

IBN KHALDUN INTERNATIONAL CONFERENCE ON APPLIED AND SOCIAL SCIENCES (IICASS)

Universitas Ibn Khaldun Bogor

Claim for Madhiyah Alimony in Divorce Proceedings: A Case Study at the Religious Court of Bogor

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ARTICLE INFO

DOI: 10.32832/

Article history:

Received:

August, 26 2024

Accepted:

August, 28 2024

Available online:

Nov, 01 2024

Keywords:

Madhiyah Nafkah , Divorce, Religious Court, Marriage

ABSTRACT

This Marriage is a sacred bond that occurs between a man and a woman, as mentioned in Law No. 1 of 1974. In married life, there must be many problems that occur even between married couples who are no longer able to survive choosing divorce as their last resort, When a divorce occurs, of course there will arise several rights and obligations that each party must fulfil. One of them is the provision of madhiyah nafkah for husbands who neglect their obligations in providing nafkah during the marriage. The research method that will be used in research is that author will use a qualitative approach, while the data collection techniques and procedures used are: literature techniques that are carried out by analyzing documents and data related to the judge's views on the prosecution of madhiyah alimony in the divorce process and the documentation technique that the author uses is data collection in the form of writing, such as copies of judgments, books and archives. The place where this research was carried out was at the Bogor Religious Court Class 1A. As for the judge's consideration in deciding the madhiyah case, the panel of judges decided to provide alimony according to the ex-husband's ability. The reason for choosing the title is because the author sees the phenomenon that is happening in society many women who demand nafkah that is not given by their husbands while they are still in the marriage bond, which should be men or husbands who provide support to their wives according to their abilities because this is in accordance with the words of Allah contained in QS. At-Talaq Verse 7. And it is recommended for men, both married and those who want to get married, to pay more attention to their responsibilities, especially in providing alimony.

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1. INTRODUCTION

In the Compilation of Islamic Law, marriage is a strong or firm contract (mitsaqon ghalidzan) as a means to obey Allah's commands, and when performed, it is considered a righteous deed that is recorded as an act of worship. Abu Yahya Zakariya Al-Anshary defines the term "nikah" according to Islamic law as: "A contract that contains the legal

provision permitting sexual relations through the words 'nikah' or other synonymous terms." (Rohilati, 2020) According to Subekti, the definition of marriage is a legitimate bond between a man and a woman for a long period of time. (Hanifah, 2019). In married life, there are bound to be many issues, and even among couples who can no longer endure, divorce is often chosen as a last resort. However, the legal ruling on divorce is that it is makruh, meaning it is a permissible act but greatly disliked by Allah SWT, as stated in the hadith:

(رَوَاهُ أَبُو دَاوُدَ وَابْنُ مَاجَهَ) أْبْعَضُ الْحَلَالِ عِنْدَ اللَّهِ الطَّلَاقُ

The meaning is: "The permissible act that is greatly disliked by Allah is divorce (talaq)." (Hadith narrated by Abu Dawud and Ibn Majah)

When divorce occurs between a husband and wife, several rights and obligations arise that must be fulfilled by each party. For the ex-husband, one of the obligations is to provide past maintenance (nafkah madiyah) to his ex-wife, as well as to provide maintenance for the children under the mother's custody. Sulaiman Rasjid mentions that: "Maintenance is everything that is needed based on circumstances and place, whether it is clothing or housing. As for determining the amount of maintenance, it can be adjusted based on the situation and the ability of the person who has the obligation, taking into account local customs and only to meet the needs and necessities."

There is no clear and detailed regulation regarding the amount of maintenance that should be provided by the ex-husband. However, there needs to be a legal basis used by judges in determining a decision that will serve as the consideration for the court panel. The determination of the amount of maintenance or family needs has been regulated in the Quran, the Sunnah, and Ijma', as well as in positive law through the applicable regulations in Indonesia. Maintenance is one of the obligations that the husband must fulfill and discharge. As stated in Article 34, Paragraph (1) of Law No. 1 of 1974 on Marriage and Article 80, Paragraph (4) of the Compilation of Islamic Law. Article 34, Paragraph (1) of the Marriage Law states that: "The husband is obligated to protect his wife and provide for all the household needs according to his ability." In Islamic teachings, a man (a husband) is supposed to be a protector for the woman, as stated in QS. An-Nisa, verse 34, which reads:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ ۗ فَإِنِ اطَّعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

In the excerpt from QS. An-Nisa, verse 34, it is stated: "Men are the protectors and maintainers of women." From this excerpt, it can be understood that: Allah informs that "men are the leaders of women," meaning that they are required to fulfill the rights of Allah,

including maintaining and carrying out obligations from Him, and prohibiting them from causing corruption. Therefore, men are obligated to emphasize these duties to women. Men are also leaders of women by providing for them, including clothing and shelter. (Prasetyo 2021).

