



Problem of Determining Past Income for Children in Court the Decisions

Masnuah Lisa

Universitas Diponegoro, Indonesia | mlisa@undip.ac.id

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Abstract

The data obtained were then analyzed using the content analysis method. Decision Religious shows that the legal basis for refusing claims for māḍiyah maintenance for children in divorce is legal considerations as considered by the Supreme Court in its decision rejecting lawsuits for past maintenance for children, namely that the father's obligation to provide for his child is *lil-intifā'*, not *lit-tamlīk*, then a person's negligence fathers who do not provide for their children cannot be sued. This leads to injustice because māḍiyah maintenance is not granted to children. This will certainly be detrimental to the life and welfare of the child, who in other circumstances can become a shield for a father who neglects to provide for his child. Māḍiyah's livelihood is a form of protection for the rights of divorced women and children born during a marriage. This is in line with the verses of the Koran and hadith which talk about the obligation of a father to his wife and children to provide maintenance.

Keywords: Māḍiyah maintenance, children, religious court

Introduction

Children are a gift from God and at the same time, a trust given by Him to their parents. This has the consequence of being responsible for the life of the child from the womb to adulthood. The problems in the household that arise, even to the point of ending in divorce, are not an obstacle for both parents to provide for their children's needs. (Devy & Suci, 2020)

In line with that, in the Preamble to the 1945 Constitution of the Republic of Indonesia, in the fourth paragraph, it states, "...To form an Indonesian State government that protects the entire Indonesian nation and all of Indonesia's bloodshed...". Based on this, it can be understood that one of the objectives of the establishment of the Republic of Indonesia is to protect all Indonesian citizens regardless of gender, group, or class. All citizens are entitled to protection which is the obligation of the state. The life and well-being of children are guaranteed by applicable law in Indonesia. ("Tinjauan Hukum Islam Dan Hukum Positif Terhadap Permohonan Nafkah Māḍiyah Dalam Perkara Cerai Gugat (Studi Komperatif)," 2020)

The unfortunate fact is that when faced with the practice, there is a discrepancy with the provisions above. Lawsuits for *māḍiyah maintenance*, namely debt support, especially for children, are often rejected by the courts. This is based on the existence of jurisprudence based on the decision of Supreme Court Number 608/K/AG/2003, which in the end can be detrimental to the life and welfare of children. This problem is interesting to be studied more deeply. Therefore, this paper will comprehensively and thoroughly describe these dilemmatic problems, which are specifically contained in the decision of the Religious Court. (Iksan & Adnan, 2020)

Literatur Review

In line with the opinion above, Wasman and Wardah Nuroniyah stated that if a father is poor, but can work and indeed has worked, but his income is not sufficient, then the father's obligation to provide maintenance for his children is permanent and does not fall. If the mother is able, she can be asked to provide for her children, which is the obligation of their father. However, it can be calculated as a father's debt, which if he is able, then he can be billed to return it. (Alauddin, 2019)

Basir also stated that the attitude of rejecting any claim for a child's *māḍiyah maintenance* is only because the father's obligation to provide for his child is *lil-intifā'* not *lit-tamlīk*, basically the same as considering aborting or aborting the father's obligation to provide for the child he has neglected. This means freeing the father who has neglected his obligations and allowing another party to be wronged, namely the child. Even the rejection of any lawsuits for *māḍiyah maintenance* children will foster erroneous understanding and trivial assumptions regarding the father's obligation to provide for the child. This will certainly have an impact on the physical and psychological development of the child. (Devy & Muliadi, 2020)

There are many arguments to justify the payment of a *māḍiyah subsistence*. The opinion stating that the child's *māḍiyah* maintenance can be met and a lawsuit can be filed is based on the Koran surah al-Baqarah [2]: 233, the hadith of the Prophet Muhammad. above, as well as efforts to prevent tyranny against post-divorce children. (Fadri et al., 2020)

Research methods

This type of research is normative legal research using *a* case approach. Sources of research data are primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials are the Koran, hadith, court decisions, and laws and regulations. Secondary legal materials are books and articles related to the maintenance of a child's *māḍiyah* and the Decision of the Tanjungkarang Religious Court Number 0846/Pdt.G/2015/PA.Tnk . Tertiary legal materials include legal encyclopedias, Indonesian dictionaries, and legal dictionaries. The data obtained were then analyzed using the *content analysis method*.

