice oriented toward protection and the common good, or whether it instead creates new inequalities for one of the parties.

3. The Theory of Maqāṣid al-syarī'ah in Legal Protection

The contemporary maqāṣid al-syarī'ah theory developed by Jasser Auda positions sharia as a goal-oriented, dynamic, and multidimensional Islamic legal system designed to address the complexities of modern legal issues. In contrast to the classical understanding, which tends to focus on protection and preservation, Auda proposes a systems approach capable of integrating the various dimensions of Islamic legal values into contemporary legal analysis.[23] This approach differs from the classical maqāṣid paradigm, which places greater emphasis on the protection of the five basic necessities (al-ḍarūriyyāt al-khams). Jasser Auda

[22] Leif Wenar, *John Rawls*, 25 Maret 2008, https://plato.stanford.edu/archives/fall2025/entries/rawls/.

[23] Syarifuddin Syarifuddin, "Maqāshid Syarī'ah Jasser Auda: Sebuah Sistem Pendekatan Dalam Hukum Islam Kontemporer," *Al-Mizan (e-Journal)* 17, no. 1 (2021): 27–42, https://doi.org/10.30603/am.v17i1.2061.

developed a (system approach) that views Islamic law as an open, interconnected system that continually evolves in accordance with changes in space and time. Through this approach, maqāṣid syarī'ah is understood not only as an effort to safeguard fundamental public interests but also as an instrument for realizing justice, human rights, dignity, freedom, and social welfare.[24] Therefore, Islamic law must be able to provide contextual, adaptive, and responsive solutions to the various issues facing modern society.

In the context of this study, this theory provides an analytical framework for assessing whether the grounds for divorce among elderly couples truly reflect the objectives of Sharia or, on the contrary, give rise to new mafsadah.[25] Jasser Auda explains that the systems approach to maqāṣid syarī'ah is based on six main features: cognitive nature (cognitive nature), this feature means that Islamic law produced in the form of fiqh is the result of human understanding of revelation, not revelation itself, and to examine the judge's process of understanding the law, rather than considering the decision as absolute law, wholeness (wholeness), this feature means that a legal issue must be viewed as a whole, not partially, openness (openness) indicates that the Islamic legal system is a system that is open to changes in conditions, environment, place, time, and social reality, interrelated hierarchy (interrelated hierarchy)according to Auda, the objectives of Sharia do not stand independently in a rigid manner, but are interconnected and influence one

[24] Jasser ʿAuda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. by Jasser ʿAuda (The International Inst. of Islamic Thought, 2008).

[25] Ah Soni Irawan, "MaqāShid Al-Sharīah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporer," *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (2022): 39–55, https://doi.org/10.51675/jaksya.v3i1.192.

another, multidimensionality (multidimensionality) is a way of understanding Islamic law (fiqh) broadly and flexibly, rather than being focused only on one text or one perspective, and purposefulness (purposefulness or goal-oriented) means that law is not only assessed based on whether procedures or rules have been fulfilled, but also based on the objectives that the law seeks to achieve.

These six features serve as an analytical framework for understanding Islamic law more comprehensively not merely focusing on normative texts, but also taking into account social realities, the relationships among values, changes in societal conditions, and the ultimate goals that Sharia seeks to achieve. In a study on *grey divorce* at the Sleman Religious Court, Jasser Auda's theory of maqāṣid syarī'ah was used as an analytical framework to assess whether the judges' considerations in ruling on divorce cases involving elderly couples reflected the objectives of Islamic sharia.

CHAPTER III

RESEARCH METHODOLOGY

A. Types of Research

This study is an empirical legal study. An empirical legal study was chosen because the subject of this research not only examines written legal norms but also investigates how those laws are applied and function in judicial practice, particularly in cases of (*grey divorce*) at the Sleman Religious Court. Empirical research aims to identify the gap between normative law and the social reality that exists in society and within the judicial system.[26]

This study does not stop at analyzing the laws and regulations on divorce, but also examines trial records, judges' reasoning, and the reasons why parties file for divorce in old age to determine whether such divorce decisions can uphold the public interest and minimize harm in a proportionate manner.[27] Conceptually, empirical legal research is based on the view that law is understood not only as written norms (law in books), but also as social behavior that is alive within society (law in action). This approach is consistent with the thinking of Soerjono Soekanto, who asserts that empirical legal research aims to examine the effectiveness of the law as well as the interaction between the law and society.[28]

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[26] Beni Ashari, "INTEGRASI PRINSIP MAQASHID SYARIAH DALAM PUTUSAN PERADILAN AGAMA: MENUJU KEADILAN SOSIAL DALAM KASUS HUKUM KELUARGA," *Al-Qadlaya : Jurnal Hukum Keluarga Islam* 4, no. 01 (2024): 12–20, https://doi.org/10.55120/qadlaya.v4i01.2096.

[27] Amri Amri, "Disfungsi Nilai Maqhasid Syariah Terhadap Perceraian Karena Alasan Ekonomi Di Masa Pandemi Covid-19," *Tasamuh: Jurnal Studi Islam* 14, no. 2 (2022): 295–315, https://doi.org/10.47945/tasamuh.v14i2.686.

[28] Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003),

B. Research Approach

The methodological approach used in this study is the sociological-juridical (empirical) approach. The sociological-juridical approach is a legal research method that not only examines law as written norms (law in books) but also analyzes how the law functions and is applied in social practice (law in action). This approach was chosen because the study focuses on the reasons for *grey divorce* (divorce among older adults) as well as the judges' considerations in practice at the Sleman Religious Court; therefore, an understanding of the empirical realities of the religious court system is necessary. An empirical approach is essential to determine whether the divorce norms in Islamic family law are actually implemented in accordance with the objectives of the law in judicial practice.[29]

In this research analysis, a sociological-legal approach examines the relationship between the normative provisions of the Marriage Law, the Compilation of Islamic Law (KHI), and the social dynamics of the parties involved in the case. The phenomenon of rising divorce rates in Muslim societies indicates that family issues cannot be fully understood through a doctrinal lens alone but must also be analyzed within the context of modern social change. The socio-legal approach helps explain the non-normative factors that influence divorce rulings, such as domestic conflicts, economic factors, and power dynamics within the family.[30]

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[29] Muhammad Adiem dkk., "Dimensi Maqasid Syariah Dalam Putusan Hakim Atas Perkara Cerai Gugat Di Pengadilan Agama Jayapura," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 2 (2022): 197–211, https://doi.org/10.32694/qst.v20i2.2373.

[30] Yangto dkk., "PERCERAIAN DALAM PERSPEKTIF KAIDAH FIKIH DAN APLIKASINYA," *Jurnal Ilmiah Ahwal Syakhshiyyah (JAS)* 7, no. 2 (2025): 295–308, https://doi.org/10.33474/jas.v7i2.24621.

To strengthen the analysis of substantive justice, this study employs the contemporary maqāṣid al-syarīʻah approach developed by Jasser Auda. This approach emphasizes that the objectives of sharia do not stop at the protection of the five essential elements (al-ḍarūriyyāt al-khams), but also encompass the promotion of the public interest, the protection of human rights, and the law's responsiveness to social change. Auda's perspective allows the maqāṣid approach to be used to assess and evaluate whether a judge's ruling has applied the objectives of sharia in realizing public interest and preventing harm to the parties involved.[31]

Furthermore, this study is qualitative in nature because it places greater emphasis on an in-depth interpretation of the judges' reasoning, legal arguments, and the social context of the parties involved in divorce cases among the elderly, rather than on the measurement of figures or data. Through a qualitative analysis of the rulings of the Sleman Religious Court, this study seeks to analyze judges' rulings in cases involving *grey divorce* grounds, as well as their alignment with the principle of public interest in Islamic law, using a combination of sociological-juridical and maqāṣid syarīʻah approaches. the study is expected to provide a comprehensive overview of the practice of divorce among the elderly in religious courts while also producing an analysis that is appropriate from the perspective of maqāṣid al-syarīʻah.

[31] Ah Soni Irawan, "Implikasi Cerai Gugat Terhadap Hak Istri Perspektif Maqashid Al-Shariah Jasser Auda," *Minhaj: Jurnal Ilmu Syariah* 4, no. 2 (2023): 178–93, https://doi.org/10.52431/minhaj.v4i2.1828.

C. Research Site or Location

This study was conducted at the Sleman Religious Court in the Special Region of Yogyakarta. The selection of this location was based on the court's relevance as the institution authorized to examine, hear, and adjudicate divorce cases for Muslims, including cases involving older adults (grey divorce). As one of the religious courts handling a significant volume of divorce cases, the Sleman Religious Court is considered representative of judicial practices in divorce cases at the first-instance level.

Furthermore, this location was chosen due to the relatively open availability of judgment data through the Supreme Court's judgment directory, as well as the possibility of field access to obtain empirical data in the form of interviews with judges or relevant parties. Thus, this study can comprehensively examine both the normative and empirical aspects of the grounds for *grey divorce*. By establishing the research location at the Sleman Religious Court, it is hoped that the data obtained will support a more in-depth and contextual sociological-juridical analysis and evaluation based on maqāṣid syarī'ah of the grounds for *grey divorce.*

D. Research Informants

The informant in this study is Mr. Sulaiman, S.Ag., M.H., a judge at the Sleman Class IA Religious Court who has handled and adjudicated divorce cases falling under the *grey divorce* category.

E. Techniques for Selecting Infromants

Informants for this study were selected using a purposive sampling technique, based on the judges' experience, knowledge, and direct involvement in the examination and adjudication of divorce cases involving elderly couples; the validity of the information is ensured by cross-referencing the informants' statements with court rulings, legal documents, and relevant literature. Through interviews with these informants, the study aims to gather data regarding the grounds for divorce, the judges' legal reasoning, and the relevance of these factors to the perspective of Maqāṣid Sharīʿah.

