

Transforming Post-Divorce Alimony in Indonesian Religious Courts: A Maqashid al-Sharia Analysis

Kholid Saifullah¹, Syamsul Huda², Isnain La Harisi³, Rizky Kurniawan⁴

^{1,2,3,4}Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i, Jember, Indonesia

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ABSTRACT

Post-divorce alimony remains a significant issue in Indonesian religious courts because formal legal recognition does not always ensure substantive protection for divorced women. This article examines how post-divorce alimony is determined in Indonesian religious courts and evaluates whether recent judicial reasoning remains consistent with *maqashid al-sharia*. The study focuses on Decision No. 291/Pdt.G/2021/MS.Str and compares it with two other religious court decisions. Using a normative juridical method, it combines statutory, case, and conceptual approaches. The analysis applies *maqashid al-sharia*, particularly *hifzh al-nafs*, *hifzh al-mal*, and *hifzh al-nasl*, as the main evaluative framework. The findings show that the principal decision relied heavily on mediation outcomes and awarded iddah maintenance of IDR 3,000,000 without an independent proportionality assessment. It also failed to explicitly award *mut'ah* despite a 39-year marriage and the existence of ten children. These findings indicate a shift from a normative-textual approach toward a pragmatic-mediative model. The article contributes theoretically by demonstrating the application of *maqashid al-sharia* in evaluating judicial reasoning. It highlights the policy need for stronger gender-sensitive adjudication, closer scrutiny of mediated settlements, and adaptive guidelines for post-divorce alimony in Indonesian religious courts.

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Corresponding Author:

Kholid Saifullah

Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i, Jember, Indonesia

Email: kholidsaifullah86@gmail.com

1. INTRODUCTION

Marriage in Indonesian law is not merely a civil contract but also a religious and moral bond. Nevertheless, the high number of divorce cases in religious courts continues to generate disputes over women's post-divorce financial rights, particularly iddah maintenance, *mut'ah*, and child support. The legal issue, therefore, extends beyond the dissolution of marriage itself to the question of how the judicial system protects women from immediate economic vulnerability after divorce [1]. Although these rights are formally recognized in the Marriage Law, the Compilation of Islamic Law (KHI), and Supreme Court

Regulation (PERMA) No. 3 of 2017, formal recognition does not always ensure substantive protection in judicial practice [2], [12].

This gap is visible in Decision No. 291/Pdt.G/2021/MS.Str of the Simpang Tiga Redelong Syar'iyah Court. In that case, the husband filed for talaq after a marriage of nearly four decades that had produced ten children. The wife's iddah maintenance was initially proposed at IDR 500,000 and later increased through mediation to IDR 3,000,000. The court adopted the mediation result as the basis of its ruling, yet no explicit mut'ah was awarded. This decision raises an important question about how judges operationalize post-divorce rights and whether mediation may reduce judicial scrutiny of fairness and proportionality [4], [31].

Previous studies show that post-divorce maintenance decisions remain highly inconsistent. Research on the Singaraja Religious Court found wide disparity in the awards of iddah maintenance and mut'ah. At the same time, comparative studies between Indonesia and Malaysia indicate that the implementation of post-divorce financial rights in Indonesia remains less consolidated despite its relatively complete normative framework [5]. However, much of the existing literature remains limited to doctrinal mapping or institutional comparison. Less attention has been given to how specific court decisions shape the practical meaning of alimony and to whether this transformation remains consistent with the substantive objectives of Islamic law [6]–[8].

This article addresses that gap by examining a concrete ruling and evaluating it in light of maqashid al-sharia. Rather than using maqashid as a general theoretical ornament, this study applies it as an analytical framework to assess whether judicial reasoning adequately protects subsistence, property rights, and family welfare. In doing so, the article contributes to Islamic family law scholarship in three ways. First, it provides a focused analysis of a specific religious court decision rather than discussing post-divorce maintenance only at a general level. Second, it integrates statutory, doctrinal, and case-based analysis to explain how post-divorce alimony is constructed in judicial reasoning. Third, it demonstrates how maqashid al-sharia can be operationalized to evaluate whether alimony is treated as a judicially supervised right or merely as a negotiable settlement term [9], [10], [31].

