

Custody Decisions by Syariah Courts in Malaysia: An Empirical Study

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Abstract: *When the courts make custody decisions in favour of mothers or fathers, they are for the children's welfare and best interests. To this end, depending on the circumstances of the case, the courts normally consider several factors as provided by the law. Among these factors, it is important to determine which ones have a significant impact on the outcome of the cases. This can be achieved by conducting a quantitative analysis. As no related studies have been published, the current study was conducted to quantitatively analyse past custody decisions and identify the significant factors considered by the Syariah Courts in these decisions, thus offering added value to pertinent parties in terms of predictive benefits. Past cases were analysed under Malaysian Islamic law and involved custody claims in Syariah Courts. There were 47 reported cases, covering 30 years (1987-2017). To identify these influential factors, an analysis was conducted using the research technique of content analysis, and a Chi-Square test was run. It was found that in more than 60% of cases, mothers have won child custody against the fathers, and the factors of child preference and continuity of residence enhance the likelihood of a parent receiving custody. By quantitatively analysing the associations based on a conceptual model, the current study has added a new dimension to the literature on studies involving custody decisions in Malaysia. Rather than treating custody decisions as mechanical applications of statutory provisions, this study also conceptualises Syariah Court decision-making as a form of socio-legal practice shaped by judicial interpretations of welfare, morality and stability.*

Keywords: child custody, Act 303, hadanah, child preference, family law

1. Introduction

In child custody or *hadanah* cases involving divorced couples, the Syariah Courts typically follow a practice of awarding sole custody to one parent. In most instances, the court appoints one parent as the sole custodian, while the other parent is granted visitation rights and overnight stays. The term *hadanah* in Islamic law refers to the upbringing of a minor child by the mother or by someone who is legally entitled to it. In other words, the concept of *hadanah* refers to providing physical care for a child who cannot care for themselves, including protection, affection, nurturing, education, and shelter (Mohammad Hidir & Rahmawati, 2020). Custody rights for a *mumayyiz* child are referred to as *kafalah*, according to Al Mawardi (Ahmad Mukhlis et al., 2024). The scope of hadhanah broadly covers all essential aspects of a child's care, including their upbringing, educational needs, and all matters related to their welfare and

well-being (see para 35, *Bashirah bt Ishak v Zawawi bin Zakaria* [2015] 3 SHLR 7). The guiding principle in these custody decisions, whether favouring the mother or the father, is the welfare and best interests of the child, as outlined in Section 86(2) of the Islamic Family Law (Federal Territories) Act 1984 (Act 303). To uphold this principle, the courts carefully evaluate various factors, depending on the circumstances of each case. The most fundamental factor considered is the presumption of maternal custody, as detailed in Sections 81(1) and 86(3) of Act 303. Other legally mandated factors as prescribed by Act 303 include the child's preference (Section 86(2)(b)), the parent's wishes (Section 86(2)(a)), the existing living arrangement (Section 86(3)), the qualifications of the parents (Section 82), and any factors that might result in the loss of custody rights (Section 83).

When the courts consider the presumption of maternal custody during custody decisions, and there are no rebuttals, custody of younger children is likely to be granted to mothers. This principle is upheld in the case of *Maimunah Hamzah v Mohammad Embong* [2005] 2 (Sya) 16, where the presumption recognises the traditional role of mothers as children's primary caretakers. In most families, mothers actively handle the child-rearing tasks while the marriages subsist. Thus, granting custody to mothers after their divorce allows them to continue assuming their accustomed roles. From the jurist's point of view, which is based on a hadith read by 'Amru bin Syu'aib on his father's authority said that his grandfather (Abdullah bin 'Amr ibn al-'As) reported (Sunan Abi Dawud, Kitab Al-Talaq; Hadith 2276), which means, "Rasulullah s.a.w was approached by a woman who said, "Oh Rasulallah, though my child was in my womb and it is his place to shed, my breast is his place to feed, and my lap is his place to seek cover, though his father has divorced me and wants to confiscate my child from me," then Rasulallah s.a.w said to that woman, "You have more rights to your child as long as you do not remarry." This hadith emphasises that in matters of custody or *hadanah*, the child's welfare is the primary concern. It highlights the mother's dedication to caring for her child, prioritising this responsibility over her role as a wife. As a result, the Prophet decided that the child should remain in the mother's custody without deviation. However, the awards are not always granted to mothers in custody battles. When other factors are also considered by the courts, such as mothers' qualifications or loss of rights, custody decisions may be in the father's favour instead.

