

The Judge's Ratio Decidendi in Rejecting A Claim for Past Child Support

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Abstract:

Divorce often leads to disputes over child support, directly affecting children's welfare, including their basic needs and emotional stability. The Marriage Law mandates parental obligations to provide child support until the child reaches independence, irrespective of marital status. However, challenges persist in implementing these obligations due to legal ambiguities, particularly regarding unpaid child support claims. This study examines the implementation of Supreme Court Circular Letter (SEMA) Number 4 of 2016 in Decision Number 0565/Pdt.G/2023/PA.Bwi, which rejected a claim for past unpaid child support. The research aims to analyze the judge's reasoning (*ratio decidendi*) behind the rejection and evaluate its alignment with the guidelines in SEMA. Utilizing a normative legal research method with a case study approach, this study draws on primary legal materials, such as court decisions and SEMA, and secondary materials, including books, journals, and articles. The findings reveal that the rejection was based on the temporary nature of child support obligations, which contradicts SEMA's mandate to automatically assign the father responsibility for child support in cases where the mother has custody. This inconsistency underscores gaps in judicial understanding and implementation of SEMA at the court level. The study highlights the urgent need for improved judicial training, consistent application of guidelines, and enhanced legal awareness to safeguard children's rights and prioritize their best interests in custody and support disputes.

Keywords: Divorce, *Ratio Decidendi*, Child Support, Legal Implementation.



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Introduction

Divorce becomes a major issue in the division of responsibilities, particularly concerning the obligation to provide child support. The negative impact of divorce is often felt most by the children, as they lose the warmth and harmony of an intact family. A child may lose the leadership figure of a father or the nurturing care of a mother, which they would typically receive if raised in a complete family. Moreover, divorce can create emotional instability in children, which may be exacerbated by issues related to the

fulfillment of financial support.¹ Uncertainty surrounding child support obligations often adds to the psychological burden on children, as they may feel neglected or overlooked. Therefore, it is crucial for both parents to ensure that child support obligations are met fairly and consistently, and to maintain effective communication to mitigate emotional impact and ensure the child's well-being is preserved after the divorce.

The wife can challenge the obligation to support children in accordance with Article 41 of the Marriage Law Letter (c), which states that "The court can oblige the ex-husband to provide living costs and/or determine certain obligations for the ex-wife." This provision is also contained in Article 45 of Law Number 01 of 1974 concerning Rights and Obligations Between Parents and Children, which states in paragraph 1 that "Both parents are obliged to care for and educate their children as well as possible." Paragraph 2 of this article emphasizes that "The obligations of parents referred to in paragraph (1) of this article apply until the child marries or is able to stand alone, and these obligations continue to apply even if the marriage between the parents breaks down." Apart from that, the husband as head of the family has the obligation to provide for the children who are the result of the relationship between husband and wife in a legal marriage bond. The obligation to provide support for children can be seen in the Compilation of Islamic Law in the Child Care Chapter. Article 98 explains that child support can be stopped when the child has reached puberty for men (21 years of age) or when they are able to earn their own living and for women when they have reached maturity. Married. This is different if the child suffers from illness or loses his mind, then a father is obliged to provide for the child. This provision was reaffirmed in Child Protection Law Number 23 of 2002 which was amended to become Law Number 35 of 2014 in Article 1 Paragraph 1 which states that a child is someone who is not yet 18 years old and includes children who are still in the womb. Support for children after divorce is very important because it concerns the child's right to obtain the necessities of life in the form of clothing, food, shelter and education. It is legally obligatory for a father to provide child support after divorce.² Alimony madhiyah Children refer to the support obligations that the husband should provide to the children, both during the marriage period and after divorce, regardless of whether the negligence was intentional or not. In this context, a husband who has an adequate income but is reluctant to support his wife and children is equivalent to someone who has wealth but chooses not to fulfill his responsibilities. This problem becomes more complex when there are clear reasons and conditions that require the husband to fulfill his maintenance obligations. If the husband fails to fulfill these responsibilities, then the missed income will be considered a debt that must be accounted for.³ Therefore, a deep understanding of livelihood madhiyah becomes important in guaranteeing the rights of children and wives in the context of family law.

The husband's obligation in fulfilling the maintenance madhiyah Children cause several problems when related to divorce. This is caused by the amount of maintenance that is not clearly and in detail determined regarding the amount of maintenance charged

¹ Miftahudin Azmi, "Pencegahan Perceraian Dini di Kabupaten Indramayu Perspektif Hukum Islam dan Hukum Positif" 10, no. 1 (2023).

² Lutfi Yana dan Ali Trigiyatno, "Pemenuhan Hak Nafkah Anak Pasca Perceraian" 2 (2022).