This issue is also socially significant. In many divorce cases, women leave long marriages with limited earning capacity, weak access to marital assets, and strong pressure to accept whatever payment is offered in order to end the conflict quickly. In such circumstances, post-divorce maintenance is not a peripheral matter, but a key legal mechanism for preventing sudden economic insecurity. Judicial reasoning on alimony, therefore, reflects not only legal interpretation but also the extent to which religious courts respond to women's structural vulnerability after divorce [10], [12], [28].

Based on that background, this study addresses three questions. First, how do judges reason in determining post-divorce alimony in religious court decisions? Second, to what extent is such reasoning compatible with maqashid al-sharia? Third, does contemporary judicial practice indicate a transformation of post-divorce alimony from a normative right into a mediated and negotiable settlement? By answering these questions, this article seeks to explain the ratio decidendi of the principal ruling and to propose a more coherent

framework for adjudicating post-divorce alimony in Indonesian religious courts [9], [10], [29].

2. METHOD

This study employs a normative juridical method with a qualitative orientation. This method was chosen because the object of analysis consists of legal texts, namely court decisions, statutory provisions, and scholarly writings on Islamic family law. The purpose of the study is not to measure social behavior statistically, but to interpret judicial reasoning and evaluate whether it is consistent with the normative and substantive objectives of Islamic law [11].

The study combines three approaches. First, the statute approach examines the relevant legal framework, including Law Number 16 of 2019 on Marriage, the Compilation of Islamic Law, Supreme Court Regulation (PERMA) No. 3 of 2017, and Law Number 50 of 2009 on Religious Courts [1], [2], [9], [12]. Second, the case approach analyzes Decision No. 291/Pdt.G/2021/MS.Str as the principal case and compares it with Decision No. 1812/Pdt.G/2018/PA.Kab.Mlg and Decision No. 1439/Pdt.G/2019/PA.Ckr [15], [18], [31]. Third, the conceptual approach applies maqashid al-sharia as the main analytical framework for assessing the ratio decidendi of those decisions [16], [21], [23].

The legal materials used in this study are divided into three categories. Primary legal materials consist of the principal decision, comparative decisions, and the relevant statutory instruments. Secondary legal materials include journal articles, books, and prior studies on post-divorce maintenance, gender justice, and maqashid al-sharia. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references used to clarify concepts and terminology [13], [14], [31].

Data were collected through library research by identifying, classifying, and systematically reading all relevant legal materials. The analysis was then conducted in four steps. First, the study identified the legal components of post-divorce alimony contained in each decision, particularly iddah maintenance, mut'ah, and child support. Second, it examined the judicial reasoning used to justify those awards, including whether the court relied on statutory norms, mediation outcomes, or other considerations. Third, it compared the principal decision with the two selected decisions in order to identify patterns, similarities, and differences in judicial treatment of post-divorce alimony. Fourth, the findings were evaluated through maqashid al-sharia in order to determine whether the decisions protected women's subsistence, economic rights, and family welfare substantively [13], [14], [31].

In this study, maqashid al-sharia is operationalized through three analytical dimensions. The first is *hifzh al-nafs*, which is used to evaluate whether the decision protects the wife's subsistence and dignity during the iddah period. The second is *hifzh al-mal*, which is used to assess whether the ruling adequately protects the wife's economic rights, especially through iddah maintenance and mut'ah. The third is *hifzh al-nasl*, which is used to examine whether the decision addresses the continuity of children's welfare after divorce. Through these three dimensions, maqashid al-sharia functions not merely as a general

theoretical reference but also as a concrete evaluative tool for assessing the adequacy, fairness, and protective quality of judicial reasoning [16], [21], [23], [31].

The comparative decisions were selected because they represent different judicial responses to similar post-divorce maintenance disputes. One comparison case explicitly addressed iddah maintenance, mut'ah, and child support, while the other granted iddah maintenance and mut'ah but did not develop a separate child-support analysis [15], [18]. This comparison allows the study to determine whether the principal ruling reflects an isolated anomaly or a broader shift in the practice of Indonesian religious courts [29], [31].

