

Fulfillment of Wife's Rights after Divorce in the Perspective of Legal Justice Theory and Maqashid Shari'ah Cum-Mubadalah

Nur Ushmi Usthyawati

Universitas Islam Negeri Sunan Kudus, Indonesia

nurushmiusthya@gmail.com

Muhaimin

Universitas Islam Negeri Sunan Kudus, Indonesia

muhaimin@iainkudus.ac.id

Bangkit Budi Satriya

Universitas Islam Negeri Sunan Kudus, Indonesia

bangkitbudsatriya@gmail.com

Abstract:

The fulfillment of a wife's rights in contested divorce cases, including mut'ah, iddah alimony, and *madliyah* alimony, has historically lacked specific regulation, often resulting in injustice for women who initiate divorce. Divorce is not always the wife's choice; it may be influenced by factors such as discrimination or domestic violence, necessitating a legal review grounded in both *maqashid shari'ah* cum-mubadalah and legal justice theory. This study employs a normative-legal approach, analyzing conceptual and statutory legal materials. The findings reveal that the fulfillment of a wife's rights in contested divorce cases aligns with the principles of *maqashid shari'ah*, encompassing its five core objectives, while the cum-mubadalah principle emphasizes gender equality and justice comparable to rights in *talak* divorce. The study further demonstrates that fulfilling these rights considers women's biological and social realities and adheres to Gustav Radbruch's legal justice theory by upholding justice, utility, and legal certainty. Practically, the research shows that basic wife's rights, traditionally granted only in *talak* divorce, can and should also be recognized in divorce initiated by the wife, promoting equitable treatment and advancing gender justice within Islamic law. These findings contribute to both theoretical discourse and legal practice by integrating *maqashid shari'ah*, mubadalah, and legal justice theory, offering a normative framework for ensuring fairness in divorce litigation. The study also underscores the need for empirical research to complement the normative analysis and further strengthen legal policy and judicial practice.

Keywords: Legal Justice; Wife's Alimony; Divorce; Maqashid Shari'ah; Mubadalah.



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Introduction

Divorce rates in Indonesia have been steadily increasing in recent years. According to data from the Indonesian Central Statistics Agency, there were 394,608 divorces in the past year, of which 308,956 were initiated by men and 85,652 by women¹. The growing number of divorces filed by women highlights the need to examine the underlying causes and consequences of marital dissolution. Economic pressures, communication breakdowns, infidelity, and socio-cultural factors are among the primary drivers of divorce². Beyond these causes, it is essential to consider the social, psychological, and legal implications of divorce, particularly the fulfillment of wives' rights.

Divorce, whether initiated by the husband or the wife, represents the legal termination of marriage due to irreconcilable differences, often resulting in the non-fulfillment of mutual rights and obligations³. Divorces in Islamic law are generally categorized into two types: talaq, initiated by the husband, and lawsuit divorce (khuluk), initiated by the wife⁴. One critical consequence of divorce is the provision of the wife's basic rights, including financial support in the form of mut'ah, iddah alimony, and *madliyah* alimony⁵. While talaq divorce explicitly outlines these obligations in Articles 149 and 161 of the Compilation of Islamic Law, lawsuit divorces often provide less clarity, potentially limiting women's access to equitable financial support.

In practice, women face numerous obstacles in claiming their rights during contested divorces⁶. Many women are unaware of their entitlements or encounter societal and institutional barriers, leaving them vulnerable to psychological, social, and economic hardships. Unmet obligations, such as mut'ah and iddah alimony, can result in trauma, financial instability, and long-term social consequences, often exceeding the impact of marital dissolution due to death⁷. Given these realities, it is imperative to study the fulfillment of wives' rights after contested divorces through the lens of *maqashid shari'ah* and gender justice. Ensuring these rights aligns with Islamic legal objectives and promotes equity, ensuring that women receive the same protections and entitlements in lawsuit divorces as they do in talaq cases.

¹ Badan Pusat Statistika, 'Nikah Dan Cerai Menurut Provinsi (Kejadian), 2024', Badan Pusat Statistika Indonesia, <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi--kejadian---2024.html?year=2024>.

² Nibras Syafriani Manna et al., 'Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga Di Indonesia', *Al-Azhar Indonesia Seri Humaniora* 6, no. 1 (2021): 11, <https://doi.org/10.36722/sh.v6i1.443>.

³ Muhammad Syaifuddin et al., *Hukum Perceraian* (Sinar Grafika, 2013).

