



# Maintenance of Ex-wife and Children After Court Decision at Pa Class 1a Tanjung Karang

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**Abstract:** This study describes the implementation of the fulfillment of wife and child maintenance after a court decision. There are husbands who fulfill these obligations and those who neglect them. The focus of this research is how is the implementation of the fulfillment of maintenance for ex-wives and children after the Court's decision at PA class 1A Tanjung Karang from the perspective of Maqasid Shari'ah? This research is a field research related to the implementation of court decisions related to post-divorce wife and child maintenance. The primary data of this research are the results of observations and interviews related to the implementation of court decisions related to the maintenance of wives and children after divorce. Then analyzed using Maqasid Shari'ah theory to draw conclusions. The findings of this study are: The implementation of the provision of iddah, mut'ah, and nafkah Madiyah has been implemented by withholding the deed of divorce. Previously had to pay these obligations based on maqasid Shari'ah to help the wife's economy after divorce. But child maintenance after a court decision in PA class 1A Tanjung Karang is not in accordance with the provisions of Islamic Law. The former husband did not pay child maintenance after the divorce, paid it only once during the pledge of divorce, not regularly, and not regularly with a smaller nominal than the court decision.

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## **INTRODUCTION**

The dissolution of marriage does not necessarily eliminate the obligations of the former husband towards his former wife and the children born of their marriage. The wife is entitled to mut'ah (Ad-Dimasyqi, 2000) and iddah maintenance from her ex-husband when the divorce is at the will of her husband (Susylawati et al., 2013). The wife is also entitled to get nafkah madiyah if the husband does not provide proper maintenance during the marriage bond.

Islamic law and positive law do not regulate the amount or nominal limits on the amount of maintenance that a husband must pay to his ex-wife. For example in the decision of a divorce suit at the Tanjung Karang Religious Court. Case No. 0507/Pdt.G/2020/PA.Tnk, the counterclaim filed was *iddah* maintenance of Rp.4,500,000.00 and *madliyah* maintenance of Rp. 43,500,000.00, but the judge set the third lower than the wife's claim. These three maintenance were paid by the former husband before the vow of divorce was read. As for child maintenance, the judge set an obligation of Rp. 500,000.00 per month with an increase of 10% (percent) per year. However, the obligation was only carried out several times by the former husband, and the amount given was not in accordance with what had been determined in the decision (*Interview with Er (25 years old) in Bandar Lampung, on October 14,.*).

Related previous research: Ulfie Andie's research entitled, "Legal Protection for Children After Divorce in the Religious Court." The findings of this study are that legal protection for children is the competence of the PA must be executorial and binding with the content of criminal sanctions for people who violate it, in this case fathers who are capable and deliberately do not provide maintenance for children that have been determined by law (Nasriah et al., 2021). M. Zakaria's research entitled, "Post-Divorce Child Maintenance in the Perspective of Islamic Law and Positive Law (Case Study in PA of PTA Riau Legal Area)."

This paper concludes that Islamic Law has regulated the provisions regarding the fulfillment of maintenance obligations for children after divorce, but this regulation is still general, so that judges' interpretation is needed in its application, be it interpretation in terms of the number or age of children who must be supported after divorce (ZAKARIA, 2018). Anjani Sipahutar's article entitled, "Parental Responsibility for Child Maintenance After Divorce Decree for Indonesian Citizens who are Muslim." The findings of this study are the factors of deviation from the judge's decision that obliges the father to provide child maintenance are low economic levels, parents remarrying, psychological impact, and the mother is able to provide child maintenance costs (Sipahutar et al., 2016).

The similarity of this research is the same as discussing child maintenance after their parents' divorce, the difference is that Ulfie Andie discusses Legal Protection for Children After Divorce, Zakaria discusses "Post-Divorce Child Maintenance in the Perspective of Islamic Law and Positive Law, Anjani Sipahutar examines related to Parental Responsibility for Child Maintenance After Divorce Decisions. The focus of this research is: How is the implementation of the fulfillment of the former wife's and children's maintenance after the Court's decision at the Tanjung Karang class 1A Religious Court from the perspective of Maqasid Shari'ah?