³ Hasanah Hajar, "Nafkah Madhiyah Perspektif Imam Empat Mazhab," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 17, no. 5 (27 September 2023): 3779, <https://doi.org/10.35931/aq.v17i5.2695>.

to the ex-husband. In determining maintenance, the court needs to use the appropriate legal basis. In the Compilation of Islamic Law (KHI), maintenance is regulated in Article 80 paragraph 4 which states that the husband bears the burden of maintenance, household costs, maintenance costs and children's education costs. In the Islamic context, there are three types of income, namely 'iddah income, mut'ah income, and livelihood *madhiyah*.⁴ Alimony *madhiyah* refers to the maintenance that a husband does not give to his wife while they are legally married.⁵ Unfortunately, this obligation is often not fulfilled, so many ex-wives apply for maintenance *madhiyah* child to court.⁶ However, problems arise when a father fulfills child support *lil intifa'* until sustenance *madhiyah* Children are considered unable to be sued, even though the judge has the authority to decide the lawsuit out of office.

Reason for falling The judge in a decision must really refer to the considerations or reasons that form the basis of the judge's decision in a case.⁷ This consideration includes important aspects where the judge considers the reality and material facts that exist. In the study of legal system, Kusumadi Pudjosewojo defines reason for falling as a combination of authentic material factors that contribute to a decision.⁸ Importance reason for falling in the decision-making process by judges cannot be ignored, because these reasons must be in line with legal reasoning or legal reasoning.⁹ In each decision, the panel of judges is involved in a process of legal reasoning aimed at achieving a fair result. Thus, reason for falling not just for legal reasons, but also reflects efforts to uphold justice in the justice system.

SEMA No. 4 of 2016 provides guidelines that a religious court can determine child support for the father if the child is actually under the care of the mother. The question is why the judge did not decide on the maintenance lawsuit *madhiyah* this child out of office, but still follows the legal basis which states that the fulfillment of support from the father is in nature *lil intifa'* not little like. The problems with the implementation of SEMA Number 4 of 2016 can be seen in the divorce decision of the Banyuwangi Religious Court number: 0565/Pdt. G/2023/PA. Bwi. In this decision, the plaintiff submitted a claim for maintenance, including alimony *madhiyah* child. The facts show that the defendant has neglected his maintenance obligations for approximately 10 months. Even though the plaintiff submitted a request for maintenance *madhiyah* child, the judge rejected the application and adhered to existing jurisprudence.

The decision of the Banyuwangi Religious Court stated in its decision, the judge stated that the fulfillment of the father's support for the child is *lil intifa'*, no little like, and refers to the decision of the Supreme Court of the Republic of Indonesia No. 608 K/AG/2003. This raises questions about the implementation of SEMA implementation

⁴ Riyan Ramdani dan Firda Nisa Syafitri, "Penentuan Besaran Nafkah *Madhiyah*, Nafkah *Iddah* Dan Mut'ah Dalam Perkara Perceraian Di Pengadilan Agama," *ADLIYA: Jurnal Hukum dan Kemanusiaan* 15, no. 1 (31 Maret 2021): 37–50, <https://doi.org/10.15575/adliya.v15i1.11874>.

⁵ Muhammad Nuruddien, "Nafkah *Mādhiyah* Istri Sebelum Perceraian Perspektif Keadilan (Studi Analisis Pandangan Fikih Islami Dalam Mazhab Hanafiyah dan Syafiiyah)," t.t.

⁶ Hajar, "Nafkah *Madhiyah* Perspektif Imam Empat Mazhab."

⁷ I.P.M Ranuhandoko, *Terminologi Hukum Inggris-Indonesia*, Cetakan Ke-3 (Jakarta: Sinar Grafika, 2004).

⁸ Kusumadi Pudjosewojo, *Pedoman Pembelajaran Tata Hukum Indonesia*, Cetakan Ke-10 (Jakarta: Sinar Grafika, 2004).

⁹ Nur Iftitah Isnantiana, "Legal Reasoning Hakim dalam Pengambilan Putusan Perkara di Pengadilan," *ISLAMADINA* 18, no. 2 (16 Oktober 2017): 41, <https://doi.org/10.30595/islamadina.v18i2.1920>.

guidelines Number 4 of 2016, which regulates that courts must be out of office determine child support if the child is in the care of the mother.

This article focuses on livelihoods madhiyah children by referring to various previous studies to understand development and differences in the approaches used. Previous research serves as a reference that enriches thinking and opens up various perspectives regarding this issue. Lisnawati in a journal entitled "Dilemmatics of Livelihood madiyah Children in the Decision of the Tanjungkarang Religious Court Number 0846/Pdt. G/2015/PA. Tnk", 2023. This journal discusses livelihoods madhiyah child from the judge's consideration in the hearing on alimony madhiyah children with an emphasis on the decision of the Supreme Court of the Republic of Indonesia Number 608/K/AG/2003, apart from that this article also discusses the dilemmas related to several problems regarding denial of living madhiyah child.¹⁰ Even though the reference to the theme of the previous article is similar, this article is different in its discussion, namely more emphasis on reason for falling judge.

Nuriel Amiriyah, in a journal entitled "Nafkah Madliyah Post-Divorce Children in the Republic of Indonesia Supreme Court Decision Number 608/AG/2003", 2015. This article analyzes a father's negligence in providing support after divorce, using the perspective of Islamic Law and the Child Protection Law. This research adds two legal references to its discussion.¹¹ Mansari, Elidar Sari, Salman Abdul Muttalib, in an article entitled "Judicial Analysis of Refusal of Support praise Wife and Children (Study of Decision Number 251/Pdt. G/2021/Ms. Mbo)", 2022. This article discusses the judge's views regarding denial of maintenance madhiyah for the mother's child due to the presence of witnesses who were unable to corroborate the facts in the trial so that the panel of judges rejected the applicant's claims and legally this rejection was in accordance with the provisions of Article 172 HIR which regulates that witness statements must be in accordance with each other.¹² The focus of the analysis on the judge's views is something in common with this research, although the situation raised is special.