Among the factors considered by the courts, a question arises as to which ones are most significant in terms of their influence on case outcomes. One way to determine which factors compel the courts to side with either the mothers or the fathers during custody decisions is by conducting a quantitative analysis. Analysing the correlation between the factors and custody decisions in this manner will enable the identification of a pattern of relationship, and this will be useful for predicting future custody decisions. If mothers had won the majority of cases in the past, one could accurately predict that the likelihood of victory for mothers will always be higher in the future, and the winning or losing decision is likely to be attributable to the identified predictors. Predictors identified through quantitative analysis of past decisions would enable litigants to know whether the winning of a parent is more likely to be attributable, for example, to the application of the presumption of maternal custody, or due to the absence of inquiry raised regarding mothers' qualifications. The statistical analysis can ascertain the most significant factor that could potentially explain why the court might have sided with a mother or father. Knowing expected outcomes can also be useful for settlement negotiations. Lawyers can preliminarily evaluate their client's chances of winning custody claims and propose the most optimal dispute resolution strategy. Overall, the availability of quantitative results of past cases will hopefully help make the outcomes of future custody litigations less uncertain.

A review of current publications indexed in the ISI Web of Science and Scopus databases is predominantly doctrinal or qualitative; few systematically examine judicial outcomes. Thus, this study was conducted to understand the trends in past custody decisions and identify the significant factors considered by the courts when making these decisions, offering added value to pertinent parties in terms of predictive benefits.

The study incorporated all relevant reported past decisions in its analysis and statutory provisions in its conceptual model. The study's variables were chosen based on their theoretical reasons. The remainder of this paper is structured as follows. First, the conceptual framework and hypotheses development are presented. Second, the methodological aspects of the study are described. Third, data analysis and results of hypothesis testing are discussed, and finally, the study concludes with suggestions for future research.

2. Theoretical Framework: Judicial Decision-Making and Socio-Legal Interpretation in Custody Disputes

This study is situated within the socio-legal tradition, which conceptualises law not merely as a system of formal rules but as a social institution whose meaning and application are shaped by judicial actors, social norms, and institutional practices. In custody disputes, judicial decision-making involves an interaction between statutory provisions, religious principles, factual circumstances, and broader understandings of family, welfare, and morality. Accordingly, custody outcomes cannot be fully explained by doctrinal analysis alone but require an examination of how judges interpret and prioritise legally relevant factors in practice.

Socio-legal scholarship has long emphasised that judicial decisions are influenced by what judges perceive as socially legitimate, morally appropriate, and practically workable outcomes. In family law, and particularly in child custody cases, courts are frequently guided by open-textured concepts such as the “welfare” or “best interests” of the child. These concepts operate as normative standards rather than rigid legal rules, granting judges considerable discretion in weighing competing factors. The exercise of this discretion reflects what Ewick and Silbey (1998) describe as legal consciousness—how legal actors understand, invoke, and give meaning to law in everyday institutional settings. Within this framework, statutory provisions serve as reference points, but their application is mediated through judicial interpretations of stability, caregiving roles, moral fitness, and children's voices.

In the context of the Malaysian Syariah Courts, custody adjudication is further shaped by Islamic legal principles and social expectations surrounding parental roles. While the Islamic Family Law (Federal Territories) Act 1984 (Act 303) enumerates specific factors relevant to custody determinations such as the presumption of maternal custody, parental qualifications, children's preferences, and continuity of residence. The Act does not prescribe how these factors should be prioritised when they conflict. As a result, judges must actively construct the meaning of the child's best interests by selecting which factors to emphasise and which to subordinate in particular cases. This process reflects an interpretive practice rather than a mechanical application of statutory rules.

From a socio-legal perspective, patterns observed across multiple custody decisions can be understood as manifestations of institutionalised judicial reasoning. Recurrent reliance on certain factors such as maintaining the status quo living arrangement or giving decisive weight to a child's expressed preference may indicate shared judicial assumptions about what

constitutes welfare and stability for children. Conversely, the absence of statistically significant associations for factors that are doctrinally prominent, such as the presumption of maternal custody, may suggest that such principles function more as symbolic or background norms than as decisive determinants in contested cases.

This study adopts an empirical socio-legal approach to examine how Syariah Court judges operationalise statutory custody factors in practice. By quantitatively analysing reported custody decisions over thirty years, the study seeks to identify which legally recognised factors are most strongly associated with custody outcomes and, by extension, which considerations appear to carry the greatest normative weight in judicial reasoning. The conceptual framework underpinning this analysis treats custody judgments as social texts that reflect judicial legal consciousness, institutional priorities, and prevailing understandings of children’s welfare within the Syariah legal system. Through this lens, the findings contribute not only to doctrinal knowledge but also to a deeper understanding of how law, religion, and social values intersect in the adjudication of child custody disputes.

3. Literature Review and Development of Hypotheses

In this quantitative study, the extent of association between the independent variables and the dependent variable was measured. The conceptual model, illustrated in Figure 1 (Rokiah et al., 2021), consisting of independent and dependent variables and hypotheses used in this study, was formulated based on relevant statutory provisions. The independent variables represented the factors influencing judicial decisions, while the dependent variable was the resulting custody outcomes. The independent variables included: the presumption of maternal custody, custodian’s qualifications, grounds for loss of custody rights, status quo living arrangement, the parents’ wishes, and the child’s expressed wishes.