Results and Discussion

Overview of *Māḍiyah* Support for Children in Divorce Cases

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Children are the responsibility of both parents. A child has the right to earn a living from the time he is born to adulthood or when he is married. Even though there was a divorce between his parents, this did not prevent him from providing maintenance to the child.

Māḍiyah is an obligation for someone that was not carried out in the past, which should be given by a husband to his wife and children. The alimony should be given while the marriage is still in progress, but until the divorce occurs it has not been paid. Therefore, as long as the husband has not paid the debt to his wife and children, the husband still has debts that must be paid to fulfill his family's maintenance. (Jamaluddin et al., 2015)

Wahbah az-Zuhailī in Salma, et al. said, there are 5 (five) kinds of children's rights towards their parents, namely: nasab rights (offspring), rights *raḍā'* (breastfeeding), rights hadanah (maintenance), *wilāyah rights* (guardians), and maintenance rights (alimentation). By fulfilling these needs, parents mean that they have prepared their children to be able to live independently. The birth of a child is a legal event, which brings consequences to various kinds of rights that will be received, including inheritance rights. The kinship relationship results in the existence of a series of children's rights that must be fulfilled by parents, and vice versa, guaranteeing the rights of parents over their children. (Widyakso, 2018)

Regarding a father who has neglected his obligation, namely to provide maintenance for the child, among the priests of the school of thought are of the following opinion: (1) The Hanafī school of thought believes that the maintenance of a child is not a debt for a father, whether it is determined by a judge or not. In contrast to the wife's maintenance which can be owed to the husband if it is determined by a judge or mutually willing; (2) The Syafi'ah school believes that the child's maintenance does not necessarily become a debt for the father, unless it is determined by a judge or permission is granted for the debt, because the father is not at home or deliberately does not want to provide a living; (3) The jurists think that the child's maintenance dies with time, without being taken and without being in debt because the maintenance is legally obligatory for a father to meet the needs of the child. So, according to the fuqaha, if time has passed, then the need is no longer there and their livelihood will be lost. Based on some of the opinions above, only Syafi'ah scholars stated that a child's maintenance does not necessarily become a debt, this income can become a debt with the existence of a judge's policy through his decision. (Supriyadi, 2022)

Decisions of the Religious Courts relating to the maintenance of a child's *māḍiyah*, one of which is the decision of the Tanjungkarang Religious Court Number 0846/Pdt.G/2015/PA.Tnk.

IN CONVENTION

1. Granted the petition of the Convention Petitioners.
2. *raj'i* divorce against the Convention Respondent before the Tanjungkarang Religious Court session.
3. Ordered the Registrar of the Tanjung Karang Religious Court to send a copy of the Divorce Pledge in this case to the Marriage Registrar at the Religious Affairs Office of Bumi Waras and Tanjung Senang Districts, Bandar Lampung City to be recorded in the list provided for that purpose.

IN RECONVENTION

1. Granted Partial Reconvention Plaintiff's Claim.

2. Determine the obligations of the Counterclaim Defendant to pay the Counterclaim the consequences of divorce in the form of:
 - 2.1 Iddah maintenance money of Rp. 3,000,000,- (three million rupiah)
 - 2.2 Mut'ah in the form of gold weighing 5 grams
 - 2.3 Past allowance of 5,000,000, - (five million rupiah)
3. Determined that the Counter Plaintiff as the holder of *hadhanah rights* to the child of the Counter Plaintiff and Counter Counter Defendant named XXXXX was born on May 29, 2014, aged 18 months with the provision that the Counter Plaintiff may not prevent the Counter Defendant from meeting and meeting with the child.
4. Determine the maintenance of the child of the counter plaintiff and counter defendant as mentioned in dictum number 3 above every month a minimum of IDR 1,000.00 (one million rupiahs), starting from the time this decision was made until the child is an adult or independent.
5. Punish the Counterclaim Defendant to deliver money to the Counterclaim Plaintiff in the amount as stated in dictum number 2 and 4 above;
6. Convict counter plaintiffs and counter defendants to obey and implement the contents of the agreement dated March 31, 2016.
7. Reject and declare that the counterclaim of the Plaintiff's lawsuit is unacceptable for other than and for the rest.

