

## Analysis of Decision No. 568/Pdt.G/2020 on Arrears of Maintenance in a Divorce Lawsuit from the Perspective of Islamic Law

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### ABSTRACT

This study examines the Decision of the Temanggung Religious Court No. 568/Pdt.G/2020/PA.Tmg concerning arrears of maintenance in a divorce lawsuit, which arises from household problems caused by the husband's neglect of maintenance obligations during a period of living separately. Economic difficulties constitute the dominant factor triggering marital conflict and ultimately leading to divorce, thereby giving rise to the wife's claim for arrears of maintenance. This research aims to analyze the judges' legal considerations in deciding the case and to assess their conformity with the principles of Islamic law. The research method employed is a normative-juridical approach, with data collected through library research on court decisions, statutory regulations, the Compilation of Islamic Law, legal doctrines, and relevant Islamic legal literature. Data analysis is conducted using a descriptive-qualitative method by examining legal norms and judicial considerations. The findings indicate that maintenance is positioned as a husband's obligation that does not lapse despite living separately, and failure to fulfill this obligation results in legal consequences in the form of arrears of maintenance that may be claimed by the wife. This decision is in line with the principles of justice in Islamic law and strengthens the protection of the wife's economic rights. This study is expected to contribute to the development of Islamic family law studies and to increase public awareness of the importance of maintenance responsibilities within the household.

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## Introduction

This study explains the problems that occur within the household, in which economic difficulties are the main factor that often give rise to conflict and ultimately lead to divorce. In

this context, the author raises the title “Analysis of the Temanggung Religious Court Decision on Arrears of Maintenance in a Divorce Lawsuit No. 568/Pdt.G/2020/PA.Tmg.” This issue is highly complex and, in practice, often results in negative consequences. In Islamic law, the term *nafkah* refers to all living expenses that constitute the rights of the wife and children, including food, clothing, housing, and other basic necessities, even if the wife is a wealthy woman (Kanag, 2018). The obligation to provide maintenance is in accordance with the opinion of Imam Hanafi, who states: “Every family member who reaches a certain condition has the right to be supported, even if he or she is still a child and poor, weak, blind, or destitute” (Kanag, 2018).

It is stated that if a husband does not provide maintenance to his wife and children after they have separated households and he chooses to live at the wife’s parents’ home, the husband is considered to have neglected them. This is because providing maintenance for the wife and children is a mandatory obligation of the husband. Therefore, a wife is permitted to claim her rights, namely the right to receive maintenance. To understand the rights of the wife, the rights of the husband, the obligations of the husband, and the obligations of the wife, these matters are explained in this study. This discussion is expected to broaden knowledge, as disputes within the household are highly complex and may ultimately have an impact on children and lead to prolonged conflict between both families.

## Method

This research employs a normative-juridical approach, namely an approach that emphasizes the study of legal norms, including statutory regulations, legal principles, doctrines, and jurisprudence, with a focus on analyzing the Decision of the Temanggung Religious Court No. 568/Pdt.G/2020/PA.Tmg concerning arrears of maintenance from the perspective of Islamic law. Data were collected through **library research** by examining primary legal sources in the form of the official copy of the court decision and secondary sources consisting of books, scholarly articles, academic journals, and other relevant documents, including those related to the Compilation of Islamic Law (KHI). Data collection techniques involved tracing case archives in libraries as well as documents that provide a general overview of the geographical and sociological conditions of the Temanggung Religious Court. Data analysis was conducted using a **descriptive-qualitative method** by systematically organizing, examining, and interpreting the data based on relevant legal norms, theories of justice, and the content of the court decision, in order to obtain a comprehensive understanding of the application of law in cases of arrears of maintenance and to draw logical and in-depth legal conclusions.

## Results

### Legal Basis for the Judges' Considerations

In adjudicating divorce case Number 568/Pdt.G/2020/PA.TMG, the panel of judges of the Temanggung Religious Court took into account various formal legal bases, including statutory regulations and religious legal arguments.

