

Towards Equitable Divorce: Reconstructing Legal Provisions for Non-Maintenance by Husbands Based on Justice Principles in Indonesia

Dr. Siti Maemunah R. Hakim

Faculty of Sharia and Law, Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta, Indonesia

Dr. Ahmad R. Nugroho

Faculty of Law, Universitas Gadjah Mada (UGM), Yogyakarta, Indonesia

Dr. Nur Aisyah Putri

Faculty of Law, Universitas Airlangga, Surabaya

Dr. Lalu M. Fikriansyah

Research Center for Law and Human Rights, National Research and Innovation Agency (BRIN), Jakarta

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ABSTRACT

This study critically examines the existing legal regulations governing divorce suits initiated by wives on the grounds of the husband's failure to provide maintenance, within the Indonesian legal framework. Rooted in the principles of justice, this research seeks to identify discrepancies between current legal provisions and the normative values of fairness, equity, and human dignity, particularly concerning the economic vulnerability of wives post-divorce. Employing a normative legal research methodology, the study analyzes relevant statutory laws, Islamic jurisprudence (Fiqh), judicial circulars, and scholarly interpretations to uncover lacunae and inconsistencies. The findings reveal that while Indonesian marriage law acknowledges non-provision of maintenance as a ground for divorce, the practical application and interpretation by courts may not always fully embody the values of justice, potentially leaving wives in precarious financial situations. This research proposes a reconstruction of these regulations, advocating for clearer legal definitions, more robust enforcement mechanisms, and a broader interpretation of maintenance obligations that align with contemporary understandings of gender equality and economic justice. The aim is to ensure that divorce proceedings, particularly those initiated due to non-maintenance, genuinely uphold the principles of justice and protect the rights and well-being of all parties, especially the economically weaker spouse.

Keywords: Divorce Law, Maintenance, Non-Provision, Justice Values, Legal Reconstruction, Indonesian Law, Islamic Law, Spousal Support.

INTRODUCTION

Marriage, as a fundamental social institution, is underpinned by mutual rights and obligations between spouses, with the provision of maintenance (nafkah) by the husband to the wife being a cornerstone in many legal and religious traditions, including Islamic law and Indonesian national law [1, 2]. This obligation is not merely a financial duty but reflects a broader commitment to the wife's well-being and security within the

marital union [3]. However, circumstances arise where a husband fails to fulfill this fundamental obligation, leading to significant financial hardship and emotional distress for the wife, often culminating in the dissolution of the marriage through divorce [4].

In Indonesia, the legal framework governing marriage and divorce is bifurcated, encompassing both national marriage laws (Law Number 16 of 2019 concerning Amendments to Law of the Republic of Indonesia, and its

predecessors) and the Compilation of Islamic Law (KHI) for Muslim citizens, adjudicated by Religious Courts (Law Number 50 of 2009 concerning Religious Courts) [5, 6]. Both frameworks acknowledge the non-provision of maintenance as a legitimate ground for a wife to seek divorce [7]. However, the interpretation, application, and enforcement of these regulations in practice can vary, raising critical questions about whether the outcomes consistently align with the overarching values of justice [8]. Justice, in this context, extends beyond mere procedural fairness to encompass substantive equity, ensuring that the economically vulnerable party, typically the wife, is not unduly penalized or left in a precarious financial state following the dissolution of a marriage due to the husband's failure to provide support [9]. The issue of non-provision of maintenance as a ground for divorce is particularly salient given the potential psychological and financial impacts of divorce on families, especially children [10, 11]. While the legal system aims to provide a mechanism for marital dissolution, it must also ensure that the process and its outcomes are just and equitable, protecting the rights and future well-being of all involved [12]. This study, therefore, aims to critically assess and propose a reconstruction of the existing divorce suit regulations in Indonesia, specifically those pertaining to the husband's failure to provide maintenance to the wife. The core objective is to analyze how these regulations can be reformed and reinterpreted to more fully embody the values of justice, ensuring greater fairness and protection for wives seeking divorce on this crucial ground.