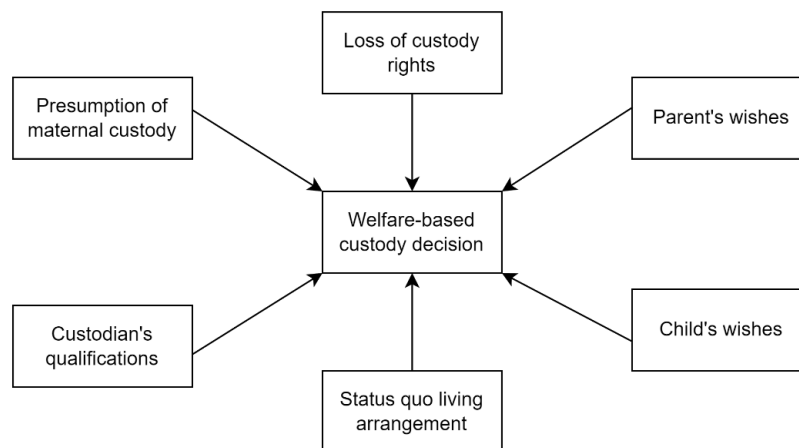


Figure 1: Conceptual Framework Formulated Based on Relevant Statutory Provisions

The presumption of maternal custody holds that mothers are the best custodians or caregivers for children during their infancy. The underlying objective of this presumption is to safeguard and promote the children’s welfare. The presumption is derived from section 81(1) of Act 303, which states “the mother shall be of all persons the best entitled to the custody of her infant children during the connubial relationship as well as after its dissolution”. This assumption is based on the mother’s nurturing and compassionate nature toward her children. According to Nur Zulfah (2019), a mother’s bond with her child is unique and different from the bond between the father and the child. A mother’s sacrifice of bearing the hardships throughout the

pregnancy until the child's birth is also another justification as to why mothers are deemed best suited to care for the child. In contrast, fathers are often presumed to be less naturally suited for parenting and are viewed primarily as providers of economic support for their children's growth and development. The presumption is also provided in section 86(3) of Act 303, which states, "It shall be a rebuttable presumption that it is for the good of a child during his or her infancy to be with his or her mother". Case reports frequently contain references to these provisions, and as a result, mothers often receive custody of younger children. Thus, the study hypothesised the following:

H1: There is a significant association between reference to the presumption of maternal custody and custody decisions.

Custodians' qualifications are an integral part of custody determination. As required by section 82 of the Act 303, certain qualifications are to be satisfied by the custodial parents. These include being a Muslim, having soundness of mind, being of an age that qualifies the custodian to provide childcare, love, and affection that the child may need, having good character and conduct, and living in a safe home where the child is protected from any physical or spiritual harm. As a matter of discussion, there are three potential scenarios regarding the qualification factor that may occur. In the first scenario, a father fighting for custody argues that the mother is not qualified to be the custodian. The mother disagrees and objects to this claim. The court then examines the father's claim, which can either be accepted, rejected, or left undecided. In the second scenario, the father does not challenge the mother's qualifications at all. This could be for any reason, but he does not dispute her ability to be the custodian. When allegations against the mother are either absent, rejected, or unconfirmed, these situations are viewed as favourable to the mother. In the third scenario, the mother claims that she is qualified and accuses the father of not being qualified. If the court accepts her claim, this situation also benefits the mother. When any of these scenarios occur during court proceedings, the likelihood of the mother being granted custody increases. Thus, the study hypothesised the following:

H2: There is a significant association between the qualification scenarios in favour of the mothers and custody decisions.

Certain circumstances, as provided under section 83 of the Act 303, may lead to mothers losing their rights to custody. These comprise mothers' remarriage to individuals not related to the mothers' children, immorality, change of residence to prevent the father from visiting the children, abjuration of Islam, and neglect or cruelty to the children. In respect of these factors, besides remarriage, three possible scenarios are in favour of mothers retaining custody. These scenarios are as follows: the allegation of gross and open immorality, etc., against the mother is absent, the allegation is present but is rejected or unconfirmed, and the assertion that the mother is not involved in the immorality, etc., is present. A mother is probably more likely to be given custody if she is not remarried or if any one of the scenarios in favour of the mother retaining custody applies. Thus, the study hypothesised the following:

H3: There is a significant association between the mother's remarriage, the loss of rights scenarios in favour of the mother retaining custody, and custody decisions.

The necessity to preserve the status quo or the existing living arrangements can be a critical factor in custody decisions. This principle, outlined in section 86(3) of the Act 303, aims to prevent unnecessary disruption to the children's established custodial situation. As a result, when courts take this principle into account, they are more likely to grant custody to the current

