



Non-Determination Of One-Third Of Civil Servant Ex-Husband's Salary For Ex-Wife With Disabled Child

(Study of the Decision Religious Court of Kediri Regency No: 154/Pdt.G/2025)

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Abstract

This research is based on the law issue of religious court decree about the obligation to allocate 1/3 of the salary to a former wife who has a disabled child by the bench of judges in a divorce case of a civil servant husband as regulated under Article 8 of Government Regulation Number 10 Year 1983 and analyzed using John Rawls' perspective of justice and Maqashid Sharia in the aspects of *hifz al-nasl* and *hifz al-mal*. The type of research is normative juridical with a case study approach using a prescriptive analysis model. The results show that not allocating 1/3 of the salary to the former wife who cares for a disabled child does not align with the prevailing legal norms. Furthermore, from the perspective of *maqashid sharia*, the decision does not fulling the principles *hifz al-nasl* and *hifz al-mal*, including in the analysis of John Rawls' theory of justice, the decision has not yet shown the principle of justice as fairness, that the importance of law enforcement is oriented towards social welfare and favors vulnerable groups.

[Riset berangkat dari problematika hukum terkait putusan pengadilan agama tentang kewajiban mengalokasikan 1/3 gaji kepada mantan istri yang memiliki anak disabilitas oleh majelis hakim dalam perkara perceraian suami pegawai negeri sipil sebagaimana diatur dalam Pasal 8 Peraturan Pemerintah Nomor 10 Tahun 1983 dan diurai menggunakan sudut pandang keadilan John Rawls serta



Maqashid Syariah dalam aspek *hifz al-nasl* dan *hifz al-mal*. Jenis penelitian menggunakan pola yuridis normatif dengan pendekatan studi kasus dan teknik analisis preskriptif. Hasil memperlihatkan bahwa ketika tidak mengalokasikan 1/3 dari gaji untuk mantan istri yang merawat anak berkebutuhan khusus itu tidak sesuai dengan norma hukum yang berlaku. Disamping itu, dilihat dari perspektif maqashid syariah, putusan tersebut tidak memenuhi prinsip *hifz al-nasl* dan *hifz al-mal*, termasuk melalui analisa teori keadilan John Rawls, putusan tersebut belum menunjukkan prinsip keadilan sebagai kesetaraan, bahwa pentingnya penegakan hukum yang berorientasi pada kesejahteraan sosial dan berpihak kepada kelompok rentan.]

Keywords: civil servant; divorce; disabled; salary.

Introduction

Divorce is defined as a legal event that gives rise to a series of legal consequences. In the context of Civil Servants (PNS), the implementation of marriage and divorce is subject to specific procedures that differ from those applicable to the general public.¹ As part of the state bureaucracy, civil servants bear a moral responsibility to serve as role models for society in all of their actions.² The provisions regarding marriage and divorce for Civil Servants (PNS) are regulated under Government Regulation Number 10 of 1983, which was later refined through Government Regulation Number 45 of 1990. These regulations aim to minimize the rate of divorce among civil servants by establishing strict mechanisms governing the divorce process.³ Based on Article 3 of Government Regulation Number 45 of 1990, every Civil Servant (PNS) intending to divorce is required to obtain legal authorization in the form of permission or an official statement from their direct superior beforehand. The divorce application must be submitted through a written request accompanied by reasonable grounds and considerations that can be legally justified.⁴ This requirement is intended to ensure legal certainty, as law without certainty has the potential to lose its meaning.⁵

¹ Dahwadin Dahwadin Dkk., "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam Di Indonesia," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 11, No. 1 (2020): Hal 89, <https://doi.org/10.21043/Yudisia.V1i1.3622>; Muhammad Ardiansyah et al., "Verbal Violence as Divorce Grounds in Bekasi Religious Court: Islamic Law Perspective," *Kanuun: Journal of Sharia, Law, and Digital Society*, 2026, 45–58, <https://doi.org/10.66277/kanuun.v1i1.12>.

² H. Abd Rahman Ghazaly, *Fiqh Munakahat* (Kencana, 2003), Hal 8-9.

³ Lasri Nijal Dkk., "Pelaksanaan Peraturan Pemerintah No. 10 Tahun 1983 Pasal 8 Jo. Peraturan Pemerintah No. 45 Tahun 1990 Tentang Pemberian Sepertiga Gaji Suami Pegawai Negeri Sipil (Pns) Untuk Istri Yang Di Ceraikan (Kajian Yuridis Sosiologis Study Kasus Di Riau)," *Jurnal Hukum Das Sollen* 8, No. 2 (2022): Hal 349, <https://doi.org/10.32520/Das-Sollen.V8i2.2118>.

⁴ Muhammad Syafiin Rizqullah Dan Imanuddin Abil Fida, "Akibat Hukum Perceraian Bagi Pns Berdasarkan Pp Nomor 10 Tahun 1983 Jo Pp Nomor 45 Tahun 1990," *Usrah: Jurnal Hukum Keluarga Islam* 3, No. 2 (2022): Hal 70, <https://doi.org/10.46773/Usrah.V3i1.473>.