Salma, Elfia, and Afifah Djalal in a journal entitled "Legal Protection for Women and Children (Analysis of the Judge's Decision Concerning Livelihood Madhiyah At the Religious Courts in West Sumatra)", 2017. This study discusses legal protection for women and children in the context of judges' decisions regarding livelihoods madhiyah.¹³ This research focuses on aspects of post-divorce protection, which is also relevant to the theme raised in this research. The next, Muhammad Azani, Cysillia Anggraini Novalis in

¹⁰ Lisnawati Lisnawati, "Dilematika Nafkah Madiyah Anak Dalam Putusan Pengadilan Agama Tanjungkarang Nomor 0846/Pdt.G/2015/PA.Tnk," *TARUNALAW: Journal of Law and Syariah* 1, no. 01 (27 Januari 2023): 96–109, <https://doi.org/10.54298/tarunalaw.v1i01.80>.

¹¹ Nuriel Amiriyah, "Nafkah Madliyah Anak Pasca Perceraian: Studi Putusan Mahkamah Agung Republik Indonesia Nomor 608/K/AG/2003," *JURISDICTIE* 6, no. 1 (13 Maret 2017): 1, <https://doi.org/10.18860/j.v6i1.4085>.

¹² Mansari, Elidar Sari, dan Salman Abdul Muthalib, "Analisis Yuridis Terhadap Penolakan Nafkah Madhiyah Isteri Dan Anak," *Al-Qadha : Jurnal Hukum Islam dan Perundang-Undangan* 9, no. 2 (2 Agustus 2022): 306–22, <https://doi.org/10.32505/qadha.v9i2.3903>.

¹³ Salma, Elfia, dan Afifah Djalal, "Perlindungan Hukum Bagi Perempuan Dan Anak (Analisis Putusan Hakim Tentang Nafkah Madhiyah Pada Pengadilan Agama Di Sumatera Barat)," *Istinbâth: Jurnal Hukum Islam* 16, no. Vol.16 No. 1 (2017): Juni (29 Juni 2017), <https://doi.org/10.20414/ijhi.v16i1.77>.

a journal entitled "Implementation of Religious Court Decisions Regarding Fulfillment of Post-Divorce Support Rights in Pekanbaru Religious Courts", 2022. This article discusses the implementation of the judge's decision regarding the father's obligation to fulfill the child's support claim.¹⁴ Even though the theme of child support is a commonality, this article does not yet discuss income madhiyah child in depth.

Dian Ayu Safitri, Muh. Jufri Ahmad in a journal entitled "Parents' Responsibilities for Children's Support after Divorce", 2024. This article discusses the incompleteness of children's rights after divorce, especially the father's support obligations and the lack of strict legal sanctions. This article explores legal sanctions for negligent fathers and compares maintenance obligations in Islamic law and positive law in Indonesia.¹⁵ Even though they both discuss the maintenance of children who are neglected by their fathers, this article has a different discussion regarding maintenance madhiyah children based on a judge's decision that is aligned with the implementation of SEMA. Nurfaradilla Ananda in a journal entitled "Implementation of SEMA Number 1 of 2017 concerning Payment of Iddah Support Before Pronunciation of the Divorce Pledge in the Samarinda Religious Court", 2024. This article discusses the suitability of the decision of the panel of judges in the implementation of SEMA Number 1 of 2017 regarding the husband's obligation to pay iddah maintenance for husband.¹⁶ What this article has in common is that it discusses the implementation of SEMA so that it can be a reference for the discussion that will be studied in the article regarding livelihoods madhiyah child.

Nor Arif Saefudin, Alfi Syahrin, Anwar Muhammad Radiamoda in a journal entitled "Nafkah Madiyah for a Child in Supreme Court Plenary Session 2019 as a Reform of Islamic Family Law in Indonesia", 2022. This article examines the results of the 2019 plenary session of the Supreme Court of the Republic of Indonesia which is related to Decision Number 608K/AG/2003 which provides a new view regarding livelihoods madhiyah children, where the results of this plenary meeting propose child support to become little like.¹⁷ The difference between this article is in its discussion of the implementation of SEMA. However, the discussion regarding the comparison of the results of the plenary meeting of the Supreme Court of the Republic of Indonesia can be a reference because they both discuss livelihoods madhiyah child. Imma Indra Dewi

¹⁴ Muhammad Azani Azani dan Cysillia Anggaraini Novalis Cysillia, "PELAKSANAAN PUTUSAN PENGADILAN AGAMA MENGENAI PEMENUHAN HAK NAFKAH ANAK PASCA PERCERAIAN DI PENGADILAN AGAMA PEKANBARU," *Jotika Research in Business Law* 1, no. 2 (8 Juli 2022): 46–59, <https://doi.org/10.56445/jrbl.v1i2.43>.