IN CONVENTION AND RECONVENTION

Burdening the Convention Petitioner / Counter-Defendant to pay court fees which until now has been calculated at Rp. 231.000,- (two hundred and thirty-one thousand rupiah).

The decision of the Tanjungkarang Religious Court shows that the legal basis for refusing claims for *māḍiyah* maintenance for children in divorce in the judge's decision is based on legal considerations as the Supreme Court's considerations in its decision which rejected claims for past maintenance for children, namely that the father's obligation to provide for his child is *lil-intifā'*, not *lit-tamlīk*, then the negligence of a father who does not provide for his child (*nafkah māḍiyah* children) cannot be sued. This reason refers to Book II, that the child's past maintenance/support of the child owed cannot be sued. Apart from that, the judge also used Article 41 letter b of Law Number 1 of 1974. In this case, the panel of judges agreed with the Supreme Court Decision Number 600 K/AG/2003 dated September 8, 2004.

The Religious Courts have been given the authority to uphold the dignity and protect the rights of wives and children. Therefore, judges at the Religious Courts should try to find out matters related to the husband's work which can be used as a basis for consideration in determining the wife's living and *mut 'ah*, even *māḍiyah* and child support. Especially if the panel of judges considers that the father has been proven to have neglected the maintenance obligation, even though he can carry it out, as stated in the decision above. Therefore, the judge should be able to reconsider and decide to sentence the father to pay the child's *māḍiyah maintenance*.

In addition to the decisions mentioned above, there are many other decisions of the Religious Courts which also decide to reject and not punish husbands for paying the *māḍiyah* maintenance for *children* who have been demanded by the wife based on the *māḍiyah* maintenance principles *in* related jurisprudence (Decision of the Supreme Court of the

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Republic of Indonesia Number 608/K /AG/2003). These decisions include the Pasuruan Religious Court Decision Number 658/Pdt.G/2012/PA.Pas and the District Court Decision. Fifty Cities Number 22/Pdt.G/2013/PA.LK. This will certainly be detrimental to the life and well-being of children.

Māḍiyah Support for Children Based on the Decision of the Supreme Court of the Republic of Indonesia Number 608/K/AG/2003

The jurisprudence that is used as a reference for court judges in cases of *māḍiyah maintenance* is the decision of the Supreme Court Number 608/K/AG/2003. This decision stated that the wife's lawsuit against the child's *māḍiyah maintenance* (past income) was declared unacceptable. The Supreme Court thinks that the obligation of a father in providing maintenance for his child is *lil-intifā* ' not *lit-tamlīk*, so the negligence of a father who does not provide maintenance for his child cannot be sued. The decision of the Supreme Court of the Republic of Indonesia shows that the income from the father given to the child is to provide benefits or to be taken advantage of by the child, not to be fully owned by the child. This makes the negligence of a father who does not provide for his child cannot be sued. In this case, the wife as the respondent/reconvention plaintiff/comparator/applicant for cassation sued the child's *māḍiyah maintenance* as follows:

Whereas since January 2000 until now the Counterclaim Defendant has neglected his obligations as a good father, so that the son of the Counterclaim Plaintiff and Counterclaim Defendant named ----- is 14 years old and now lives with the Counterclaim Plaintiff, therefore maintaining and care the child must remain with the Counter Plaintiff.