guardians with whom the children have been living before the legal proceedings. This principle was demonstrated in the case of *Bashirah bt Ishak v Zawawi bin Zakaria* [2015] 3 SHLR 7. The case involved a marriage that was annulled by the Syariah Subordinate Court on February 4, 2010, and later confirmed by the Syariah High Court on February 17, 2012. The couple had four children together. Before the divorce, the mother (the plaintiff) left the matrimonial home with three of the children when the father (the defendant) decided to remarry, but she later returned her son to the defendant. Subsequently, the plaintiff lived separately with her two daughters while the defendant stayed with their two sons. Both parents visited their children on weekends or at their convenience. The plaintiff later applied for custody of her two sons. The main issue was determining which parent was best suited to have custody of the children. At the time, the plaintiff was still unmarried, and the children had reached the age of discernment (*mumaiyiz*). The court ultimately granted custody of the third and fourth children to the plaintiff and awarded custody of the first and second children to the defendant. After considering all the evidence, including interviews with the children, the court decided to maintain the current living arrangements, allowing the two daughters to stay with the mother and the two sons to remain with the father. The children had already begun their schooling in the area where the parents lived, and the court believed that continuing these arrangements was in the best interest of the children's welfare. This approach seeks to avoid significant changes to the children's daily routines, which could adversely affect their well-being and welfare. Thus, the study hypothesised the following:

H4: There is a significant association between maintaining status quo arrangements and custody decisions.

The preference of children of *mumaiyiz* or discernment age may be taken into consideration during custody decisions. Abdul Ghani Azmi (2003) advocated that the right given to children to choose between their parents is supported by a Prophetic tradition narrated by Abu Hurairah (Sunan Abi Dawud 2277, Book 13, Kitab At-Talaq, Hadith 103), to the effect that a woman came to the Prophet p.b.u.h. and asked: "O Messenger of Allah, my (former) husband wants to take my son away when he (my son) is capable of bringing water from the well of Abu 'Inabah and it is beneficial for me". The Messenger said to the child: "This is your father, and this is your mother; choose either one of them". The child chose his mother, and then both left.

In addition, the reason for allowing a *mumaiyiz* child (one who has reached an age of discernment) to choose his or her custodian lies in prioritising the child's welfare over the parents' interests. It is presumed that the chosen custodian is more affectionate and nurturing toward the child, ensuring his or her needs and well-being are better safeguarded. The principle is enunciated by the case of *Maimunah Hamzah v Mohammad Embong* [2005] 2 (Sya) 16, where it is emphasised that the age of *mumaiyiz* is the age at which children can distinguish between right and wrong, good and bad whenever tested by a court. Principally, when the child has reached the age of discernment (*mumaiyiz*), he or she shall have the choice of living with either of the parents, unless the court orders otherwise (Nurhidayah et al., 2017). In the case of *Bashirah bt Ishak v Zawawi bin Zakaria* [2015] 3 SHLR 7, the judge highlighted that when parents separate, and both reside in the same locality (*qariah*), the mother has greater rights over the child as long as she has not remarried, and the child is still young. Once the child reaches the age of seven or eight years and has attained sufficient understanding (*mumaiyiz*), he or she is given the choice to decide between staying with the father or the mother.

A child is generally considered to reach the age of discernment, known as *mumaiyiz*, around seven to eight years old, depending on the child's individual development. Thus, the

determination of *mumaiyiz* is not solely based on a specific age but also takes into account the child's maturity. Section 86(2) of the Act 303 requires the courts to consider children's preferences if they are capable of expressing an independent opinion. The section provides in that "...if the child has reached the age of discernment (*mumaiyiz*), he or she shall have the choice of living with either of the parents unless the Court otherwise orders". In relation to this, Najibah (2003) stressed that Malaysian law is very firm in giving a child the right to choose who he or she prefers to live with after a divorce. Therefore, while interviewing children in custody disputes, the judge may request the input of the child to assist in making a decision. This can be illustrated by cases such as *Wan Mohd Kamil Wan Abd Ghani v Rosliza @ Mazwani Mohamed Mustapha* [2006] 2 (Sya) 10, where the court held that a child aged eight years old had attained his discernment age after being tested by the court on his competency to express his independent opinion, and chose to live with his father. Upon considering his welfare, the court granted custody of him to the father accordingly. A similar approach can be seen in the case of *Norani Abd Rahman v Md Taib Hanapi* [2005] 1 CLJ (Sya) 332. Nevertheless, if a child has already attained the age of discernment but refused to make any choice between the two parents, the court would decide for the child. The principle is enunciated in the case of *Noornita Kamaruddin v Faeiz Yeop* [2004] CLJ (Sya) 198. A parent is probably more likely to be awarded custodial rights if the child's opinion is asked and he or she prefers to live with the chosen parent. Thus, the study hypothesised the following:

H5: There is a significant association between children's preferences and custody decisions. Parents' wishes may also determine custody decisions. Parents may reflect their wishes

concerning custody arrangements through agreements following negotiations held either privately or through mediation or *sulh*. When both parties can practice mutual consent, it creates a positive environment that safeguards the child's rights. By prioritising the child's well-being, the parties set aside any post-divorce conflicts, either temporarily or permanently, to focus on the child's best interests. Following section 99 of the Syariah Court Civil Procedure (Federal Territories) Act 1998 (SCCPA), disputing parties are encouraged to engage in the practice of *sulh* at any point during court proceedings. Additionally, section 94 of the same Act also permits both parties to opt for settlement at any stage of the proceedings. Parties can later apply for a variation of the terms, and courts can vary custody agreements if it is reasonable to do so based on the welfare principle (section 76 of the Act 303). When one parent has given custody to the other, and the agreement is endorsed by the courts, custody is more likely to be awarded to the chosen parent. Thus, the study hypothesised the following:

H6: There is a significant association between parents' wishes expressed through custodial agreements and custody decisions.