2. RESEARCH METHODS

In this study, a case study approach model is used, commonly referred to as normative legal research. Normative legal research is a type of legal research methodology that bases its analysis on existing laws and regulations that are relevant to the legal issues at the focus of this research. (Kornelius Benuf 2020). The research method to be used in this study is a qualitative approach. Qualitative research is a method used to address problems that require in-depth understanding within the context of time and situation. Qualitative research is conducted in a fair and natural manner according to the objective conditions in the field without manipulation. (Dr. H. Sutisna, M.A. Dr. Abdurrahman Misno BP 2019).

The research will be conducted at the Religious Court of Bogor, and the data sources used in this study are: primary data, secondary data, and tertiary data. These data sources are obtained from the ruling of the panel of judges in Case Number: 902/Pdt.G/2023/PA.Bgr, regarding past maintenance (nafkah madhiyah). In this study, the data collection techniques and procedures used are: library research and documentation techniques.

Library research is conducted by gathering and analyzing documents and data related to the judges' views on the demand for nafkah madhiyah during divorce proceedings, based on the ruling with Case Number 902/Pdt.G/2023/PA.Bgr. Meanwhile, the documentation technique is carried out by collecting written data. The written data sources in this study include: documents, copies of decisions, books, and archives. This research uses the Decree of the Religious Court of Bogor with Case Number 902/Pdt.G/2023/PA.Bgr regarding Nafkah Madhiyah (Past Maintenance).

3. RESULTS & DISCUSSION

3.1. The Claim for Madhiyah Maintenance in Islamic Law in Divorce Proceedings

According to Wahbah Zuhaili, nafkah is something beneficial and functions to fulfill the living needs of oneself and others, such as food, drinks, educational costs, and so on. Meanwhile, Sayyid Sabiq in his book *Fiqh Sunnah* explains, as quoted by Karimuddin, that nafkah refers to fulfilling all the needs of the wife, including housing, clothing, food, and medicine, even if the wife is wealthy. (Muhammad Zhilal Haq, Muchlis Bahar 2024)

The obligation to provide nafkah is explained by Allah in QS. An-Nisa' verse 34, where in its interpretation, Ibnu 'Asyur elaborates that the phrase *الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ* refers to the superiority of men over women in terms of protection, rejection, effort, and earning wealth. Meanwhile, in the following part of the verse, *بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ*, Allah has elevated some of them (men) over others (women) by requiring them to provide for their wives from their wealth. (Jaya 2020). Meanwhile, *nafkah madhiyah*, according to

Muhammad Abu Zahrah in his book *Ahwal Asy-Syakhshiyah*, is known as *dain fi annafaqoh* (outstanding nafkah). However, there are differences of opinion among the fuqaha (Islamic jurists) in determining whether this nafkah is considered a debt. The majority of scholars hold the view that *nafkah madhiyah* is regarded as a debt that must be repaid by the husband. This debt arises once the husband no longer provides nafkah to his wife. The obligation to pay this outstanding nafkah will only cease when the husband fulfills his obligation by repaying the *nafkah madhiyah*, or when the wife releases the husband from the debt, just as with any other debt. *Nafkah madhiyah* is considered a debt if it is established by a court decision or an agreement between the husband and wife. (Rahayu 2019)

The madhhab scholars, such as Imam Hanafi and Imam Syafi'i, have different opinions on whether a wife can file for divorce due to economic problems. According to the first opinion (Hanafi school), filing for divorce due to economic issues within the household is haram (forbidden). According to the Hanafi school, a wife cannot file for divorce if the husband is poor, but she may borrow money on his behalf or in his name. The Hanafi school also states that during the time of the Prophet Muhammad (PBUH), there were both rich and poor companions, but the Prophet never encountered a case where a wife sought divorce simply because her husband was unable to provide nafkah. If it were indeed correct in Islamic law for a wife to have the right to file for divorce due to her husband's inability to provide nafkah, such a case would have been presented to the Prophet.