⁴ Anwar Rachman et al., *Hukum Perkawinan Indonesia 'Dalam Perspektif Hukum Perdata Dan Hukum Administrasi'* (Prenada Media Group (Divisi Kencana), 2020). Pages 232-233

⁵ Taufik, 'Perlindungan Hak-Hak Perempuan Pasca Perceraian', PA Jombang, <https://www.pajombang.go.id/article/Perlindungan-Hak-hak-Perempuan-Pasca-Perceraian>.

⁶ Hamzah et al., 'Hak-Hak Perempuan Pasca Perceraian Dalam Hukum Positif Dan Hukum Islam', *Jurnal Usroh* 6, no. 1 (2022): 65, <https://doi.org/10.19109/ujhki.v6i1.12239>.

⁷ Titin Triana et al., *Urgensi Pemberian Mut'ah Pasca Perceraian Dalam Perspektif Hukum Islam Dan Perundang-Undangan Di Indonesia* (Penerbit Adab, 2024).

Several studies have examined the rights of women in divorce within Islamic law, highlighting both legal provisions and practical challenges in their enforcement. Santi et al.,(2022) analyzed the implementation of Supreme Court Regulation Number 3 of 2017 in divorce cases in Indonesian Religious Courts. The study found that many women filing for divorce (divorce lawsuits) did not fully obtain their entitled rights, particularly in Verstek decisions, due to difficulties faced by judges in executing rulings, especially for non-civil servants. The research emphasized that while the regulation provides significant guidance, practical implementation remains a major challenge.⁸ Musaddad et al. (2025), conducted a comparative study between Indonesia and Malaysia, focusing on post-divorce rights of children and women, particularly regarding custody (hadanah) and alimony (nafkah). The study revealed frequent non-compliance by husbands, resulting in the ineffective enforcement of court decisions. While Indonesia has developed the E-Mosi Caper application to enhance legal effectiveness, Malaysia relies on the Family Support Division (BSK) to monitor maintenance payments. The research highlighted the importance of preventive and curative legal mechanisms to ensure the protection of post-divorce rights⁹.

Furthermore, Syukrawati et al (2024) examined post-divorce rights of women and children in Pekalongan City, Central Java. Analysis of ten court decisions revealed a significant gap between legal rulings and their real-world fulfillment. The study identified a lack of public knowledge on post-divorce execution procedures and limited application of Islamic legal principles by husbands as key causes of non-fulfillment, resulting in serious social and economic consequences for women and children. While, Nurafni et al (2025) focused on the protection of women's rights in marriage according to the Compilation of Islamic Law (KHI) and its implementation in Indonesia. While formal laws comprehensively regulate women's rights, implementation remains limited due to cultural practices, patriarchal norms, and informal dispute resolutions, often marginalizing women and undermining their rights¹⁰.

Despite these valuable contributions, existing studies mainly focus on statutory implementation, enforcement challenges, or the general protection of women's rights. Few studies systematically integrate *maqashid shari'ah*, gender justice (cum-mubadalah), and legal justice theory to analyze the fulfillment of wives' rights in contested divorce cases (khuluk). Moreover, most research emphasizes divorces initiated by husbands (talaq), leaving a gap in understanding how women's rights can be realized when they initiate divorce, particularly in cases involving mut'ah, iddah, and madliyah alimony.

This study contributes to the literature by integrating *maqashid shari'ah* cum-mubadalah with Gustav Radbruch's legal justice theory to analyze the fulfillment of wives' rights in contested divorce cases. Unlike previous studies, this research provides a normative framework that addresses both gender equality and legal justice, highlighting how wives' rights can be protected in practice even when divorce is initiated by the wife.

⁸ Santi et al., 'Analysis of Women's Protection Law in Divorce Case', *LEGAL BRIEF* 11, no. 4 (2022): 2494–98, <https://doi.org/10.35335/legal.v11i4.466>.

⁹ Endad Musaddad et al., *Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia / Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, n.d., accessed 16 August 2025, <https://ejournal.uinsaizu.ac.id/index.php/volksgeist/article/view/12214>.

¹⁰ Nurafni Nurafni et al., *Protection of Women's Rights in Marriage According to the Compilation of Islamic Law and Its Implementation in Indonesia / Journal of Law, Politic and Humanities*, 21 June 2025, <https://dinastires.org/JLPH/article/view/1775>.

By combining these perspectives, the study offers a fresh, comprehensive approach to ensuring justice and equity in Islamic family law.