Based on the foregoing, the respondent/plaintiff in the counterclaim requests the Buntok Religious Court to decide on the lawsuit as follows:

Punish the Reconventional Defendant to pay the maintenance of the child from the marriage of the Reconventional Plaintiff and the Reconvention Defendant who are owed Rp. 33,600,000.- (thirty-three million six hundred thousand rupiah) to the Counterclaim Plaintiff immediately after the verdict was pronounced.

Furthermore, in the decision of the Buntok Religious Court which rendered a decision on November 5, 2002, the counterclaim stated that the plaintiff's counterclaim could not be accepted. Then the decision on the appeal at the level of appeal against the respondent's application was amended by the Palangka Raya Religious High Court with a decision dated June 5, 2003, in its decision stating that the plaintiff's counterclaim claim, including the claim for the *māḍiyah maintenance* of the *child* being filed by the counterclaim plaintiff, is unacceptable. Then the respondent/appellant filed a cassation request on August 11, 2003. The reasons presented by the cassation plaintiff in his cassation memory regarding the child's *māḍiyah maintenance* are as follows:

That the Cassation Petitioner and ----- have the right to the maintenance owed. Thus the considerations and decisions of the Palangkaraya High Religious Court which did not take into account and stated the problem of the livelihood owed by the Cassation Appellant to the Cassation Petitioners and were not acceptable, then based on the above

provisions the Palangkaraya High Religious Court was wrong to apply and violate applicable laws.

The Supreme Court of the Republic of Indonesia then opined on the reasons in the cassation memorandum regarding the claim for a living being owed by the child as follows:

Whereas the obligation of a father to provide maintenance for his child is *lii intifa*, not *lii tamlik*, then the negligence of a father who does not provide maintenance for his child (children's *madliyah* income) cannot be sued.

According to Nuriel Amiriyyah, the decision of the Supreme Court of the Republic of Indonesia has 3 (three) legal principles, namely: (1) A counterclaim filed by the attorney of the respondent in a divorce case that exceeds the limits of the authority given to him, limited to the consequences of divorce, can be granted *ex-officio*; (2) The obligation of a father to provide maintenance for his child is *lil-intifā* 'not *lit-tamlīk* , so that the negligence of a father who does not provide maintenance for his child, namely the child's *māḍiyah maintenance* cannot be sued; (3) The value of *mut'ah* , maintenance, *maskan* , and *kiswah during the iddah period as well as child maintenance must meet the minimum needs, based on decency and fairness following the provisions of the applicable laws and regulations*. From this rule of law, it can be seen that the Supreme Court (MA) thinks that if there is negligence by the father who does not provide maintenance for his child, or what is known as the child's *māḍiyah maintenance*, then this cannot be sued for this.

The Dilemma of Child *Māḍiyah Livelihoods* in Islamic Law and Positive Law

Ahmad Zuhdi Muhdlor and M. Natsir Asnawi mentioned in *What Is the Madliyah (Past) Child's Income That Is Not Paid Absolute Lilintifa'? (Study of Supreme Court Jurisprudence Rules of the Republic of Indonesia Number 608 K/Ag/2003)* , that the considerations used by the panel of judges, both at the cassation level and at the appeal level, referred to the book *Al Fiqh al Islām wa fairlatuhū* by Wahbah az-Zuhailī. Based on the results of their investigation, such a rule is contained in the book on Juz 7 page 829. They argue that the responsibility of a father to meet the costs of raising a new child can be transferred to the mother if there is a court decision. However, if there is no court decision and the father deliberately neglects his child, while he is financially and more reliably able, then the mother can sue for all the costs of raising the child she has incurred. This is based on 2 (two) important arguments, namely:

1. It is unfair for a mother who has been burdened with household chores, then also burdened with the obligation to pay for child care, while the father is financially and more willing to carry out this obligation and deliberately neglects it.
2. The law should control such situations by providing a way for every mother who feels wronged to demand justice against a capable and negligent husband. The law must be a catalyst for this dynamic so that in the future there will be no more unscrupulous fathers who neglect their obligations because the law has prepared several mechanisms to compel the fulfillment of these obligations which are fulfilled by the wife/mother of the child.