#### 1. Formal legal bases

- a. Article 49 of Law Number 7 of 1989, as amended for the second time by Law Number 50 of 2009, provides that the Temanggung Religious Court has the authority to examine and adjudicate this case.
- b. Article 66 paragraph (2) of Law Number 7 of 1989, as amended for the second time by Law Number 50 of 2009, establishes that based on the identity card, the petition, and the summons report, the Respondent resides within the territorial jurisdiction of the Temanggung Religious Court. Therefore, this case falls under the relative competence of the Temanggung Religious Court.
- c. Article 39 paragraph (1) of Law Number 1 of 1974 in conjunction with Article 82 of Law Number 7 of 1989 stipulates that the panel of judges had made efforts to reconcile the Petitioner and the Respondent in order to reunite them in maintaining the marital relationship. However, such efforts were unsuccessful, as both parties remained firm in their respective positions.
- d. Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 provides that mediation efforts were conducted for both the Petitioner and the Respondent; however, according to the mediator's report, the mediation was unsuccessful.
- e. Articles 171–172 of the Herzien Inlandsch Reglement (HIR) provide that the testimonies presented by witnesses from both parties may be accepted as valid evidence in this case.
- f. Article 73 paragraph (1) of Law Number 7 of 1989 establishes that the Petitioner and the Respondent are legally married spouses who have never been divorced. Accordingly, both parties possess legal standing in this case, and the Petitioner is entitled to file a lawsuit against the Respondent before the Religious Court.
- g. Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law provides that the marital relationship between the Petitioner and the Respondent has been devoid of harmony since 2018 due to frequent disputes and conflicts between the parties, as well as their demonstrated unwillingness to reconcile. When correlated with the facts set out in points (3), (4), and (5), which show that the Petitioner and the Respondent have lived

separately since September 2018, it is evident that persistent disputes and quarrels have occurred, resulting in an irreparable breakdown of the marriage. Consequently, the Petitioner's claim fulfills one of the alternative grounds for divorce as stipulated in Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law in Indonesia.

## 2. Islamic Legal Arguments as the Basis for Judicial Consideration

### a. Qur'anic Foundations

Among the Islamic legal arguments referenced in the judicial considerations are provisions from the Qur'an. One of them is Surah al-Baqarah verse 227, which states:

وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

"And if they resolve upon divorce, then indeed Allah is All-Hearing, All-Knowing." (Kemenag RI, 2019)

This verse affirms that the decision to dissolve a marriage is not merely a personal or private act, but one that carries moral and theological dimensions. The phrase *'azamu al-ṭalāq* indicates a deliberate and firm intention, implying that divorce should not be understood as an impulsive emotional reaction, but rather as a conscious decision accompanied by legal and ethical consequences. The closing attributes of Allah as *al-Samīʿ* (All-Hearing) and *al-ʿAlīm* (All-Knowing) serve as an ethical reminder that every intention, justification, and action of the parties including the fulfillment or neglect of post-divorce rights—is under divine supervision. Within the framework of Islamic law, this verse reinforces the principles of prudence (*taḥarrī*

al-‘adl) and honesty in divorce proceedings, particularly in relation to maintenance obligations and the protection of the more vulnerable party.

In addition, Surah al-Talāq verse 7 provides a strong normative foundation for the principle of proportional justice in post-divorce maintenance:

لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِۦ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُۥ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ ۚ لَا يُكَلِّفُ اللَّهُ نَفْسًا  
إِلَّا مَا آتَاهَا ۚ سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

“Let a man of wealth spend according to his means; and he whose provision is restricted, let him spend from what Allah has given him. Allah does not burden any soul except with what He has given it. Allah will bring about ease after hardship.” (Kemenag, 2019)

This verse establishes that the amount of maintenance must correspond to the husband’s actual financial capacity. Those who are affluent are required to provide according to their abundance, while those with limited means remain obligated to provide maintenance within the limits of their ability. The principle *lā yukallifullāhu nafsan illā mā ātāhā* demonstrates that Islamic law is neither punitive nor rigid, but rather realistic and oriented toward *maslahah* (benefit). Consequently, this verse serves as an *usul al-fiqh* basis for judges to assess financial capability objectively and transparently when determining *iddah* maintenance, *mut’ah*, and *madhiyah* (arrears). Thus, justice in Islamic family law is not

reflected in uniform numerical equality, but in a balanced consideration of obligation, capacity, and the prevention of harm.

#### b. Integrated Fiqh Principles and Legal Maxims

In addition to Qur'anic foundations, the judges' considerations are also aligned with established principles of Islamic jurisprudence and legal maxims, particularly:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Preventing harm takes precedence over attaining benefit (al-Suyūṭī, 1971).

This maxim is further reinforced by another principle:

إِذَا تَعَارَضَتْ مَفْسَدَتَانِ رُوعِي أَعْظَمُهُمَا ضَرَرًا بِإِزْتِكَابِ أَحَقِّهِمَا

When two harms conflict, the greater harm should be avoided by committing the lesser one.