Method

This study employs normative legal research with a conceptual and analytical approach, aiming to examine the legal framework and theoretical foundations for fulfilling wives' rights in divorce. The approach allows for a systematic exploration of legal norms, principles, and theories relevant to the protection of women's post-divorce rights, particularly in contested divorce cases (khuluk). The research draws on both primary and secondary legal materials. Primary legal materials include Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), Supreme Court Regulation (PERMA) Number 3 of 2017 concerning Guidelines for Handling Women Involved in Legal Matters, and Supreme Court Circular Letter (SEMA) Number 3 of 2018, which operationalizes PERMA Number 3 of 2017. Secondary legal materials consist of books, academic journals, prior research, and other relevant literature that provide additional context and support for the analysis.

The study applies inductive analysis, systematically examining these legal materials to identify patterns, principles, and gaps in the fulfillment of wives' rights. Insights drawn from this process are developed into hypotheses, which are descriptively evaluated to provide a comprehensive overview of the current legal framework and its practical implementation. This method enables a normative evaluation of how Islamic law, gender justice principles (cum-mubadalah), and Gustav Radbruch's legal justice theory intersect to ensure equitable treatment of women in divorce cases, highlighting both legal obligations and practical challenges in protecting women's post-divorce rights.

Discussion

Mut'ah, Iddah Alimony and Madliyah Alimony in Divorce Cases According to Islamic Law and Positive Law

First, Mut'ah in language by using the dhammah of the letter mim (*mut'ah*) or the kasrah of the letter mim (*mit'ah*) means pleasure like the word *al-mata'*. In terms, *mut'ah* is property given by the husband. This means that it is mandatory for the husband to give the property to a wife whom he divorces with several conditions.¹¹ The evidence for the *mut'ah* argument is found in the Qur'an Surah Al-Baqarah verse 241 and the Hadith as follows:

وَلِلْمُطَّلَّقِتِ مَنَاعٌ بِالْمَعْرُوفٍ حَقًا عَلَى الْمُتَّقِينَ

"And for divorced women, *mut'ah* should be given in a proper manner, as an obligation for the pious." (Q.S. Al-Baqarah/2:241).

وَعَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا : أَنَّ عَمْرَةَ بِنْتَ الْجَوْنَ تَعَوَّدَتْ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حِينَ أَدْخَلَتْ عَلَيْهِ تَعْنِي لَمَّا تَزَوَّجَهَا فَقَالَ : لَقَدْ عُدْتِ بِمَعَادٍ، فَطَلَّقْهَا وَأَمْرَ أَسَامَةَ فَمَتَّعَهَا بِثَلَاثَةِ أَثْوَابٍ أَخْرَجَهُ أَبْنُ مَاجِهِ وَفِي إِسْتَادِهِ رَأَوْ مَتْرُوكٍ .

¹¹ Syihabuddin Muhammad Ar-Ramli, *Nihayatu Al-Muhtaj Ila Syarhi Al-Minhaj* (Dar Al-Kutub Al-'Ilmiyah, 1004).

"From Aisha r.a., "That Amrah bint al-Jauni took refuge from the Prophet (peace be upon him) when she met him when he was about to marry her. He then said, 'Surely you have taken refuge with the true protector. Then divorced the woman, and told Utsamah to give her a mut'ah (memento) in the form of three pieces of clothing,' Ibn Majah narrated the hadith and in his sanad there was a matruk narrator." (HR. Ibn Majah).¹²

The law of fulfilling mut'ah in Islamic law is carried out if the divorce occurs in *qabla al-dukhul*, so regarding the giving of mut'ah is reviewed from two things, namely: if the mascot is not divided in two, then the wife is entitled to mut'ah and if the mascot has been divided in two, then the wife is not entitled to mut'ah anymore according to popular opinion. Meanwhile, if the divorce occurs after the husband has sex with his wife, then the wife is entitled to get mut'ah. However, any divorce that is filed or caused by the wife, then the wife is not entitled to mut'ah.¹³

According to the Shafi'I madhhab, it is obligatory to give mut'ah to women who are tagged before and after *dukhul* except for women who are tagged before *dukhul* and a dowry is set for her. Meanwhile, the Maliki madhhab punishes the sunnah of giving mut'ah to women who are rejected. Termination of marriage due to khuluk or divorce lawsuit filed by the wife in the Shafi'i madhhab is not entitled to mut'ah.¹⁴

Second, iddah alimony is the alimony given by the husband within the period of iddah of the wife he rejects. It is explained that women who are iddah because of talaq raj'i is entitled to housing and alimony, while for iddah because of talaq ba'in she is only entitled to a place to live without alimony, unless she is pregnant.¹⁵ The evidence for the argument of alimony iddah is based on Surah At-Thalaq verse 6 and Hadith, as follows:

أَسْكُنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجُدُّكُمْ وَلَا تُضَارُّوْهُنَّ لِتُضَيِّقُوْهُنَّ وَإِنْ كُنَّ أُولَاتٍ
حَمْلٌ فَأَنْفَقُوْهُنَّ عَلَيْهِنَّ حَتَّى يَضَعُنَ حَمْلَهُنَّ

"Place them (wives) where you dwell according to your ability, and do not trouble them to narrow their hearts. And if they (rejected wives) are pregnant, then give them their support until they give birth....." (Q.S. At-Thalaq/65:6).