## METHODS

This type of research is *field research* which is analytically descriptive. The approach used is empirical legal research (Johan Nasution, 2008) Primary data research (Marzuki, 1983) Decisions of PA Tanjung Karang and women who have filed for divorce. Then supplemented with secondary data. Secondary collection methods used are: documentation, interview and observation. Furthermore, data validity checks were carried out by means of extended observation and data triangulation. Data analysis in qualitative research is carried out since before entering the field, during the field and after completion in the field (Sugiyono, 2008). Finally, inductive analysis is carried out using Maqasid Shari'ah theory to draw conclusions.

## FINDINGS AND DISCUSSION

### Maqasid al-Shari'ah Theory

*Maqāsid ash-shari'ah*, linguistically, consists of two words: *maqāsid* and *shari'ah*. *Maqāsid* is the plural of *maqṣad* which comes from the word *قصد* (*qasḍ*), which has several meanings such as towards a direction, goal, middle, balanced, fair, not exceeding limits, straight path, the middle between excess and deficiency (Abadi, 2005). Among the examples of the meaning of the word "*qasada*" in the Qur'an, Surah Luqmān/31: verse 19:

واقصد في مشيك

"And be modest in walking."

The phrase "*maqsid fī masyika*" above means walk moderately, not too fast and not too slow, meaning modestly.

Shari'ah etymologically also has many meanings, namely the road to the spring or the place where humans and animals go to get water, *al-atabah* (doorways and stairs), and *at-tariqah al-mustaqimah* (the straight, haq, and right path) (SYALTOUT, 1966). This is as explained by Ahmad Rofiq that literally *syari'ah* means the way to the spring, or the place where the river flows. Its use in the Qur'an is interpreted as a clear path that brings victory (Rofiq, 1995). The concept of *maqāsid ash-shari'ah* as the purpose of the law must be straight, not crooked, not devoid of wisdom, and purpose (As-Sayis, n.d.).

In terms of terminology, *maqāsid ash-shari'ah* is defined by Izzuddin ibn Abdussalam as the meaning and wisdom of the Shari'ah in all rulings or most of them, even if it is not specified to maintain it in every type of law from the laws of Shari'ah (SYATHIBI, 1900). According to ash-Shātībī, *maqāsid ash-shari'ah* has the purpose of realizing the benefit of human life in this world and in the hereafter based on clear evidence (SYATHIBI, 1900). Based on the above definitions, it can be seen that the essence of *maqāsid ash-shari'ah* means the purpose of Allah swt and His Messenger in formulating Islamic law.

Izzuddin bin Abdussalam explained that the Shari'ah was established to eliminate human difficulties, reject things that are harmful, realize benefits, allow good things, and forbid evil, so that humans get benefits in the world and the hereafter. In line with this opinion, Ash-Shātībī also explained that the ultimate goal of the law is one, namely mashlahah or the good and welfare of mankind (SYATHIBI, 1900).

Based on the research of Usul Fiqh experts, all the commands and prohibitions of Allah and His Messenger contained in the Qur'an and Sunnah have a specific purpose and nothing is in vain. Everything has wisdom and benefits for the people. The benefit for the people has two forms, namely realizing benefits (*jalb al-manāfi'*) and avoiding people from harm (*dar'u al-mafāsīd*) (Ushul Fiqh, 2015). *Maqāsid ash-shari'ah*, which substantially contains kemashlahlah, according to ash-Shātībī can be seen from two points of view, namely *maqāsid ash-shāri'* (the purpose of Allah as the maker of shari'a) and *maqāsid al-mukallaf* (the purpose of humans / mukallaf).

The benefits that are the objectives of the Shari'ah are summarized in five things known as *al-maqāsid al-khamsah*, namely:

1. *Hifẓ ad-dīn* (preserving religion). The benefit is to preserve religion which is the main objective of Islamic law.
2. *Hifẓ an-nafs* (preserving the soul). The laws relating to diyat, qishash are prescribed to preserve the soul (*hifẓ an-nafs*).
3. *Hifẓ an-nasl* (preserving offspring and honor).
4. *Hifẓ al-māl* (preserving property). This includes the obligation to seek a lawful fortune, the prohibition of stealing, and depriving others of their property.
5. *Hifẓ al-'aql* (maintaining the mind). This includes the prohibition of drinking alcohol, consuming drugs, shabu, and the obligation to study (JAZULI, 2005).