F. Data Collection Methods

In data collection, researchers use two methods, namely:

1. Interview

Interviews with judges at the Sleman Religious Court to gain in-depth information about the judges' considerations and the reasons behind *grey divorce* cases.[32] Interviews were used because this was a qualitative study that emphasized an understanding of meaning, legal reasoning, and the social context underlying the rulings.

2. Literatur Review

In addition, a literature review was conducted to gather relevant primary, secondary, and tertiary legal sources, such as legislation, the Compilation of Islamic

[32] Sri Devi dan Muhammad Sabir, "Pengaruh Penurunan Pendapatan Akibat Covid-19 terhadap Tingkat Perceraian di Pengadilan Agama Jeneponto: Analisis Maqasid al-Syariah," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*, 31 Mei 2023, 521–37, https://doi.org/10.24252/shautuna.vi.29631.

Law, books, and academic journals on divorce and maqāṣid syarī'ah. All collected data were then qualitatively analyzed using the maqāṣid al-sharī'ah approach to assess whether the grounds for *grey divorce* and the judges' considerations were in line with the objective of protecting the welfare of the family under Islamic law. The maqāsid approach was used because it provides a substantive evaluative framework for family law practices in Indonesia.

G. Data Validity

This study employs triangulation as a method to test the credibility of the data. Triangulation is conducted by comparing and cross-checking data obtained from various sources and data collection methods, thereby enhancing the level of confidence in the research findings.

This research has limitations regarding the number of informants used as primary data sources. The limitation in the number of informants in this research was caused by several conditions during the research process that made it impossible for the research to obtain additional informants from the personnel of the Sleman Religious Court. These conditions limited the scope of the research in obtaining a variety of perspectives from judicial officials involved in handling divorce cases. Nevertheless, this research continued to strive to maintain data credibility by maximizing the depth of interviews with the available informants and conducting a more in-depth examination of the information obtained from the interviews by comparing it with court decisions, statutory regulations, the Compilation of Islamic Law, books, and relevant scholarly literature.

The interview results were used to understand the practices and considerations of judges directly, while document analysis was used to verify and strengthen the empirical data obtained from the informants.

H. Data Analysis Techniques

Data analysis in this study employs qualitative analysis, as the study emphasizes an in-depth understanding of the meaning behind legal facts and judicial practices.[33] Qualitative analysis was chosen to comprehensively interpret the reasons for *grey divorce* as well as the judges' considerations in their rulings at the Sleman Religious Court. This study interprets the judges' rulings on grey divorce cases from the perspective of maqāṣid al-sharī'ah in order to draw conclusions.

This study examines judicial rulings in *grey divorce* cases as the subject of analysis from the perspective of maqāṣid al-syarī'ah. Through this framework, the researcher examines the extent to which the grounds for divorce among older adults and the judges' considerations reflect the objectives of Islamic law, such as the protection of the public interest, the preservation of family unity, and the prevention of harm. The choice of qualitative analysis is based on the nature of the research, which is not oriented toward numbers or statistical generalizations but rather toward a deep understanding of the legal arguments in judicial rulings. Through this analysis, the study aims to assess whether the grounds for *grey divorce* at the

[33] Fildza Malahati dkk., "Kualitatif : Memahami Karakteristik Penelitian Sebagai Metodologi," *JURNAL PENDIDIKAN DASAR* 11, no. 2 (2023): 341–48, https://doi.org/10.46368/jpd.v11i2.902.

Sleman Religious Court align with the primary objectives of maqāṣid syarī'ah, namely, realizing public interest and preventing harm in life, thereby producing comprehensive, contextual, and normatively valuable conclusions.

BAB IV

RESEARCH FINDINGS AND DISCUSSION

A. Profile of The Sleman Religious Court

1. History of the Sleman Religious Court

The existence of the Sleman Religious Court is inseparable from the Sultanate of Ngayogyakarta Hadiningrat, led by a sultan bearing the additional title of Abdurrahman Sayidin Panoto Gomo Kholifatullah. The Religious Court itself has existed since the time of Sultan Agung under the name Peradilan Surambi, presided over by a Penghulu assisted by four judges from the Alim Ulama, known as Pathok Nagari, who were appointed by a royal decree; they resided in the four Pathok Nagari mosques located in the four cardinal directions of the Yogyakarta Palace.

In Javanese tradition, there is a saying, “Keblat Papat Lima Pancer”; this concept reflects the structure of villages in Java. Mancalima refers to the concentric circles formed by villages. “Mancapat” refers to a hierarchical system of appeals, similar to the Supreme Court (today). The Surambi Court handles matters of community life governed by Islamic Sharia law, such as marriage, wills, inheritance, gifts, and so on. The legal texts used as references include not only the Qur’an and Hadith but also the Muharror, Mahali, Tuhfah, Fatkhul Mu’in, and Fatkhul Wahab that is, the fiqh texts known as the “yellow books.”.

Since the abolition of the Royal Courts, the formal courts have ceased to function legally and have been merged into the Religious Courts. Based on

Decree of the Minister of Religious Affairs of the Republic of Indonesia No. 61 of 1961, dated July 25, 1961, which took effect on August 1, 1961, the establishment of branch offices of the Yogyakarta Religious Court was regulated, - Wonosari, for the Gunung Kidul Level II Region, - Wates, for the Kulon Progo Level II Region, - Bantul, for the Bantul Level II Region, and - Sleman, for the Sleman Level II Region, all of which fall under the jurisdiction of the Semarang High Religious Court.

Law of the Republic of Indonesia No. 20 of 1992, dated August 31, 1992, concerning the establishment of new High Religious Courts, including the Yogyakarta High Religious Court, and thus, since the enactment of that Law, the jurisdiction of the Religious Courts in the Special Region of Yogyakarta has been transferred from the jurisdiction of the Semarang High Religious Court; consequently, effective January 30, 1993, the Yogyakarta High Religious Court was officially recognized by the Chief Justice of the Supreme Court of the Republic of Indonesia.

The Sleman Religious Court building was originally constructed at Jalan Candi Gebang No. 1, Sleman City; phone: 0274 868201; ZIP code: 55511. The building was constructed in 1976 on a plot of land measuring 800 m² under a right-of-use agreement, with a building area of 72 m², funded through the Sleman Regional Government's DIP budget. Then, in 1980, a 296 m² renovation and expansion was carried out based on the 1978 State Budget at a cost of Rp. 6,694,000, carried out by CV. Budi Utama, bringing the total land area to 800 m² and the total building area to 368 m².

In 2006, using funds from the Supreme Court's DIPA budget, the Sleman Religious Court constructed a new building located on Jalan Parasamya, Beran, Tridadi, Sleman. Standing on a 2,537 m² plot of land under a right-of-use agreement with the Sleman Regional Government, the building has a total floor area of 830 m² and consists of three stories. The Sleman Religious Court building was officially inaugurated by the Chief Justice of the Supreme Court of the Republic of Indonesia (Prof. Dr. Bagir Manan, S.H., M.Cl.) on August 14, 2007. Subsequently, the Sleman Regency Government donated a plot of land to the Supreme Court of the Republic of Indonesia. The 2,538-square-meter plot of land now houses the Sleman Regency Religious Court building. Meanwhile, the Supreme Court transferred its assets to the Sleman Regency Government..

The signing ceremony and handover minutes between the Sleman Regency Government and the Supreme Court of the Republic of Indonesia were conducted by Sleman Regent Drs. H. Sri Purnomo, M.S.I., and the Head of the Supreme Court's Equipment Bureau, Rosfiana, S.H., M.H., in the auditorium on the 3rd floor of the Sleman Regency Secretariat on Wednesday, November 27, 2019. In 2017, the Sleman Religious Court was upgraded to a Class 1A Court based on Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 37/KMA/SK/II/2017 regarding the Upgrade of 29 (Twenty-Nine) Class II Religious Courts to Class 1B and 21 (twenty-one) Class 1B Religious

Courts to Class 1A. (rewritten by Khamimudin, Judge at the Sleman Religious Court, 2025)[34]

2. Vision and Mission

VISION

"The Realization of a Majestic Sleman Religious Court"

MISION

1) To safeguard the independence of the Sleman Religious Court from interference by outside parties
2) To enhance the professionalism of the Sleman Religious Court's staff in providing fair legal services to those seeking justice.
3) To improve the quality of leadership at the Sleman Religious Court.
4) Implementing the Integrity Zone toward a Corruption-Free Zone (WBK) and the Anti-Bribery Management System (SMAP) in the modern, credible, and transparent management of the Sleman Religious Court

3. Duties and Function

The Sleman Religious Court, which is a court of first instance that hears, adjudicates, and resolves cases at the first instance involving Muslims in matters of marriage, inheritance, wills, and gifts made in accordance with Islamic law, as well as waqf and sadaqah, is regulated under Article 49 of Law No. 50 of 2010 on the Religious Court System.

[34] "History – Sleman Religious Court," accessed July 13, 2026 https://www.pa-slemankab.go.id/article/sejarah.

In carrying out these primary duties, the Sleman Religious Court has the following functions:

a) Provide technical, judicial, and administrative clerical services for first-instance cases, as well as for seizures and enforcement proceedings;
b) Provide services related to the administration of appeals, cassation, and reconsideration cases, as well as other judicial administrative matters;
c) Provide general administrative services to all divisions within the Sleman Religious Court (general, personnel, and finance, excluding case fees);
d) Providing information, opinions, and advice on Islamic law to government agencies within its jurisdiction, and overseeing compliance with Article 52 of Law No. 50 of 2010 concerning the Second Amendment to Law No. 7 of 1989 on Religious Courts;
e) Resolving requests for assistance in the distribution of disputed inherited assets among Muslims, conducted in accordance with Islamic law as stipulated in Article 107(2) of Law No. 3 of 2006 Amending Law No. 7 of 1989 on the Religious Courts;
f) Certifying handwritten inheritance deeds for the withdrawal of deposits/savings, pensions, and so forth;
g) Carrying out other service duties such as legal counseling, performing hisab rukyat, providing research services, and so forth.[35]

[35] "Main Duties and Functions – Sleman Religious Court," accessed July 13. 2026, https://www.pa-slemankab.go.id/article/tugas-pokok-dan-fungsi.