Literature Review

The concept of maintenance (nafkah) in marriage is deeply embedded in Islamic jurisprudence (Fiqh) and forms a cornerstone of marital obligations [13]. As-Sayyid Sabiq (1977) extensively discusses the husband's duty to provide for his wife, detailing the types and conditions of maintenance, and the consequences of its non-fulfillment [14]. This religious obligation is codified and recognized within the Indonesian legal system, particularly for Muslim citizens, through the Compilation of Islamic Law (KHI) [15, 16]. The KHI, alongside

Law Number 16 of 2019 concerning Amendments to Law of the Republic of Indonesia, provides the legal basis for divorce in Indonesia, outlining various grounds, including the husband's failure to provide maintenance [5, 7]. The legal consequences of divorce, especially when initiated due to the husband's incapacity or unwillingness to support the wife, are complex and have been a subject of legal scholarly review [17]. These consequences extend beyond the immediate dissolution of the marriage to include issues such as the wife's right to *iddah* living expenses (maintenance during the waiting period post-divorce) and the return of dowry (mahar) [18, 19]. While the law aims to protect the wife's rights, the practical implementation in courts, such as the Religious Courts (Law Number 50 of 2009 concerning Religious Courts), can present challenges in ensuring comprehensive legal protection for women during the divorce process, particularly in cases like *khulu'* (wife-initiated divorce) [6, 20].

The philosophical underpinnings of justice are crucial when evaluating legal regulations. Bahder Johan Nasution (2016) provides a philosophical study of justice and law, emphasizing the need for legal frameworks to reflect equitable principles [9]. In the context of divorce due to non-maintenance, justice demands not only that the wife has a legal avenue to terminate the marriage but also that she is not left in an economically disadvantaged position [11]. The broader legal landscape in Indonesia also includes laws aimed at protecting vulnerable individuals, such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which, while not directly addressing maintenance, underscore the state's commitment to protecting individuals, particularly women, from harm and injustice within relationships [21, 22].

Judicial interpretations and circulars play a significant role in shaping the application of laws. The Circular of the Supreme Court Number 01 of 2022, for instance, provides guidelines for courts, including formulations related to marriage law and divorce [23]. These circulars can

influence how judges interpret and apply the grounds for divorce based on non-maintenance, potentially impacting the extent to which justice values are upheld in practice.

Despite the existing legal provisions and philosophical ideals, the reality of family financial management after divorce often reveals significant disparities, with women frequently bearing a disproportionate economic burden [11]. The psychological development of children can also be severely impacted by parental divorce, emphasizing the need for legal outcomes that promote stability and well-being for the entire family unit [10]. Therefore, a critical analysis of current regulations, informed by justice values and practical realities, is essential to propose a reconstruction that ensures more equitable and protective outcomes for wives seeking divorce due to the husband's failure to provide maintenance.

METHODOLOGY

This study employed a normative legal research methodology, also known as doctrinal research, which focuses on analyzing legal norms, principles, and concepts within the existing legal framework [24]. This approach is particularly suitable for assessing the alignment of legal regulations with philosophical values like justice and proposing legal reconstruction.

Research Approach

The research adopted a prescriptive and analytical approach. It was prescriptive in that it aimed to propose how the law *should be* reconstructed to better reflect justice values. It was analytical in its critical examination of existing legal provisions, judicial interpretations, and their practical implications.

Types of Legal Materials

The study primarily utilized statutory legal materials, which include:

- **Primary Legal Materials:**

- Law Number 16 of 2019 concerning Amendments to Law of the Republic of Indonesia (Marriage Law).

- Law Number 50 of 2009 concerning Religious Courts.
- Compilation of Islamic Law (KHI).
- Circular of the Supreme Court Number 01 of 2022 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022.
- Constitution of the Republic of Indonesia, as the supreme law embodying fundamental justice principles [25].

- **Secondary Legal Materials:**

- Legal textbooks, scholarly articles, and monographs on Indonesian marriage law, Islamic family law, and legal philosophy [1, 2, 3, 9, 15, 24].
- Judicial decisions (though not directly analyzed as empirical data, their interpretations as discussed in legal scholarship were considered).

- **Tertiary Legal Materials:**

- Legal dictionaries, encyclopedias, and indexes to understand legal terminology and concepts.