Decision of the Temanggung Religious Court Number 568/Pdt.G/2020/PA.Tmg can be analyzed through the application of the maxim *\*dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ\**, which prioritizes the prevention of harm over the pursuit of benefit. In this case, although the wife was declared *\*nusyuz\**—a condition that normatively may nullify certain maintenance rights—the panel of judges nonetheless imposed outstanding maintenance within certain limits. This approach reflects judicial caution in preventing greater harm, such as the complete deprivation of the wife's economic rights, which could result in social injustice and post-divorce vulnerability. Accordingly, the determination of maintenance was not viewed merely as the fulfillment of individual rights, but as a mechanism for preventing broader harm.

The application of this maxim also correlates with other fiqh principles, such as *\*al-ḍarar yuzāl\** (harm must be eliminated) and *\*lā ḍarar wa lā ḍirār\** (there shall be no harm nor reciprocal harm), which emphasize the obligation to remove harm in every legal determination. The award of *\*iddah\** maintenance, *\*mut'ah\**, and *\*madhiyah\** maintenance by the panel of judges reflects the use of a *\*maslahah\**-oriented approach that seeks to balance normative legal rules with contextual realities in Islamic family law. However, the failure to consider the wife's health condition and the lack of objective data regarding the husband's income indicate that the effort to prevent harm was not fully optimized. From an *usul al-fiqh* perspective, this shortcoming affects the realization of substantive justice, as new forms of

harm such as imbalanced financial assessment and neglect of the wife's factual circumstances remain possible.

The decision explicitly states that a marital condition of this nature is no longer appropriate to be maintained, as it would generate negative consequences for both parties, with the resulting harm outweighing any potential benefit, and therefore must be avoided. Based on the foregoing analysis, the author concludes that the judges' considerations meet the formal requirements for adjudicating a case, as they contain clear legal grounds and reasoning. According to legal theory, judicial reasoning must articulate the bases and justifications underlying a decision as a form of accountability to society, explaining why a particular ruling was rendered so that the decision possesses objectivity and authority (Wahyu, 2012).

Accordingly, the judges held that the Petitioner's claim satisfied one of the alternative grounds for divorce as stipulated in Article 19 letter (f) of Government Regulation Number 9 of 1975 and Article 116 letter (f) of the Compilation of Islamic Law, which provide that continuous disputes and quarrels between husband and wife with no reasonable prospect of reconciliation constitute grounds for divorce (Compilation of Islamic Law, 1991). The decision resolved both the principal claim and the reconventional claim and was deemed consistent with the prevailing laws and regulations.

Nevertheless, although the decision granted several rights to the former wife (the Plaintiff in Reconvention), including mut'ah, iddah, maintenance, and madhiyah maintenance amounting to IDR 7,200,000 for 18 months, after considering allegations of nusyuz, the author argues that the ruling falls short of substantive justice. The court did not take into account the medical expenses borne by the former wife as a result of a domestic accident incurred while performing household duties. The amount of maintenance awarded (IDR 400,000 per month) is considered insufficient to meet basic living needs, let alone cover medical treatment costs. Therefore, the author concludes that the judicial decision should have included additional

compensation for medical expenses in order to more fully reflect substantive justice for the disadvantaged party.

## Discussion

### Provisions on Outstanding Maintenance in Decision Number 568/Pdt.G/2020/PA.Tmg from the Perspective of Islamic Law

Providing maintenance (nafkah) constitutes a fundamental obligation of a husband toward his wife under Islamic law. This obligation is also affirmed in Indonesian positive law, particularly in Article 41 letter (c) of Law Number 1 of 1974 on Marriage, which provides that: “The court may require the former husband to provide living expenses and/or determine certain obligations for the former wife.”

Within the framework of Islamic family law, the obligations of a husband toward his former wife encompass several forms of maintenance. Nafkah madhiyah refers to past or outstanding maintenance that accrued during the marriage and was not fulfilled by the husband. This type of maintenance is not exclusively linked to ṭalāq-based divorce cases and may be claimed by the wife through a reconventional claim when the husband files for divorce. “Nafkatu iddah” is based on the fact that following a divorce decision, the former wife undergoes the waiting period (iddah), during which the husband is obligated to provide for her basic needs until the completion of that period. Meanwhile, nafkah mut’ah is a form of compensation, generally in the form of property or material benefit, provided by the husband to console the former wife and alleviate the emotional hardship caused by the dissolution of the marriage (Khairuddin, 2019).

