



LEGAL REFORM OF NAFKAH MADHIYAH IN WIFE-INITIATED DIVORCE CASES: A MAQĀṢID AL-SHARĪ'AH ANALYSIS WITHIN THE RELIGIOUS COURT SYSTEM

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ABSTRACT

Madhiyah alimony is one of the economic rights of women that must be fulfilled by husbands, but in practice, divorce proceedings in religious courts often fail to implement this right optimally. The gap between positive legal provisions such as the Compilation of Islamic Law, the Marriage Law, and SEMA Number 3 of 2018 and the reality of women's rights protection after divorce shows the weak application of the principle of substantive justice in the religious court system. This study aims to analyze the problems of madhiyah alimony regulations in divorce cases and formulate a model of legal reform oriented towards *maqāṣid al-syaṅ'ah*, particularly the dimensions of *ḥifẓ al-māl* and *ḥifẓ al-nafs*. This study uses a normative juridical method with analysis of regulations, fiqh doctrine, and the principles of *maqāṣid al-syaṅ'ah* as a philosophical basis for strengthening the protection of women's economic rights. The results of the study show that (1) the positive legal framework does not yet provide clear guidelines on the standards for determining madhiyah alimony, thus potentially leading to disparities in application; (2) *maqāṣid* analysis emphasizes the importance of fulfilling madhiyah al-nafkah as a form of substantive justice and protection of sharia objectives; and (3) integrative legal reform is needed through the improvement of judicial guidelines and the strengthening of judges' arguments based on *maqāṣid al-syaṅ'ah*. This research contributes to the development of Islamic family law in Indonesia that is more just and responsive to women's rights in divorce cases.

Keywords: Madhiyah alimony; divorce by lawsuit; protection of women; *maqāṣid al-syaṅ'ah*; legal reform.

1. INTRODUCTION

Divorce is one of the causes of the termination of marital relations that carries significant legal consequences, particularly concerning the fulfillment of women's economic rights after divorce. One of these rights is *madhiyah* alimony, which refers to alimony that was not fulfilled by the husband during the marriage and remains his responsibility until divorce occurs. In the context of Islamic family law in Indonesia, *madhiyah* alimony has a legal basis in *fiqh*, the

Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), and various regulations that aim to guarantee the protection of women's rights.

However, normative studies indicate that legal protection for *madhiyah* alimony has not been optimally realized in practice. In many divorce cases adjudicated by Religious Courts (*Pengadilan Agama*), judges often focus more on prospective alimony—such as *iddah* and *mut'ah*—while claims for *madhiyah* alimony are frequently overlooked, inadequately considered, or rejected due to evidentiary constraints. Several Religious Court decisions demonstrate disparities in judicial reasoning, where similar factual circumstances result in different outcomes regarding the recognition of *madhiyah* alimony. At the level of the Supreme Court (*Mahkamah Agung*), although certain decisions affirm the obligation of husbands to fulfill unpaid alimony, these rulings have not yet been consistently translated into uniform judicial practice at lower courts.

This condition reflects a legal gap in the regulation of *madhiyah* alimony. Existing legal instruments, including the KHI, do not provide clear and detailed guidelines regarding the criteria, calculation methods, evidentiary standards, and enforcement mechanisms for *madhiyah* alimony. As a result, judges exercise broad discretion, which often leads to legal uncertainty and weak protection for women's economic rights after divorce. This gap places women in a more economically vulnerable position, despite their normative status as rights holders under Islamic family law.

From the perspective of *maqāṣid al-sharī'ah*, the fulfillment of *madhiyah* alimony is closely related to the protection of property (*ḥifẓ al-māl*) and the preservation of life (*ḥifẓ al-nafs*). Ensuring women's access to their rightful economic entitlements after divorce is therefore not merely a procedural matter, but a substantive requirement of justice. Islamic family law, when viewed through the *maqāṣid* framework, should function not only formalistically but also responsively, prioritizing the welfare and dignity of women as the most vulnerable party in post-divorce situations.

Previous studies have discussed alimony in general within Islamic family law; however, only a limited number have specifically examined the regulation of *madhiyah* alimony through the lens of *maqāṣid al-sharī'ah*. Most existing research tends to focus on normative doctrinal analysis without sufficiently addressing the practical implications of judicial inconsistency and regulatory shortcomings. Consequently, there remains a significant research gap in reconstructing the concept and application of *madhiyah* alimony in a manner that aligns with the objectives of Islamic law and contemporary demands for gender justice.