⁵ Novan Ferdi Hasan and Rayno Dwi Adityo, "Legal Certainty In Divorce Petitions Against Military Husbands: A Van Apeldoorn Perspective (Study of Decision No. 5604/Pdt.G/2022/PA.Bwi)," *MASLAHAH (Jurnal Hukum Islam Dan Perbankan Syariah)* 16, no. 1 (2025): 1–16, <https://doi.org/10.33558/maslahah.v16i1.10519>.

The dissolution of a marital relationship due to divorce constitutes the termination of a husband and wife's legal bond under Islamic law, which generally occurs after the husband pronounces *ṭalāq* (divorce) to his wife, commonly referred to as *cerai talak*.⁶ These provisions are in line with Article 39 of Law Number 1 of 1974 concerning Marriage, which stipulates that: (1) divorce can only be carried out before a court after the court has tried, but failed, to reconcile the two parties; and (2) the validity of a divorce can only be determined if there are strong and valid reasons that prove that the husband and wife can no longer live harmoniously as a married couple.⁷ Such regulations exist because marriage law in Indonesia adheres to the principle of limiting divorce, meaning that divorce should not be carried out easily without careful and thorough consideration, a principle commonly referred to as the principle of making divorce difficult.⁸ This is also in line with the basic principles of marriage, namely building a happy, eternal and prosperous family based on belief in God Almighty.⁹

Considering the realities of divorce, many divorces are carried out without considering the consequences for former partners and their children. One impact includes psychological effects on adolescents or children, such as depression and feelings of hopelessness.¹⁰ Many husbands neglect their obligation to provide child support after divorce. This obligation, particularly for civil servants (PNS), was further emphasized in Government Regulation No. 10 of 1983, along with Government Regulation No. 45 of 1990. These regulations require husbands to allocate one-third of their salaries to their ex-wife, their children, and themselves.

The implementation of such obligations is not always carried out consistently. One example can be seen in Decision Number 154/Pdt.G/2025/PA.Kab.Kdr, in which a husband who held the status of a Civil Servant (PNS) filed a petition for *cerai talak* (divorce by repudiation) against his wife.¹¹ In this case, the wife filed a counterclaim (*rekonvensi*) containing demands for *iddah* maintenance, *mut'ah*, child support, and the allocation of one-third of the husband's salary, considering that she would be responsible for caring for a 14-year-old daughter who also has a disability.¹²

⁶ Heribertus Richard Chascarino, "Pelaksanaan Perceraian Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Menurut Hukum Kanonik," *Legalitas* 7, No. 1 (2022): Hal 17, <https://doi.org/10.31293/Lg.V7i1.6510>.

⁷ Masodi Masodi Dkk., "Perceraian Dalam Perspektif Fikih Dan Kompilasi Hukum Islam," *Samawa: Jurnal Hukum Keluarga Islam* 2, No. 1 (2022): Hal 8, <https://doi.org/10.53948/Samawa.V2i1.45>.

⁸ Hermansyah Hermansyah, "Interpretasi Asas Mempersulit Perceraian Dalam Perspektif Hukum Islam," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 1 (2024): 1110-21, <https://doi.org/10.47467/as.v6i1.6307>; Madnur et al., "Contestation and Actualization of Ijma' in the Formation of Law in Indonesia," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 13, no. 2 (2023): 2, <https://doi.org/10.15642/ad.2023.13.2.307-333>.

⁹ Tara, *Kewajiban Orang Tua Memberikan Fasilitas Pendidikan Kepada Anak Disabilitas Di Kecamatan Percut Sei Tuan Kabupaten Deli Serdang: Perspektif Hukum Nasional Dan Hukum Islam*, H. 8.

¹⁰ Siregar et al., "Analisis Dampak Perceraian Orang Tua Terhadap Psikologis Remaja," *Jurnal Kajian Ilmiah Interdisipliner* 8, no. 6 (2024): 13-20.

¹¹ Lutfi Yana Dan Ali Trigiyatno, "Pemenuhan Hak Nafkah Anak Pasca Perceraian," *Al-Hukkam* 2 (2022): Hal 117.

¹² Ningsih, "Penyandang Disabilitas, Antara Hak Dan Kewajiban," H. 70.