4. Methodology

4.1 Research Design

This study employed a quantitative socio-legal research design using systematic content analysis of judicial decisions. Content analysis was selected as it enables the empirical examination of legal texts in order to identify patterns, relationships, and trends in judicial reasoning that may not be apparent through traditional doctrinal analysis alone. Unlike conventional legal research, which focuses primarily on the interpretation of legal principles, content analysis treats judicial opinions as data that can be systematically coded and analysed to reveal how legal factors are applied in practice.

The primary objective of the study was to identify which legally recognised factors are significantly associated with custody outcomes in Syariah Court decisions and to assess their potential predictive value. The analysis focused on the relationship between statutory custody factors (independent variables) and the resulting custody decisions (dependent variable), as conceptualised in the study's framework.

4.2 Data Collection and Case Selection

The dataset comprised reported Syariah Court custody decisions decided under the Islamic Family Law (Federal Territories) Act 1984 (Act 303) and equivalent state Islamic family law enactments. Cases were identified through searches conducted in the LexisNexis legal database using keywords such as “child custody”, “custodial order”, “custody rights”, and “hadanah/hadhanah”. To ensure comprehensive coverage, cross-checks were conducted using the *Current Law Journal* and *Jurnal Hukum*, and any additional relevant cases were incorporated.

The search results were screened to include only cases that met the following criteria: (i) the dispute involved a claim for a custody order; (ii) the parties to the dispute were the child's parents; and (iii) the court made a determination awarding custody to either the mother or the father. Cases were excluded if they related solely to procedural matters, applications concerning visitation rights without a custody order, contempt proceedings, or applications brought by parties other than the parents.

Following the screening process, a total of 47 reported cases were identified as suitable for analysis. These cases spanned a period of thirty years, from 1987 to 2017, and included applications for permanent custody orders, interim orders, variations of existing orders, and applications to set aside *ex parte* orders. The temporal scope was considered sufficient to identify consistent patterns in judicial decision-making within a relatively stable statutory framework.

4.3 Coding Procedure and Variables

A coding instrument was developed based on the relevant statutory provisions governing custody determinations under Act 303. The independent variables represented the factors expressly recognised by law as relevant to custody decisions, namely: the presumption of maternal custody, custodians' qualifications, grounds for loss of custody rights, continuity of residence or status quo arrangement, parents' wishes, and children's expressed preferences. The dependent variable was the custody outcome, coded according to whether custody was awarded to the mother or the father.

Each judicial decision was carefully examined and coded according to predefined categories. Where necessary, sub-categories were developed to capture different factual scenarios, particularly in relation to custodial qualifications and loss of custody rights. The coding scheme was refined iteratively as new patterns emerged during the analysis. To minimise errors and enhance reliability, all cases were reviewed twice after the initial coding exercise to ensure consistency and accuracy in data extraction.

4.4 Data Analysis

The coded data were entered manually into IBM SPSS Statistics (Version 26) for analysis. Descriptive statistics were first generated to identify general trends in custody outcomes. Cross-tabulation (contingency table) analysis was then employed to examine the joint distribution of the independent variables and custody decisions.

To test the hypothesised associations between variables, Pearson’s Chi-square (χ^2) test was used. In instances where the assumptions of the Chi-square test were violated due to small cell sizes, Fisher’s Exact Test was applied instead. For relationships that were found to be statistically significant, the Phi coefficient was calculated to assess the strength of the association between variables.

4.5 limitations

One limitation of the study is its reliance on reported cases, which may not capture the full range of custody decisions adjudicated by the courts. Unreported cases may exhibit different patterns, particularly in routine or uncontested matters. Future research may address this limitation by incorporating unreported decisions through appropriate sampling techniques or by complementing quantitative analysis with qualitative methods such as judicial interviews or courtroom observations. Despite this limitation, the present study provides a systematic empirical account of custody decision-making trends within the Syariah Courts and offers a robust foundation for further socio-legal inquiry.

5. Results and Findings

The analysis showed that mothers won more than 60% of the cases. It was also found that mothers were the plaintiffs or applicants in 81% of the custody claims. Regarding the hypotheses, it was found that significant associations exist between children’s preferences, status quo arrangement, married mothers, and custody decisions. However, no significant associations exist between reference to the maternal presumption, favourable scenarios on qualification and loss of rights factors, custodial agreement and custody decision. The results of statistical analysis for each factor concerning the hypotheses are presented below.