This study aims to analyze the regulation and judicial practice of *madhiyah* alimony in divorce cases in Indonesia and to examine the urgency of legal reform through a *maqāṣid al-sharī'ah* approach. Academically, this research contributes to the development of Islamic family law theory by offering a value-oriented reinterpretation of alimony obligations. Practically, it provides recommendations for judicial guidelines and policy formulation that may strengthen the protection of women's economic rights in divorce cases before the Religious Courts.

2. METHODS

This study uses a normative juridical approach that aims to examine the regulation of madhiyah alimony in divorce cases based on positive law provisions and the principle of justice in Islamic family law. The data sources in this study are secondary data obtained through *library* research, with a scope covering relevant laws and regulations such as the Marriage Law, the Religious Court Law, the Compilation of Islamic Law (KHI), and judicial policies such as SEMA Number 3 of 2018 and PERMA Number 3 of 2017. In addition, fiqh literature, expert doctrines, and previous research results were used as theoretical and analytical foundations.

The data obtained was analyzed descriptively and qualitatively through three stages: (1) normative analysis of legal provisions regarding madhiyah alimony in the Islamic family law system in

Indonesia; (2) conceptual analysis of the fulfillment of women's economic rights in divorce lawsuits based on the principle of justice; and (3) a philosophical analysis referring to the *maqāṣid al-syaṭī'ah* approach, particularly the aspects of *ḥifẓ al-māl* and *ḥifẓ al-nafs*, to formulate ideas for reforming madhiyah alimony law to be more responsive to the protection of women after divorce.

3. RESULTS AND DISCUSSION

A. The Construction of Madhiyah Alimony Law in the Islamic Family Law System in Indonesia

Normatively, the obligation of a husband to provide financial support to his wife during marriage is stipulated in Law No. 1 of 1974 on Marriage (Article 34 paragraph (1)). Meanwhile, post-divorce financial obligations, including *nafkah madhiyah*, are implicitly regulated in the Compilation of Islamic Law (KHI), particularly Article 149 letter (d). In addition, judicial policy instruments issued by the Supreme Court—such as SEMA Number 3 of 2018 and PERMA Number 3 of 2017—affirm the obligation of judges to consider the economic rights of women after divorce.

However, despite this normative framework, there are no binding technical judicial guidelines (*pedoman teknis yudisial*) that regulate the standards for determining the amount of madhiyah alimony, the calculation method, and the enforcement mechanism. This legal vacuum places excessive reliance on judicial discretion (*vrije bewijsleer*), which in practice has resulted in inconsistent court decisions and legal uncertainty for divorced women.

Empirical observation of Religious Court decisions shows disparities in the treatment of madhiyah alimony. In some cases, judges grant madhiyah alimony as an enforceable debt, while in others, similar claims are rejected on procedural or evidentiary grounds, even when the factual circumstances are comparable. This disparity indicates that the absence of technical standards has transformed judicial discretion into a source of inequality rather than justice.

From the perspective of classical fiqh, differences in opinion regarding past alimony further complicate judicial practice. Certain juristic views—commonly associated with the Hanafi school—require a judicial ruling for past alimony to become a legally enforceable debt, whereas the Shafi'i and Hanbali schools consider unpaid alimony as an inherent obligation that

automatically binds the husband. Indonesian judges are therefore required to harmonize these doctrinal differences with the KHI and the national legal system. Yet, without clear methodological guidance, such harmonization often depends on individual judicial interpretation.

This condition reflects a structural weakness in the construction of madhiyah alimony law in Indonesia. The lack of clear operational norms undermines legal certainty and contradicts the objectives of Islamic family law, particularly the protection of property (*ḥifẓ al-māl*) and human dignity (*ḥifẓ al-nafs*). Consequently, a normative reconstruction is required—one that not only reinforces the legal basis of madhiyah alimony but also provides concrete judicial standards to ensure consistency, predictability, and effective protection of women's economic rights after divorce.

B. Substantive Justice Analysis of Women's Economic Rights in Divorce Cases

Justice in Islamic family law is not limited to formal legality but is intrinsically linked to the protection of vulnerable parties and the realization of social welfare. In divorce cases, women are disproportionately affected by the dissolution of marriage, particularly in terms of economic security. Therefore, madhiyah alimony plays a crucial role as an instrument for safeguarding women's livelihoods after divorce.

Nevertheless, Indonesian positive law has not yet provided clear and measurable standards regarding the assessment of needs, the husband's financial capacity, and the enforcement of madhiyah alimony. As a result, the application of this right at the Religious Court level varies significantly. Judicial decisions demonstrate that women with similar factual circumstances may receive fundamentally different outcomes depending on the interpretive approach of individual judges.