Anything that involves the preservation of these five things is called maslahah and anything that causes them to disappear is called mafsadah. The benefits achieved by the preservation of these five things include three levels of human needs: *darūriyyah*, *hājjiyah* and *tahsiniyah*:

1. *Darūriyyah* needs are all things that are the foundation of human life. In other words, *darūriyyah* is the enforcement of religious and worldly interests. This means that when *darūriyyah* is lost, the benefits of the world and even the hereafter will also be lost, and what will emerge is damage and even the destruction of life (Juhaya S, 1995).
2. *Hājjiyah* needs are needed by humans to eliminate difficulties and ward off any threatening dangers. However, the absence of this aspect of *hājjiyah* will not threaten human life, but only cause difficulties and hardships. The main principle in this aspect of *hājjiyah* is to eliminate hardship, ease the burden of taklif, and facilitate human affairs (Juhaya S, 1995).
3. *Tahsiniyah* needs are all things or actions that are principally related to noble morals, and doing things that are recommended and bring virtue, both in the fields of worship and muamalah (Quthb, 2011).

### Case Data at Class IA Tanjungkarang Religious Court in 2020

PA Class 1A Tanjungkarang is still dominated by divorce cases, and the largest number of contested divorce cases. In 2020, 1893 divorce cases were registered and the remaining divorce cases in 2019 were 268 cases. So that the total number of cases that must be resolved is 2,161 cases. The number of decisions in which there is an obligation to pay maintenance for ex-wives and children is 32 case decisions (*Tanjung Karang Religious Court* n.d.).

Research at the Tanjung Karang Religious Court succeeded in confirming five (5) decisions in which there was an obligation to pay maintenance for the ex-wife and children. The confirmation aims to find out whether the verdict is related to the obligation to pay maintenance for the ex-wife

and children. The confirmation was carried out by interviewing the party in the decision, namely the ex-wife. Below are several decisions that have been successfully confirmed regarding the implementation of alimony payments:

1. In Case No. 0265/Pdt.G/2020/PA.Tnk, the maintenance demanded through a counterclaim is *iddah* maintenance of Rp. 1,500,000.00, *mut'ab* of 3 grams of 24-carat gold, and *madliyah* maintenance of Rp. 1,500,000.00, but the judge determined *iddah* maintenance of Rp. 2,250,000.00, *Mut'ab* maintenance of two grams of gold and *madliyah* maintenance of Rp. 1,500,000.00. This maintenance obligation has been paid by the husband, before the vow of divorce is read. As for child maintenance, it is stipulated that the father is obliged to pay Rp. 750,000.00 per month with an increase of 10% (percent) every year, but this obligation is not carried out by the father (*Interview with Ri (22 years old) in Bandar Lampung, October 9, 2021*).
2. Case No. 0342/Pdt.G/2020/PA.Tnk, the counterclaim filed regarding maintenance is *iddah* Rp. 6,000,000.00, *mut'ab* gold 15 grams 24 carats and *madliyah* maintenance Rp. 60,000,000.00. However, the judge determined the former wife's maintenance in the form of *iddah* maintenance of Rp. 3,000,000.00, *Mut'ab* maintenance of 5 grams of 24-carat gold, *madliyah* maintenance of Rp. 24,000,000.00 and was paid by the former husband before the vow of divorce was read. As for child maintenance, the judge determined that the husband was obliged to provide maintenance of Rp. 1,000,000.00 every month with an increase of 10% (percent) every year, but the father did not fulfill this obligation (*Interview with Ka (30 years old), in Bandar Lampung, on October 9, 2021*).
3. Case No. 0507/Pdt.G/2020/PA.Tnk, the counterclaim filed was *iddah* maintenance of Rp. 4,500,000.00 and *madliyah* maintenance of Rp. 43,500,000.00, but the judge determined the former wife's maintenance in the form of *iddah* maintenance of Rp. 1,500,000.00, *nafkah iddah* of Rp. However, the judge determined the former wife's maintenance in the form of *iddah* maintenance of Rp. 1,500,000.00, *mut'ab* maintenance of Rp. 1,000,000.00 and *madliyah* maintenance of Rp. 9,000,000.00, these three maintenance were paid by the former husband before the vow of divorce was read. As for child maintenance, the judge set an obligation of Rp. 500,000.00 per month with an increase of 10% (percent) per year. However, the obligations set out in the decision were only carried out several times by the former husband, and the amount given was not in accordance with what had been determined in the decision (*Interview with Er (25 years old) in Bandar Lampung, on October 14,*).
4. Case No. 0870/Pdt.G/2020/PA.Tnk, a counterclaim related to the former wife's maintenance that was submitted was only *mut'ab*, namely Rp. 15,000,000.00. However, the judge determined the *iddah* maintenance of Rp. 1,350,000 and *mut'ab* of Rp. 2,000,000. The maintenance was paid by the former husband before the vow of divorce was read. As for child maintenance, the judge determined Rp. 500,000 per month, but this obligation was only carried out several times by the former husband. According to the information obtained, it was only 4 months that the ex-husband provided maintenance in accordance with the amount stipulated in the decision. In the following months the amount varies and is below the predetermined amount, sometimes not giving maintenance at all (*Interview with Nt (25 years old) in Bandar Lampung, on October 10,*).
5. Case No. 1671/Pdt.G/2020/PA.Tnk, in this case there was no counterclaim related to the former wife's maintenance, but the judge determined that the maintenance that must be paid by the former husband was *iddah* maintenance of Rp. 1,500,000 and *Mut'ab* of Rp. 500,000.00. The maintenance has been paid by the former husband before the vow of divorce is read. As for child maintenance of Rp. 500,000, the former husband did not carry out his obligations in accordance with the decision (*Interview with Re (40 years old) in Bandar Lampung, on October 8,*).