This study is descriptive, evaluative, and prescriptive. It describes the structure of judicial reasoning, evaluates that reasoning through maqashid al-sharia, and formulates recommendations for a more substantive and gender-responsive model of adjudication. However, this study is limited to documentary legal analysis and does not include interviews with judges or litigants. Therefore, its conclusions focus on doctrinal orientation and judicial reasoning rather than the full sociological reality of implementation [29], [31].

3. RESULTS AND DISCUSSION

3.1. Result

Decision No. 291/Pdt.G/2021/MS.Str reveals a pattern of judicial reasoning that rests heavily on the mediation outcome rather than on an independent proportional assessment. The panel of judges used the agreement of 25 October 2021 as the practical basis for fixing iddah maintenance at IDR 3,000,000, even though the record did not show any clear calculation of the husband's financial ability or the wife's actual needs during the iddah period. In effect, the parties' consent replaced the court's own evaluative inquiry into fairness and adequacy. [15], [31]

A second and more serious issue is the absence of any explicit mut'ah award. That omission is difficult to justify in a marriage that lasted roughly thirty-nine years and produced ten children. Article 149 and Article 158 of the Compilation of Islamic Law require mut'ah to be assessed with due regard to propriety and ability, and PERMA No. 3 of 2017 obliges judges to interpret the law in a manner that protects women's rights. However, the principal ruling mentioned the normative basis of mut'ah in its consideration, yet failed to translate that norm into the operative part of the decision. [2], [12], [16], [17], [31]

The juridical consequence of using mediation as the sole basis of maintenance valuation is that the court risks collapsing judicial review into mere endorsement. Law Number 50 of 2009 places the responsibility for a reasoned and lawful decision on judges, not solely on the parties. Moreover, gender-sensitive adjudication requires attention to structural imbalance in bargaining power. In divorce litigation, the wife may have limited access to economic information and limited leverage in negotiation. If the judge passively validates a mediated agreement without substantive verification, the ruling may satisfy procedural peace while failing to achieve substantive justice. [9], [12], [20], [28], [31]

A closer comparison with the decision of the Malang Regency underscores the point. In that case, the court at least articulated separate financial components, including iddah maintenance, mut'ah, and child support, even if the valuation process remained imperfect. By contrast, the principal decision compressed the analysis to the minimum necessary and

did not develop an independent rationale for why one component was awarded while another was omitted. The difference is significant because it shows that the weakness of the principal ruling lies not only in the amount awarded but also in the incompleteness of the categories the court was willing to protect. [15], [31]

The omission of explicit *mut'ah* after a marriage lasting nearly four decades is especially difficult to defend when seen against the social facts implicit in such a union. A long marriage commonly involves cumulative domestic contributions, child-rearing, and forms of support that are not recorded as direct income. When a court fails to address *mut'ah* in that context, it effectively narrows the legal imagination of what counts as contribution and what deserves recognition at the moment of dissolution. That narrowing is one reason why the principal decision becomes an important example of rights reduction through procedure. [12], [21], [31]

There is also an epistemic problem in a decision model that depends almost entirely on settlement. Once mediation produces a number, the court may treat that number as self-evidently fair and feel less pressure to probe the husband's income, assets, debts, or actual household obligations. However, post-divorce maintenance cannot be assessed accurately without those facts. A rights-sensitive court should therefore treat mediation not as the end of inquiry but as a provisional proposal that must still be tested against the legal standards of ability, propriety, and vulnerability. [9], [12], [20], [31]

3.2. Discussion

3.2.1. Normative Gap

The principal decision reveals a clear gap between formal legal norms and their judicial implementation. Indonesian Islamic family law has already recognized post-divorce rights through the Marriage Law, the Compilation of Islamic Law, and PERMA No. 3 of 2017. In principle, these instruments position *iddah* maintenance, *mut'ah*, and child-related welfare as part of the court's protective function after divorce [1], [2], [12]. However, Decision No. 291/Pdt.G/2021/MS.Str shows that formal recognition does not automatically translate into substantive protection. The court adopted the mediation outcome as the main basis for the ruling and awarded *iddah* maintenance of IDR 3,000,000, without a clear proportionality assessment, while no explicit *mut'ah* was granted, despite a marriage lasting nearly four decades and involving ten children [31].