This situation reveals a structural imbalance in the legal system. Women who initiate divorce proceedings often face economic vulnerability, while former husbands retain financial control and bargaining power. When judges prioritize procedural formalism over substantive considerations, court decisions may appear legally correct but fail to deliver real justice. Such rulings reinforce gender-based inequality and undermine the protective function of Islamic family law.

From the perspective of *maqāṣid al-syarī'ah*, madhiyah alimony is directly connected to *ḥifẓ al-māl* and *ḥifẓ al-nafs*. The rejection or neglect of madhiyah claims can result in women being unable to fulfill their basic needs, contradicting the fundamental objective of Islamic law to promote public welfare (*maṣlaḥah*). Therefore, legal interpretations that are detached from social realities cannot be regarded as fulfilling the true purpose of Islamic justice.

A substantive justice approach requires judges to view madhiyah alimony not merely as a technical claim, but as a mechanism of distributive justice aimed at restoring socio-economic balance after divorce. Progressive judicial interpretation, grounded in *maqāṣid al-syarī'ah*, is essential to ensure that legal norms function as tools of protection rather than instruments of exclusion.

C. The Idea of Reforming Madhiyah Alimony Law Based on Maqāṣid al-Syarī'ah

Reforming madhiyah alimony law must be oriented toward strengthening substantive justice within the Religious Court system. The current legal framework, which remains general and fragmented, necessitates derivative regulations and binding technical guidelines to ensure legal certainty and equality before the law. This reform is firmly grounded in *maqāṣid al-syarī'ah*, particularly the protection of property (*ḥifẓ al-māl*) and human dignity (*ḥifẓ al-nafs*).

First, reform must include the standardization of judicial guidelines at the national level. The Supreme Court should issue technical judicial guidelines (*pedoman teknis yudisial*) that regulate the calculation of *madhiyah alimony*, including indicators of the wife's reasonable needs, the husband's financial capacity, and the duration of unpaid support. Such standardization is essential to reduce disparities in court decisions and to ensure equal treatment for women across different jurisdictions.

Second, integrating the *maqāṣid al-syarī'ah* framework into judicial reasoning is crucial. Judges must be encouraged to move beyond formalistic interpretations and to employ *maqāṣid*-based reasoning as a legitimate method of legal interpretation. This approach ensures that court decisions are not only legally valid but also socially responsive and morally justified.

Third, legal reform must address enforcement mechanisms. *Madhiyah alimony* should be explicitly recognized as a civil debt with effective execution instruments. Strengthening enforcement units within the Religious Courts and enhancing cooperation with institutions that support women's rights are necessary to prevent enforcement burdens from falling solely on divorced women.

Through this integrative reform—combining regulatory strengthening, judicial standardization, and effective enforcement—the law of *madhiyah alimony* can function as a genuine instrument of justice. Such reform aligns with the vision of Islamic family law, which seeks not only to regulate marital dissolution but also to ensure the continued social welfare of vulnerable parties. Ultimately, *madhiyah alimony* reform represents a concrete realization of substantive justice in accordance with *maqāṣid al-syarī'ah* within the Indonesian legal system.

4. CONCLUSION

The regulation of *madhiyah alimony* in the Islamic family law system in Indonesia has a strong legal basis through the Marriage Law, KHI, and judicial guidelines such as SEMA Number 3 of 2018 and PERMA Number 3 of 2017. However, there are no clear technical standards for determining the amount of *madhiyah alimony*, the calculation method, and the implementation mechanism leading to legal uncertainty and disparities in rulings between Religious Courts. This situation means that the protection of the right to *madhiyah alimony* has not been consistently realized as expected by the normative provisions.

From the perspective of substantive justice, the weak implementation of *madhiyah alimony* shows that women's economic rights after divorce are still not optimally protected. Women who file for divorce are often in the most socio-economically vulnerable position, so that decisions based solely on formal legality without considering the circumstances of women can result in pseudo-justice—which is legally valid but does not provide real economic recovery for the entitled party. The *maqāṣid al-syarī'ah* approach emphasizes that the fulfillment of *madhiyah* sustenance is part of the protection of property (*ḥifẓ al-māl*) and life (*ḥifẓ al-nafs*) as important objectives in Islamic family law. Therefore, legal reform oriented towards the welfare of women is an urgency that cannot be ignored. The formulation of national technical guidelines, the strengthening of judges' arguments based on *maqāṣid*, and the effective implementation of decisions are strategic steps to realize a religious court system that is more just, responsive, and in line with the principle of protecting women's rights in divorce cases in Indonesia.

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