وَعَنِ الشَّعْبِيِّ، عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ رَضِيَ اللَّهُ عَنْهَا، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي
الْمُطْلَقَةِ ثَلَاثَةً: لَيْسَ لَهَا سُكْنَى وَلَا نَفْقَةً (رَوَاهُ مُسْلِمٌ)

"From Sha'biy from Fatimah bint Qais ra., from the Prophet (saw) about a wife who was rejected three times: "For the wife she does not get a place to live and to provide for her." (H.R. Muslim)¹⁶

The majority of scholars, both Maliki, Hanafi, Shafi'i and Hanbali madhhab, agree that the one who is obliged to get iddah support is a wife who is in iddah talak raj'i. In madhhab Shafi'i, a woman who is in a state of talak ba'in there are details about the law of her iddah alimony, for those who are not pregnant, for her there is no right to iddah

¹² Ibnu Hajar Al-Asqalani, *Bulughul Maram Min Adillati Al-Ahkam* (Darul Falaq, 1424).

¹³ Ar-Ramli, *Nihayatu Al-Muhtaj Ila Syarhi Al-Minhaj*.

¹⁴ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, Juz 9 (Dar Al-Fikr, 1996).

¹⁵ Taqiyuddin Abu Bakar Al-Husaini, *Terjemah Kifayatul Akhyar*, 2nd ed., trans. Achmad Zaidun and A. Ma'ruf Asrori (PT Bina Ilmu, 1997).

¹⁶ Al-Asqalani, *Bulughul Maram Min Adillati Al-Ahkam*.

alimony while those who are pregnant are entitled to iddah alimony until she gives birth.¹⁷ Furthermore, regarding khuluk, Imam Shafi'i argued that for him, the iddah period is the same as talaq, there is a right of residence but no alimony because there is no right of reference for the husband.¹⁸ This is different from the opinion of Imam Hanafi who believes that iddah alimony remains an obligation for the husband because of the existence of khuluk.¹⁹

Third, madliyah alimony comes from the word *na-fa-qa* which means to provide sustenance or to give shopping, also comes from the word *ikhradj* which means to spend shopping. Shaykh Abu Shuja' said that it is obligatory to provide for a wife who surrenders herself to her husband.²⁰ The evidence for alimony is based on the words of Allah SWT in the Qur'an surah Al-Baqarah verse 233 and Hadith, as follows:

وَالْوَالِدُتُ يُرْضِعْنَ أَوْ لَادْهُنَ حَوْلِينَ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتْمِ الرَّضَاعَةَ وَعَلَى الْمُؤْلُودِ
لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

"And mothers should breastfeed their children for two whole years, for those who want to breastfeed perfectly. And it is the duty of the father to provide for their sustenance and clothing in a proper manner....." (Q.S. Al-Baqarah/3:233)

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: دَخَلَتْ هَنْدُ بِنْتُ عُثْبَةَ - امْرَأَةُ أَبِي سُفْيَانَ - عَلَى رَسُولِ
اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيقٌ لَا يُعْطِينِي
مِنَ النَّفَقَةِ مَا يَكْفِينِي وَيَكْفِي بَنِيَ إِلَّا مَا أَحَدَثُ مِنْ مَالِهِ بِغَيْرِ عِلْمِهِ، فَهَلْ عَلَيَّ فِي ذَلِكَ مِنْ
جُنَاحٍ؟ فَقَالَ: حُذِيَ مِنْ مَالِهِ بِالْمَعْرُوفِ مَا يَكْفِي، وَيَكْفِي بَنِيَكِ. (مُتَّقِّدٌ عَلَيْهِ)

"It is narrated that 'Aisha (may Allah be pleased with her) said: Hind bint 'Utbah (wife of Abu Sufyan) went to the Messenger of Allah (may Allah's peace and blessings be upon him). He said: O Messenger of Allah! Abu Sufyan was a rare person who did not provide me with enough and sufficient support for my children except what I took from his money without his knowledge. And he said, "Take from his wealth what is good enough for you, and enough for your son." (H.R. Bukhari and Muslim)²¹

If a husband is negligent in his obligations, a wife has the right to take part of her husband's legal property to meet the needs of her life and her children. If you look at the law of the obligation to provide alimony by the husband to his wife, then the wisdom of the existence of madliyah alimony is so that the rights that are neglected by the husband can be fulfilled. So madliyah alimony can be mandatory to be given according to the amount and days left by the husband.²²

¹⁷ Abdul Rahman Al-Jaziri, *Al-Fiqh 'Ala Madzahib Al-Arba'Ah*, Juz 4 (Dar Al-Kutub Al-'Ilmiyyah, 2003).