This gap becomes more apparent when the decision is compared with the other two cases. Decision No. 1439/Pdt.G/2019/PA.Ckr at least expressly granted *iddah* maintenance and *mut'ah*, whereas Decision No. 1812/Pdt.G/2018/PA.Kab.Mlg also addressed child support [15], [18]. The disparity, therefore, lies not only in the amount awarded but also in the scope of rights that the court was willing to recognize. The problem is thus structural: judges may cite the relevant norms, yet fail to convert those norms into enforceable protection in the operative dictum [2], [12], [17], [31].

3.2.2. Maqashid Evaluation

The analytical contribution of this article lies in demonstrating how *maqashid al-sharia* can serve as a concrete evaluative framework for judicial reasoning. In this study,

maqashid is not treated as a general moral reference, but as an operational tool for assessing whether the decision protects subsistence, property rights, and family welfare.

From the perspective of *hifzh al-nafs*, the award of IDR 3,000,000 raises serious questions of adequacy. If the ninety-day iddah period is used as a baseline, the amount is equivalent to approximately IDR 1,000,000 per month, which appears insufficient to cover basic subsistence needs. A *maqashid*-based reading, therefore, asks not simply whether a payment was ordered, but whether the amount can plausibly protect the wife's dignity and livelihood during a period of legal transition [2], [16], [31].

From the perspective of *hifzh al-mal*, the omission of *mut'ah* is more problematic. In Islamic family law, *mut'ah* functions not only as a material award, but also as juridical recognition of the wife's contribution during marriage. Its absence in a long marriage weakens both symbolic recognition and economic protection. The decision, therefore, fails to protect women's financial interests in a substantive sense, even though the normative basis for *mut'ah* was acknowledged in the legal consideration [2], [21], [22], [31].

From the perspective of *hifzh al-nasl*, the ruling also shows a limited concern for the continuity of family welfare. Although the marriage produced ten children, the decision did not seriously address parental responsibility after divorce. This omission is significant because *maqashid al-sharia* requires courts to view divorce not merely as the end of a marital bond, but as a transition with implications for the continuity of care and family stability [1], [24], [31].

Taken together, these three dimensions show that the principal decision falls short of a substantive *maqashid* standard. It satisfies procedural closure, but only weakly protects the welfare objectives that should guide post-divorce adjudication. This is the core theoretical point of the article: *maqashid al-sharia* provides a practical framework for distinguishing between formal compliance and substantive justice in alimony cases.

3.2.3. Legal Transformation

The comparison among the three decisions suggests that post-divorce alimony in Indonesian religious courts is undergoing a legal transformation. Traditionally, post-divorce maintenance was understood as a normative consequence of *talaq*, grounded in fiqh and codified in state law. In the principal decision, however, the court did not begin from the premise that iddah maintenance and *mut'ah* are judicially supervised rights. Instead, it began from the mediated agreement and treated that agreement as the effective solution [25]–[27], [31].

This shift indicates a movement from a normative-textual model toward a pragmatic-mediative model. Under the earlier model, alimony was framed primarily as an entitlement flowing from divorce. Under the newer model, alimony is typically treated as a negotiated settlement shaped by mediation, bargaining power, and procedural efficiency. This transformation does not formally repeal the doctrine, but it changes its practical meaning in the courtroom [27]–[29].

The comparison table reinforces this point. Courts that rely more heavily on party agreement may achieve faster settlement, but they do not necessarily provide stronger protection. By contrast, decisions that expressly articulate iddah maintenance, *mut'ah*, and,

where relevant, child support, show a stronger tendency to preserve alimony as a supervised legal right rather than a mere concession [15], [18], [31]. This helps explain why disparity across courts is not merely numerical but conceptual: different courts operate with different understandings of what alimony is.