In more than half of the cases (54%), both spouses had legal representation (Table 1). When only one spouse was represented, it was mothers who were more likely to be represented in the majority of cases (93%). When only one party was represented, in most cases, the party with counsel’s representation was more likely to be awarded custody. This shows that while self-representation is possible, self-represented parties may be at higher risk of losing custody. This is probably due to failure to meet technical requirements to prove their cases or failure to follow the required procedures. As previous studies have confirmed, there was an association between the availability of counsel representation and an increased prospect that the represented parent would be awarded sole custody (Poppe & Rachlinski, 2016). However, two cases were decided in favour of fathers despite the fact that they were self-represented and the mothers were counsel-represented. In the first case, the two children of *Mumaiyiz*’s age were living with the father and preferred to continue living with him. In the second case, the mother’s application for custody of her non-*mumaiyiz* children was dismissed because she had surrendered custody to the father through an agreement.

Table 1: Association between Counsel Representation and Custody Decision

Counsel representation	Custody decision		Total
	Father won	Mother won	
Both parties represented	12	10	22
Only mothers represented	2	14	16
Only fathers represented	1	0	1
Both parties not represented	0	2	2
Total	15	26	41

Hypothesis 1 posited that there is a significant relationship between reference to the presumption of maternal custody and custody decisions. Based on the results, the relationship was found to be non-significant (Table 2). Therefore, the hypothesis was not supported. However, descriptively, the results showed that the presumption was referred to in many cases, with custody decisions favouring mothers given out in the majority of the cases. In cases involving children of older or *mumaiyiz* age, custody awards were given to either the mothers or fathers, with all cases won by mothers involved children who were already living with them.

Table 2: Association between Reference to Rebuttable Presumption and Custody Decision for The Child of Non-Mumaiyiz Age

Rebuttable presumption	Custody decision		Total
	Father won	Mother won	
The presumption not referred	3	2	5
The presumption referred	5	16	21
Total	8	18	26

Hypothesis 2 posited that there is a significant association between the qualification scenarios favouring mothers and custody decisions. Scenarios favouring mothers include those where allegations of their lack of qualification are non-existent, unconfirmed, or rejected; assertions of mothers' qualifications are accepted; or allegations of fathers' lack of qualification are accepted. Based on the results, the relationship was found to be non-significant (Table 3). Therefore, the hypothesis was not supported. This means there is no significant correlation between the scenarios favouring mothers and their success in receiving custody. In most cases, the mother's qualifications were not contested even when the fathers were represented. This constitutes the most common phenomenon in relation to the qualification factor. This phenomenon reflects that in most cases, qualification is not an issue, and fathers do not dispute mothers' qualifications. The absence of allegations regarding mothers' lack of qualifications can be expected when the fathers are absent, the mothers apply for an *ex parte* hearing, or the fathers are unrepresented. In cases where allegations are raised, it is more likely that they are rejected or unconfirmed rather than accepted. Allegations may be rejected if they are not detailed, if no witnesses are called to substantiate the claims, or if the allegations are brought up only in the closing statements. Rejected or unconfirmed allegations will not disqualify mothers from exercising their custodial rights. Cases involving mothers asserting their qualifications, as stated in the affidavits or mentioned by courts, were few.

Table 3: Association between Mothers' Favourable Scenarios on Qualification Factor and Custody Decision

Qualification factors	Custody decision		Total
	Father won	Mother won	
Mothers without favourable scenarios	1	0	1
Mothers with favourable scenarios	15	26	41
Total	16	26	42

Hypothesis 3 posited that there is a significant association between loss of rights and custody decisions. Based on the results, the association was found to be significant for the marriage factor, as shown by the Phi Coefficient value (Table 4). This indicates that if a mother is not married, custody is more likely to be given to her. Descriptively, as the pattern of custody decisions showed, mothers who stay unmarried have a better likelihood to win custody cases (75%), whilst mothers who remarry have zero probability (0%). However, as the statistical testing showed, the association was not significant for other factors of loss of rights (Table 5).

This indicates that the absence of allegations of immorality against mothers, change of residence, etc., or rejected and unconfirmed allegations has no association with the prospect of mothers winning custody.

Table 4: Association Between Mothers' Marriage and Custody Decision

Marital status of the mother	Custody decision		Total
	Father won	Mother won	
Married	8	0	8
Not married	6	18	24
Total	14	18	32

Note: $\chi^2 = 13.714$, $df = 1$, $p < 0.001$, Phi coefficient = -0.655 , $p < 0.001$

Table 5: Association between Mothers' Favourable Scenarios on Other Factors of Loss of Rights and Custody Decision

Other factors on the loss of rights	Custody decision		Total
	Father won	Mother won	
Mothers without favourable scenarios	1	0	1
Mothers with favourable scenarios	15	26	41
Total	16	26	42

Hypothesis 4 posited that there is a significant association between status quo arrangements and custody decisions. As indicated by the Phi Coefficient value (Table 6), a very strong association exists between this factor and the litigation outcome. The hypothesis was therefore supported, indicating that if continuing the status quo arrangement is taken into consideration, the parent more likely to be awarded custodial rights is the existing custodian. Descriptively, when children were living with their mothers, custody was given to the mothers in 96% of the cases, and when children were living with their fathers, custody was given to the fathers in 78% of the cases. Without the children living with them, the prospect of a winning decision is reduced to 4% and 22% respectively. The results of the analysis showed that the need to maintain continuity of parenting is a significant factor in the decision of whether to grant custody to either of the parents. The odds of a parent receiving custody increase in cases where the child has been living with him or her.