As a reference to previous studies, the differences between this study and previous studies lie in the object of study, theoretical approach, and the main issues studied. Fajril Khoiril Alkamil's undergraduate thesis entitled "Determination of the Division of the Salary of a Civil Servant's Husband in Divorce Cases with Prayer According to the Judge's Perspective at the Magetan Religious Court" focuses on the practice of regulating the rights to the income of a civil servant's husband in divorce cases based on the judge's perspective, without linking it to the condition of children with special needs and without using the *maqāṣid al-sharī'ah* approach.¹³

The final research project by Muhammad Yogie Hidayatullah entitled "The Increase of Child Support After Divorce from the Perspective of Gustav Radbruch's Theory of Justice" focuses on the increase of child support after divorce through the lens of Gustav Radbruch's theory of justice. Therefore, it does not discuss the absence of a determination regarding the distribution of a Civil Servant's (PNS) salary, nor does it employ the perspective of Islamic law.¹⁴ Journal article by Mokhamad Fajrul Falakh entitled "The Rights to Maintenance for Wife and Children After Divorce in an Obscure Libel Decision: A Study of Decision Number 2276/Pdt.G/2023/PA.Bgl from the Perspective of Satjipto Rahardjo's Progressive Law" examines the problematics of an obscure (obscure libel) judgment in maintenance cases through a progressive law approach, without specifically focusing on Civil Servants (PNS) and children with disabilities.¹⁵ Meanwhile, the undergraduate thesis by Achmad Taufiqur Rizky entitled "*The Determination of Child and Wife Maintenance After Divorce from the Perspective of Murtadha Muthahhari's Theory of Justice (Study of Decision Number 376/Pdt.G/2020/PTA.Sby)*" analyzes the determination of maintenance based on Murtadha Muthahhari's theory of justice, without making the salary of Civil Servants (PNS) and children with disabilities the primary objects of study.¹⁶ Furthermore, the final research project conducted by Triyas Sakti Dewi entitled "Provision of Maintenance to Former Wives Among Civil Servants from the Perspective of Masalah Mursalah (Study of the Decision of the Supreme Court of the Republic of Indonesia Number 02 P/HUM/2017)" focuses on the analysis of the Decision of the Supreme Court of the Republic of Indonesia Number 02 P/HUM/2017 in the context of a judicial review of the policy on the distribution of salaries of Civil Servants.¹⁷ Therefore, the novelty of this research lies in its specific examination of the considerations of the Religious Court judges in not determining the distribution of one-third of the salary of a civil servant's

¹³ Fajril Khoiril Alkamil, *Penetapan Pembagian Gaji Suami Pegawai Negeri Sipil Pada Perkara Cerai Talak Menurut Pandangan Hakim Pengadilan Agama Magetan*, T.T.

¹⁴ Muhammad Yogie Hidayatullah Dan Ahsin Dinal Mustafa, "Penambahan Nafkah Anak Pasca Perceraian Perspektif Teori Keadilan Gustav Radbruch," *Sakina: Journal Of Family Studies* 8, No. 1 (2024): 48–63, <https://doi.org/10.18860/Jfs.V8i1.6482>.

¹⁵ Mokhamad Fajrul Falakh, *Hak Nafkah Istri Dan Anak Pasca Perceraian Pada Putusan Obscure Libel Studi Putusan Nomor 2276/Pdt.G/2023/Pa.Bgl Perspektif Hukum Progresif Satjipto Rahardjo*, 2025.

¹⁶ Achmad Taufiqur Rizky, *Penentuan Nafkah Anak Dan Istri Pasca Perceraian Perspektif Teori Keadilan Murtadha Muthahhari (Studi Putusan Nomor 376/Pdt.G/2020/Pta.Sby)*, 2025.

¹⁷ Triyas Sakti Dewi, *Pemberian Nafkah Kepada Mantan Istri Di Kalangan Pegawai Negeri Sipil Perspektif Masalah Mursalah (Studi Putusan Mahkamah Agung Republik Indonesia Nomor 02 P/Hum/2017)*, T.T.

husband, even though there is a child with a disability, by using the *maqāṣid al-sharī'ah* approach and the perspective of justice theory.

The theory of *maqāṣid al-sharī'ah* from Imam al-Shaṭibi, especially the aspects of *ḥifẓ al-nasl* (protection of offspring) and *ḥifẓ al-māl* (protection of property), is used as an analytical framework in examining Decree Number 154/Pdt.G/2025/PA.Kab.Kdr. In the context of divorce, the concept of *maqāṣid al-sharī'ah* is applied to assess the extent to which the judge's decision is able to realize benefits (*maṣlaḥah*) and prevent losses (*mafsadah*), especially for the ex-wife and children with disabilities.¹⁸ Furthermore, in addition to that, this also uses John Rawls' theory of justice, which emphasizes the importance of the equal liberty principle, namely that every individual has the right to obtain equal freedom and guarantees of basic rights without discrimination, including economic rights after divorce.¹⁹

The application of Rawls's principle of justice is highly relevant in the context of this research, where the neglect of the rights of the ex-wife and child with disabilities can be seen as inconsistent with the principle of justice as fairness, where the legal system ideally functions as an instrument for equal justice and social protection for all citizens, especially vulnerable groups. The application of both theories in the case of a civil servant's divorce emphasizes the protection of the livelihood of the child with disabilities as well as the economic security of the ex-wife responsible for caring for the child.²⁰ In general, this article attempts to uncover legal issues characterized by a gap between legal norms and social reality. Then, this article focuses on examining the extent to which court decisions can be assessed from the perspective of protecting vulnerable parties, namely the ex-wife and children with disabilities, within the framework of the principles of *maqāṣid al-sharī'ah*, particularly *ḥifẓ al-māl* (protection of property) and *ḥifẓ al-nasl* (protection of children), as well as John Rawls's theory of justice.