Ms Basir stated that simply refusing any claim for a child's *māḍiyah maintenance* just because the father's obligation to provide for his child is *lil-intifā* 'not *lit-tamlīk*, irrelevant to Islamic law and positive law. Allah says in surah al-Baqarah [2]: 233:

... وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

Meaning: ...And the obligation of the father to bear their maintenance and clothing in a proper way.... (Indonesia, 2013)

In addition, there is also a hadith of the Prophet Muhammad. as follows:

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنَا يَحْيَى عَنْ هِشَامٍ قَالَ أَخْبَرَنِي أَبِي عَنْ عَنْ أَنَّ هِنْدُ بِنْتُ عُتْبَةَ قَالَتْ يَا رَسُولَ اللَّهِ إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ وَلَيْسَ يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي إِلَّا مَا أَخَذْتُ مِنْهُ وَهُوَ لَا يَعْلَمُ فَقَالَ خُذِي مَا يَكْفِيكِ وَوَلَدَكَ بِالْمَعْرُوفِ .

Meaning: Having told us Muḥammad bin al-Muṣanna had told us Yaḥya from Hisham he said, had told me, my father, from ‘Āisyah that Hindun bint ‘Utbah said, “O Messenger of Allah, actually Abū Sufyān is a stingy man. He does not provide a sufficient living for me and my child unless I take from his wealth without his knowledge.” So he said: "Take from his wealth just to meet your needs and also your child."

Based on the verses of the Koran and hadith above, it can be understood that the first and most important person who is obliged to carry out the duties and responsibilities of providing for children is the father, not the mother. If one day there are circumstances and other things that result in the mother being forced to bear the burden of providing for her child, then at that time the father must return or pay the mother the maintenance that has been given to her child. A mother's willingness to provide for her child does not necessarily abort the father's obligation to support the child, especially if a father deliberately neglects this obligation. The cessation of the father's obligation to provide for his child is only possible when there is a condition that is justified by law.(Devy & Muliadi, 2020)

Rejecting a claim for a child's *māḍiyah maintenance* only because the father's obligation to provide for his child is *lil-intifā'* not *lit-tamlīk*, besides being irrelevant to Islamic law it is also irrelevant and even contradicts the laws and regulations in force in Indonesia, such as in Article 45 paragraphs (1) and (2) jo. Article 41 letters a and b of Law Number 1 of 1974 concerning Marriage. Article 51 paragraph (1) of Law Number 39 of 1999 concerning Human Rights. Compilation of Islamic Law Article 80 paragraph (4) jo. Article 105 letter c. Article 13 paragraph (1) letter c Law Number 23 of 2002 concerning Child Protection. Article 5 letter d Law Number 23 of 2004 concerning the Elimination of Domestic Violence Some of these legal bases have in common, namely that they aim to protect the interests of the child. *Māḍiyah* income is one of the children's interests that must be considered.(Masrukhin & Damayanti, 2020)

Based on some of the provisions in the positive law above, in general, it can be understood that in terms of caring for and educating children, it is a joint obligation between husband and wife. However, in terms of fulfilling living, maintenance, or upbringing costs, and children's education, it is the father's obligation, as the first and foremost person to fulfill it. A father's negligence in fulfilling his child's maintenance is a form of neglect that is included as an act of domestic violence and can be threatened with imprisonment and/or a fine. The occurrence of divorce of the two parents in no way stops the father's obligation to provide for the child. If for some reason the mother is forced to bear the child's maintenance, this does not simply abort the father's obligation to provide for his child. The court can determine that the

mother also bears the child's maintenance if according to the court the father of the child is proven unable to fulfill his obligations. Thus, it is increasingly clear that Indonesia's positive law is also very concerned about the interests of children, or in this context, *māḍiyah maintenance*. (Sujono, 2022)

Basir further said that a father could be said to be unable to fulfill his obligations to provide for his child so that the mother could be determined to share responsibility for bearing the child's maintenance, if in court it is proven that the father is, in fact, incapable, either physically/mentally or materially/financially or any way. circumstances (emergencies) that do not allow the father to fulfill these obligations. The father's inability in this regard may be caused by: (1) powerlessness or what is known in civil law as *onmacht*, (2) there is an emergency, or what is known in civil law as *overmacht*. That is, this is an exception to the obligation in question.