¹⁸ Muhammad bin Idris Syafi'i, *Al-Umm*, in *Dar Al-Fikr*, Juz 6 (Beirut, Lebanon, 1983).

¹⁹ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

²⁰ Ar-Ramli, *Nihayatu Al-Muhtaj Ila Syarhi Al-Minhaj*.

²¹ Al-Asqalani, *Bulughul Maram Min Adillati Al-Ahkam*.

²² Nur Ushmi Usthyawati, 'Review of Faqihuddin Abdul Kodir's Mubadalah on the Fulfilment of Women's Right in a Plaintiff's Divorce Case', *Proceeding of Postgraduate International Conference on Islamic Studies* 03, no. 01 (2024): 21–36.

In the Hanafiyah madhab, alimony is forfeited because it has passed its time and has not been made as a debt. And it does not become a dissolvency after the judge's decision and can become a debt that can be fulfilled. Meanwhile, in the Malikiyyah, Hanbaliyyah and Shafi'iyyah madhab state that alimony because it has passed its time does not become a loss and a wife can ask for her main alimony from her husband.²³ Thus, the majority of scholars agree that madliyah alimony is still a debt that must be fulfilled by the husband and cannot be lost.

The fulfillment of the rights of wives due to divorce according to positive law in Indonesia is stated in Law No.1 of 1974 concerning Marriage Article 41 "The consequences of the breakdown of marriage due to divorce are:

- a. *Both the mother or the father is still obliged to maintain and educate his children, solely based on the interests of the child; if there is a dispute regarding the custody of the children, the Court gives its decision;*
- b. *The father is responsible for all necessary alimony and education costs for the child; if the father is in fact unable to fulfill the obligation, the Court may determine that the mother is also responsible for the costs;*
- c. *The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife."*

Then in the Compilation of Islamic Law Article 149 "If the marriage is broken up due to talaq, then the ex-husband is obliged:

- a. *giving proper mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is qobla al dukhul;*
- b. *giving alimony, maskan and kiswah to the ex-wife during iddah, unless the ex-wife has been convicted of talak balin or nusyur and is not pregnant;*
- c. *to pay off the dowry that is still owed in full, and half if qobla al dukhul;*
- d. *provide hadhanah fees for their children who have not reached the age of 21."*

As for Khuluk, in Article 161 it is stated "Divorce by way of khuluk reduces the number of talaq and cannot be referred".

Maqashid Shari'ah Cum-Mubadalah Towards Wife's Alimony In Divorce Lawsuit

Maqashid syari'ah cum-mubadalah is a concept proposed by Faqihuddin Abdul Kodir. Faqihuddin observes that maqashid syari'ah is agreed upon by contemporary scholars as a tool to realize universal values such as justice, social welfare, and economic well-being for both men and women. However, there is no appropriate maqashid methodology to address gender issues. Even the concepts used have not been able to involve women or incorporate their life experiences.²⁴

This methodological gap was observed by Faqihuddin Abdul Kodir, who offered the idea of maqashid syari'ah cum-mubadalah, which combines maqashid syari'ah and mubadalah in judging issues, especially those related to gender. The term Maqashid Syariah refers to the ultimate goals of Islamic law, which is the pinnacle of contemporary

²³ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

²⁴ Faqihuddin Abdul Kodir et al., 'Maqāṣid Cum-Mubādalah Methodology of KUPI: Centering Women's Experiences in Islamic Law for Gender-Just Fiqh', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 19, no. 2 (2024): 519–45, <https://doi.org/10.19105/al-ihkam.v19i2.16617>.

fiqh methodology. Meanwhile, cum-Mubadalah refers to the integration of the Maqashid asy-Syari'ah theory with the perspective of mutual respect (mubadalah) between men and women.²⁵ The author considers this approach to be sufficiently appropriate for addressing the fulfillment of a wife's rights post-divorce, where disparities still exist and require further exploration of the underlying causes of divorce, thereby ensuring justice for both parties.