Methodology

This study is conducted using a normative juridical research method, which focuses on examining law as written norms that regulate behavior and provide the legal basis for judicial decisions.²¹ The research approach is carried out using a case study method, with Decision Number 154/Pdt.G/2025/PA.Kab.Kdr as the primary object of analysis. This approach is used to assess the consistency of the panel of judges' considerations with applicable laws and regulations as well as theories of justice.²² The main legal materials include Law Number 1 of 1974 concerning Marriage, Government Regulation Number 10 of 1983 together with Government Regulation Number 45 of 1990 concerning the

¹⁸ Marzuki, *Pengantar Studi Hukum Islam: Prinsip Dasar Memahami Berbagai Konsep Dan Permasalahan Hukum Islam Di Indonesia*, Cetakan Kedua (Penerbit Ombak, 2017), H. 14.

¹⁹ John Rawls, *Teori Keadilan (A Theory Of Justice)*, H. 72.

²⁰ Rayno Dwi Adityo, "Ambiguitas Konsep Perlindungan Hukum Terhadap Pekerja Sosial," *Morality: Jurnal Ilmu Hukum* 8, No. 1 (2022): Hal 71, <https://doi.org/10.52947/Morality.V8i1.253>.

²¹ Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif*, H. 46.

²² Peter Marzuki, *Penelitian Hukum*, H. 158.

obligation of Civil Servants to provide one-third of their salary after divorce, the Compilation of Islamic Law, and relevant court decisions.²³ Secondary legal materials include academic legal literature, journal articles on law and family law, while tertiary legal materials consist of electronic sources containing legal information. The collected legal materials are then analyzed using prescriptive methods to examine the conformity of court decisions with the principles of substantive justice, namely justice as fairness according to John Rawls, as well as the *istinbat* method in the aspects of *ḥifẓ al-nasl* and *ḥifẓ al-mal* within the framework of *maqāṣid al-shari'ah*.²⁴ Through these stages, this article attempts to conduct a critical assessment of the extent to which court decisions fulfill justice in protecting vulnerable groups, in this context, namely ex-wives or mothers of children with disabilities after divorce.²⁵ Prescriptive analysis is used to assess what should be implemented in the context of this research. Researchers evaluate the ideal formulation of legal provisions related to the conditions of children with disabilities and provide suggestions or recommendations regarding the position of the case and the circumstances that should be considered.

Results and Discussion

The following section will present the legal considerations of the judges in the divorce *talaq* case at the Religious Court of Kediri Regency, Decision Number 154/Pdt.G/2025, as well as a discussion of John Rawls' theory of justice and *maqāṣid al-shari'ah al-Shatibi*, especially *ḥifẓ al-nasl* and *ḥifẓ al-mal*, which are divided into four parts, namely:

Position of the Judge's Reasoning in the Judgment

The first consideration of the judge focuses on the validity and grounds for divorce. Based on the examination during the trial, the judge found a legal fact that the marital relationship between the petitioner and the respondent could no longer be maintained due to continuous conflict (*syiqaq*). The judge assessed that such disputes fulfilled the requirements under Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law, namely ongoing disputes that cannot be reconciled. Therefore, the grounds for divorce submitted by the petitioner were deemed legally justified and met the objective elements for approval.²⁶

The second consideration concerns the husband's responsibilities to his ex-wife and children after the divorce. In the counterclaim, the defendant requested maintenance for the *iddah* period, *mut'ah* (a period of temporary dowry), and the distribution of one-third of the plaintiff's salary as a civil servant (PNS), as well as child support and custody. However, the judge also emphasized that fulfilling these obligations must take into

²³ Benuf Dan Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," Hal 22.

²⁴ Sholahuddin Al-Fathoih, *Perkembangan Metode Penelitian Hukum Indonesia*, H. 9.

²⁵ Munauwarah Dkk., "Pendidikan Inklusi Solusi Utama Untuk Anak Penyandang Disabilitas," Hal 123.

²⁶ Pasal 9 Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Perkawinan

account the husband's financial capabilities.²⁷ Based on pay slips and debt statements as evidence, it was found that the applicant's income was burdened by other financial obligations, including the cost of caring for a disabled child.

The third consideration concerned child support and custody (*haḍanah*). The panel of judges ruled that the child, who is still a minor and has special needs, is more appropriately cared for by his mother (the defendant), in accordance with the principle of the child's best interests (*maslahah al-mahdun*). This is based on Article 105 (a) of the Compilation of Islamic Law (KHI), which states that children under the age of *mumayyiz* are entitled to the custody of their mother, unless the mother is proven unfit. In this case, the judge found no indication that the defendant was unfit as a caregiver; therefore, custody was awarded to him, with the applicant obligated to cover the child's support and medical expenses.