Based on the results of interviews with the former wife in these decisions, it was found that the post-divorce maintenance of the former wife imposed on the husband had been paid. However, the determination of the amount of maintenance that must be paid by the husband is smaller than the wife's claim in the counterclaim.

The level of compliance in fulfilling child maintenance after divorce is still quite low. There are no fathers who fully comply with the provisions in the court decision. There are fathers who are recorded as having fulfilled child maintenance after divorce. However, he does not routinely pay his obligations and the amount paid is below the provisions of the PA Tanjung Karang decision. The aim



of the parties to a civil case in court is to resolve their case completely with a legally enforceable court decision. However, sometimes the court's decision alone does not mean that it has resolved their case completely, but if the verdict has been implemented, the court's decision will be finalized (SHAHRANI, 2004).

The final procedure of a case in the PA is the implementation of the verdict, in accordance with the provisions of Article 41 letter c of Law No. IX. 1 of 1974 on Marriage, the court may require the former husband to provide livelihood expenses and or determine an obligation of the husband to his former wife. And the provisions of Article 156 letter d to provide living expenses for children.

Judges at PA Tanjung Karang revealed that the low level of compliance was caused by the absence of sanctions or supervision in the implementation of court decisions. Other causes are poor communication between the divorced parents, the condition of the ex-husband who has remarried, or internal factors from the ex-husband, namely a lack of knowledge about religious knowledge and a sense of responsibility (*Interview with Husnidar, Judge of the Tanjungkarang Religious Court. On March 13, 2021 in Bandar Lampung, n.d.*).

### **Implementation of Provision of Ex-Wife and Child Maintenance After the Decision of PA Class 1A Tanjung Karang Maqasid Shari'ah Perspective**

The ex-wife after the decision of PA Class 1A Tanjung Karang is entitled to iddah maintenance, madiyah, and mut'ah (Idris Ramulyo, 1999). Most fuqaha agree that husbands are obliged to provide maintenance and housing for divorced wives during the iddah period, because women who undergo the iddah period are still wives. Therefore, they cannot marry another man before the iddah period ends. This is intended to maintain balance and justice. Likewise, the father is obliged to continuously provide for his child (Alauddin, 2019).