Table 6: Association between Living Arrangement and Custody Decision

The child has been living	Custody decision		Total
	Father won	Mother won	
Not with mothers	14	4	18
With mothers	1	22	23
Total	15	26	41

Note: $\chi^2 = 23.467$, $df = 1$, $p < 0.001$, Phi coefficient = 0.757 , $p < 0.001$

Hypothesis 5 posited that there is a significant association between children's preferences and custody decisions. As shown in Table 7, a very strong relationship exists between this factor and custody decision. The hypothesis was therefore accepted, confirming that the likelihood of custody is enhanced by this factor. When the children decided to live with their preferred parents, custody was given to the parents in 100% of the cases.

Table 7: Association between Children’s Wishes and Custody Decision

Child’s wishes	Custody decision		Total
	Father won	Mother won	
Child preferred mothers	0	4	4
Child did not prefer mothers	4	0	4
Total	4	4	8

Note: Fisher’s test is significant at $p < 0.05$, Phi coefficient = 1.000, $p < 0.05$

Hypothesis 6 posited that there is a significant association between parents’ wishes expressed through custodial agreement and custody decisions. Based on the results, the association was found to be non-significant. Statistically, the hypothesis stating that a parent is more likely to be awarded custody if it has been given to the parent through an agreement was not supported (Table 8).

Table 8: Association between Custodial Agreement and Custody Decision

Custodial agreement	Custody decision		Total
	Father won	Mother won	
Custody is given to fathers through agreements	7	0	7
Custody is given to mothers through agreements	0	1	1
Total	7	1	8

6. Discussion

The Chi-Square analysis revealed that the custody decision is significantly associated with children’s preferences, status quo arrangements, and mothers’ marriages. The strongest associations were found for the child’s preference and the status quo arrangement. Based on their respective strengths, these factors can significantly increase the odds that a parent would receive custody. Therefore, these two factors serve as the strongest predictors of custody decisions. However, the Chi-Square analysis revealed that reference to the maternal presumption, favourable scenarios on qualification and loss of rights factors, and custodial agreement have no significant correlation with custody decision. The findings were determined based on the frequency of cases in categorical responses when comparing the observed and expected values.

In terms of descriptive analysis, children’s decision to live with their preferred parent led to custody being given to the preferred parent in all of the cases. Concerning the status quo arrangement, when the children were living with their mothers, the probability of mothers receiving custody was higher. Similarly, if children were residing with the fathers, custodial orders were given to the fathers in a higher number of cases. The chance of winning custody was higher for unmarried mothers. The likelihood of them obtaining custody of *mumaiyiz* children was 50%, and the prospect increased to 69% in the case of non-*mumaiyiz* children.

When it came to custody of non-*mumaiyiz* children, the decisions sided with mothers more than they did with fathers. Fathers’ prospects of winning custody of younger children stood at about one-third of the cases. This may be because courts recognised the assumption that mothers are better suited to raise children of young age, as provided under sections 81(1) and 86(3) of Act 303. Thus, giving custody to mothers was viewed as meeting the children’s best interests and welfare requirements. However, as provided under section 86(3), the presumption of maternal custody is rebuttable. In some cases, the application of the presumption may not serve the children’s best interests. These can be illustrated by the case of *Wan Junaidah Wan Jusoh v*

Latiff Mohd Shah [1992] 2 (Sya) 12. For the welfare of the children, the court granted custody of two children aged twelve and eleven years to the father, while the other child, aged six years to the mother. In this case, the two children had already attained the age of discernment and were capable of expressing themselves. The court observed that the father would better serve the children's welfare, as he possessed a good religious background and the ability to carry out his responsibility as a father. The youngest, who was just a six-year-old boy, was still incapable of expressing his opinion independently. Thus, the mother would better serve his welfare.

Summarily, it can be deduced that in keeping with the best interest principle, other factors, such as the need to maintain continuity of residence or the mother's loss of custodial rights due to remarriage, may be applied to override the presumption. As the data showed, when the children were already living with the fathers, non-*mumaiyiz* cases were mostly won by fathers. In these cases, the courts recognised the need for continuity in parenting and thus required the children to be placed in an environment they were familiar with. Changing their existing living environment may not be a desirable move if such changes would disturb the stability of their lives. Nevertheless, if the change does not affect the children's stability, the court will not be reluctant to vary its earlier decision to remove the custody of children from the existing custodian to another, as can be exemplified by the case of *Rahanim Mohd Yobe v Adnan Ahmad* [1994] 2 (Sya) 10. In justifying the change of custody of two children from their father to the mother, the court held that the welfare and emotional aspect would not be disrupted by the change, as they used to be with their mother at least two days every week. After contemplating the conditions of the applicant (mother), the court found that there was no condition rendering the mother unfit to be the custodian of the children. Therefore, the removal of the children from the custody of the father to the mother was justified and seen not to cause disturbance to the stability of the children's lives. In summary, for the best interests of the child, a parent who can maintain stability or at least continue in the child's surroundings is considered more favourable by the court for custody, as there is no set standard constituting stability.