Data Collection Technique

Data collection was primarily conducted through a literature review (library research). This involved:

- **Document Analysis:** Systematic review and analysis of the identified primary, secondary, and tertiary legal materials. Each document was read thoroughly to extract relevant legal provisions, interpretations, and philosophical arguments related to maintenance, divorce, and justice.
- **Content Analysis:** Qualitative content analysis was applied to identify recurring themes, legal principles, and judicial trends within the collected legal materials.

Data Analysis Technique

The collected legal materials were analyzed using a combination of conceptual analysis, legal interpretation, and philosophical analysis:

- **Conceptual Analysis:** This involved defining and clarifying key concepts such as "maintenance," "non-provision," "divorce," and "justice" within the context of Indonesian law and Islamic jurisprudence.
- **Legal Interpretation (Hermeneutics):** The study interpreted statutory provisions and religious texts to understand their original intent and their application in contemporary contexts. This included examining different schools of thought in Islamic Fiqh regarding maintenance obligations and divorce.
- **Philosophical Analysis:** The core of the analysis involved assessing the existing legal regulations against the normative values of justice, fairness, and equity. This involved drawing upon philosophical theories of justice to evaluate whether the current legal framework adequately protects the rights and interests of wives in cases of non-maintenance.
- **Comparative Analysis (Implicit):** While not a formal comparative legal study, the analysis implicitly compared the legal ideal (justice values) with the legal reality (current regulations and their interpretations) to identify gaps and areas for reconstruction.
- **Constructive Analysis:** Based on the identified gaps and philosophical evaluations, the study proposed concrete recommendations for the reconstruction of legal provisions, aiming to enhance their alignment with justice principles.

The analysis was iterative, moving back and forth between legal texts, scholarly interpretations, and philosophical concepts to build a coherent argument for legal reform.

RESULTS

The analysis of Indonesian divorce suit regulations concerning a husband's non-provision of maintenance reveals a complex interplay between legal provisions, religious tenets, and the pursuit of justice. While the legal framework provides grounds

for divorce in such cases, significant areas for reconstruction exist to better align with contemporary justice values.

Legal Recognition of Non-Maintenance as a Divorce Ground

Both the national Marriage Law (Law No. 16 of 2019 amending Law No. 1 of 1974) and the Compilation of Islamic Law (KHI) explicitly recognize the husband's failure to provide maintenance as a legitimate ground for a wife to file for divorce [5, 7]. Article 116 of the KHI, for instance, lists "the husband's failure to provide maintenance to the wife for six months or more" as a reason for divorce. This legal provision is crucial as it empowers wives to seek legal recourse when a fundamental marital obligation is breached. The Supreme Court's Circular No. 01 of 2022 further reinforces this, providing guidelines for courts in handling such cases, indicating a judicial recognition of this ground [23].

Interpretation and Application of "Non-Provision of Maintenance"

Despite clear legal recognition, the interpretation and application of "non-provision of maintenance" by courts can vary, leading to outcomes that may not always fully embody justice.

- **Proof of Non-Provision:** The burden of proof often lies heavily on the wife to demonstrate the husband's consistent failure to provide maintenance. This can be challenging, especially in informal economic settings or where financial transactions are not well-documented.
- **Capacity vs. Willingness:** Courts sometimes differentiate between a husband's *incapacity* to provide maintenance (e.g., due to illness, unemployment) and his *unwillingness* to do so. While both can be grounds for divorce, the legal consequences or the court's approach to subsequent financial obligations might differ [17].

- **Scope of Maintenance:** The definition of "maintenance" often focuses on basic necessities. However, a justice-oriented perspective might argue for a broader interpretation that considers the wife's accustomed standard of living during the marriage, ensuring that divorce does not lead to a drastic decline in her quality of life [11].

Post-Divorce Financial Implications and Justice

The most critical area for reconstruction lies in the post-divorce financial implications for the wife, particularly concerning maintenance during the *iddah* period and other potential financial claims.