4. Organizational Structure

Tabel 1.5 Organizational Structure of the Sleman Religious Court 2026. [36]

Chairperson	Dr. Muhammad Fauzan, S.H.I., M.A.
Vice Chair	Rika Hidayati, S.Ag., M.H.I
Judge	Hj. Juharni, S.H., M.H.
	Drs. Khamimudin, M.H.
	Dra. Husniwati
	Dra. Sri Sangadatun, M.H.
	Dra. Marfu`ah, M.H.
	Sulaiman, S.Ag., M.H.
Clerk	Anas Mubarok, S.H., M.H.
Junior Clerk for Petetions	Triwahyu Hartanto, S.H.
Junior Cour Clerk for Civil Cases	Hj. Hastuti Ramadhana, S.E., S.H., M.H.
Junior Legal Clerk	Nathalia Sri Ariyanti, S.H., M.H.
Sekretary	Rr. Arum Fitriana Rohmah, S.H., M.H.
Deputy Head of The Information Technology Planning and Reporting Divisions	Fuad Tansauddin, S.E., M.M.
Deputy Head of Organization and Administration Divison	Mya Shita Rini, S.E., S.H., M.M.
Deputy Head of The Geneal and Financial Affairs Division	Lily Yuslianti, S.E., M.M.
Deputi Clerk	Dwi Wiwik Subiarti, S.Sy., M.H.
	Leny Legawati, S.H.
	Yusran Idehamsyah, S.Ag.
	Miftahul Hasanah, S.H.
	Abdul Hafid, S.Kom., S.H., M.H.
	Puji Astuti, S.Ag.
	Ratna Khuzaemah, S.H.I., M.H.
	Muhammad Najib, S.H., M.H.
	Elfira Hakim, S.E., S.H.
Bailiff / Substitute Bailiff	Irwan Setyawan, S.Kom.
	Lia Ratna, S.H.
	Salmah Ali
	Thresia Methawati, S.H.
	Ayu Febriyanti, S.H.

[36] "Organizational Structure – Sleman Religious Court," accessed 13 July 2026, https://www.pa-slemankab.go.id/article/struktur-organisasi.

Functional Position : 1. State Budget Financial Officer / Treasurer 2. WorkForce Analysis 3. Computer Tecnhnician	Rita Listiyanti, S.E., S.H., M.M.
	Noor Lynda Arnia Sari, S.Sos.
	Ardhan Arifudin, S.Kom.

B. History and Development of the Term *Grey Divorce*

This term began to gain widespread recognition in the United States in the early 2000s. According to the American Association of Retired Persons (AARP), the term *grey divorce* began to be popularized in 2004 through publications concerning the increasing divorce rate among middle-aged and older adults.[37]

The term received greater attention in the academic world following the study by Susan L. Brown and I-Fen Lin entitled *The Grey divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults, 1990–2010*. The study showed that the divorce rate among individuals aged 50 years and older in the United States nearly doubled during the period from 1990 to 2010, leading this phenomenon to become known as the "*Grey divorce Revolution."*[38] *Grey divorce* has developed into a concept that is widely used in studies of family sociology, gerontology, psychology, and family law in various countries. Although the term originated in the United States, a similar phenomenon has also attracted attention in several other countries, such as Canada, the United Kingdom, Australia, Japan, South Korea, and several European countries, which have experienced an increase

[37] Sharon Jayson dan AARP 53 Comments En español, "Divorce Skyrocketing Among Aging Boomers," AARP, Accessed 11 Juli 2026, https://www.aarp.org/family-relationships/gray-divorce-trend/.

[38] Brown dan Lin, "The Grey divorce Revolution."

in the divorce rate among older adults along with rising life expectancy, changes in family structure, and increasing economic independence of women. In the United Kingdom, this phenomenon is even known by the term *"silver splitters."*

In Indonesia, the term grey divorce is still relatively new and has not been officially used in statutory regulations or in the practice of the Religious Courts. The Religious Courts generally continue to classify cases as cerai talak or cerai gugat without distinguishing the age of the parties. Nevertheless, in recent years, the term grey divorce has begun to be used by academics and family law researchers to describe the increasing number of divorces among couples aged 50 years and older. Therefore, the use of the term grey divorce in research in Indonesia functions more as an academic concept to identify the specific characteristics of divorce in later life rather than as a legal category regulated normatively.

C. Dynamics of Grey divorce at the Sleman Religious Court

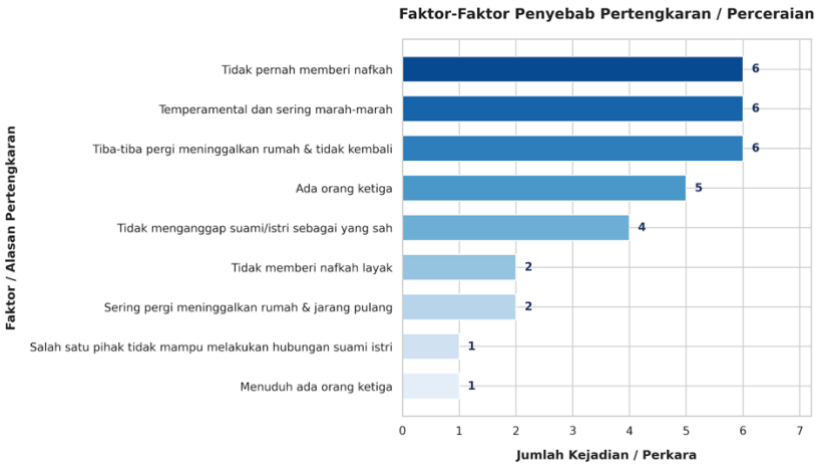
1. Factors Contributing to Grey divorce Cases in the Sleman Religious Court

The term *grey divorce* is used to describe divorce that occurs among older couples, which exhibits characteristics different from those of divorce among younger couples. These cases generally involve couples who are over 50 years of age, have been married for a long period of time, have adult children and even grandchildren, and come from diverse social and economic backgrounds.

Based on the results of an interview with one of the judges of the Sleman Religious Court, the grey divorce cases handled by the court are not only filed by individuals with low educational backgrounds, but also by academics, civil

servants, and members of the intellectual community. This indicates that divorce in later life is not solely influenced by economic factors, but is also affected by the dynamics of the marital relationship that have developed over a long period of time. This phenomenon demonstrates that a long duration of marriage does not always guarantee the realization of a harmonious family. Grey divorce refers to divorce among older couples that is influenced by changes in family roles, the loss of emotional closeness, and economic pressures after retirement.[39]

The following are the factors that most commonly occur in grey divorce cases:



Gambar 1 1. Factors Contributing to Grey Divorce

The judge explained that every divorce case, including grey divorce, is still required to undergo the mediation process as stipulated in the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in the Courts.[40]In addition to mediation, the panel of judges also always provides

[39] Utari Kamila Dewi dkk., "Fenomena Grey divorce: Mengapa Pasangan Usia Senja Memilih Bercerai?," *Triwikrama: Jurnal Ilmu Sosial* 11, no. 8 (2025): 511–20.

[40] "Perma No. 1 Tahun 2016," Database Peraturan | JDIH BPK, accessed 29 June 2026, http://peraturan.bpk.go.id/Details/209641/perma-no-1-tahun-2016.

advice to the parties to encourage them to reconsider their decision to divorce. The advice is based not only on legal aspects, but also takes into account moral, religious, psychological, and social considerations. The parties are reminded that, in later life, they already have adult children and even grandchildren, so divorce will have psychological as well as social impacts on the extended family.

According to the judge, a persuasive approach is very important when dealing with older couples. This is based on the understanding that individuals in later life experience significant psychological changes. The judge relates this condition to Islamic values, which teach that older people should be treated with kindness and compassion. Changes in the behavior of older adults are also explained in the Qur'an, one of which is found in Surah Yā Sīn, verse 68, as follows.[41]:

وَمَنْ نُّعَمِّرْهُ نُنَكِّسْهُ فِى الْخَلْقِۗ اَفَلَا يَعْقِلُوْنَ ﴿٦٨﴾

Meaning: And whoever We grant long life, We reverse him in creation (from strength to weakness). Will they not then understand.

Based on the Qur'anic verse, it can be understood that individuals who enter old age experience decline both physically and psychologically, thus requiring a wiser approach in resolving family conflicts. Nevertheless, the judge emphasized that, in carrying out judicial functions, judges must continue to uphold the principle of equality before the law. There is no difference in the

[41] "Surat Yasin Ayat 68: Arab, Latin, Terjemah Dan Tafsir Lengkap | Quran NU Online," accessed 29 June 2026, https://quran.nu.or.id/yasin/68.

application of the law between older couples and younger couples. If the grounds for divorce are proven based on lawful evidence and the panel of judges concludes that maintaining the marriage would instead result in greater harm, then the divorce may still be granted.

The interview results also showed that the primary factor in grey divorce cases at the Sleman Religious Court is more strongly influenced by long-term marital conflict. Such conflict generally does not arise suddenly, but rather constitutes the accumulation of various marital problems that have remained unresolved for many years. Continuous disputes eventually lead to emotional exhaustion, causing the parties to choose to end their marriage.[42]

2. Socioeconomic Profile and Household Conditions of the Parties Prior to the Occurrence of *Grey divorce*

Economic factors remain the most dominant cause. However, the economic problems referred to are not merely due to poverty or lack of wealth, but rather because the husband is considered not to have provided adequate financial support to his wife despite actually having sufficient economic capability. In addition, there were also cases influenced by the husband's declining attention toward his wife, worsening communication, prolonged conflict, and the emergence of suspicions of infidelity in later life.