According to the second opinion (Shafi'i school), filing for divorce due to economic problems in the household is permissible. If a husband is unable to meet the family's financial needs or provide nafkah to his wife, the wife has the right to file for divorce through the court. Training plays a crucial role in equipping nurses with the necessary skills and knowledge to perform their duties effectively. It ensures that nurses are up-to-date with the latest medical practices, technologies, and clinical guidelines. As a result, trained nurses are more confident, make fewer errors, and can handle their responsibilities more efficiently, leading to increased productivity. Furthermore, when nurses perceive that their organization is committed to their professional development, they develop a stronger sense of loyalty, which reduces turnover rates and enhances job satisfaction.

Competency, on the other hand, is directly linked to the quality of care that nurses provide. Competent nurses, who possess a high level of clinical skills and knowledge, are better able to deliver quality patient care, which improves patient outcomes and satisfaction. This professional fulfillment fosters a stronger emotional connection to their workplace, enhancing their loyalty to the organization. Competency also contributes to the overall efficiency of the healthcare team, as competent nurses require less supervision and are more adept at problem-solving.

The study underscores the need for hospital administrators to prioritize training and competency development as key strategies for achieving organizational excellence. By investing in structured training programs and fostering a culture of continuous learning, hospitals can ensure that their nursing staff remains competent and motivated. Tailoring

training programs to address specific gaps in knowledge and skills, and regularly evaluating their effectiveness, can further enhance the impact of these initiatives. The Shafi'i school of thought also states that any divorce claim made by a wife against her husband is not considered as talaq (divorce), because the claim is made by the wife through the court, and the judge has the right to separate them if the husband fails to provide maintenance. (Harahap 2019)

However, if a wife demands maintenance beyond the husband's ability, it is seen as improper. According to Surah At-Talaq, verse 7, as interpreted by Imam Al-Qurthubi, the maintenance given by a husband to his wife and children is based on the husband's financial capability and the needs of the wife. This adjustment should be made in accordance with the prevailing societal norms through ijthad (interpretation). (Sa'ban 2023) Regarding madhiyah maintenance (outstanding maintenance), if the husband cannot pay, it remains his obligation, even without a court ruling. This applies if the wife is patient with her husband's inability to provide and can support herself by using her own wealth or lending money to the husband. Scholars from various schools of thought, including Maliki, Shafi'i, and Hanbali, have different opinions on determining madhiyah maintenance (or outstanding maintenance). (Hajar 2023)

According to the Shafi'i school, if the husband is wealthy and fails to provide maintenance equal to what would be given to a poor person, this creates a debt owed to the wife. If the husband refuses to pay without valid reason, it is considered a debt. The wife has the right to forgive part or all of the debt. The Hanbali school differentiates between rich and poor women, allowing rich women to reduce their maintenance based on their wealth. However, for poor women, the law does not permit this reduction. Imam Malik's view is that individuals with significant debt should not keep more than necessary, such as only enough clothing to cover themselves. (Maulana and Sakinah 2021)

According to the opinion of the scholars of the madhhab, regarding a husband who neglects to provide maintenance (outstanding maintenance), there are several provisions, including:

“According to the Hanafiyyah scholars, it is permissible for a wife, by the court's order or by mutual agreement between the husband and wife, to release the husband from the obligation to provide maintenance for the child, as the amount of child maintenance can vary. Meanwhile, the debt (outstanding maintenance) that the husband must pay should be fulfilled according to his financial capacity. Most scholars of the madhhab agree that the exception to the husband's maintenance obligation is valid if the conditions are applied and approved by the judge”.

3.2. Considerations of the Judge in the Religious Court of Bogor City in Deciding the Case of Madhiyah Maintenance with Decision Number 902/Pdt.G/2023/PA.Bgr.

The legal considerations of the panel of judges at the Religious Court of Bogor in deciding the case Number 902/Pdt.G/2023/PA.Bgr include the following: The case filed by the Plaintiff is primarily a divorce lawsuit, with the decision number 902/Pdt.G/2023/PA.Bgr. Based on the provisions of Article 49 letter a number 9 of Law No. 3 of 2006, as amended

by Law No. 50 of 2009, the Religious Court has the authority to accept and examine the case in question.