In paragraph 80, (4) letter (a) of the Compilation of Islamic Law (KHI) emphasizes that although maintenance is provided according to the husband’s financial capacity, it remains a binding obligation that must not be neglected. Accordingly, “nafkatu madhiyah” represents a husband’s unfulfilled obligation arising during the subsistence of the marriage. When such maintenance has not been paid for a period of three months or more, it may be categorized as outstanding maintenance. In addition to statutory regulations contained in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law and Law Number 1 of 1974 on Marriage, further guidance is provided in Supreme Court Circular Letter (SEMA) Number 3 of 2018, the outcome of the Plenary Meeting of the Religious Courts. Point 2 of this circular refines the formulation previously set out in SEMA Number 7 of 2012, paragraph 16, which stipulates that: “In determining nafkah madhiyah, nafkah iddah, nafkah mut’ah, and

child maintenance, judges must consider fairness and propriety by examining the factual economic capacity of the husband and the basic living needs of the wife and/or children.”

Moreover, Article 149 letter (b) of the Compilation of Islamic Law provides that when a marriage is dissolved due to *ṭalāq*, the former husband is obligated to provide maintenance, housing (*maskan*), and clothing (*kiswah*) to the former wife during the *iddah* period, except in cases where the wife has been subjected to an irrevocable divorce (*ṭalāq bā’in*) or is declared *nusyuz* and is not pregnant. This provision is further reinforced by Article 80 paragraph (2) of the KHI, which states: “The husband is obliged to protect his wife and to provide all necessities of household life according to his ability.”

In assessing maintenance claims, judges generally consider two primary factors: first, whether the wife is categorized as *nusyuz*, and second, the husband’s financial capacity. In Decision Number 568/Pdt.G/2020/PA.Tmg, the wife was deemed to have committed *nusyuz* due to disobedience toward her husband. Consequently, with regard to the reconventional claim submitted by the wife, only *nafkah iddah* and *nafkah mut’ah* were granted, while the claim for *nafkah madhiyah* was not fully accepted on the grounds that the wife had failed to comply with her marital obligations.

From the perspective of legal effectiveness, the panel of judges considered that the ruling on maintenance remained consistent with the applicable legal framework and was aimed at achieving a form of justice acceptable to both parties. The determination of *nafkah iddah*, *nafkah mut’ah*, and partial *nafkah madhiyah* was viewed as not causing undue harm or disproportionate burden to either party, as the decision was grounded in the principle of fairness. Accordingly, maintenance constitutes a binding obligation of the husband toward the wife under both Islamic law and Indonesian positive law, encompassing *nafkah madhiyah*, *nafkah iddah*, and *nafkah mut’ah*. In the divorce case Number 568/Pdt.G/2020/PA.Tmg, the wife submitted a reconventional claim seeking all three forms of maintenance. However, because the wife was considered *nusyuz*, her claim for *nafkah madhiyah* was not granted in full. Nevertheless, the panel of judges awarded *nafkah iddah* in the amount of IDR 2,000,000, *nafkah mut’ah* amounting to IDR 5,000,000, and partial *nafkah madhiyah* totaling IDR 7,200,000, resulting in an overall amount of IDR 14,200,000.

This decision was deemed fair insofar as it took into account the principles of justice, the economic conditions of the parties, and their respective conduct, although it should be noted that the husband’s income was not elaborated in detail. Thus, the ruling reflects an

attempt to balance legal norms, social realities, and principles of justice within the context of religious court adjudication.

## Conclusion

In Decision of the Temanggung Religious Court Number 568/Pdt.G/2020/PA.Tmg, the panel of judges applied an integrative approach by combining formal law, substantive law, and principles of Islamic law in adjudicating the divorce and maintenance claims. Although the wife was declared nusyuz, the court nonetheless determined the existence of outstanding maintenance in an amount deemed fair and proportional. This determination reflects the judges' effort to move beyond mere procedural justice and to prioritize substantive justice, while also considering the element of *maslahah* (public interest) for both parties involved in the dispute. From the perspective of Islamic law, in general the legal reasoning adopted by the panel of judges is consistent with contemporary Islamic legal principles, particularly through the application of the concept of *maslahah*, as evidenced by the award of *iddah* maintenance, *mut'ah*, and *madhiyah* maintenance despite the wife being declared nusyuz. However, the decision does not fully reflect substantive justice, as the court did not adequately take into account the wife's health condition while she continued to perform her domestic duties. Furthermore, the absence of clear data regarding the husband's income resulted in a lack of transparency in assessing his financial capacity, which may have affected the accuracy of the determination of the maintenance amount.

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