According to the judge, allegations of infidelity in later life do occur, but their number is relatively small compared to economic factors and long-

[42] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.

standing marital conflicts. These findings are also supported by research stating that divorce in later life is generally triggered by the accumulation of marital dissatisfaction over several decades, a decline in the quality of emotional relationships, and increasing individual expectations regarding quality of life in old age.[43] Different divorce among younger couples, which is more often triggered by conflicts arising in the early years of marriage, grey divorce is more commonly influenced by chronic conflicts that remain unresolved..

The household conditions of the parties also exhibit distinctive characteristics. Most older couples tend to choose divorce after their children have reached adulthood, so considerations regarding child custody are no longer the primary factor preventing divorce.[44] However, the presence of adult children remains a moral consideration for the judge when providing advice to the parties. The judge reminds the parties that divorce at an older age still has psychological impacts on their children, particularly with regard to the harmony of the extended family and intergenerational relationships.[45]

This condition is similar to the cases handled by the Sleman Religious Court, where most of the parties already have independent adult children and even grandchildren. In addition, the Sleman Religious Court also gives special attention to justice seekers who are older adults. The judge explained that services for older adults are prioritized in accordance with the principles of

[43] Brown dan Lin, "The Grey divorce Revolution."

[44] April S. Masarik dkk., "Stress and Resilience among Resettling Refugee Youth: An Illustrative Review and New Applications for the Family Stress Model," *Journal of Family Theory & Review* 14, no. 2 (2022): 207–32, https://doi.org/10.1111/jftr.12454.

[45] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.

public service that are responsive to vulnerable groups. This priority is provided in the form of easier access to administrative and court services, without affecting the independence of judges in examining and deciding cases.[46]

D. Judges' Legal Considerations in Deciding Grey divorce Cases

1. The Legal Basis Applied by Judges in Deciding Cases and the Judges' Juridical Considerations in Divorce Judgments

In examining and deciding grey divorce cases, the judges of the Sleman Religious Court base their considerations on the applicable positive law, Islamic law, and the facts revealed during the trial. Based on the results of an interview with one of the judges of the Sleman Religious Court, the advanced age of the parties is not a legal basis for determining whether a divorce petition is granted or rejected. The judge emphasized that all justice seekers receive equal treatment before the law (equality before the law), without distinction based on the age, educational background, social status, or profession of the parties.[47]

The judge explained that if the parties are able to prove the grounds for divorce through lawful evidence and the facts revealed during the trial indicate that the marriage can no longer be maintained, then the judge has no reason to prevent the divorce. Conversely, if maintaining the marriage would instead result in greater harm to the parties, then divorce is regarded as a solution that is justified by law.

This is in line with the provisions of Article 39 paragraph (2) of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, which states that

[46]Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.
[47]Results of an interview with a judge from the Sleman Religious Court on June 24, 2026..

divorce may only be granted if there are sufficient grounds indicating that the husband and wife can no longer live together harmoniously as husband and wife. This provision is further reinforced by Article 19 of Government Regulation Number 9 of 1975, as well as Article 116 of the Compilation of Islamic Law (KHI), which sets out the grounds that may serve as the basis for divorce.[48], Including :

a) One of the parties commits adultery or becomes an alcoholic, drug addict, gambler, or engages in other similar habits that are difficult to cure;
b) One of the parties abandons the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or due to circumstances beyond his or her control;
c) One of the parties is sentenced to 5 (five) years of imprisonment or a more severe sentence after the marriage has taken place;
d) One of the parties commits cruelty or severe abuse that endangers the other party;
e) One of the parties suffers from a physical disability or illness that results in the inability to perform his or her duties as a husband or wife;
f) Continuous disputes and quarrels occur between the husband and wife, with no hope of living together harmoniously in the household.

Thus, the judge does not consider age as a legal ground for divorce, but rather relies on the facts established during the trial as the primary basis for formulating the legal considerations. This approach is consistent with the principle of proof in civil

[48] "Kompilasi Hukum Islam (khi) | Jaringan Dokumentasi dan Informasi Hukum Universitas Sumatera Utara," accessed 30 June 2026, https://jdih.usu.ac.id/id/regulasi/kompilasi-hukum-islam-khi.

procedural law, namely that a judicial decision must be based on lawful evidence as stipulated in Article 1866 of the Indonesian Civil Code, as well as the procedural rules applicable within the Religious Court system.

In civil cases, judges are not permitted to render decisions based solely on assumptions, but must base their decisions on facts proven during the trial. Therefore, the judges' juridical considerations constitute the process of linking the facts established during the trial with the relevant legal norms, thereby producing a decision that provides legal certainty.[49] The judge explained that, with regard to judicial considerations in divorce cases at the Religious Court, the majority of judges place greater emphasis on proving the existence of a broken marriage rather than merely examining the formal grounds for divorce. If the marital relationship has lost the purpose of marriage and there is no longer any hope of reconciliation between the husband and wife, then divorce is regarded as the most appropriate legal solution.[50]

Grey divorce is generally the result of the accumulation of marital conflicts over several decades, so that maintaining the marriage instead increases the psychological suffering of the couple. Under such circumstances, divorce is regarded as a form of conflict resolution that provides legal certainty while at the same time reducing the harm experienced by the parties.[51] Thus, the judges' juridical considerations in grey divorce cases at the Sleman Religious Court are based on three main aspects, namely conformity with the applicable statutory

[49] M. Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Sinar Grafika, 2017).

[50] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.

[51] Brown dan Lin, "The Grey divorce Revolution."

regulations, the proof of the facts established during the trial, and the fulfillment of the grounds for divorce as stipulated in positive law as well as the Compilation of Islamic Law.

2. Sociological and Philosophical Considerations, as well as Peace Efforts and Mediation in Case Resolution

In addition to basing their decisions on the provisions of positive law, the judges of the Sleman Religious Court also take sociological and philosophical aspects into consideration in resolving grey divorce cases. Based on the interview results, the judge stated that law is understood not only as written norms (law in books), but also as law that lives within society (law in action).

Before deciding a divorce case, the judge first understands the social conditions of the parties, their family background, the relationship between the husband and wife, and the impacts that will arise if the divorce is granted.[52] The judge always prioritizes reconciliation efforts as an implementation of the family court's function, which is oriented not only toward dispute resolution but also toward maintaining family unity. Based on the results of an interview with a judge of the Sleman Religious Court, all divorce cases, including *grey divorce* cases, are first required to undergo the mediation process in accordance with the provisions of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in the Courts.[53] In addition to mediation conducted by the mediator, the panel of judges also actively provides advice (*advisory efforts*) to the parties at every stage

[52] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.
[53] Database Peraturan | JDIH BPK, "Perma No. 1 Tahun 2016."

of the proceedings, encouraging them to reconsider their decision to end the marriage.

According to the judge, couples who have entered old age experience psychological changes that differ from those of couples in their productive years. In later life, individuals experience a decline in both physical and emotional conditions, so the approach toward the parties is not sufficiently carried out through the formal application of the law alone, but also through humanitarian and religious approaches. Therefore, the judge always provides advice to the parties in a courteous and persuasive manner.

The judge reminds the parties that they have entered old age and already have adult children and even grandchildren, so that divorce affects not only the husband and wife but also the relationships within the extended family. However, if all reconciliation efforts are unsuccessful and the facts established during the trial indicate that maintaining the marriage would instead result in greater harm, the judge will still grant the divorce based on the facts proven during the trial.[54] According to Rawls, justice is not merely understood as the formal application of legal rules (*formal justice*), but also as an effort to realize justice that is genuinely experienced by every individual (*substantive justice*). In the concept of *justice as fairness*, Rawls emphasizes that every person has an equal right to obtain legal protection, while every decision must take into account the concrete circumstances faced by the parties in order to produce proportional justice.[55]

[54] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.
[55] Wenar, *John Rawls*.

The approach adopted by the judges of the Sleman Religious Court in *grey divorce* cases reflects substantive justice because the judges do not merely consider the age of the parties or regard the preservation of the marriage as the ultimate objective, but instead assess whether maintaining the marriage is still capable of providing maslahah (public welfare) or would instead result in greater suffering. The judges also do not differentiate legal treatment of the parties based on age, educational background, or social status, thereby upholding the principle of equal rights (equal liberty principle) as proposed by Rawls.[56] Di sisi lain, hakim juga mempertimbangkan kondisi psikologis dan sosial para pihak sehingga putusan yang dijatuhkan tidak hanya memenuhi kepastian hukum, tetapi juga memberikan keadilan yang nyata.

E. Maqāsid al-Sharīʿah Review of the Grounds for Grey divorce at the Sleman Religious Court

Jasser Auda developed the theory of maqāṣid syarīʿah through the systems approach, which views Islamic law as a dynamic, open, and maslahah-oriented system. This approach consists of six features, namely cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. These six features serve as analytical instruments to assess whether the grounds for *grey divorce* decided by the Class IA Sleman Religious Court are in accordance with the

[56] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.

objectives of the Sharīʿah in realizing maslahah (public welfare) and preventing harm.[57]

1. Analysis Based on Cognitive Nature

In the systems theory of *maqāsid syarīʿah*, Jasser Auda explains that *Cognitive Nature* is a characteristic that views law as the result of human understanding (*fiqh*) of revelation, rather than revelation itself. Therefore, every legal decision is a product of *ijtihād* that is influenced by the judge's intellectual capacity, the method of interpretation employed, professional experience, the evidence presented, and the social realities underlying a particular case. Thus, judges are not only responsible for applying normative provisions textually, but also for carrying out a process of legal reasoning that takes into account the objectives of the law, empirical conditions, and the *maslahah* (public welfare) of the parties.[58]

This concept demonstrates that Islamic law is dynamic because the scope for *ijtihād* always remains open to adapt the application of the law to the development of society. Jasser Auda criticizes the classical approach to Islamic law, which tends to be textual and neglects the social context in the process of legal discovery. According to him, the success of a judicial decision is measured not only by its conformity with the wording of legal provisions, but also by the extent to which the decision is able to respond to the realities of social life and realize the objectives of the Syarīʿah (*Maqāṣid Syarīʿah*).[59]

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[57] Syarifuddin Syarifuddin, "Maqāshid Syarī'ah Jasser Auda: Sebuah Sistem Pendekatan Dalam Hukum Islam Kontemporer," *Al-Mizan (e-Journal)* 17, no. 1 (2021): 27–42, https://doi.org/10.30603/am.v17i1.2061.