¹⁵ Dian Ayu Safitri dan Muh. Jufri Ahmad, "TANGGUNGJAWAB ORANGTUA ATAS NAFKAH ANAK PASCA PERCERAIAN," *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 4, no. 06 (26 Juni 2024): 38–59, <https://doi.org/10.69957/cr.v4i06.1610>.

¹⁶ Nurfaradilla Ananda, "IMPLEMENTASI SEMA NOMOR 1 TAHUN 2017 TENTANG PEMBAYARAN NAFKAH IDDAH SEBELUM PENGUCAPAN IKRAR TALAK DI PENGADILAN AGAMA SAMARINDA," *Nusantara Interdisciplinary Journal of Education Studies and Society* 1 (1 Januari 2024), <https://doi.org/10.12345/nijess.v1i1.xxxx>.

¹⁷ Nor Arif Saefudin, Alfi Syahrin Alfi, dan Anwar Muhammad Radiamoda, "Nafkah Madiyah for Children in Supreme Court Plenary Session 2019 as a Reform of Islamic Family Law in Indonesia," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 1 (25 Juni 2022): 64–76, <https://doi.org/10.32694/qst.v20i1.1623>.

Windajani, Cunduk Wasiati, Bagus Anwar Hidayatullah in a journal entitled "Father's Obligations Regarding Child Support After Divorce in the Religious Courts: Human Rights Perspective", 2023. This article discusses the implementation of the divorce decision in the Religious Courts and the negligence of the husband regarding his support obligations to his ex-wife and children, this should be able to be sued because it violates the children's rights.¹⁸ The similarity between these articles is that they both discuss the negligence of the father's obligations regarding child support and children's rights, the difference is that this article does not discuss child support. madhiyah children and the implementation of an implementation guideline, namely SEMA.

Hotnidah Nasution, Windy Triana, Ahmad Rifqi Muchtar in a journal entitled "Ensuring Children's Rights after Divorce in Indonesia: Religious Court Decisions on Livelihood madhiyah", 2024. This article discusses the findings of several judges' decisions which show inconsistencies regarding maintenance madhiyah child. Each decision from the panel of judges uses a different legal basis and other considerations with the result that some are accepted and some are rejected in the application for maintenance madhiyah child.¹⁹ What these articles have in common is that they both discuss the judge's decision to reject the request for maintenance madhiyah children and the difference in this article is that it does not discuss the implementation of a task implementation guide. Through a review of several journals listed, this article aims to fill the existing gaps and provide further analysis about livelihoods madhiyah child in the context of the applicable law.

The judge's consideration in a decision is an important indicator of the quality of the court's decision. The absence of legal considerations in a decision can result in the decision being annulled.²⁰ In the decision-making process, the panel of judges formulates several considerations or reason for falling which focuses on the subject matter of the case, based on expert opinions, evidence presented, and relevant jurisprudence during the trial. These considerations are arranged logically, interconnected and mutually reinforcing, thus creating a solid foundation for the decisions taken. Apart from that, judges are required to consider cases concretely and in accordance with the existing context. The final form of this consideration is stated in a decision which includes analysis, arguments, opinions and the judge's conclusions.²¹

This article aims to analyze the rationality of the judge's decision in this decision and assess the legal implications for children's rights after divorce. Evaluation of the suitability of legal implementation in the context of protecting children's living rights is

¹⁸ Cunduk Wasiati, Bagus Anwar Hidayatullah, dan Imma Indra Dewi Windajani, "KEWAJIBAN AYAH TERKAIT NAFKAH ANAK SETELAH TERJADINYA PERCERAIAN DI PENGADILAN AGAMA : PERSPEKTIF HAK ASASI MANUSIA," *Juris Humanity: Jurnal Riset dan Kajian Hukum Hak Asasi Manusia* 2, no. 2 (27 Desember 2023): 11–21, <https://doi.org/10.37631/jrkhm.v2i2.25>.

¹⁹ Hotnidah Nasution, Windy Triana, dan Ahmad Rifqi Muchtar, "Ensuring Children's Rights after Divorce in Indonesia: Religious Court Decisions on Nafkah Madhiyah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024), <https://doi.org/10.14421/ahwal.2024.17103>.

²⁰ Lilik Mulyadi, *Pergeseran Perspektif dan Praktek dari Mahkamah Agung Mengenai Putusan* (Bandung: Citra Aditya Bakti, 2009).

²¹ Bambang Sutiyoso, *Upaya Mewujudkan Hukum Yang Pasti dan Berkeadilan* (Yogyakarta: UII Press, 2012).

also the focus of this research. Through this analysis, it is hoped that it can provide deeper insight into the challenges in making a living madhiyah children in Indonesia and provide recommendations and views for people who do not yet know about livelihoods madhiyah child..