In responding to contemporary problems, it is necessary to apply the concept of *maqasid asy-shari'ah*. The concept of *maqasid asy-shari'ah* is a paradigm that needs to be applied in order to achieve the goals of true religion. *Maqasid asy-shari'ah* in language means as a human effort to get a perfect solution and the right path based on the main source of Islamic teachings.²⁶ Legal problems that arise follow the development of time, time and place where the law is located. It is also the fulfillment of the wife's rights after the lawsuit divorce which nowadays is considered necessary and even important because the divorce filed by the wife is not entirely the wife's wishes, but there may be external factors from her such as violence committed by the husband, the husband who does not fulfill his obligations and the husband's negligence in the fulfillment of his wife's rights.

Jasser Auda states that the classical classification of *maqasid asy-shari'ah* includes three levels namely; first, *al-daruriyyat* (inevitability) is a necessity in which man will face danger and can destroy the soul if it is not fulfilled, such as the prohibition of murder. The scholars divide it into five parts (*al-daruriyyat al-khams*), namely: protection of the soul (*hifz an-nafs*); protection of Reason (*hifz al-'aql*); protection of property (*hifz al-mal*); family protection (*hifz an-nasl*) or honor (*hifz al-'irdh*) and religious protection (*hifz ad-din*). Second, *al-hajiyat* (needs) is something that, if not fulfilled, does not damage the soul, such as the need for marriage. And third, *al-tahsiniyyat* (luxury) is something that can beautify life such as wearing good and beautiful clothes. From these three levels, there is a relationship between each other.²⁷

Mubadalah comes from the word ba-da-la, which means to replace, change, and exchange. The development of mubadalah is used as a perspective in certain relationships between two parties that contain the values and spirit of partnership, cooperation, mutuality, reciprocity, and the principle of reciprocity. Faqihuddin focuses his discussion of mubadalah on the relationship between men and women in both public and domestic spaces. Mubadalah is also used as a method of interpreting Islamic source texts that require men and women to be treated as equal subjects, both of whom are mentioned in the text and must be included in the meaning contained within it.²⁸ Mubadalah is based on three fundamental premises: first, Islam is for both men and women. Second, the principle of their relationship is one of cooperation and mutuality, not hegemony or power. Third, existing texts are open to reinterpretation to ensure that the first two premises are reflected in every interpretive effort.²⁹

The provision of mut'ah in a lawsuit divorce is not clearly regulated in Islamic law, but its fulfillment can be done by looking at the elements of maqashid sharia. Women

²⁵ Faqihuddin Abdul Kodir, 'Menawarkan Gagasan Maqashid Syariah Cum-Mubadalah', accessed on April 10, 2025, <https://mubadalah.id/menawarkan-gagasan-maqashid-syariah-cum-mubadalah/>.

²⁶ Busyro, *Maqashid Al-Syariah Pengetahuan Mendasar Memahami Maslahah* (Prenada Media Group (Divisi Kencana), 2019).

²⁷ Jaser Audah, *Al-Maqasid Untuk Pemula*, trans. Ali Abdelmon'im (SUKA-Press UIN Sunan Kalijaga, 2013).

²⁸ Faqihuddin Abdul Kodir, *Qira'ah Mubadalah: Tafsir Progresif Untuk Keadilan Gender Dalam Islam* (IRCiSoD, 2019), 60.

²⁹ Kodir, *Qira'ah Mubadalah: Tafsir Progresif Untuk Keadilan Gender Dalam Islam*, 195–97.

who experience divorce are at high risk of psychological distress. Some of the issues faced by divorced women include social, economic, and psychological challenges, as well as societal perceptions, family relationships, interactions with former spouses, income, employment, child support, and low self-esteem. Stress is one of the psychological impacts on divorced women, which can trigger mental and physical illnesses, disrupt functioning and adaptation, and ultimately impair mental health.³⁰

If viewed from the meaning of *mut'ah* itself as a gift for solace in pain, it can be categorized at the level of *al-tahsiniyyat* (luxury) because there is no evidence that requires the fulfillment of this in a divorce lawsuit. However, if you look at the psychological side of women who file for divorce who can experience problematic psychiatric and mental conditions. then the law of giving *mut'ah* can be mandatory in a lawsuit divorce by looking at the element of *daratdarat* in her psychology which is contrary to the principle of maintaining reason (*hifz al-'aql*) which is included in the category of the first level of *maqasid asy-shari'ah*, namely *al-daruriyyat* (inevitability).³¹ This is by considering the social experience of women who are vulnerable to discrimination and violence so that the provision of *mut'ah* in a lawsuit divorce is important in addition to being a medicine but also a form of gender justice for women.