[58] ʿAuda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

[59] ʿAuda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

In grey divorce cases at the Sleman Religious Court, the judges' considerations demonstrate a process of legal *ijtihād* that takes into account the actual circumstances of older couples. The grounds for divorce are generally no longer triggered by temporary problems, but rather by the accumulation of marital conflicts that have persisted for many years, such as continuous disputes, loss of communication, and neglect of marital obligations. The petitioner's application to file a petition for *cerai talak* against the respondent on the grounds of continuous disputes and the impossibility of living harmoniously within a marital bond fulfills the requirements of Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law. The judge also continued to pursue mediation and provided advice aimed at reconciling the Petitioner and the Respondent so that they could restore harmony in their marriage, but these efforts were unsuccessful before the judgment was rendered.[60]

Based on the analysis of the Cognitive Nature feature, it can be concluded that the judges' legal reasoning in grey divorce cases at the Sleman Religious Court generally reflects Jasser Auda's concept of Cognitive Nature. The decisions were formulated through a process of ijtihad that took into account empirical facts, evidentiary materials, the circumstances of the parties, and the findings of the trial, rather than relying solely on a literal application of legal provisions. However, this conformity has not yet been fully realized. The judges' reasoning remains primarily

[60]"Direktori Putusan," accessed 28 July 2026, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaefd1b67948d88c921c323035383332.html.

focused on establishing the legal grounds for divorce, with limited integration of broader social, economic, psychological, and post-divorce protection considerations that constitute essential dimensions of Maqāṣid al-Sharīʿah. Consequently, the implementation of the Cognitive Nature feature requires further strengthening so that judicial decisions not only ensure legal certainty but also promote substantive justice and comprehensive welfare (maṣlaḥah) for elderly couples following divorce.

2. Analysis Based on Wholeness

Every legal issue is understood as an integrated system that is interconnected. According to Jasser Auda, the weakness of the classical Islamic legal approach is its tendency to view issues in a partial (atomistic) manner, so that it is only oriented toward fulfilling normative requirements without considering the entire social system underlying them. Therefore, judges are not only required to prove the existence of continuous disputes as stipulated under the applicable law, but also need to consider the overall living conditions of elderly couples.

Based on the results of the research conducted at the Sleman Religious Court, the majority of *grey divorce* cases were filed after the parties had been married for decades. The *Wholeness* characteristic has very strong relevance because divorce in old age is not only related to the dissolution of the marital bond, but is also associated with various problems that have accumulated over decades of married life. The research findings show that the majority of *grey divorce* cases were filed by couples who had been married for more than twenty years and already had adult children. The disputes that formed the basis for divorce were generally

not caused by a single particular event, but rather constituted an accumulation of prolonged conflicts in the form of loss of communication, marital disharmony, neglect of the obligations of the husband or wife, family economic problems, changes in health conditions due to old age, and the declining function of the family after the children no longer lived with their parents..[61]

Based on the analysis of the judges' decisions that became the object of this research, it can be seen that the judges made efforts to understand the background of the parties' marital conflict comprehensively through the examination of evidence, witness testimony, as well as reconciliation and mediation efforts before rendering the decision. This indicates that the judges were not only oriented toward the textual application of legal norms, but also paid attention to the facts that developed during the trial. From the perspective of the case examination process, the judges' legal reasoning has reflected, to some extent, the Wholeness characteristic because it sought to examine the relationship between the grounds for divorce and the actual conditions of the parties' marital life.

If analyzed more deeply using Jasser Auda's systems theory, the implementation of the Wholeness feature in the judges' legal reasoning has not yet been fully optimal. The legal reasoning is still dominated by proving that the element of "continuous disputes and quarrels" has been fulfilled as the legal basis for divorce. Once this element has been established, the judges' arguments are primarily directed toward the conclusion that the marriage can no longer be maintained. Meanwhile, the discussion of the parties' psychological condition after

[61] "Direktori Putusan."

divorce, their living needs in old age, health conditions, economic dependency, relationships with their children and grandchildren, as well as the parties' social readiness to face post-divorce life, has not yet become a part that is examined in depth in the legal reasoning.[62]

According to Jasser Auda, the *Wholeness* approach requires that law be understood as an integrated system, so that every judicial decision must consider all of the consequences it produces, rather than merely resolving the normative aspects of the dispute. In *grey divorce* cases, the need for post-divorce protection becomes even more important because the parties have entered old age, in which they are physically, psychologically, and economically more vulnerable than couples of productive age. Therefore, judicial decisions should not only consider the grounds for divorce, but should also take into account how the decision will affect the continuity of the parties' lives, including certainty regarding the fulfillment of maintenance obligations, the distribution of marital property, living arrangements, access to healthcare, and family support after the divorce.[63]

Based on the *Wholeness* analysis, it can be concluded that the judges' legal reasoning in *grey divorce* cases at the Sleman Religious Court has demonstrated partial conformity with Jasser Auda's *wholeness* feature. This conformity is reflected in the judges' efforts to understand the background of the marital conflict

[62] Santi Ayuningtiyas dkk., "The Construction of the Concept of a Sakinah Family from the Perspective of Maqāṣid Al-Sharīʻah by Jasser Auda and Its Relevance to Islamic Family Law," *TOFEDU: The Future of Education Journal* 4, no. 3 (2025): 776–84, https://doi.org/10.61445/tofedu.v4i3.492.

[63] Fahmi Assulthoni, "Rethinking Islamic Divorce Law In Indonesia Through Jsser Auda's Systems Approach," *Hakam : Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam* 10, no. 1 (2026), https://ejournal.unuja.ac.id/index.php/hakam/article/view/14501.

through a comprehensive examination of the facts presented during the trial. However, the implementation of the *Wholeness* feature has not yet been fully optimal because the legal reasoning remains focused on proving the grounds for divorce and has not yet fully integrated the psychological, social, economic, health, and post-divorce protection dimensions of the parties' lives.

3. Analysis Based on Openness

In the systems theory of *Maqāṣid al-Sharīʿah*, Jasser Auda explains that *Openness* is a characteristic that positions Islamic law as a system that is adaptive to the development of the times. Law is not understood as a closed system that is confined to the literal meaning of the text, but rather as a system that is capable of interacting with the dynamics of society, the development of knowledge, institutional changes, and the transformation of social values without abandoning its primary orientation, namely, the realization of *maṣlaḥah*.[64]

According to Auda, *Openness* does not mean changing the principles of *Syarīʿah*, but rather opening the space for *ijtihād* so that the application of the law remains relevant to an ever-evolving reality. Islamic law must be capable of providing answers to new issues that were previously unknown in classical society, as long as it remains oriented toward the objectives of *Sharīʿah* (*Maqāṣid Syarīʿah*), such as justice, the protection of human dignity, and the welfare of society. Auda criticizes the view that Islamic law is static because, according to him, *Syarīʿah* has

[64] Mukh. Sumaryanto, *"Maqāshid al-Shari'ah" Metode Analisis Sistem dalam Filsafat Hukum Islam - Dr. Jasser Auda*, Uncategorized @id, 28 Februari 2017, https://www.jasserauda.net/maqashid-al-shariah-metode-analisis-sistem-dalam-filsafat-hukum-islam/?lang=id.

objectives that must continue to be realized through adaptation to changing social contexts. Judges are not only required to apply the normative provisions concerning the grounds for divorce, but must also understand changes in family structures and the characteristics of contemporary society.

The phenomenon of *grey divorce* is a concrete example of such social change, as the increasing rate of divorce among couples aged 50 years and above is influenced by rising life expectancy, women's economic independence, changes in husband–wife relationships, and increasing awareness of rights and quality of life in old age. This phenomenon shows that the marital problems of elderly couples can no longer be understood using the classical paradigm that merely regards divorce as the failure to maintain a marriage. On the contrary, divorce in old age is often the result of the accumulation of conflicts that have persisted for decades and only reach their final point when all efforts to preserve the marriage are no longer effective.[65]

Based on the results of the research conducted at the Sleman Religious Court, the judges have, in principle, demonstrated an open attitude toward these social changes. This is reflected in the judges' legal reasoning, which does not merely focus on the age of the parties, but places greater emphasis on the fact that the marital relationship has suffered an irreversible breakdown (*broken marriage*), as indicated by continuous disputes, loss of communication, separation of residence, and the failure of mediation.[66]

[65] Ayuningtiyas dkk., "The Construction of the Concept of a Sakinah Family from the Perspective of Maqāṣid Al-Sharī'ah by Jasser Auda and Its Relevance to Islamic Family Law."

[66] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.

When analyzed using the *Openness* feature, the judges' legal reasoning remains primarily oriented toward the categories of grounds for divorce as stipulated in Article 39 of Law Number 1 of 1974 in conjunction with Article 19 of Government Regulation Number 9 of 1975 and Article 116 of the Compilation of Islamic Law (*KHI*), rather than identifying the characteristics of *grey divorce*, such as the health vulnerabilities of the elderly, economic dependency after retirement, the need for care in old age, or the psychological impact of divorce on elderly couples. Thus, openness toward this social phenomenon has begun to emerge, but it has not yet fully developed into substantive legal reasoning based on *maqāsid syarīʿah*. This finding is consistent with Assulthoni's research, which states that divorce law in Indonesia still tends to be formalistic and has not yet been fully responsive to the changing dynamics of the contemporary Muslim family.[67]

4. Analysis Based on Interrelated Hierarchy

According to Jaser Auda, the objectives of the Sharia do not exist in a rigid hierarchical relationship as in the classification of *daruriyyat*, *hajiyyat*, and *tahsiniyyat* in classic theory; all objectives of the Sharia are interconnected and mutually influence each other, so that the resolution of a legal issue must consider the interrelationship between the interests of individuals, families, society, and the state.[68]

[67] Assulthoni, "Rethinking Islamic Divorce Law In Indonesia Through Jsser Auda's Systems Approach."