Abu Hanifah argues that a wife who is divorced ba'in has the right to maintenance and residence as in the case of a wife who is divorced raj'i. This is because the wife is obliged to live in her husband's residence during the iddah period, and the husband still has rights over her so the wife still has the right to maintenance. Imam Malik and Imam Shafi'i are of the opinion that the wife has the right to residence, but not to maintenance, unless she is pregnant. There are three reasons why a woman is not entitled to maintenance during the iddah period: if the breakup of the marriage is due to an invalid marriage contract or because of *wath'syubhab*. If the breakup of the marriage is due to the death of the husband, because maintenance is the husband's obligation. With the death of the husband, there is no one else who can fulfill this obligation. And if the breakup of the marriage is caused by the wife, for example the wife commits sin (Ihwanudin, 2016).

The data obtained from PA Tanjung Karang shows that in divorce cases the obligation to provide alimony to the former wife and children is not fully implemented in accordance with the court's decision. However, in the case of a gugat divorce, the verdict regarding the former wife's maintenance is not implemented, this is because in a gugat divorce there is no obligation or compulsion to pay maintenance madiyah, iddah or mut'ah which has been determined in the decision before the pledge of divorce. However, the obligation of child support must still be carried out until the child matures and can be independent (Sarianti, 2018).

The act of failing to fulfill the obligation to provide child maintenance after divorce, which occurred in the above case, is a form of injustice (Choiri, 2016). In Islamic Law, a single divorce has not yet terminated the marriage in its true meaning; there are still rights and obligations between the two even though they are no longer full. Referring to Surah at-Talāq verse one which obliges the wife to remain at home during the iddah period and verse six which obliges the husband to provide for the needs of the former wife during the iddah mass. Logically, the obligation to stay at home during the iddah period, if there is no one to fulfill her basic needs, will provide difficulties for the ex-wife. The amount of nafkah is adjusted to the ability of the husband (Ash Shiddieqy & Hasbi, 2000).

The husband's obligation to provide iddah, mut'ah or madiyah maintenance that has been determined in a court decision to his ex-wife must be fulfilled. Providing maintenance to a former wife is something that must be fulfilled. The purpose of providing maintenance itself is intended to provide assistance and respect to the former wife and avoid difficulties due to the breakdown of marriage. Providing maintenance for the former wife will cause her benefit, because she does not need to bother to look for her own livelihood.

The wife's maintenance by decision of the judge or by mutual agreement of both parties may become a debt for the husband. If a wealthy husband refuses to provide maintenance to his wife, then the judge has the right to sell the husband's valuables by force and give the proceeds to the wife as maintenance. However, if the wealthy husband hides his wealth, then at the request of the wife, the judge has the right to imprison the husband as long as he has not paid the outstanding maintenance obligation (Khairuddin et al., 2020).

However, if the husband is truly unable to pay maintenance, the judge may grant relief. Thus, Islamic Law still provides tolerance for ex-husbands who are not able to fulfill this obligation. Because Islamic law aims for the good or benefit of its people, not to burden. The judge in his *ijtihad* determines the amount of Iddah alimony, *mut'ah*, *madiyah* charged to the former husband. The main consideration as the basis for determination is the appropriateness and ability of the former husband.

Divorce will also have an impact on the fulfillment of maintenance for children born in marriage, the maintenance of children is still the responsibility of parents, especially the father until the child reaches the age limit that can be considered an adult. Data from PA Tanjung Karang regarding the implementation of court decisions related to child maintenance after divorce shows that some of these decisions are not implemented at all or are implemented but not in accordance with what is stipulated in the ruling. The implementation of the fulfillment of post-divorce child maintenance obligations that are not in accordance with the ruling such as, the amount of maintenance paid does not match the amount stipulated in the decision or the provision of maintenance that is not routine every month. (*Interview with Wi (37 years old) in Metro, on October 13*). Of course this causes harm to the child. He needs living expenses, school, education, health, and others. If his maintenance is not given, of course he and his mother will experience difficulties in supporting their lives.

From several decisions that were clarified to ex-wives regarding the fulfillment of child maintenance after divorce, most of them admitted that their ex-husbands had never provided for their children even though the court decision stipulated the amount to be borne by the husband. Divorce does not eliminate the obligation to fulfill maintenance by a father towards his children. Because divorce does not break the blood ties between parents and children. The father is not free from his responsibility to fulfill the child's maintenance even though he has divorced from his wife. Because the provision of maintenance takes place while still in the bonds of marriage and after the breakup of marriage. As confirmed in Surah al-Baqarah Verse 233 regarding the responsibility of a father towards his wife and children in the event of a divorce. The provisions of the responsibility for child maintenance during the marriage period are the same as after the breakup of the marriage.