Based on the arguments presented by the Plaintiff and the Defendant, the parties in the case in question are a married couple who were legally married and registered at the Office of Religious Affairs on Sunday, June 5, 2011. Therefore, the Plaintiff has a legal relationship with the Defendant as a husband and wife, and as such, the Plaintiff has the right (legal standing) to file the lawsuit in question. The Plaintiff and Defendant attended the scheduled hearing on the date set by the panel of judges, and the judges made efforts to reconcile both parties in accordance with the provisions of Article 82 paragraph (1) and (4) of Law No. 7 of 1989 on Religious Courts, as amended by Law No. 3 of 2006, as well as Article 131 paragraph (2) of the Compilation of Islamic Law. However, the reconciliation effort was unsuccessful.

Based on the consideration of the panel of judges, since the Plaintiff and Defendant are a legally married couple, registered at the Office of Religious Affairs on Sunday, June 5, 2011, in the Office of Religious Affairs of Tanah Sareal, Bogor City, West Java Province, and have been blessed with two sons, Child I, born on June 25, 2012, and Child II, born on March 29, 2014, who are under the custody of the Plaintiff (the biological mother), one of the consequences of the dissolution of the marriage (divorce) is that the Defendant is required to pay alimony, including iddah maintenance, madhiyah alimony, mut'ah alimony, and hadhanah alimony to the Plaintiff, according to the judges' considerations, as follows:

Regarding the maintenance for the two children, the Plaintiff requested the panel of judges to order the Defendant to pay a monthly amount of Rp. 6,470,000 (six million four hundred seventy thousand rupiahs) for both children. However, the Defendant stated that he could only provide Rp. 1,000,000 (one million rupiahs) per month. In the Plaintiff's reply, she lowered the amount to Rp. 5,400,000 (five million four hundred thousand rupiahs) per month. Since there was no agreement between the Plaintiff and Defendant regarding the children's alimony, the panel of judges ruled that the Defendant must pay alimony for the children in the amount of Rp. 3,000,000 (three million rupiahs) per month, plus 10% annually until the children become adults or independent, excluding educational and health expenses.

Considering, based on Article 149 letter b of the Compilation of Islamic Law, that a husband who intends to divorce his wife is required to provide maintenance to his ex-wife during the iddah period, the Plaintiff requested the panel of judges to order the Defendant to pay iddah maintenance for 3 (three) months in the amount of Rp. 10,000,000 (ten million rupiahs). However, in his response, the Defendant stated that he was unable to fulfill this request and could only provide Rp. 500,000 (five hundred thousand rupiahs) for the iddah. Since there was no agreement between the Plaintiff and the Defendant regarding the amount of iddah maintenance, the panel of judges ruled to order the Defendant to pay iddah

maintenance for 3 months, calculated at Rp. 1,500,000 per month for 3 months, totaling Rp. 4,500,000 (four million five hundred thousand rupiahs).

Considering, since the Plaintiff demanded mut'ah from the Defendant in the amount of Rp. 20,000,000 (twenty million rupiahs) while the Defendant could only afford to pay Rp. 1,000,000 (one million rupiahs) for mut'ah, and because there was no agreement between the Plaintiff and the Defendant, the Panel of Judges decided that the mut'ah to be paid by the Defendant to the Plaintiff should be Rp. 18,000,000 (eighteen million rupiahs). Considering, regarding the maintenance arrears claimed by the Plaintiff, as the Defendant had neglected his obligation from May 2023 until now for approximately 5 months, the Plaintiff demanded a total of Rp. 81,146,007 (eighty-one million one hundred forty-six thousand seven rupiahs) for nafkah madhiyah, but the Defendant stated he could not afford this due to current financial limitations. Since no agreement was reached between the Plaintiff and the Defendant, the Panel of Judges ruled to order the Defendant to pay the maintenance arrears of Rp. 10,000,000 (ten million rupiahs) for the 5 months he had neglected his obligation.