[68] Sumaryanto Mukh, *"Maqāshid al-Shari'ah" Metode Analisis Sistem dalam Filsafat Hukum Islam - Dr. Jasser Auda*, Uncategorized @id, 28 Februari 2017, https://www.jasserauda.net/maqashid-al-shariah-metode-analisis-sistem-dalam-filsafat-hukum-islam/?lang=id.

In *grey divorce* cases, the relationship between these interests appears more complex compared to divorce during productive age. The end of an elderly couple's marriage is not only related to the husband and wife's rights to terminate the legal relationship, but also affects various legal and social relationships that have been formed over decades. Bonds with adult children, relationships with grandchildren, the management of joint property, the execution of maintenance obligations, and family responsibilities in caring for elderly parents are part of an interconnected system that cannot be separated from the dispute resolution process. Therefore, the *interrelated hierarchy* approach demands that all these interests be considered proportionally so that the ruling not only resolves the conflict between the parties, but also maintains the balance of family relationships after the divorce.[69]

Most couples filing for *grey divorce* have been married for decades and have adult children, a condition often understood to mean that divorce no longer has a significant impact on the children, yet that assumption is not entirely true. A judge at the Sleman Religious Court stated that divorce in old age still causes emotional stress for adult children, particularly regarding changes in family structure, responsibilities for caring for elderly parents, and conflicts over the division of family assets.[70]

When analyzed using the *interrelated hierarchy* feature, the judge's considerations reflect the interconnected relationship between various interests within the family system. The judge does not merely consider the legal relationship

[69] ʿAuda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.
[70] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.

between husband and wife as the parties, but also pays attention to the impact of the divorce on children, the continuity of family life, and the legal consequences that will arise after the verdict is delivered; this demonstrates that the decision is not solely oriented toward resolving the marital conflict, but strives to maintain the balance of rights and obligations of all affected parties. This approach aligns with Jasser Auda's systems concept which views *maqasid sharia* as an interrelated hierarchy, so that the protection of the family institution is carried out comprehensively to prevent the emergence of new *mafsadah* after the divorce. Therefore, the application of *maqasid* in the judge's considerations does not stop at the legality aspect of the divorce, but also reflects an effort to maintain the well-being of the family system as a whole.[71]

5. Analysis Based on Multidimensionality

The *multidimensionality* feature is Jasser Auda's critique of legal methods that view an issue from only a single perspective. According to him, every legal issue has interconnected dimensions, so its resolution must not be reductionist or atomistic.[72]

Research findings show that the reasons for *grey divorce* at the Sleman Religious Court never stand alone; continuous disputes are usually influenced by post-retirement economic factors, changes in health conditions, declining quality of communication, differences in mindset at an advanced age, and the reduced

[71] Assulthoni, "Rethinking Islamic Divorce Law In Indonesia Through Jsser Auda's Systems Approach."

[72] Nur Wakhidah, "Jasser Auda's Multidimensional System (Ta'addud Al-Ab'ad) in Reconciling Contradictory Arguments," *Journal of Educational Sciences* 9, no. 6 (2025): 5793–803, https://doi.org/10.31258/jes.9.6.p.5793-5803.

parenting function after the children become independent.[73] The legal reasons listed in the lawsuit are actually a representation of multidimensional problems that have developed over the years.

The judge's considerations in the decision have formulated the grounds for divorce based on normative categories, such as "continuous disputes and quarrels", which comply with the applicable procedural law provisions and regulations. However, in its application, the judge did not merely stop at that normative classification, but also considered trial facts showing the interconnectedness of various factors causing *grey divorce*, such as the psychological condition of the parties, economic issues, health, household harmony, as well as social relationships within the family.[74]

Thus, the judge's reasoning reflects an approach that views divorce as a multidimensional and interrelated issue; this is in line with Jasser Auda's concept of an interrelated hierarchy, which emphasizes that every legal issue must be understood through the relationships among elements within a system, so that the ruling not only fulfills

legal-formal aspects but is also oriented toward achieving the overall welfare of all parties affected by the divorce.[75]

[73] "Direktori Putusan."

[74] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.

[75] Assulthoni, "Rethinking Islamic Divorce Law In Indonesia Through Jsser Auda's Systems Approach."

6. Analysis Based on Purposefulness

Purposefulness is the core of Jasser Auda's theory; the entire process of legal reasoning must be directed toward achieving the objectives of Islamic law (maqāṣid syarīʿah), namely the realization of public benefit (maslahah) and the prevention of harm (mafsadah). The success of a judicial decision is not measured by its conformity with the formal application of legal provisions, but by the extent to which the decision is able to produce substantive justice for the parties, not merely based on the formal application of legal provisions, but by the extent to which the decision is able to produce substantive justice for the parties.[76]

In grey divorce cases, this objective becomes particularly important because the spouses seeking divorce have entered old age. At this stage of life, individuals experience declining physical conditions, increasing needs for emotional support, as well as economic and health dependence; therefore, divorce cannot be viewed merely as the resolution of a legal dispute, but must be ensured to become the last resort (*ultimum remedium*) after all efforts at reconciliation have failed. The research findings show that the judges of the Sleman Religious Court conducted mediation and provided advice to the parties before rendering their decision; this step reflects the maqāṣid orientation of preserving family unity as long as there remains an opportunity for reconciliation. However, when the conflict has persisted for a long time and the marital relationship can no longer be restored, divorce is

[76] Sumaryanto Mukh,*"Maqāshid al-Shari'ah" Metode Analisis Sistem dalam Filsafat Hukum Islam - Dr. Jasser Auda*.

instead regarded as a more beneficial (*maslahah*) option than maintaining a marriage that only causes prolonged suffering.[77]

The analysis shows that the orientation of welfare in judges' decisions has focused on achieving the objectives of sharia (purposefulness), namely realizing the welfare and preventing harm for the parties. In deciding cases, judges not only consider the termination of the marriage relationship as a legal-formal aspect, but also consider the legal consequences that arise after the divorce, such as the fulfillment of the rights and obligations of the parties, the certainty of the implementation of maintenance in accordance with applicable regulations, and protection for vulnerable parties.[78]

These considerations reflect that the objectives of Islamic law do not end with the resolution of the dispute, but are also directed toward maintaining the continuity of public benefit (*maslahah*) after the marriage has ended. In other words, a divorce decision oriented toward purposefulness not only resolves the legal conflict, but also ensures that the rights of the parties remain protected so that justice and sustainable public benefit (*maslahah*) are achieved. This view is consistent with studies on the application of Jasser Auda's systems approach in divorce law in Indonesia, which emphasize the importance of orienting judicial decisions toward the objectives of public benefit (*maslahah*), the effectiveness of mediation, the protection of post-divorce economic rights, as well as responsiveness to the dynamics of contemporary families.[79]

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[77] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026.
[78] Results of an interview with a judge from the Sleman Religious Court on June 24, 2026..
[79] Assulthoni, "Rethinking Islamic Divorce Law In Indonesia Through Jsser Auda's Systems Approach."

BAB V

CONCLUSION

A. Conclusion

1. The reasons for grey divorce filed at the Sleman Religious Court are generally caused by continuous disputes and quarrels, the loss of marital harmony, economic problems, reduced effective communication, as well as changes in the physical and psychological conditions experienced by elderly couples. These factors constitute an accumulation of conflicts that have persisted for a long period of time, so that the objective of marriage to establish a family that is *sakinah*, *mawaddah*, and *raḥmah* can no longer be achieved.
2. In deciding grey divorce cases, the judges of the Sleman Religious Court base their considerations on the provisions of positive law, particularly Law Number 1 of 1974 on Marriage, its implementing regulations, and the Compilation of Islamic Law. In addition to the juridical aspects, the judges also consider the facts established during the trial, the results of mediation, the psychological conditions of the parties, as well as the possibility of maintaining the marriage. If it is proven that the marital relationship can no longer be sustained and reconciliation is no longer possible, then divorce is regarded as the best solution to prevent greater harm (*mafsadah*).
3. From the perspective of *Maqāṣid al-Sharīʿah*, the reasons for divorce in grey divorce cases at the Sleman Religious Court can, in principle,

be justified when divorce serves as a means of realizing public benefit (*maṣlaḥah*) and preventing harm (*mafsadah*). Divorce under such circumstances is consistent with the objectives of Islamic law in preserving life (*ḥifẓ al-nafs*), preserving intellect (*ḥifẓ al-ʿaql*), preserving property (*ḥifẓ al-māl*), as well as preserving the dignity of the parties. Therefore, divorce is not regarded as an objective in itself, but rather as a last resort (*ultimum remedium*) when married life is no longer capable of realizing the objectives of marriage as prescribed by Islamic law.

B. Recommendations

1. For the Religious Courts, it is expected that in handling grey divorce cases they will not only be oriented toward fulfilling formal juridical requirements, but will also pay greater attention to the psychological, social, and public benefit (maṣlaḥah) aspects of the parties through a more humane approach in accordance with the principles of Maqāṣid al-Sharīʿah.
2. For elderly married couples, it is expected that they will optimize communication, deliberation, and efforts to resolve conflicts through family mediation as well as court-annexed mediation before choosing divorce as the last resort.
3. For the government and relevant institutions, it is necessary to strengthen family development programs, particularly for elderly

couples, through marriage counseling, family education, and psychological assistance in order to reduce the rate of *grey divorce*.

4. For future researchers, it is expected that research on *grey divorce* can be further developed by using a broader research scope and involving more diverse informants, including judges, court clerks, litigants, and other parties involved in the handling of *grey divorce* cases. This study has limitations in terms of the number of informants; therefore, future research is expected to involve more informants in order to obtain a wider range of perspectives and strengthen the depth and validity of the research data. In addition, future researchers may employ other contemporary Islamic legal perspectives to enrich the study of Islamic family law in Indonesia.