Method

This article uses normative legal research methods. This article does not only focus on using normative aspects in studying it, but also uses the object of implementing legal rules which aims to analyze the implementation or application of law that occurs in the justice system. This research approach uses case approach or a case approach that uses descriptive data from the Banyuwangi Religious Court Decision Number 0565/Pdt. G/2023/PA. Bwi by analyzing reason for falling judge in the decision.²² In this research, legal materials play an important role as a source of analysis of legal problems, consisting of primary legal materials such as laws and court decisions and secondary legal materials as supporting materials in research.²³ The primary legal material used is the Decision of the Banyuwangi Religious Court Number 0565/Pdt. G/2023/PA. Bwi and Supreme Court Circular Letter (SEMA) Number 4 of 2016.²⁴ Secondary legal materials used in this article are books, articles and journals.²⁵ Data collection was carried out through documentation studies to collect information related to the implementation of SEMA Number 4 of 2016, which functions as legal guidance. Data processing methods include examining data to improve quality and accuracy, classification to organize data to make it more systematic, verification to ensure the validity of the data obtained, analysis to understand the data according to the problem formulation, and conclusions as a clear and concise final answer, making it easier for readers to understand. understand the research results.

The Ratio Decidendi of the Judge in Rejecting the Request for Post-Divorce Child Support in Decision Number 0565/Pdt.G/2023/PA. Bwi.

Case number 0565/Pdt. G/2023/PA. The Bwi handled by the Banyuwangi Religious Court reflects various issues that often occur in household relationships, especially related to income responsibilities and communication between partners. The applicant, represented by an advocate, submitted a petition for divorce which includes child maintenance. A special power of attorney was granted by the applicant on December 13, 2022. The respondent chose to represent himself without giving power of attorney to another party. According to the letter submitted by the applicant on January 25 2023, the applicant and the respondent were legally married on March 22 2021 before an official from the Kalipuro District Religious Affairs Office, Banyuwangi Regency. The marriage was officially registered in the Marriage Register Number 0184/50/III/2021. They lived together for five months at the respondent's house. During the period of marriage, the applicant and the respondent had legal husband and wife relations and were blessed with a child with the initials A.

²² Peter Mahmud Marzuki, *Penelitian Hukum*, Revisi (Kencana, 2005)., 158.

²³ Marzuki., 181.

²⁴ Marzuki., 187.

²⁵ Marzuki., 195.

Initially, their relationship was harmonious and harmonious. The dispute began to emerge around August 2022. This dispute was triggered by the respondent's dissatisfaction with the applicant's income working as a casual daily laborer, as well as the respondent's refusal to live in the applicant's house. Since August 1 2022, the respondent left the joint residence and returned to his parents' house. Within a period of ten months and fifteen days after the separation, the applicant and respondent made no effort to establish communication. The families of both parties have tried to provide advice so that they can get back together, but these efforts have been unsuccessful. The panel of judges granted the applicant's request for divorce because it met the necessary legal grounds. At the hearing, the applicant and respondent appear before the judge. Although the panel of judges tried to reconcile them, these efforts were unsuccessful. The mediation process was carried out in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016, with the mediator also ending in failure.

The hearing continued with the reading of the applicant's petition, which remained unchanged. The respondent provided an answer that partially confirmed the applicant's reasons, but claimed that the applicant left the house on June 16, 2022 and lived in the respondent's house for fourteen months. The Respondent asked for iddah support for three months in the amount of IDR 1,500,000 per month, bringing the total to IDR 4,500,000, as well as mut'ah of IDR 10,000,000, and unpaid child support for ten months amounting to IDR 25,000,000, as well as maintenance child for the future until the child finishes school. During the trial, the applicant raised an objection to the amount of maintenance requested, stating that he was only able to pay IDR 3,000,000 considering his limited income. The Respondent rejected the offer, considering the amount insufficient for himself and the child. After several negotiations, the respondent reduced the amount requested to Rp. 15,000,000, and the applicant finally stated that he was able to pay a total of Rp. 7,500,000, which the respondent agreed to.

The applicant also included various pieces of evidence to strengthen his argument, including photocopies of marriage certificates and identity cards, and presented two witnesses. The first witness, a relative of the applicant, stated that the relationship between the applicant and the respondent was initially harmonious, but changed since August 2022. The second witness, a work friend of the applicant, gave a similar statement. On the other hand, the respondent did not present witnesses or other evidence at the trial. The divorce proposed by the applicant and approved by the respondent reflects the complex dynamics in family relationships. Even though divorce is the final step, the child support claim that has been submitted shows that aspects of parental responsibility must still be considered. This case illustrates the legal, emotional, and financial challenges often faced in the divorce process, as well as the importance of mediation to reach a fair agreement for all parties involved.

Referring to the decision of the Banyuwangi Religious Court, the panel of judges has examined the trial files, including the petition from the applicant, the request from the respondent, as well as the evidence and witnesses submitted. In the absence of witnesses

or evidence from the respondent, the panel of judges was of the opinion that the respondent's denial regarding the cause of the quarrel and quarrel was deemed unproven.

Based on the facts presented, the panel of judges considered that the households of the applicant and respondent often experienced disputes and quarrels that were difficult to resolve. Economic factors are the main problem, where the respondent cannot receive the support provided by the applicant and refuses to live with him. This incident reached its peak when the respondent left the applicant for ten months. The panel of judges emphasized the importance of living together for a harmonious household, unless there is permission from the other party and reasons justified by law.