There are several opinions regarding a father who has neglected the maintenance of a child. According to the Hanafiyah and other fuqaha, child maintenance is waived due to the passage of time and cannot be called a debt. This is because the father's obligation to provide for the child is to fulfill a need. If that need no longer exists with the passage of time then the maintenance is waived. Meanwhile, according to the Shafi'iyah scholars who state that child maintenance does not become a debt for the father and that it is canceled if the period has passed, but the maintenance can become a debt if based on the judge's ruling, on the grounds that the father is not at home and the father deliberately does not provide maintenance (Husein, 1995).

Article 66 paragraph (5) of Law Number 7 of 1989, which reads: "The application for child control, child maintenance, wife's maintenance, and joint property of husband and wife can be submitted together with the application for divorce or after the vow of divorce is read". Based on the data available in PA Tanjung Karang, the demands for iddah, *mut'ah*, *madiyah* and child maintenance are included in the divorce lawsuit. In recent years, there have been no cases involving independent maintenance claims. According to the author, the reluctance of women to file a claim for maintenance is due to the lengthy judicial process, and the costly execution process. Psychologically, women in divorce cases want the case to be resolved as quickly as possible, so that they can continue their lives.

A divorce verdict is usually followed by the husband's obligation to pay iddah and *mut'ah* maintenance in relation to the divorced wife. This is because the judge is authorized by law to impose the burden of *nafkah iddah* and *mut'ah* on the wife. This means that the judge *ex officio* can determine iddah and *mut'ah* maintenance without filing a counterclaim. The considerations of the

judge in sentencing the Petitioner ex officio include that the Respondent is not *nusyuz*, *qabla dukhul*, and the husband's material ability (Syahrani, 2004).

When a wife files for a contested divorce, she is not entitled to demand *iddah* maintenance and *mut'ah*. This is considered not to provide justice and guarantee the fulfillment of the wife's rights after divorce, so SEMA No. 3/2018 was born which states that the wife in a case of gugat divorce can be given *mut'ah* and *iddah* maintenance as long as she is not *nusyuz* (Labib, 2017).

The principle of *maqasid Shari'ah* is realized in the implementation of post-divorce maintenance payments before the vow of divorce. This policy is a breakthrough to improve the welfare of the wife and ensure the lives of children after divorce occurs. The realization of the principle of *maqasid Shari'ah* is the policy of withholding the husband's divorce certificate until the husband is able to pay off the former wife's post-divorce maintenance rights in the case of a contested divorce. With this policy, the rights of ex-wives and children after divorce will be more secure than before. The implementation of post-divorce payments before the pledge of divorce and the withholding of the husband's divorce certificate until the husband is able to pay off his maintenance obligations to the ex-wife has been implemented by all courts based on Supreme Court Regulation No. 3 of 2017, which is an amendment to SEMA No. 3 of 2015 in letter C and Letter No. 1669/DJA/HK.00/5/2021 by the Supreme Court of the Republic of Indonesia, in this case the Directorate General of Religious Courts, regarding "Guaranteeing the Fulfillment of Women's and Children's Rights After Divorce". This regulation is a force to prevent husbands from shirking their responsibilities. Because if the ex-wife demands the right to divorce maintenance through an execution lawsuit, there will be more costs incurred and sometimes the cost of execution is not small, so many are reluctant to make these demands (Yulita, 2020).

Fakhulmuji revealed that the PERMA and the Supreme Court Circular Letter only regulate the payment of *iddah* maintenance, *nafkah madiyah* and *mut'ah* to be paid before the vow of divorce, but in practice the judge also asked the ex-husband to pay child maintenance, at least for the first month or in accordance with the court's decision (Syarifuddin, 2007).

## CONCLUSIONS

The conclusion of this research is: the implementation of the provision of *iddah*, *mut'ah*, and *nafkah Madiyah* has been implemented by withholding the deed of divorce. Previously, it had to pay these obligations based on *Maqasid Shari'ah* to help the wife's economy after divorce. But not with child maintenance after a court decision in PA class 1A Tanjung Karang. This of course brings harm to them.

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