REFERENCES

Adiem, Muhammad, Husnul Yaqin, Moh Wahib, dan Athoillah Islamy. "Dimensi Maqasid Syariah Dalam Putusan Hakim Atas Perkara Cerai Gugat Di Pengadilan Agama Jayapura." *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 2 (2022): 197–211. https://doi.org/10.32694/qst.v20i2.2373.

Adriansyah, Yufri. *PROGRAM S1 PRODI HUKUM KELUARGA FAKULTAS SYARIAH DAN ILMU HUKUM UNIVERSITAS ISLAM NEGERI SULTAN SYARIF KASIM*. t.t.

Amri, Amri. "Disfungsi Nilai Maqhasid Syariah Terhadap Perceraian Karena Alasan Ekonomi Di Masa Pandemi Covid-19." *Tasamuh: Jurnal Studi Islam* 14, no. 2 (2022): 295–315. https://doi.org/10.47945/tasamuh.v14i2.686.

Ashari, Beni. "INTEGRASI PRINSIP MAQASHID SYARIAH DALAM PUTUSAN PERADILAN AGAMA: MENUJU KEADILAN SOSIAL DALAM KASUS HUKUM KELUARGA." *Al-Qadlaya : Jurnal Hukum Keluarga Islam* 4, no. 01 (2024): 12–20. https://doi.org/10.55120/qadlaya.v4i01.2096.

Assulthoni, Fahmi. "Rethinking Islamic Divorce Law In Indonesia Through Jsser Auda's Systems Approach." *Hakam : Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam* 10, no. 1 (2026). https://ejournal.unuja.ac.id/index.php/hakam/article/view/14501.

Ayuningtiyas, Santi, Risma Zukhrofatul Azizah, dan Iklil Azka Azkiya. "The Construction of the Concept of a Sakinah Family from the Perspective of Maqāṣid Al-Sharī'ah by Jasser Auda and Its Relevance to Islamic Family

Law." *TOFEDU: The Future of Education Journal* 4, no. 3 (2025): 776–84. https://doi.org/10.61445/tofedu.v4i3.492.

Brown, S. L., dan I. F. Lin. "The Gray Divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults, 1990-2010." *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences*, advance online publication, 2012. https://doi.org/10.1093/geronb/gbs089.

Brown, Susan L., dan I.-Fen Lin. "The Graying of Divorce: A Half Century of Change." *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences* 77, no. 9 (2022): 1710–20. https://doi.org/10.1093/geronb/gbac057.

Database Peraturan | JDIH BPK. "Perma No. 1 Tahun 2016." Accessed 29 June 2026. http://peraturan.bpk.go.id/Details/209641/perma-no-1-tahun-2016.

Devi, Sri, dan Muhammad Sabir. "Pengaruh Penurunan Pendapatan Akibat Covid-19 terhadap Tingkat Perceraian di Pengadilan Agama Jeneponto: Analisis Maqasid al-Syariah." *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*, 31 Mei 2023, 521–37. https://doi.org/10.24252/shautuna.vi.29631.

Dewi, Utari Kamila, Yani Achdiani, dan Gina Indah Permata Nastia. "Fenomena Gray Divorce: Mengapa Pasangan Usia Senja Memilih Bercerai?" *Triwikrama: Jurnal Ilmu Sosial* 11, no. 8 (2025): 511–20.

"Direktori Putusan." Accessed 28 July 2026. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaefd1b67948d88c921c323035383332.html.

Fachrina, Fachrina, dan Nini Anggraini. “Motive for Divorce among The Elderly in Padang City.” *Journal of Education, Humaniora and Social Sciences (JEHSS)* 5, no. 4 (2023): 2556–64. https://doi.org/10.34007/jehss.v5i4.1511.

Firmannulloh, Akbar. *PROGRAM STUDI HUKUM KELUARGA ISLAM FAKULTAS SYARI’AH UIN PROF. K. H. SAIFUDDIN ZUHRI PURWOKERTO 2024*. t.t.

“Gray Divorce After 50: A Scoping Review of Antecedents, Consequences, and Family-Theoretical Gaps.” https://doi.org/10.1111/jftr.70078.

Harahap, M. Yahya. *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Sinar Grafika, 2017.

Idrus, Achmad Musyahid. “CONCEPTION OF LEGAL PROTECTION IN ISLAMIC LAW.” *Al-Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan* 8, no. 2 (2019): 185–96. https://doi.org/10.24252/ad.v8i2.11141.

Irawan, Ah Soni. “Implikasi Cerai Gugat Terhadap Hak Istri Perspektif Maqashid Al-Shariah Jasser Auda.” *Minhaj: Jurnal Ilmu Syariah* 4, no. 2 (2023): 178–93. https://doi.org/10.52431/minhaj.v4i2.1828.

Irawan, Ah Soni. “MaqāShid Al-Sharīah Jasser Auda Sebagai Kajian Alternatif Terhadap Permasalahan Kontemporer.” *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (2022): 39–55. https://doi.org/10.51675/jaksya.v3i1.192.

Jayson, Sharon, dan AARP 53 Comments En español. “Divorce Skyrocketing Among Aging Boomers.” AARP. Accessed 11 July 2026. https://www.aarp.org/family-relationships/gray-divorce-trend/.

“Kompilasi Hukum Islam (khi) | Jaringan Dokumentasi dan Informasi Hukum Universitas Sumatera Utara.” Accessed 30 June 2026. https://jdih.usu.ac.id/id/regulasi/kompilasi-hukum-islam-khi.

Lin, I.-Fen, Susan L. Brown, Matthew R. Wright, dan Anna M. Hammersmith. “Antecedents of Gray Divorce: A Life Course Perspective.” *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences* 73, no. 6 (2018): 1022–31. https://doi.org/10.1093/geronb/gbw164.

Malahati, Fildza, Anelda Ultavia B, Putri Jannati, Qathrunnada Qathrunnada, dan Shaleh Shaleh. “Kualitatif : Memahami Karakteristik Penelitian Sebagai Metodologi.” *JURNAL PENDIDIKAN DASAR* 11, no. 2 (2023): 341–48. https://doi.org/10.46368/jpd.v11i2.902.

Masarik, April S., Hailey Fritz, dan Vanja Lazarevic. “Stress and Resilience among Resettling Refugee Youth: An Illustrative Review and New Applications for the Family Stress Model.” *Journal of Family Theory & Review* 14, no. 2 (2022): 207–32. https://doi.org/10.1111/jftr.12454.

Mukh. Sumaryanto. *“Maqāshid al-Shari’ah” Metode Analisis Sistem dalam Filsafat Hukum Islam - Dr. Jasser Auda*. Uncategorized @id. 28 February 2017. https://www.jasserauda.net/maqashid-al-shariah-metode-analisis-sistem-dalam-filsafat-hukum-islam/?lang=id.

Pradikta, Hervin Yoki, dan Maya Noviana Sari. “ANALISIS FAKTOR PERCERAIAN SUAMI ISTRI DI USIA SENJA (Studi Kasus Pada Masyarakat Kec. Teluk Betung Timur Kota Bandar Lampung).” *ASAS* 11, no. 2 (2019): 117–33. https://doi.org/10.24042/asas.v11i2.5601.

Putri, Ellis Lindini, Rusmala Dewi, dan Ari Azhari. “Gray Divorce at Palembang Religious Court 2022: Factors Associated with Old Age Divorce.” *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 2 (2023): 205–25. https://doi.org/10.14421/al-mazaahib.v11i2.3231.

Putri, Ellis Lindini, Rusmala Dewi, dan Ari Azhari. “Gray Divorce at Palembang Religious Court 2022: Factors Associated with Old Age Divorce.” *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 2 (2023): 205–25. https://doi.org/10.14421/al-mazaahib.v11i2.3231.

Quran.com. “Surah Al-Baqarah Ayat 229 - Membaca, Mendengarkan, Terjemahan, tafsir.” Accessed 28 Agustus 2026. https://quran.com/id/sapi-betina/229.

Roslan, Muhammad Mustaqim, dan Anwar Osman Zainuri. “Teori Hifz Al-Nafs Dalam Maqasid Syariah: Analisis Pendalilan: The Theory of Hifz Al-Nafs In Maqasid Syariah: Argumentation Analysis.” *Journal of Muwafaqat* 6, no. 1 (2023): 1–13. https://doi.org/10.53840/muwafaqat.v6i1.121.

“sejarah - Pengadilan Agama Sleman.” Accessed 13 Juli 2026. https://www.pa-slemankab.go.id/article/sejarah.

Shofa, Lailatus. “Maqasid Syariah in the Judge’s Decision on the Divorce Case at the Amuntai Religious Court.” *JOURNAL OF ISLAMIC AND LAW STUDIES* 9, no. 2 (2025): 127–37. https://doi.org/10.18592/jils.v9i2.17814.

Sofyan, Akhmad, dan Robi Yatul. “FACTORS CAUSING DIVORCE FOR OLD AGE COUPLES IN SOCIETY.” *Mitsaq: Islamic Family Law Journal* 1, no. 2 (2023): 175–93. https://doi.org/10.21093/jm.v1i2.7223.

“Struktur Organisasi - Pengadilan Agama Sleman.” Accessed 13 July 2026. https://www.pa-slemankab.go.id/article/struktur-organisasi.

“Surat Yasin Ayat 68: Arab, Latin, Terjemah Dan Tafsir Lengkap | Quran NU Online.” Accessed 29 Juni 2026. https://quran.nu.or.id/yasin/68.

Syarifuddin, Syarifuddin. “Maqāshid Syarī’ah Jasser Auda: Sebuah Sistem Pendekatan Dalam Hukum Islam Kontemporer.” *Al-Mizan (e-Journal)* 17, no. 1 (2021): 27–42. https://doi.org/10.30603/am.v17i1.2061.