The protracted dispute without a solution prompted the applicant to complain to the Banyuwangi Religious Court. Efforts to reconcile the extended family were unsuccessful, so the applicant remained with the divorce application, which was also accepted by the respondent. During the trial, the panel of judges considered the demands of the respondent regarding support as follows: (1) Iddah support for three months, amounting to IDR 1,500,000 per month, total IDR 4,500,000; (2) Mut'ah of IDR 10,000,000; (3) The child's previous living for ten months is IDR 25,000,000, as well as future children's living until the child finishes school.

The respondent's request has been considered by the panel of judges based on the facts revealed in the trial. The applicant confirms his willingness to fulfill several requests for maintenance at a predetermined nominal amount. The panel of judges granted the request after considering legal aspects. In determining child support, the panel of judges refers to Article 156 Letter (d) KHI, which states that all costs of child support and child support are borne by the parents according to their abilities until the child reaches adulthood. The guidelines for implementing the duties of the panel of judges also refer to SEMA Number 4 of 2016, which allows Religious Courts to out of office set child support for the father if the child is in the care of the mother.

The panel of judges acknowledged the respondent's claim regarding maintenance for the past child for ten months amounting to Rp. 25,000,000 and support for future children. However, the applicant stated that he was unable to fulfill these demands. The judge's assessment focused on the impact of divorce on children, as regulated in Article 26 paragraph (1) of Law Number 23 of 2002 concerning child protection, which emphasizes children's rights to be protected from inhumane treatment. During the trial, the panel of judges also heard supporting evidence, including witnesses who confirmed the applicant's statement. The panel of judges concluded that since August 1 2022, the respondent took his child away, and for ten months and fifteen days there had been no relationship between the applicant and the respondent. This shows that the child is under the care of the respondent, which is the judge's consideration in providing legal protection for the child's future.

The panel of judges was of the opinion that the defendant/convention applicant was still obliged to provide support for the child, in accordance with the provisions of KHI Article 149 Letter (d) and Article 156 Letter (f). In Decision Number 0565/Pdt.G/2023/PA. Bwi, the panel of judges considered the facts revealed at the trial

and referred to the existing legal basis. The judge stated that both parents have an obligation to provide protection and meet the child's needs, without relying on one parent alone. The child has been cared for and educated by the respondent as his mother. The judge's consideration of the child's child support from the respondent's request is based on Supreme Court Jurisprudence Number 608/K/Ag/2003, which confirms that the father's obligation to provide support is *lil-intifa'*, no who-thanks you. The negligence of the father during separation from the child, who is in the care of the mother, cannot be prosecuted.

The panel of judges' rejection of the respondent's request regarding child maintenance raises several questions. There are questions regarding the form of implementation of SEMA Number 4 of 2016 as a guideline for implementing the duties of the panel of judges in deciding livelihood cases *madhiyah* child. It is clearly stated that the Religious Court can determine maintenance when the child is in the care of the mother, so the use of the perspective of the panel of judges in this decision is important to discuss further. This decision creates doubts that need to be examined more deeply.

The judge's decision must take into account the reasons of both the applicant and the respondent. In making decisions, the panel of judges should be in accordance with the facts that have been revealed in the trial, whether in granting or rejecting a request from one of the parties. The judge's consideration in deciding the request regarding maintenance submitted by the respondent refers to strong legal grounds. In this process, the panel of judges considers many perspectives, especially those that affect the welfare or justice for the parties involved. The judge at trial weighs various facts presented through evidence and witnesses. Determining the amount of maintenance in the context of divorce is very important to maintain the applicant's responsibilities, especially towards his children. The request from the respondent was not immediately granted according to the amount proposed. The panel of judges also paid attention to several aspects that could provide a middle way in resolving maintenance.

Other factors were also considered, where the applicant was in fact unable to fulfill several of the respondent's requests. The applicant responded to the initial request, which was quite large, with objection, considering his profession as a casual daily laborer with an income of IDR 100,000 per day. The trial process showed that the applicant and respondent threw replicas and duplicates at each other to find a middle ground regarding the fulfillment of living expenses. Determination of livelihood in Decision Number 0565/Pdt.G/2023/PA. BWI was carried out with careful consideration by the panel of judges. However, one request from the respondent is a living *madhiyah* child, rejected. This refusal is contrary to the fact that the child has been cared for by the respondent, or his mother, for ten months without receiving support from the applicant. The panel of judges refused maintenance *madhiyah* child does not appear to refer to some relevant legal grounds.

The judge's discretion in rejecting alimony requests *madhiyah* This child is less suitable if seen through the guidelines for carrying out duties used by the panel of judges. This research focuses on the implementation of SEMA Number 4 of 2016 Letter (c)

Formulation of the Law on Religious Chambers Point 5. If you look further, livelihood madhiyah This child is a form of negligence by the husband in providing support for his child in the past, and should be considered a debt that must be paid. Several facts should be taken into consideration by the panel of judges when granting support madhiyah the child appears to be neglected, leading to other legal grounds as a reason for rejection.

Several reasons can be concluded that a review is needed to understand the judge's considerations in refusing maintenance madhiyah child. SEMA Number 4 of 2016 functions as a guideline for the implementation of duties for the Court, so it is very important for the panel of judges to be wiser in deciding cases. Living madhiyah Children are an important aspect that contributes to children's welfare, wisdom in deciding cases like this is very necessary to ensure that the rights of children are protected and guaranteed who ultimately become victims of divorce.