- **Iddah Maintenance:** Islamic law and the KHI stipulate maintenance for the wife during the *iddah* (waiting period) [18]. However, the adequacy and enforcement of this provision can be inconsistent. If the husband has already failed to provide maintenance during the marriage, enforcing *iddah* maintenance can be problematic.
- **Lack of Comprehensive Spousal Support:** Beyond *iddah* maintenance, Indonesian law, unlike some other jurisdictions, does not explicitly provide for long-term rehabilitative or compensatory spousal support for wives who have been economically disadvantaged by the marriage or its dissolution due to the husband's fault, particularly in cases of non-provision. This can leave wives, especially those who have sacrificed career opportunities for family, in a vulnerable economic position [11].
- **Impact on Children:** The financial consequences of divorce due to non-maintenance directly impact children, who may suffer psychologically and economically [10]. While child support is mandated, the wife's economic instability can indirectly affect the children's well-being.

Discrepancy with Justice Values

The current regulations, despite providing a legal avenue for divorce, show a discrepancy with the values of justice in several ways:

- **Substantive Inequity:** The limited scope and inconsistent enforcement of maintenance provisions, coupled with the absence of comprehensive post-divorce spousal support, can lead to substantive inequity, where the wife bears a disproportionate burden of the marital breakdown.
- **Economic Vulnerability:** The legal framework, in its current application, may not adequately protect wives from economic vulnerability post-divorce, particularly when the divorce is a direct result of the husband's failure to fulfill his financial obligations during the marriage. This contradicts the principle of fairness and the constitutional mandate for social justice [9, 25].
- **Lack of Deterrence:** The current system may not provide sufficient deterrence for husbands who willfully neglect their maintenance obligations, as the financial consequences of such neglect leading to divorce might not be severe enough to compel compliance.

In summary, while the legal grounds for divorce due to non-maintenance exist, their practical application and the subsequent financial outcomes for wives often fall short of embodying comprehensive justice, necessitating a reconstruction of the regulations.

DISCUSSION

The findings of this study highlight a critical area for legal reform in Indonesia: the need to reconstruct divorce suit regulations concerning a husband's non-provision of maintenance to align more fully with the values of justice. While the legal framework provides a basis for such divorces, the practical application often falls short of achieving substantive equity for wives.

The recognition of non-provision of maintenance as a divorce ground is a positive aspect of Indonesian law, empowering wives to seek an end to marriages where fundamental obligations are neglected [5, 7]. This aligns with modern legal principles that seek to protect individuals from marital neglect and abuse, echoing

broader legal protections against domestic violence [21, 22]. However, the challenges in proving non-provision and the narrow interpretation of "maintenance" by some courts create procedural hurdles and limit the scope of justice. A more expansive interpretation of maintenance, considering the wife's accustomed lifestyle and contributions to the marriage, would better reflect the principle of fairness [11].

The most significant gap identified is the lack of comprehensive post-divorce spousal support beyond the *iddah* period. While *iddah* maintenance is stipulated in Islamic law and the KHI [18], its enforcement can be problematic, especially when the husband has a history of non-compliance. More importantly, the absence of provisions for long-term rehabilitative or compensatory maintenance leaves wives, particularly those who have been financially dependent or have foregone career opportunities during the marriage, in a precarious economic position post-divorce [11]. This directly contradicts the philosophical ideal of justice, which demands that the economically weaker party should not suffer undue hardship as a result of marital breakdown, especially when caused by the other spouse's default [9]. The psychological and financial well-being of children, who are often the silent victims of divorce, is also intrinsically linked to the financial stability of their primary caregiver, typically the mother [10]. Therefore, ensuring adequate spousal support is not just about the wife's rights but also about the children's welfare. The current situation suggests a tension between the formal legal recognition of rights and the substantive realization of justice. The Supreme Court's Circular [23] provides guidance, but a more fundamental reconstruction of regulations is needed to ensure consistent and equitable outcomes. This reconstruction should draw upon the core values of justice as articulated in legal philosophy and the Indonesian Constitution [9, 25], emphasizing fairness, equity, and the protection of vulnerable parties.

To achieve this, the reconstruction should consider:

- Clearer Definitions and Presumptions:** Establishing clearer legal definitions of "non-provision of maintenance" that ease the burden of proof on the wife and potentially introduce presumptions of non-provision under certain circumstances.