Likewise, in the fulfillment of *iddah* and *madliyah* alimony, both of which are *al-dharuriyat*. In the *nafkah iddah al-daruriyyat* (inevitability) it is seen with the reality that there is no difference in the law of *iddah* between divorce and divorce of *talaq*, both of which require women to perform *iddah*. Where the social experience of women who are in *iddah* has restrictions in acting, then the provision of *iddah* support both due to *talaq* divorce and lawsuit divorce is mandatory. Then in *madliyah* alimony which must be fulfilled and cannot be destroyed by divorce as the fulfillment of rights that have been neglected by the husband. These two alimony are based on the principle of protecting the soul (*hifz an-nafs*) of the wife, which if this alimony is not fulfilled will cause great hardship to the wife's life after divorce.

The three rights above have urgency in their fulfillment by looking at some of the mistakes that occur if these rights are not fulfilled. The rights of women after divorce are shown at the first level in *maqasid asy-shari'ah*, namely *al-daruriyyat* (inevitability) by considering the need to protect the soul (*hifz an-nafs*) and also the protection of the intellect (*hifz al-'aql*) which are both related to each other and also related to three other types, namely the protection of property (*hifz al-mal*), the protection of the family (*hifz an-nasl*) or honor (*hifz al-'irdh*) and religious protection (*hifz ad-din*).³² It is also known that fulfilling the rights of the wife in divorce cases is a form of cooperation and reciprocity between the former husband and his wife. Where in *talaq* divorce these rights can be given to the wife, then in divorce lawsuit the wife also needs to obtain these rights. Thus, the elements of *maqashid syari'ah* and the form of reciprocity from *mubadalah* can be implemented properly.

Legal Justice of the Fulfillment of Wife's Alimony in a Lawsuit Divorce Case

³⁰ Larastyan Yang Bogaan Muhammad et al., 'Religiusitas, Dukungan Sosial, Stres, Dan Penyesuaian Wanita Bercerai', *Jurnal Ilmu Keluarga Dan Konsumen* 12, no. 3 (2019): 195, <https://doi.org/10.24156/jikk.2019.12.3.194>.

³¹ Usthyawati, 'Review of Faqihuddin Abdul Kodir's Mubadalah on the Fulfilment of Women's Right in a Plaintiff's Divorce Case'.

³² Usthyawati, 'Review of Faqihuddin Abdul Kodir's Mubadalah on the Fulfilment of Women's Right in a Plaintiff's Divorce Case'.

The three values of law according to Gustav Radbruch are justice (philosophical), certainty (juridical) and utility (sociological) which must be used as the main element in the legal approach. In the process, sometimes elements can collide with each other, so Radbruch determines the priority of the three, namely the rule of law, the usefulness of the law and finally the certainty of the law.³³ However, in law enforcement practice, justice is not always the priority. Sometimes it is the benefit that comes first, and often legal certainty is always a priority. In carrying out the objectives of the law, honesty and truth must be prioritized so that the three objectives of the law are realized.³⁴ For Gustav Radbruch, justice has several meanings, namely:

- a. Justice is interpreted as a personal trait or quality. Subjective justice as secondary justice is a stance or attitude, view and belief directed towards the realization of objective justice as primary justice.
- b. The source of justice comes from positive law and the ideal of law (Rechtsidee).
- c. The essence of justice is equality. In this case Radbruch follows Aristotle's view and divides justice into distributive justice and commutative justice.³⁵

In the context of fulfilling women's rights in divorce, Gustav Radbruch's theory highlights the difference between subjective justice, which relates to individual attitudes, and objective justice, which is regulated by law. Therefore, it is crucial for judges and lawyers to adopt an attitude that supports justice for women, ensuring that their rights, such as alimony and property division, are recognized and fulfilled in the legal process. The source of justice must stem from positive law and legal ideals, indicating that legal reform is necessary if existing laws fail to provide adequate protection for women's rights. The essence of justice, according to Radbruch, is equality, which demands equal treatment for all individuals regardless of gender, so that women filing for divorce are entitled to the same rights as if the divorce were filed by their husbands.

According to Gustav Radbruch, three legal principles can be applied to the issue of fulfilling the rights of wives in divorce cases. The first is justice. With regard to fulfilling the rights of wives in divorce cases, we can see the justice as described above. The urgency of fulfilling these rights is to ensure justice for the wife who files for divorce, so that she receives the same treatment and rights as in a divorce by repudiation. Because, once again, a divorce case is not always the pure desire of a wife but may be due to other factors such as discrimination and domestic violence. Therefore, the fulfillment of the three fundamental rights of the wife in divorce as mut'ah, iddah maintenance, and madliyah maintenance will undoubtedly create a sense of justice for the wife.