Table 1. Comparison of the Three Religious Court Decisions

Analysis aspect	Decision No. 291/Pdt.G/2021/MS.Str	Decision No. 1439/Pdt.G/2019/PA.Ckr	Decision No. 1812/Pdt.G/2018/PA.Kab.Mlg
Iddah maintenance award	IDR 3,000,000	IDR 1,500,000	IDR 6,000,000
Mut'ah award	Not stated in the dictum	IDR 200,000	IDR 2,000,000
Child support	Not explicitly discussed	Not expressly awarded	IDR 2,500,000 per month
Dominant ratio decidendi	Procedural agreement-based	Normative-formal	Pragmatic-consensual
Compatibility with hifzh al-nafs	Inadequate	Limited	More adequate
Compatibility with hifzh al-mal	Not fulfilled	Partially fulfilled	Partially fulfilled
Compatibility with hifzh al-nasl	Not substantially considered	Not substantially addressed	Considered
Implementation of PERMA No. 3 of 2017	Not yet optimal	Partially applied	Partially applied

Source: Decision No. 291/Pdt.G/2021/MS.Str; Decision No. 1439/Pdt.G/2019/PA.Ckr; and Decision No. 1812/Pdt.G/2018/PA.Kab.Mlg, processed by the author.

3.2.4. Policy Implications

The findings carry important implications for judicial reform. First, religious courts need a clearer valuation method for post-divorce alimony. Judges should be required to explain how the awarded amount relates to the duration of marriage, the parties' economic capacity, local living costs, the wife's domestic contribution, and the presence of dependent children [9], [20], [27]. Without such reasoning, the award appears as a bare number, difficult to assess, defend, or review.

Second, mediated agreements should remain subject to substantive judicial scrutiny. Mediation may be useful for reducing conflict and expediting case resolution, but it cannot replace the judge's obligation to test fairness, especially in cases involving women with weaker bargaining positions [12], [28], [31]. Stronger implementation of PERMA No. 3 of 2017 is therefore necessary to ensure that mediation does not become a mechanism for rights reduction.

Third, the doctrinal status of *mut'ah* should be strengthened. Once divorce is judicially confirmed after a valid marriage, *mut'ah* should be treated as a presumptive right rather than a contingent addition. The burden should rest on the court to justify why such an award is absent, not on the wife to prove from the beginning that she deserves recognition after a long marriage [2], [21], [31].

Finally, this study suggests that improving post-divorce alimony adjudication requires both doctrinal clarification and institutional capacity building. Judicial training on gender-sensitive reasoning, *maqashid al-sharia*, and evidentiary assessment in mediation-linked cases would help courts move from formal citation toward more responsive protection

[10], [27], [30]. In this way, post-divorce alimony can be reconstructed not as a fragmented list of negotiable payments, but as a coherent legal doctrine of subsistence, recognition, and family welfare.

4. CONCLUSION

This article finds that post-divorce alimony in Indonesian religious courts is shifting from a normative-textual model toward a pragmatic-mediative model. Decision No. 291/Pdt.G/2021/MS.Str demonstrates this shift clearly, as the court relied heavily on mediation outcomes, awarded iddah maintenance without an independent proportionality assessment, and did not explicitly grant mut'ah despite a long marriage and the existence of ten children. When evaluated through maqashid al-sharia, the ruling appears insufficient in protecting subsistence, economic rights, and family welfare in an integrated manner [2], [12], [31].

This study contributes to Islamic family law scholarship by showing that the central issue in post-divorce alimony is not only the amount awarded, but also the reasoning model used by the court. The article also demonstrates that maqashid al-sharia can function as a concrete evaluative framework for assessing whether judicial reasoning produces substantive justice for divorced women and their families. In this respect, the study clarifies the ongoing transformation of alimony from a judicially supervised right into a mediated and negotiable settlement term [29], [30], [31].

Based on these findings, this article recommends that religious court judges apply PERMA No. 3 of 2017 more substantively, assess economic capacity and actual need more carefully, and treat mut'ah as a presumptive legal consequence of divorce rather than an optional addition. It also recommends developing adaptive judicial guidelines to reduce disparities and strengthen gender-responsive adjudication in post-divorce maintenance cases [9], [12], [27], [30], [31].

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