Inconsistency of the Decision with Applicable Legal Norms

An analysis of Decision Number 154/Pdt.G/2025/PA.Kab.Kdr indicates an inconsistency between the applicable positive legal provisions and the judgment rendered by the panel of judges. The core issue lies in the absence of a determination obligating the petitioner, who is a Civil Servant (PNS), to allocate one-third of his salary to his former wife and child after divorce, as explicitly regulated in Article 8 of Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990. This provision is not facultative nor does it provide broad interpretative discretion to judges; rather, it is an imperative norm that must be applied whenever a divorce involves a civil servant husband. This legal norm is intended to be protective toward women and children after divorce, as well as an instrument of state supervision over the morality and social responsibility of civil servants as state apparatus.

The judge's reasoning in rejecting the allocation of one-third of the salary based on the applicant's financial capacity as a low-level civil servant is inconsistent with the normative structure of Government Regulation Number 10 of 1983. The regulation does not provide exceptions to this obligation based on the civil servant's economic condition, because its primary purpose is to ensure the fulfillment of the basic needs of the former wife and children, especially when the children are in a vulnerable situation. When the judge uses the husband's economic capacity as the basis for the exception, it reflects reasoning that does not consider the normative limits established by law. This leads to a deviation from the mandatory rules, thereby creating a precedent that mandatory legal obligations can be negotiated without a strong normative basic.²⁸

Furthermore, an analysis of legal norms shows that the presence of children with disabilities actually strengthens the legal basis for the one-third salary provision. Positive

²⁷ Triyanita Dan Prananingtyas, "Hak Anak Akibat Perceraian Berdasarkan Undang-Undang Perkawinan Dan Kompilasi Hukum Islam," H. 45.

²⁸ Nijal Dkk., "Pelaksanaan Peraturan Pemerintah No. 10 Tahun 1983 Pasal 8 Jo. Peraturan Pemerintah No. 45 Tahun 1990 Tentang Pemberian Sepertiga Gaji Suami Pegawai Negeri Sipil (Pns) Untuk Istri Yang Di Ceraikan (Kajian Yuridis Sosiologis Study Kasus Di Riau)."

law, both Law No. 1 of 1974 concerning Marriage and Government Regulation No. 10 of 1983, places child support as the husband's absolute obligation, regardless of with whom the child lives. When a child has a disability, financial needs increase to include medical services, therapy, special education, and caregiving support.²⁹ In addition, children as legal subjects are given priority, in accordance with the United Nations Convention on the Rights of the Child, which has been ratified by Indonesia.³⁰

In short, from the explanation above, it can be observed that the failure to implement the one-third salary split reflects a lack of alignment between court decisions and prevailing positive legal norms. This also demonstrates an inability to optimally protect the conditions of women and children with disabilities after divorce, as well as a failure to fulfill the principle of legal certainty, which is a fundamental foundation, particularly in the family law justice system in Indonesia. Although the purpose of law is not solely focused on legal certainty, the law must also maintain a balance between certainty, justice, and benefits for society.³¹

Analysis of the Non-Stipulation of the 1/3 Salary Provision in the Decision Reviewed from the Hifz Al-Nasl and Hifz Al-Mal Maqhasid Syariah

The *maqasid al-shari'ah* perspective indicates that the court's ruling has not fully reflected the fundamental objectives of Islamic law, namely to achieve public benefit (*maṣlaḥah*) and prevent harm (*mafsadah*), particularly for the mother and child involved in the case. *Maqasid al-shari'ah* emphasizes the importance of justice and welfare, including the realization of fairness and prosperity for all parties, especially those in vulnerable conditions,³² As formulated by al-Shatibi, it not only emphasizes the application of legal texts, but also asserts that every legal provision must be directed towards protecting the five basic necessities of human life (*al-daruriyyat al-khams*).³³ In this case, two aspects that have not been adequately addressed are hifz al-nasl (protection of lineage) and hifz al-mal (protection of property), considering the presence of a child with disabilities who needs continuous material support, as well as an ex-wife who bears the responsibility of care and daily living expenses.³⁴

In the case of hifz al-nasl, Islamic law requires the protection of children, not only in terms of survival, but also in terms of meeting basic physical needs, healthcare,

²⁹ Tara, *Kewajiban Orang Tua Memberikan Fasilitas Pendidikan Kepada Anak Disabilitas Di Kecamatan Percut Sei Tuan Kabupaten Deli Serdang: Perspektif Hukum Nasional Dan Hukum Islam*, H. 8.

³⁰ Afifah Dhaninta Anggraeni and Rayno Dwi Adityo, "The Effectiveness of Fulfilling Children's Educational Rights in the Legal Development Process," *Sakina: Journal of Family Studies* 9, no. 3 (2025): 306–22, <https://doi.org/10.18860/jfs.v9i3.18078>.