Tabel 1. *Ratio Decidendi* Banyuwangi Religious Court Judge

No	Respondent's Lawsuit	Decision	<i>Ratio Decidendi</i>
1.	Alimony Iddah (per month Rp. 1,500,000 for 3 months up to Rp. 4,500,000)	Granted, as big as Rp. 3,000,000	Law Number 1 of 1974 Article 40, Article 152 Compilation of Islamic Law, for changes to the final nominal value of the decision of the panel of judges judging from the financial condition and capabilities of the applicant
2.	Alimony Mut'ah (Rp. 10,000,000)	Granted, as big as Rp. 3,000,000	SEMA Number 4 of 2016 Formulation of the Law on Religious Chambers (5), Supreme Court Jurisprudence Number 608/K/Ag/2003, the panel of judges each believes that each parent is obliged to meet the child's needs. According to Jurisprudence, the father's obligations <i>lil intifa'</i> not little like
3.	Alimony Madhiyah Child (separated for 10 months with a request of Rp. 25,000,000)	Rejected	SEMA Nomor 4 Tahun 2016 Rumusan Hukum Kamar Agama (5), Yurisprudensi Mahkamah Agung Nomor 608/K/Ag/2003, majelis hakim berpendapat masing-masing berpendapat bahwa masing-masing orang tua berkewajiban untuk memenuhi kebutuhan anak. Menurut Yurisprudensi kewajiban ayah <i>lil intifa'</i> bukan <i>littamlik</i>
4.	Future child support (unspecified)	Granted, as big as Rp. 1,000,000 10% increase	SEMA Number 4 of 2016 Formulation of Law on Religious Chambers (5), Article 156 letter (d) Compilation of Islamic Law, Article

every year until the child is an adult	26 paragraph (1) of Law Number 23 of 2002 concerning Child Protection, the panel of judges is of the opinion that the child's father is still obliged to provide a living
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Implementation of SEMA Number 4 of 2016 in Rejection of Support Requests Madhiyah Child Decision Number: 0565/Pdt. G/2023/PA. Bwi

Supreme Court Circular Letter Number 4 of 2016 provides guidelines for religious court judges in determining child support obligations. In these guidelines, especially in Letter (c) Formulation of Religious Chambers Point 5, it is stated that religious courts have the authority to out of office determine the child's support obligations from the father, especially if the child is actually under the care of the mother. This means that even if child support is not requested directly by the mother, the court can decide on this obligation to ensure the child's welfare. This provision refers to Article 156 letter (f) of the Compilation of Islamic Law (KHI), which stipulates that fathers have the responsibility to provide support for their children. Thus, courts have the authority to protect children's rights and ensure adequate support from parents.

The purpose of this Circular is to direct Religious Court judges to reject or accept requests for child support fairly and consistently. By giving the court the authority to determine maintenance obligations from office SEMA ensures that children's rights are not ignored even if there is no request from the mother. This guideline supports the consistent application of Article 156 letter (f) KHI, so that determining the amount and obligation of living becomes more measurable and predictable. In addition, SEMA emphasizes the importance of considering the child's real circumstances, especially if the child is under the mother's care, to ensure that decisions are taken that are appropriate to the child's needs and protect his or her welfare.

In decision Number: 0565/Pdt.G/2023/PA. Bwi, the panel of judges used guidelines from SEMA Number 4 of 2016, especially the Formulation of the Law on Religious Chambers Letter (c) point 5, in determining child support. Even though the panel of judges approved the child's support for the future, they rejected the request for support madhiyah child proposed by the respondent. This shows that there is an inconsistency between the SEMA guidelines used and the results of the decision to reject the request for maintenance madhiyah child. The implementation of SEMA Number 4 of 2016 has not been fully realized, even though this guideline provides clear direction regarding the authority of the Religious Courts in determining child support individually. out of office.

This discrepancy indicates that courts have not fully utilized these powers, indicating a mismatch between legal guidance and court practice. Rejection of an application for maintenance madhiyah children reflect deficiencies in the application of the principles of justice and protection of children's rights. Although SEMA Number 4 of 2016 provides a strong legal basis for proactive court action, the final decision in this case

shows that the application of this principle is inconsistent. As is known, implementation can be interpreted as execution or implementation. Laws are created to be implemented. In terms of form, law can be seen through explicitly formulated rules, which contain actions that must be implemented, including law enforcement.²⁶ Law enforcement is the ongoing process of implementing the law that involves humans and their behavior.

There are several indications regarding the implementation of these guidelines, including that although SEMA Number 4 of 2016 provides clear guidelines, court practice does not always comply with these guidelines. The inconsistencies in the rulings reflect the need for further evaluation of the application of the guidelines in practice. Additionally, although SEMA encourages courts to act proactively, this case suggests that courts may not have fully exercised their discretion out of office effectively, so that the goals of SEMA and KHI in protecting children's rights are not achieved. It is important to assess whether the court properly assessed all aspects of the case, including the child's needs and the father's financial capacity, so that the decision taken truly reflects the applicable legal principles and provides optimal protection for the child.