In addition, as the results showed, when the mothers were found to have remarried, custody decisions were mostly in favour of the fathers. In these cases, while the marriage factor can hurt mothers' chances of receiving custody, commentators generally view that a mother's marriage will only cause loss of custody rights if the marriage affects the welfare of the child (Najibah et al., 2016). Cases also indicate that mothers' remarriage in itself is not a conclusive ground for losing custody. It will lead to loss of custodial rights if it is found to interfere with the principle of children's best interests. In *Noornita bt Kamaruddin v. Faeiz bin Yeop* [2004] CLJ (Sya) 198 and *Azizah bt Ibrahim v. Sufian bin Che Mud* [2012] 4 SHLR 1, the courts were inclined to give prevalence to the children's welfare test, with a result that marriage itself did not relinquish a mother's right to custody. In light of these decisions, married mothers may still have the prospect of receiving custody if circumstances show that they are better parents than the fathers and the welfare of the children living with them is taken care of much better.

In this study, children's preference was found to have the strongest influence on the decisions. This means that custodial orders were given to the parents with whom the children chose to live. Children of older age understandably may want more control over their environment, including where and with whom they want to live, and these needs are recognised by the law. When children's preference was considered by the courts, was the welfare and best interest principle safeguarded? Judicially, the court accepted that if a child was old enough to express their own wishes, the court would consider them. The consideration was not because their wishes could determine the judgment, but it would help a judge in assessing what was best for a child's welfare. Nevertheless, if a child's own wishes were contrary to their long-term

interests, they may be disregarded altogether (*Chang Ah May v. Francis Teh Thian Sar*1121991] 2 CLJ (Rep) 412 at 416). Despite its strong predictability, children's preference is not viewed as a conclusive determinant of custody decisions. It will be accepted only if the children's welfare is ensured. Children's right to choose must not affect the quality of parenting and the process of upbringing (Najibah et al., 2016). As mentioned in a case recorded in *Nail al Autar*, a child's wish was not granted when he told the judge that his reason for preferring to stay with the father was that the father allowed him more time to play with his friends, but the mother asked him to go to school every day (Najibah et al., 2016; Rafiq, 2014). In *Faridah bt Daud & Anor v. Mohd Firdaus Abdullah @ Jettle Francis* [2005] 1 SHLR 153, the court viewed that the children's right to choose was to be subject to consideration of their welfare. The second child chose the father as her custodian, but given the issue of Islamic upbringing and the child's future Islamic faith, the custody was given to the maternal grandmother. If the child's preference had been considered, custody would have been given to the father. The child would have ended up living with her non-Muslim paternal grandmother or stepmother, as the father's work requirement made it impossible for the child to live with him.

As the law stipulates, custody must be awarded to the parent who can meet the child's physical, religious, mental, and emotional needs and ensure that the child will not be neglected. The finding that mothers won custody cases when their parenting ability was not an issue was in keeping with the children's best interest principle. On account of the best interest principle, custody should not be given to the mother if she is found unqualified in her parenting ability. The principle is upheld in the case of *Tunku Fazlinda Tunku Khalil v Azhar Sidek* [2006] 2 (Sya) 17, where the court, based on a consent order, granted the custody of three children to the Plaintiff as their mother was deemed unsuitable and unqualified under section 82 (a) – (e) of Act 303. In addition to this, having good conduct or morality from an Islamic point of view is also an important qualification under the provisions of section 84 of Act 303. This includes teaching children to be respectful to both their father and mother, as illustrated by the case of *Nordaliya Shamsudin v. Ahmad Nasri Shaharudin* 2010] 1 CLJ (Sya) 266 at 275. The court held that as the right of visitation was the child's right to be close and intimate with both parents, denying a child any contact with his parents was akin to teaching a child to be rebellious against them. This was, of course, sinful as Islam made it incumbent upon children to be respectful of their parents. Therefore, it was provided that a woman would lose the right to *hadanah*, if, by changing her residence, she intended to prevent the father from exercising necessary supervision over the child. Summarily, granting custody to such a mother would have a lasting effect on the child's well-being. This scenario of unqualified mothers may have been present in a small number of cases, but if allegations regarding mothers' disqualification are accepted, it can be predicted that the custody decision is likely to be in the fathers' favour.

7. Conclusion

This study's findings reveal that Syariah Court custody decisions are shaped less by formal doctrinal presumptions and more by judicial interpretations of welfare, stability, and practical caregiving arrangements. From a socio-legal perspective, these patterns reflect an underlying judicial legal consciousness in which the child's best interests are constructed through normative assessments rather than mechanically derived from statutory hierarchies. The two factors that influenced custody decisions most significantly were children's preferences and the status quo arrangement. These factors had the highest weightage value. If inferences from this trend were to extend beyond the retrospective pattern, there is probably a likelihood that these factors can offer some insights into analysing future custody cases.

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Conflict of Interest Statement

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