³¹ Oksidelfa Yanto, *Negara Hukum Kepastian, Keadilan Dan Kemanfaatan Hukum Dalam Sistem Peradilan Pidana Indonesia*, Cetakan-1 (Pustaka Reka Cipta, 2020). H. 27

³² Sheila Kusuma et al., *From Regulation to Ethics : The Legal Effectiveness of Smart Village Policy through Village SDGs and Maq ā ṣ Id al-Shar ī Ah*, 22, no. 2 (2025): 247–74, <https://doi.org/10.21154/justicia.v21i1.xxxx>.

³³ Kurniawan Dan Hudafi, "Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat," H. 34.

³⁴ Ahmad Sarwat, *Maqashid Syariah*, H. 53.

education, and care. Children with disabilities, in Islamic legal terms, are categorized as a group requiring additional protection (*masalah muhtajjah*), because this condition creates greater financial needs than children in general. When a panel of judges does not stipulate the obligation to provide one-third of the salary, which should be the source of funding for the child's needs, this decision can actually result in *mafsadah* (economic inability) in the form of the family's inability to meet the child's basic needs.³⁵ This condition is contrary to the objectives of Islamic law, which seeks to ensure the continuity and well-being of offspring through the provision of adequate and continuous financial support from the father, as the party legally obliged under Islamic law.³⁶

In the case of *hifz al-mal*, the *maqāṣid al-sharī'ah* emphasizes the importance of protecting property and ensuring the economic stability of the vulnerable party. In this case, the ex-wife is in an unequal economic position compared to the husband, particularly because she bears full responsibility for caring for a child with special needs. When the obligation to provide one-third of the salary is not stipulated, this creates a significant economic imbalance and opens up the possibility of *darar* (loss) in the form of an inability to cover living expenses, healthcare, and educational support for the child. The principle of *raf' al-haraj* (removal of hardship), which underlies the *maqāṣid al-sharī'ah*, should guide judges to ensure the continuity of adequate financial support, rather than reducing the scope of protection for those in need.³⁷

According to the *maqāṣid al-sharī'ah* parameter approach regarding *dharūriyyāt*, *hājiyyāt*, and *taḥsīniyyāt*, this case is included in the *dharūriyyāt* level because the judges did not refer to Government Regulation No. 10 of 1983, which stipulates that wives, children and husbands are entitled to one third of their husband's salary.³⁸ From a *Dharuriyyat* perspective, the child in this case has a mental disability, and the mother has no fixed income. Therefore, the judge's failure to allocate one-third of the wife's salary resulted in a denial of the rights that should have been granted to both the child and the wife. This case falls within the legal framework because the judge failed to consider that the wife does not have a fixed income like the husband and also has to care for a disabled child who requires greater support, including specialized services and ongoing care,³⁹ especially in economic matters for the sake of the survival of his wife and children.

Furthermore, *maqasid al-shari'ah* provides an orientation that when there is a conflict between two forms of public interest (*maṣlaḥah*), the law must prioritize the interests of the party who is more in need, rather than the interests of the party who has a stronger social and economic position. In this case, the judge's consideration, which

³⁵ Lestari Dkk., *Maqashid Al-Khamsah Dalam Ekonomi Islam: Perspektif Al-Ghazali, As Syatibi, Dan Ibnu Khaldun*, H. 420.

³⁶ Dian Ayu Safitri Dkk, "Tanggung Jawab Orang Tua Atas Nafkah Anak Pasca Percerian," *COURT REVIEW: Jurnal Penelitian Hukum* 4, no. 01 (2024): 34–56.

³⁷ Basri, "Pendangan At-Tufi Dan Asy-Syatibi Tentang Maslahat," H. 178.

³⁸ Bakri Dan Umar, *Konsep Maqashid Syari'ah Menurut Al-Syatibi*, H. 71.

³⁹ Marsianus Meka et al., "Analisis Kesulitan Belajar Pada Anak Berkebutuhan Khusus Pada Sekolah Luar Biasa Negeri Bajawa," *Jurnal Pendidikan Inklusi Citra Bakti* 1 (2023): 11–19.

focused on the applicant's financial capacity as a low-level civil servant, ignored this principle. The judgment shows that the judge placed the applicant's economic stability above the needs of his disabled child and ex-wife, even though *maqasid al-shari'ah* emphasizes that the welfare of vulnerable parties must be prioritized.⁴⁰

Consequently, the judgment is contrary to the universal objectives of Islamic law, namely the realization of justice and social welfare. When positive legal instruments such as Government Regulation Number 10 of 1983 have provided a one-third salary mechanism as a form of protection, the judge should have used this provision to strengthen the values of *maqasid al-shari'ah*, rather than diminish them. Overall, the *maqasid al-shari'ah* analysis indicates that the decision does not yet meet the standard of substantive welfare (*maṣlaḥah*), as it fails to provide optimal protection for women and children with disabilities. As a result, it is not fully aligned with the fundamental principles of Islamic law in the context of modern family law.⁴¹ Constitutionally, protection for children with disabilities has a very strong legal basis in the 1945 Constitution of the Republic of Indonesia.⁴² Article 28B paragraph (2) of the 1945 Constitution stipulates that every child has the right to live, grow, and develop, as well as the right to be protected from violence and discrimination. In addition, Article 28H paragraph (2) states that every person has the right to special facilities and treatment to obtain the same opportunities and benefits in order to achieve equality and justice. These constitutional norms stipulate that children with disabilities must receive affirmative protection due to their vulnerable condition.