Considering, regarding the Flexi loan, the Plaintiff demanded that the Defendant return the amount used to pay the Flexi loan installment of Rp. 107,000,000 (one hundred seven million rupiahs) and continue to pay the remaining installment each month until the loan is fully paid off. The Defendant responded that this loan was a mutual agreement made around 2018, when the Plaintiff and the Defendant's marriage was still intact, and it was used for household needs. Therefore, the Defendant disagreed with the repayment of the BNI Flexi loan. The Panel of Judges considered that the BNI Flexi loan was a joint debt that had been agreed upon by both parties in 2018, and the repayment should be shared by both the Plaintiff and the Defendant. Thus, the Panel of Judges ruled that the debt of Rp. 107,000,000 (one hundred seven million rupiahs) became a joint debt between the Plaintiff and the Defendant.

Considering, based on Article 89 of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009 on Religious Courts, the Plaintiff is obligated to pay the court fees as stated in the decision. The considerations of the Panel of Judges in adjudicating and deciding the case with Decision Number 902/Pdt.G/2023/PA.Bgr are as follows:

- a. To partially accept the Plaintiff's claim and reject the rest.
- b. To pronounce a divorce (talak) once with bain sughra to the Defendant.
- c. To legally determine that the Plaintiff's and Defendant's children, ANAK I (male), born in Bogor on June 25, 2012, and ANAK II (male), born in Bogor on March 29, 2014, shall remain in the custody of the Plaintiff as their biological mother, while granting the Defendant access to visit, see, and play with the children twice a week.
- d. To order the Defendant to pay child support as stated in point 3, amounting to Rp. 3,000,000 (three million rupiahs) per month, until the children become adults or independent, with a 10% increase each year, excluding education and healthcare costs.
- e. To order the Defendant to pay mut'ah in the amount of Rp. 18,000,000 (eighteen million rupiahs).

- f. To order the Defendant to pay iddah support of Rp. 1,500,000 (one million five hundred thousand rupiahs) per month for 3 months, totaling Rp. 4,500,000 (four million five hundred thousand rupiahs).
- g. To order the Defendant to pay the maintenance arrears (nafkah lampau) for the 5 months of neglect since May 2023 in the amount of Rp. 10,000,000 (ten million rupiahs).
- h. To determine that the debt of Rp. 107,000,000 (one hundred seven million rupiahs) is a joint debt of the Plaintiff and Defendant, which was agreed upon between both parties.
- i. To order both the Plaintiff and Defendant to settle this debt equally, with each responsible for half.
- j. To reject the remaining claims.
- k. To impose a court fee of Rp. 137,000 (one hundred thirty-seven thousand rupiahs) on the Plaintiff.

4. CONCLUSION & SUGGESTION

Regarding the claim for nafkah madhiyah in Islamic law during divorce proceedings, nafkah madhiyah, as explained by Muhammad Abu Zahrah in *Ahwal Asy-Syakhshiyah*, is known as a "debt in maintenance" (dain fi annafaqoh). It is considered a debt when, according to Imam Hanafi, the wife supports herself using her own property, or if there is a court decision that obligates the husband to provide nafkah. Most scholars agree that nafkah becomes a debt if the husband refuses to provide it. This debt is not considered paid until the wife either settles it or forgives it, similar to other debts. Regarding husbands who neglect providing nafkah, according to Hanafi scholars, the nafkah arrears should be paid according to the husband's ability. Other scholars state that the wife's exemption from the husband's nafkah is valid if approved by the court.

In the case of *Perkara Nomor 902/Pdt.G/2023/PA.Bgr* at the Religious Court of Bogor, which involved a claim for nafkah madhiyah alongside a divorce case, the court proceedings followed the proper legal process. The parties were called to the trial, with the first session being an attempt at reconciliation. However, since reconciliation failed, the trial continued. In the verdict, the court partially accepted the plaintiff's claim and rejected the rest. The defendant was ordered to pay nafkah iddah for 3 months, child support until the children are independent, mut'ah, and nafkah arrears for 5 months of neglect. Based on Article 89 of Law No. 7 of 1989, as amended by Law No. 3 of 2006 and Law No. 50 of 2009, the plaintiff was ordered to pay the court fees as stated in the decision.

ACKNOWLEDGEMENT.

WITH ALL DUE RESPECT, THE AUTHOR WOULD LIKE TO EXPRESS HIS DEEPEST GRATITUDE TO ALL THOSE WHO HAVE PROVIDED SUPPORT AND ASSISTANCE IN THE COMPLETION OF THIS ARTICLE.

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