The second is legal certainty (juridical). Element in the form of legal certainty for the fulfillment of the wife's rights has been regulated in the Supreme Court Regulation (PERMA) Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Front of the Law. This regulation is a form of concern for the government and legal institutions in ensuring justice for women when dealing with the law. It is stated in Article

³³ Hari Agus Santoso, 'Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU "PTB"', *Jatiswara* 36, no. 3 (2021): 325–34, <https://doi.org/10.29303/jtsw.v36i3.341>.

³⁴ Aturkian Laia and Purwanto, 'Kebenaran Dan Keadilan Hukum', *Jurnal Panah Keadilan* 2, no. 1 (2023): 1–14, <https://doi.org/10.57094/jpk.v2i1.709>.

³⁵ Dino Rizka Afdhali and Taufiqurrohman Syahuri, 'Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum', *Collegium Studiosum Journal* 6, no. 2 (2023): 555–61, <https://doi.org/10.56301/csj.v6i2.1078>.

2 of the PERMA that "*Judges adjudicate women's cases before the law based on the principle:*

- a. *Respect for human dignity and dignity;*
- b. *Non-discrimination;*
- c. *Gender equality;*
- d. *Equality before the law;*
- e. *Justice;*
- f. *Benefits;*
- g. *Legal certainty.*"

Furthermore, in Article 4 it is explained that "*in the examination of the case, the judge should consider gender equality and non-discrimination, by identifying the facts of the trial:*

- a. *Inequality of social status between the parties to the case;*
- b. *Inequality of legal protection that has an impact on access to justice;*
- c. *Discrimination;*
- d. *The psychological impact experienced by the victim;*
- e. *The physical and psychological helplessness of the victim;*
- f. *Power relations that result in the victim/witness being helpless; and*
- g. *History of violence from the perpetrator against the victim/witness.*"

Specifically, the fulfillment of the rights of wives in lawsuit divorce cases is mentioned in the Supreme Court Circular Letter Number 3 of 2018 which accommodates Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Judging Women in Front of the Law. In the formulation of the religious chamber law, letter a of family law number 3 states the obligations of the husband due to divorce to the wife who is not nusyuz as follows:

"Accommodating PERMA Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law, the wife in a lawsuit divorce case can be given mut'ah and iddah alimony as long as it is not proven nusyuz".

With this regulation, it can be known that the fulfillment of the wife's rights in a lawsuit divorce case receives deep attention from the government and legal institutions so that legal certainty is formed.

The third value to consider is utility. This utility means that the wife will have a more secure life after divorce, due to restrictions on movement and legal provisions that must be obeyed during the iddah period. Furthermore, in the context of divorce, wives are often in a more vulnerable position. With the fulfillment of the previous two values are justice and the existence of regulations that serve as a legal umbrella for wives filing for divorce this value of benefit will automatically be achieved. By considering these three elements of legal objectives, it is clear that all three elements have been adequately fulfilled, so there is no doubt that the rights of wives in divorce cases will be fulfilled.

Conclusion

This study demonstrates that the fulfillment of a wife's rights in divorce cases filed by the wife—specifically mut'ah, iddah alimony, and *madliyah* alimony—can and should be ensured on par with divorces initiated by the husband (talak). Applying the *maqashid shari'ah* cum-mubadalah framework provides a comprehensive normative basis for addressing gender disparities, integrating universal principles of justice, social welfare,

and mutual respect between spouses. The concept of cum-mubadalah emphasizes reciprocity and equality, ensuring that women's biological, psychological, and social experiences are acknowledged and protected in the post-divorce process.

From the perspective of *maqashid shari'ah*, the three categories—*al-daruriyyat* (necessities), *al-hajiyat* (needs), and *al-tahsiniyyat* (enhancements)—justify the provision of these rights, particularly when considering the psychological and social vulnerabilities faced by divorced women. The study further aligns the fulfillment of these rights with Gustav Radbruch's legal justice theory, confirming that the principles of justice, legal certainty, and utility are adequately met. Justice is realized through equal treatment and protection of women's rights, legal certainty is ensured through regulatory frameworks such as PERMA No. 3 of 2017 and SEMA No. 3 of 2018, and utility is achieved by securing women's welfare and social stability after divorce. In conclusion, this study contributes both theoretically and practically by providing a normative and justifiable approach to fulfilling wives' rights in contested divorce cases. It highlights the importance of integrating Islamic legal objectives and modern concepts of gender equality in legal practice. Future research, particularly empirical studies, is recommended to further strengthen the application of these principles in diverse social contexts.

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