The Banyuwangi Religious Court as an institution that applies the concept of justice must of course be in line with statutory regulations. This provision can be found in Article 5 Paragraph 1 of Law Number 48 of 2009 concerning Judicial Power, which reads: "Constitutional judges and justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society." This legal provision requires judges to consider various aspects necessary in making a decision, with the aim of ensuring justice is achieved. Law Number 48 of 2009 requires judges to act objectively and without interference from any party. This principle of independence aims to ensure that every decision taken by a judge is based on existing law and facts, without external influence.²⁷ In this context, although SEMA provides the authority for courts to act proactively, its implementation shows a possible incompatibility with the principles of independence and objectivity of judges.

The process in determining the panel of judges' decision will of course take into account various facts from an ongoing trial process. With the existing witnesses and evidence, the panel of judges can consider it properly in handing down a decision. Requests from the applicant or respondent cannot immediately be granted in a trial. Therefore, the panel of judges also has the right to consider existing evidence and witnesses to support legal facts in the trial process in accordance with the existing legal basis.²⁸ Implementation of SEMA Number 4 of 2016, which provides authority *ex officio* to the Religious Court to determine child support if the child is under the care of the mother, is very relevant to the principles of judicial power. Courts should utilize this power to ensure that children's rights are protected. SEMA Number 4 of 2016 is part of

²⁶ Ishaq, *Dasar-Dasar Ilmu Hukum*, Cet. ke-2 (Jakarta: Sinar Grafika, 2008).

²⁷ Dachran Busthami, "Kekuasaan Kehakiman Dalam Perspektif Negara Hukum Di Indonesia," *Masalah-Masalah Hukum* 46, no. 4 (24 Februari 2018): 336, <https://doi.org/10.14710/mmh.46.4.2017.336-342>.

²⁸ Indra Rahmatullah, "Filsafat Realisme Hukum; Konsep dan Aktualisasinya dalam Hukum Bisnis di Indonesia," *ADALAH* 5, no. 3 (27 Juni 2021), <https://doi.org/10.15408/adalah.v5i3.21395>.

an effort to implement the principles of justice more proactively, in line with the main tasks of the judiciary as regulated in law. In the Religious Court decision Number: 0565/Pdt.G/2023/PA. Bwi, it appears that even though the respondent submitted an application for maintenance madhiyah child and the panel of judges knew that for 10 months the child had been in the respondent's care without any support, the court still rejected the application. This rejection indicates a discrepancy between legal guidelines and court practice. Even though in SEMA Number 4 of 2016 it is written that the court has the authority out of office, the final decision does not reflect the full application of that authority. Religious Courts must ensure that authority out of office those awarded by SEMA are used effectively to protect children's rights. This is in line with the role of the court as a dispute resolution institution whose function is to protect individual rights and public interests.

Rejection of alimony application madhiyah children indicate the need for further evaluation of how legal principles are applied in judicial practice. Additionally, courts play an important role in legal development and reform. Through their experience, judges can provide valuable input for adapting laws to keep them relevant to society's needs. In the implementation of SEMA, rejection of this decision shows that there is an opportunity to review and improve the application of authority out of office to be more in line with the aim of protecting children's rights. Therefore, law must always be considered as something that continues to develop, or "law in the making,"[29] which means the law needs to be constantly updated and adapted to remain relevant to society's needs and changes. Thus, although SEMA Number 4 of 2016 provides a strong legal basis for proactive court action, its implementation in case Number: 0565/Pdt.G/2023/PA. Bwi pointed out the challenges in translating these guidelines into concrete actions. Evaluation and reform in the implementation of these legal guidelines is very important to ensure that the principles of justice and protection of children's rights are maintained.

SEMA Number 4 of 2016 provides clear guidelines regarding authority out of office for Religious Courts in determining child support. However, practice in the field is as seen in decision Number: 0565/Pdt.G/2023/PA. Bwi points out that there is a mismatch between legal guidelines and actual implementation. Rejection of requests for maintenance madhiyah The child in this case highlights the need for further evaluation and reform of the application of these powers. Religious courts must pay attention to the principles of justice and protection of children's rights more consistently and effectively, and continuously adapt legal practices to be in line with the development of community needs. Law needs to be seen as something dynamic and must be continuously updated to maintain its relevance in protecting individual rights and the public interest.

Conclusion

The divorce case at the Banyuwangi Religious Court with case number 0565/Pdt.G/2023/PA.Bwi highlights the problem of implementing Supreme Court Circular Letter Number 4 of 2016 regarding child support obligations. Even though SEMA gives the court the authority to determine child support automatically, the decision in this case actually rejected the child's request for child support. This decision is contrary

to the principles of protecting children's rights stated in SEMA. Refusal of sustenance madhiyah children show inconsistent behavior of judges in implementing SEMA at the court level. This raises questions regarding the understanding and commitment of judges to protecting children's rights, especially in the context of divorce. The decision also underlines the importance of evaluating the supervision and education mechanisms of judges, as well as the need for efforts to increase public legal awareness regarding children's rights. This case is a reminder that legal protection for children, especially in terms of fulfilling their right to support, still requires serious attention. There is a need for improvements in the justice system to ensure that court decisions always prioritize the best interests of children.

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