In the national legal framework, the most important provisions are contained in Law Number 8 of 2016 concerning Persons with Disabilities.⁴³ This law changes the old perspective from a charity-based approach to a rights-based approach.⁴⁴ People with disabilities are no longer viewed merely as recipients of social assistance, but as rights holders whose rights must be protected by the government. Article 5 of the law affirms that people with disabilities have the right to life, freedom from stigma, privacy, justice and legal protection, education, employment, health, political participation, cultural life, social welfare, accessibility, and protection from discrimination.

The most serious issue is that the number of children with disabilities experiencing neglect and social exclusion remains high. The government indicates that this issue is still a national challenge. Indonesian government datasets record categories of neglected persons with disabilities and neglected children who still require access to social services in various regions. In addition, the government also acknowledges the importance of strengthening protection systems for children with disabilities through policies involving

⁴⁰ Jauhar Dan Khikmawati (Kuwait), *Maqashid Syariah*, H. 22.

⁴¹ Jabbar Sabil, *Maqashid Syariah*, H. 123.

⁴² Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28b Ayat (2) Dan Pasal 28h Ayat (2).

⁴³ Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas.

⁴⁴ Akhmad Kamil Rizani et al., "The Politics of Disability Law in Indonesia: Transformation to Strengthen the Rights of Persons with Disabilities," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 14, no. 2 SE-Articles (2024): 246–80, <https://doi.org/10.15642/ad.2024.14.2.246-280>.

multiple sectors.⁴⁵ In addition, the Ministry of Women's Empowerment and Child Protection (PPPA) in 2026 stated that children with disabilities are a highly vulnerable group, particularly to violence, discrimination, and neglect. The Ministry also emphasized that children with disabilities face challenges in accessing education and support services, making them more susceptible to neglect.⁴⁶

Review of John Rawls's Principles of Justice Regarding Not Determining 1/3 of Salary in Decisions

Law is used as a guideline or reference for human behavior,⁴⁷ Mochtar Kusumaatmadja is of the opinion that the law treats everyone equally without discrimination,⁴⁸ Law is also not separated from justice, where in the context of this article it is examined through John Rawls' justice as fairness, which emphasizes that every legal policy or court decision must guarantee equal treatment for all individuals without differentiating between social and economic status, including gender.⁴⁹ Rawls positions the concepts of the *original position* and the *veil of ignorance* as ethical instruments for evaluating whether a legal decision has fulfilled the true principles of justice. In the original position, every individual is assumed to be unaware of their social status, so the principles of justice chosen would necessarily be oriented toward protecting all parties, especially the most vulnerable groups.⁵⁰

Rawls' first principle, namely the *equal liberty principle*, asserts that every individual possesses equal basic liberties, including the freedom to obtain and maintain economic rights.⁵¹ In the context of Case Number 154/Pdt.G/2025/PA.Kab.Kdr., this principle is not reflected, because although both parties possess equal rights and legal standing in filing for divorce, the judgment did not establish equal economic rights for the former wife, including those related to their child with disabilities. The absence of the one-third salary allocation, as regulated under Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990, demonstrates that formal freedom was not accompanied by substantive justice, as the economic rights of the weaker party were ultimately neglected. As a consequence, such neglect of vulnerable parties makes the law appear excessively liberal in its application.⁵²

⁴⁵ <https://www.kemenkopmk.go.id/perjuangan-inklusi-ibarat-lari-marathon-kemenko-pmk-dorong-satu-data-disabilitas-nasional>, accessed date 25 May 2026

⁴⁶ <https://www.kemenkopmk.go.id/perjuangan-inklusi-ibarat-lari-marathon-kemenko-pmk-dorong-satu-data-disabilitas-nasional>, accessed date 25 May 2026

⁴⁷ R. D. Adityo, "Paradigma Kepastian Hukum Pembiayaan Musyarakah Pada Bank Syariah: Perspektif Hukum Positif," ... *Hukum Islam Dan Perbankan Syariah* 6, no. 2 (2015): 24–38.

⁴⁸ Rayno Dwi Adityo, "Multi Tafsir Dan Celah Hukum Konsep Kedewasaan Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," preprint, *Jurnal Masalah: Jurnal Hukum Islam dan Perbankan Syariah*, 2015, 25–40, <https://doi.org/https://doi.org/10.33558/masalah.v6i1.1289>.

⁴⁹ Triyudiana Dan Nurhayati, *Penerapan Prinsip Keadilan Sebagai Fairness Menurut John Rawls Di Indonesia Sebagai Perwujudan Dari Pancasila*, H. 8.