In line with Basir's opinion, Sisca Hadi Velawati, et al. state that the court cannot simply reject the *māḍiyah sustenance claim* on the basis that the father's obligation to provide for his child is *lil-intifā'* not *lit-tamlīk* so that it seems as if the negligence of a father who does not provide a living for his child (nafkah *māḍiyah*) cannot be sued. Such an attitude can be considered illogical and does not fulfill justice and contradicts the laws and regulations in force in Indonesia, particularly the Compilation of Islamic Law. By refusing a lawsuit related to *māḍiyah* maintenance, it is the same as waiving a father's obligation to provide for a child who has been neglected, so that the father in question becomes free without any penalty for his negligence in not providing maintenance for his child. This is certainly not something that is expected to happen to children's rights.

***M āḍiyah* Support for Children as a Form of Protection for Children**

The Supreme Court decision No. 608/K/AG/2003 becomes jurisprudence. So that court decisions in the same case are decided in line with the jurisprudence. One of the various decisions that refer to this jurisprudence is the decision of the Tanjungkarang Religious Court Number 0846/Pdt.G/2015/PA.Tnk.

The decision of the Tanjungkarang Religious Court shows that the legal basis for refusing claims for *māḍiyah* maintenance for children in a divorce in the judge's decision is based on legal considerations as considered by the Supreme Court (*MA*) in its decision which rejected claims for past maintenance for children, namely that the father's obligation to provide maintenance for his child is *lil-intifā'*, not *lit-tamlīk*, hence the negligence of a father who does not provide for his child (nafkah *māḍiyah* children) cannot be sued. Apart from that, the judges also used Article 41 letter b of Law Number 1 of 1974. So it appears that in this case, the panel of judges agreed with the Supreme Court Jurisprudence regarding the maintenance of *māḍiyah* child. In addition to these decisions, there are many decisions of other religious courts, as previously mentioned which also reject the demand for *māḍiyah maintenance* for the child or do not stipulate that the child's alimony is owed to be paid. This certainly hurts the welfare of the child's life, because the father has been negligent in providing a living for the child.

Regarding child protection, Indonesia has ratified the Convention on the Rights of the Child which was ratified by the General Assembly of the United Nations (UN) on November 20, 1989. The ratification of the Convention on the Rights of the Child began to have forced force (*entered into force*) on September 2, 1990. The Convention The Rights of the Child is an

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international agreement on Human Rights (HAM) which integrates civil and political rights simultaneously with economic, social, and cultural rights. The legal step for the ratification was carried out by Presidential Decree (Keppres) No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child.

The principles of implementing child protection in Indonesia are Pancasila and the 1945 Constitution, and have the basic principles of the Convention on the Rights of the Child, as follows:

1. Nondiscrimination.
2. The best interests of the child.
3. Right to life, survival, and development.
4. Respect for children's opinions.

Child protection aims to guarantee the fulfillment of children's rights so that they can live, grow, develop, and participate optimally following human dignity, and receive protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children.

Children's rights are an integral part of human rights and the Convention on the Rights of the Child (CRC) is an integral part of international instruments on human rights. The convention on the rights of the child is an instrument that contains the formulation of universal principles and legal norms regarding children's rights which is an international agreement on human rights that incorporates elements of civil and political rights as well as economic, social, and cultural rights. Law Number 23 of 2002 (UUPA) concerning child protection is also one of the legal instruments for child protection. This law was later updated through Law Number 35 of 2014, arguing that Law Number 23 of 2002 was deemed not yet effective as a legal regulation aimed at providing protection and fulfillment of children's rights.