Syarifuddin, Syarifuddin. “Maqāshid Syarī’ah Jasser Auda: Sebuah Sistem Pendekatan Dalam Hukum Islam Kontemporer.” *Al-Mizan (e-Journal)* 17, no. 1 (2021): 27–42. https://doi.org/10.30603/am.v17i1.2061.

“Tugas Pokok dan Fungsi - Pengadilan Agama Sleman.” Accessed 13 Juli 2026. https://www.pa-slemankab.go.id/article/tugas-pokok-dan-fungsi.

“View of KONSEP MAQASHID SYARI’AH DAN IMPLIKASINYA PADA PENDIDIKAN ISLAM.” Accessed 4 Mei 2026. https://ejournal.unisnu.ac.id/JPIT/article/view/2138/pdf.

“View of Power Relations and Structural Inequality in Late-Life Divorce: A Socio-Legal Analysis of the Palembang Islamic Court Decisions in 2022.” Accessed 6 February 2026. https://e-journal.elkuator.com/index.php/ijssls/article/view/16/1.

Wakhidah, Nur. “Jasser Auda’s Multidimensional System (Ta’addud Al-Ab’ad) in Reconciling Contradictory Arguments.” *Journal of Educational Sciences* 9, no. 6 (2025): 5793–803. https://doi.org/10.31258/jes.9.6.p.5793-5803.

Wenar, Leif. *John Rawls*. 25 Maret 2008. https://plato.stanford.edu/archives/fall2025/entries/rawls/.

Yangto, Syafuri, dan Ahmad Hidayat. “Perceraian Dalam Perspektif Kaidah Fikih dan Aplikasinya.” *Jurnal Ilmiah Ahwal Syakhshiyyah (JAS)* 7, no. 2 (2025): 295–308. https://doi.org/10.33474/jas.v7i2.24621.

Yangto, Syafuri, dan Ahmad Hidayat. “PERCERAIAN DALAM PERSPEKTIF KAIDAH FIKIH DAN APLIKASINYA.” *Jurnal Ilmiah Ahwal Syakhshiyyah (JAS)* 7, no. 2 (2025): 295–308. https://doi.org/10.33474/jas.v7i2.24621.

Zailani, Muhammad Nooraiman, Nurulhuda Mohd Satar, dan Roza Hazli Zakaria. “A Review Of Indicators For The Presevation Of Wealth (Hifz Al-Mal) Based On Maqasid Sharih.” *Journal Islamic Philanthrophy and Social Finance* 4, no. 1 (2022): 23–29. https://doi.org/10.24191/jipsf.v4i1.3429.

ʿAuda, Ǧāsir. *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. Disunting oleh Ǧāsir ʿAuda. The International Inst. of Islamic Thought, 2008.

APPENDIX

Appendix 1.Interview Questions

A. Interview

1. What is your view regarding the phenomenon of grey divorce or divorce among elderly couples at the Sleman Religious Court?
2. In the past few years, has there been an increase in cases of divorce among elderly couples? In your opinion, what are the main characteristics of grey divorce cases compared with divorce cases involving couples of productive age?
3. What factors most frequently cause divorce among elderly couples? Are economic factors still dominant in divorce cases involving elderly couples?
4. To what extent do prolonged marital conflict and changes in the psychological or physical health conditions of the spouses contribute to the occurrence of grey divorce?
5. How do family relationships and the children usually influence grey divorce cases?
6. What is the procedure for handling divorce cases involving elderly couples at the Sleman Religious Court, and what aspects are most considered by judges in deciding grey divorce cases?
7. What legal basis is most frequently used in deciding grey divorce cases, and how are the Marriage Law and the Compilation of Islamic Law applied in divorce cases involving elderly couples?

8. Are there any challenges in applying the legal provisions to grey divorce cases? In your opinion, does the current positive law adequately accommodate the phenomenon of divorce among elderly couples?
9. Does the concept of *maṣlaḥah* (public benefit) become a consideration in deciding divorce cases? How do you understand the application of *Maqāṣid al-Sharīʿah* in family law cases?
10. Can divorce be regarded as a means of avoiding greater harm (*mafsadah*)?
11. n grey divorce cases, how do judges view the protection of the psychological aspects of the parties and justice for both parties?
12. In your opinion, do divorce decisions involving elderly couples bring more public benefit (*maṣlaḥah*) or harm (*mafsadah*)? How do judges assess the balance between preserving the marriage and protecting the welfare of the parties?
13. Is the concept of substantive justice important in deciding grey divorce cases? What is your view on the contemporary *Maqāṣid al-Sharīʿah* approach in the practice of the Religious Courts?
14. What is the greatest challenge for judges in handling grey divorce cases? In your opinion, what would be the ideal resolution for divorce cases involving elderly couples? Is there a need for specific regulations or a particular approach concerning divorce among elderly couples?

Appendix 2. Interview Transcript

Interview Result

- The Religious Court is a family court that adjudicates various family matters, including divorce cases involving couples aged 50 years and above (grey divorce). These cases arise from various backgrounds, including intellectuals and academics.
- Every divorce case is required to undergo a mediation process. Judges always seek reconciliation by providing advice to the parties so that they reconsider their intention to divorce.
- In providing advice to elderly couples, judges employ a more persuasive and courteous approach. Judges remind them that they have entered old age, that their children have become adults and even have grandchildren, and therefore they should reconsider the impact of divorce on their family.
- udges explain that, in Islam, human beings pass through the stages of childhood, adolescence, adulthood, and old age. In old age, an individual's psychological condition may change, thus requiring gentle treatment, patience, and proper advice.
- In the application of the law, there is no difference in treatment between elderly couples and other parties. As long as the grounds for divorce can be

proven in accordance with the legal provisions, judges have no legal basis to prevent the divorce.

- Before rendering a decision, judges always remind the parties of the consequences of the decision they are about to make, including its impact on their adult children and other family members.
- Judges are of the view that the law should not only be understood normatively, but must also take sociological aspects into consideration. Therefore, each case is assessed based on the facts revealed during the trial.
- If maintaining the marriage would instead result in greater harm (*mafsadah*) to the parties, judges are of the opinion that divorce may be the best solution and should not be obstructed.
- Economic factors are the most frequently encountered cause in grey divorce cases. These economic problems are not merely due to a lack of wealth, but because the husband fails to provide proper maintenance (*nafkah*) for his wife.
- In addition to economic factors, other causes that frequently arise are the lack of attention from one's spouse, prolonged marital conflicts without resolution, and psychological changes in old age, such as the emergence of suspicion or accusations of infidelity, although the latter factor is not dominant.
- Most of the parties involved in these cases are approximately 60 to 70 years of age, with children who are already adults and even have grandchildren.

- Judges stated that grey divorce cases involving couples aged 50 years and above are quite common at the Sleman Religious Court, and the majority are triggered by economic issues.
- In deciding cases, judges take sociological, philosophical, and legal certainty aspects into consideration with the objective of achieving justice for the litigating parties.
- The Religious Court gives priority services to elderly litigants as a form of age-friendly service for vulnerable groups.
- The judges' considerations are not only based on positive law, but also take into account religious values and public benefit (*maṣlaḥah*), particularly the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), and progeny (*ḥifẓ al-nasl*), considering that in old age psychological conditions and behavior often change and require attention in the resolution of cases.

Appendix 3. Sample List of Grey Divorce Rulings at the Sleman Religious Court in 2025

tanggal_putusan	Nomor Perkara	Jenis Perkara	Tanggal Lahir P	Umur P saat tanggal putua	Tanggal Lahir T	Umur T
02/01/2025	1766/Pdt.G/2024/PA.Smn	Cerai Gugat	11/11/1970	54	06/12/1969	55
07/01/2025	1738/Pdt.G/2024/PA.Smn	Cerai Gugat	11/01/1973	52	29/05/1964	61
08/01/2025	1165/Pdt.G/2024/PA.Smn	Cerai Talak	16/11/1971	53	06/03/1969	56
09/01/2025	1709/Pdt.G/2024/PA.Smn	Cerai Gugat	23/06/1970	55	30/06/1970	55
13/01/2025	1823/Pdt.G/2024/PA.Smn	Cerai Talak	27/09/1955	69	24/04/1970	55
14/01/2025	1701/Pdt.G/2024/PA.Smn	Cerai Talak	12/02/1970	55	05/08/1969	55
14/01/2025	1771/Pdt.G/2024/PA.Smn	Cerai Talak	19/06/1959	66	17/08/1962	62
03/02/2025	80/Pdt.G/2025/PA.Smn	Cerai Gugat	13/01/1966	59	26/12/1957	67
13/02/2025	98/Pdt.G/2025/PA.Smn	Cerai Talak	01/02/1949	76	29/10/1945	79
17/02/2025	133/Pdt.G/2025/PA.Smn	Cerai Gugat	23/04/1962	63	19/08/1954	71
18/02/2025	1423/Pdt.G/2024/PA.Smn	Cerai Talak	04/07/1956	69	23/10/1965	59
03/03/2025	187/Pdt.G/2025/PA.Smn	Cerai Talak	30/12/1961	63	16/10/1964	60
03/03/2025	284/Pdt.G/2025/PA.Smn	Cerai Talak	18/12/1939	85	26/08/1957	68
20/03/2025	328/Pdt.G/2025/PA.Smn	Cerai Gugat	10/01/1962	63	10/05/1958	67
24/03/2025	1660/Pdt.G/2024/PA.Smn	Cerai Gugat	25/05/1959	66	22/11/1956	68
24/03/2025	321/Pdt.G/2025/PA.Smn	Cerai Gugat	02/05/1963	62	16/04/1957	68

Appendix 4. Interview Documentation





Interview with H. Sulaiman, S.Ag., M.H. (Judge of the Sleman Religious Court),

at the Sleman Religious Court, June 5, 2026.

CURRICULUM VITAE

Personal Information

Full Name	: Rifqi Mamduh
Place, Date of Birth	: Cilacap, Juni 4, 2004
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Educational Background

- MI El-Bayan Majenang (2010-2016)
- MTS El-Bayan Majenang (2016-2019)
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