⁵⁰ Suhardin, "Konsep Keadilan Dari John Rawls Dengan Keadilan Pancasila (Analisis Komparatif)," H. 202.

⁵¹ Hanifah Dkk., *Keadilan Sebagai Tujuan Hukum: Telaah Teori Keadilan John Rawls Dalam Konteks Hukum Indonesia*.

⁵² Grimaldi Setia Budi, "Perkembangan Asas Kebebasan Berkontrak Dalam Praktik Hukum Perdata Di Indonesia," *Jurnal Kajian Hukum Dan Kebijakan Publik* 3, no. 1 (2025): 139–48.

Economic rights, within Rawls' framework, constitute part of the basic liberties that must be protected.⁵³ The allocation of one-third of the salary represents a form of protection over the means of livelihood that should rightfully be received by the former wife and child, especially when the child has special needs. When this legal provision is not implemented, there is a potential violation of the principle of freedom to maintain property rights, as well as a failure of the judgment to provide guarantees of post-divorce welfare.

In addition, Rawls emphasizes the *difference principle*, namely that social and economic inequalities can only be considered just if they prioritize the interests of those who are least advantaged. In the context of this case, the former wife and the child with disabilities clearly represent the parties in the weakest social and economic position. By failing to impose the obligation of allocating one-third of the salary upon the former husband, the panel of judges effectively fell into a form of unjust inequality, because the decision provided no benefit whatsoever to the vulnerable parties. On the contrary, the judgment widened the welfare gap between the husband, as a Civil Servant with a stable income, and the wife, who bears the full responsibility of caring for a child with special needs. Moreover, the fulfillment of child support constitutes part of the fundamental responsibility of a biological father.⁵⁴

Through Rawls' perspective, justice is not measured solely by legal procedures, but also by their impact on the parties who suffer the greatest disadvantage. Therefore, a judgment that does not determine the allocation of one-third of the salary contradicts the orientation of *justice as fairness*, which requires prioritizing those most in need of protection. Accordingly, the application of the *difference principle* should encourage the court to impose the one-third salary obligation as an instrument of distributive justice. When the court disregards this provision, the function of law as a mechanism of social correction loses its substantive meaning.

Conclusion

Based on the analysis conducted by the researcher of Decision Number 154/Pdt.G/2025/PA.Kab.Kdr, it can be concluded that there is a finding that the judges' consideration in not determining the obligation to provide one-third of the salary to the former wife who cares for a child with disabilities is not in line with the applicable legal norms and does not reflect the principles of justice and public benefit (*maṣlahah*) as embodied in *maqāṣid al-sharī'ah*. Furthermore, it does not fulfill the sense of justice from the perspective of John Rawls' theory of justice. From the perspective of *maqāṣid al-sharī'ah*, the judges' decision has not fulfilled legal protection regarding the aspects of *ḥifz al-nasl* (protection of lineage) and *ḥifz al-mal* (protection of wealth), because the ruling

⁵³ Karina Dan Kanggas, *Analisa Teori Keadilan John Rawls Dan Teori Utilitarianisme Jeremy Benthan Terhadap Konsep Pemenuhan Hak Korban Menurut Perspektif Viktimologi*, H. 265.

⁵⁴ Nuriyah Wulan Adiningrum and Rayno Dwi, *Morality : Jurnal Ilmu Hukum Kenaikan Nafkah Anak Setiap Tahun Pasca Perceraian*, 10, no. 1 (2024): 14-30.

does not adequately address the basic needs and sustainability of life for parties categorized as vulnerable, namely a wife without stable income who simultaneously cares for a child with disabilities. This condition falls within the level of *dharuriyyat*, as it concerns urgent necessities which, if neglected, may threaten their safety and welfare.

Meanwhile, from the perspective of John Rawls' theory of justice, the refusal to grant the one-third salary allocation widens the welfare gap between the former husband, who as a Civil Servant has a stable income, and the former wife, who bears the economic burden after divorce in supporting their child with special needs. Therefore, morally and philosophically, the decision has not fulfilled the principle of *justice as fairness*, whereby the law should exist not only to guarantee legal certainty, but also to pursue substantive justice that prioritizes protection for the least advantaged parties.

This analysis provides an academic contribution in the form of theoretical ideas that integrate Islamic law and modern legal philosophy. The scope of this study broadens the debate on forms of legal protection for vulnerable groups such as ex-wives who do not have a steady income and have children with disabilities by proposing a shift in the perspective of the justice system from mere legal certainty based on formal and procedural positivism to a more humanistic substantive justice. This study also offers a paradigm framework for reforming the mindset of legal rigidity to be more inclusive, sensitive, and more responsive to post-divorce social conditions. This study certainly still has many shortcomings, so it is hoped that it can be continued by future researchers interested in the field of Islamic family law studies by adding non-legal material in the form of interviews with the makers or policy makers in the decision product to obtain complete and comprehensive information, more in-depth that includes the background of the reasons beyond just obtained from the decision itself, thus forming a more comprehensive conclusion.

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