Apart from the CRC and the UUPA, other legal instruments regulate children, including the following:

1. The 1945 Constitution Article 28B paragraph (2), Article 28C, and Article 34 paragraph (1).
2. Law Number 4 of 1979 concerning Child Welfare (Supplement to State Gazette Number 3143).
3. Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (State Gazette Supplement 3277).
4. Law Number 39 of 1999 concerning Human Rights (Supplement to State Gazette Number 3886).
5. Law Number 11 of 2005 Concerning Ratification of the ICESCR [Article 10, Article 12 paragraph (2), and Article 13 paragraph (3)].
6. Law Number 12 of 2005 concerning Ratification of the ICCPR [Article 14 paragraph (1), Article 18 paragraph (4), Article 23 paragraph (4), and Article 24].
7. Presidential Decree Number 40 of 2004 concerning Defense and Security 2004-2009 concerning Inserting the Agenda for Ratification of the Optional Protocol to the Convention on the Rights of the Child on Trafficking in Children, Child Pornography, and Child Prostitution (2005) and the Optional Protocol to the Convention on the Rights of the Child concerning the Involvement of Children in Armed Conflict (2006).

8. Presidential Decree Number 59 of 2002 concerning Action Plans for the Elimination of the Worst Forms of Child Labor.
9. Presidential Decree Number 87 of 2002 concerning the National Action Plan (RAN) for the Elimination of Commercial Sexual Exploitation of Children (ESKA).
10. Presidential Decree Number 88 of 2002 concerning Plans to Eliminate Trafficking in Women and Children (RAN P3A).

In addition to the legal instruments mentioned above, there are other laws and regulations, both in the fields of civil, criminal, and employment law, such as Law Number 1 of 1974 concerning Marriage, Law Number 11 of 2012 concerning the Criminal Justice System Children, and others.

A decision that simply rejects any demand for a child's *māḍiyah* maintenance can be said to be contrary to the principles of child protection, which include the right to life, survival, and development. In addition, it is also not in line with the values contained in child protection legal instruments which want the welfare of life for children. The strong legal basis for child protection, as previously explained, should be a foundation that cannot be simply ignored in the court decisions it issues.

In addition to the various arguments above, the legal *istinbāt method* in Islam is known as *sadd aẓ-ẓarī'ah*. *Sadd aẓ-ẓarī'ah* comes from the words *saddun* and *ẓarī'ah*. The word *saddun* means to dam. The plural of *ẓarī'ah* is *ẓarā'i'*, *ẓarī'ah* means a path that leads to something. So, *sadd aẓ-ẓarī'ah* in the language is to block or block the road that conveys something. In case Number 0846/Pdt.G/2015/PA.Tnk above, with the application of *sadd aẓ-ẓarī'ah*, the judge should reconsider accepting the demand for a child's *māḍiyah* alimony as a form of prevention for the father's negligence over the child's maintenance in the future and prevent women or the mother of a *double burden* or double burden, when she has to care for children and pay for the living of these children, as well as preventing negative impacts on children's welfare.

Conclusion

Domestic life in its journey will certainly be faced with various problems, not even a few that end in divorce. This divorce does not only have consequences for the husband and wife, but also for the children they give birth to. When there is a dispute and then the husband for some reason does not support the family until the case is brought to court, then this is a *māḍiyah income* that should be given to his family. But precisely with the Supreme Court decision No. 608/K/AG/2003 which has become jurisprudence and became the basis for subsequent decisions. This leads to injustice because *māḍiyah maintenance is not granted* to children. This will certainly be detrimental to the life and welfare of the child, who in other circumstances can become a shield for a husband who neglects to provide for his child.

Māḍiyah's livelihood is a form of protection for the rights of divorced women and children born during the marriage. This is in line with the verses of the Koran and hadith which talk about the obligation of a father to provide for his wife and children. In addition, such provisions can also be found in child protection legal instruments in force in Indonesia. Therefore, it is appropriate that in the future the law can pay more attention to the lives of children by issuing judges' decisions that are good for them so that it will close gaps for

husbands or fathers who can be negligent in their obligations, including in matters of providing for their family, and protect divorced women from a double burden.

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