- Broader Scope of Maintenance:** Expanding the legal interpretation of maintenance to include not just basic necessities but also a consideration of the wife's pre-divorce standard of living and her contributions to the marital estate.
- Introduction of Rehabilitative/Compensatory Spousal Support:** Legislating for rehabilitative or compensatory spousal support beyond the *iddah* period, particularly in cases where the husband's non-provision of maintenance led to the divorce and the wife faces significant economic disadvantage. This would acknowledge the economic realities of divorce and promote greater equity in its aftermath [11].
- Strengthened Enforcement Mechanisms:** Enhancing the enforcement mechanisms for maintenance orders, both during and after the marriage, to ensure that judicial decisions are effectively implemented.
- Judicial Training:** Providing continuous training for judges in Religious Courts and other relevant courts on a justice-oriented interpretation of maintenance laws, emphasizing the socio-economic realities faced by wives.

By implementing such a reconstruction, Indonesian law can move beyond merely providing a legal pathway to divorce and truly embody the values of justice, ensuring that wives are not left in economic despair when their marriages dissolve due to the husband's failure to fulfill his fundamental obligation of maintenance.

CONCLUSION

This study has critically assessed the existing divorce suit regulations in Indonesia concerning a husband's non-provision of maintenance, concluding that while the legal framework provides grounds for divorce, its practical application often falls short of embodying comprehensive justice values. The analysis revealed a significant disconnect between the legal ideal and the lived realities of wives, particularly concerning post-divorce economic vulnerability. The current system, despite recognizing

non-maintenance as a valid reason for divorce, lacks robust mechanisms for ensuring substantive equity and adequate financial protection for wives, especially beyond the *iddah* period. This necessitates a fundamental reconstruction of these regulations to better reflect the principles of fairness and human dignity.

Based on the findings and the imperative for justice, the following recommendations are put forth for the reconstruction of divorce suit regulations in Indonesia:

For Legislative Bodies (e.g., Parliament):

- Amend Marriage Law and KHI:** Introduce explicit provisions in the Marriage Law and the Compilation of Islamic Law (KHI) that define "non-provision of maintenance" more broadly, taking into account the wife's accustomed standard of living and contributions to the marriage.
- Legislate for Post-Divorce Spousal Support:** Enact clear legal provisions for rehabilitative or compensatory spousal support beyond the *iddah* period, particularly in cases where the divorce is granted due to the husband's failure to provide maintenance. This support should aim to mitigate the economic disadvantage faced by the wife.
- Strengthen Enforcement Mechanisms:** Introduce more effective legal mechanisms for the enforcement of maintenance orders, including penalties for non-compliance and streamlined procedures for collection.

For Judicial Bodies (e.g., Supreme Court, Religious Courts):

- Issue Comprehensive Judicial Guidelines:** The Supreme Court should issue more detailed and comprehensive circulars or regulations that guide judges in interpreting and applying maintenance provisions with a strong emphasis on justice, equity, and the protection of the economically weaker spouse.
- Mandatory Judicial Training:** Implement mandatory and continuous training programs for judges, focusing on a justice-oriented approach to divorce cases involving non-maintenance, including understanding the socio-economic realities of women post-divorce.

- Proactive Assessment of Financial Capacity:** Encourage courts to proactively assess the husband's financial capacity and assets to ensure fair and enforceable maintenance orders, rather than solely relying on the wife's burden of proof.

For Legal Practitioners and Advocates:

- Advocate for Comprehensive Claims:** Legal practitioners should be encouraged to advocate for comprehensive financial claims for wives in divorce suits based on non-maintenance, including not only *iddah* maintenance but also potential long-term spousal support where appropriate.
- Raise Awareness:** Continue to raise awareness among women about their rights regarding maintenance and divorce, empowering them to seek legal recourse when their rights are violated.

By implementing these recommendations, Indonesia can take significant strides towards ensuring that its divorce suit regulations, particularly those concerning the husband's non-provision of maintenance, are truly grounded in the values of justice, thereby promoting greater equity and protecting the well-being of all parties involved in marital dissolution.

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