

## Judicial Discretion in Determining the Quantum of *Nafkah Māḍiyah* (A Study of Banda Aceh Syar'iyah Court Decisions)

Faisal Arrayansyah<sup>1</sup>, Khairani Mukdin<sup>2</sup>, Alimuddin<sup>3</sup>

Universitas Islam Negeri Ar-Raniry, Banda Aceh<sup>1,2,3</sup>

Email: [faisalararrayansyah@gmail.com](mailto:faisalararrayansyah@gmail.com)<sup>1</sup>, [khairani.mukdin@ar-raniry.ac.id](mailto:khairani.mukdin@ar-raniry.ac.id)<sup>2</sup>,  
[alimuddin3733@gmail.com](mailto:alimuddin3733@gmail.com)<sup>3</sup>

**Abstract:** *This study aims to analyze judicial discretion in determining the quantum of nafkah māḍiyah (past maintenance) in divorce cases at the Banda Aceh Syar'iyah Court through nine decisions issued between 2020 and 2025. The primary issue identified is the absence of standardized benchmarks or technical guidelines, leading to disparities among decisions even when trial facts are relatively similar. This study employs a juridical-normative-empirical research method, utilizing both case and statutory approaches. It applies content analysis of decisions and interview methods, examined through the perspectives of Islamic law (mazhab Shafi'i), substantive justice theory, and qaidah fiqhiyah (legal maxims). The findings indicate that judges continue to exercise individual discretion based on trial facts, resulting in variations where claims are granted fully, partially, or rejected entirely. The basis for calculation and legal reasoning is often not elaborated in detail; consequently, substantive justice is not always reflected in the decisions. From the perspective of Islamic law, particularly the Shafi'i school of thought, nafkah māḍiyah is obligatory provided the wife is not nusyūz, with consideration given to the wife's reasonable needs and the husband's capacity; however, the practical application remains inconsistent. This study offers theoretical implications by strengthening the application of substantive justice in the religious judiciary and demonstrating that judicial discretion can serve as an instrument of justice provided it balances formal legal, moral, and social aspects. Practically and in terms of policy, it is recommended that the Syar'iyah Court formulate technical guidelines for determining nafkah māḍiyah based on Shafi'i fiqh and principles of substantive justice to ensure decisions are legally valid and socially just.*

**Keyword:** *Nafkah Māḍiyah, Judicial Discretion, Islamic Law, Substantive Justice.*

**Abstrak:** *Penelitian ini bertujuan menganalisis diskresi hakim dalam menetapkan besaran nafkah māḍiyah (nafkah masa lalu) pada perkara perceraian di Mahkamah Syar'iyah Banda Aceh melalui sembilan putusan yang diterbitkan antara tahun 2020–2025. Permasalahan utama adalah ketiadaan standar baku atau pedoman teknis, sehingga terjadi disparitas antar putusan meskipun fakta persidangan relatif serupa. Penelitian menggunakan jenis penelitian yuridis normatif empiris dengan pendekatan kasus dan pendekatan perundang-undangan. Metode analisis isi putusan dan wawancara, serta ditinjau dari perspektif hukum Islam (mazhab Syafi'i), teori keadilan substantif, dan kaedah fiqhiyah. Hasil penelitian menunjukkan bahwa hakim masih menggunakan diskresi masing-masing berdasarkan fakta persidangan, dengan variasi putusan yang dikabulkan seluruhnya, sebagian, maupun ditolak. Dasar perhitungan dan argumentasi hukum belum dijabarkan secara rinci, sehingga keadilan substantif belum selalu tercermin. Dari perspektif hukum Islam, khususnya mazhab Syafi'i, nafkah māḍiyah wajib diberikan selama istri tidak nusyūz, dengan pertimbangan kebutuhan*

layak istri dan kemampuan suami, namun praktiknya belum konsisten. Penelitian ini memberikan implikasi teoretis berupa penguatan penerapan keadilan substantif di peradilan agama dan menunjukkan bahwa diskresi hakim dapat menjadi instrumen keadilan selama menyeimbangkan aspek hukum formal, moral, dan sosial. Secara praktis dan kebijakan, Mahkamah Syar'iyah disarankan menyusun pedoman teknis penetapan nafkah māḍiyah berbasis fiqh mazhab Syafi'i dan prinsip keadilan substantif untuk memastikan putusan sah secara hukum dan adil secara sosial.

**Kata Kunci:** Nafkah Māḍiyah, Diskresi Hakim, Hukum Islam, Keadilan Substantif.

## Introduction

In the judicial practice of the Banda Aceh Syar'iyah Court, heterogeneity is evident in decisions concerning *nafkah māḍiyah*. Some decisions reject the claim for *nafkah māḍiyah* in its entirety, citing insufficient evidence or the wife's failure to fulfill her obligations. Others grant the claim partially, while several decisions grant the claim fully in accordance with the wife's demands, based on considerations of neglect during the marriage. An examination of decisions from the Banda Aceh Syar'iyah Court for the 2020–2025 period indicates that the quantum of *nafkah māḍiyah* granted by judges varies significantly. This variation is influenced by the duration of the neglect, the standing of the parties involved, the availability of evidence, mediation outcomes, and the subjective considerations of the judges.

This phenomenon suggests the absence of a standardized benchmark for determining the magnitude of *nafkah māḍiyah*, leading judges to rely on their individual discretion based on considerations of justice and propriety. While such discretion is legally permissible, it requires limitation through principles of justice and equity to prevent disparities that may prejudice specific parties. This necessitates the development of clearer guidelines that can assist judges in making more consistent and fair decisions. Establishing a framework grounded in universally accepted principles could help mitigate potential biases and ensure a more equitable outcome for all involved.<sup>1</sup>

The diversity of these decisions can be understood as a form of legal flexibility in responding to the factual conditions of each case; however, this condition simultaneously gives rise to substantial issues regarding legal certainty for the parties involved. The lack of uniform parameters in determining *nafkah māḍiyah* makes it difficult for justice seekers, particularly wives, to predict potential outcomes, thereby creating uncertainty regarding the protection of their economic rights.<sup>2</sup> Furthermore, the differing judicial perspectives regarding the element of neglect, standards of maintenance propriety, and

<sup>1</sup> Amalia Eka Rizkiana, "Diskresi Hakim Dalam Perkara Perceraian Dan Hak Asuh Anak (Studi Di Pengadilan Negeri Pati)," *Notarius* 13, no. 2 (2020): 865–78, <https://doi.org/10.14710/nts.v13i2.31288>.

<sup>2</sup> M. Atho Mudzha, *Pengantar Studi Hukum Islam* (Jakarta: PRENADAMEDIA GROUP, 2020).

the burden of proof demonstrate a suboptimal integration of *fiqh* norms, the Compilation of Islamic Law (KHI), and technical judicial guidelines within the practice of the Banda Aceh Syar'iyah Court. This highlights the necessity for a more comprehensive formulation of references to minimize disparity and ensure the fulfillment of substantive justice in every decision.

The discourse on judicial discretion is reinforced by Wildan Sirojuddin, who explains that in post-divorce maintenance cases, judges possess discretionary space to determine nominal amounts based on the factual conditions of the parties, such as the husband's capacity and the wife's needs. Nevertheless, he emphasizes that discretion must not be exercised arbitrarily but must remain subject to principles of substantive justice and proportionality to avoid infringing upon the rights of any party. Similarly, Jamil et al. (2023) view discretion as part of judicial *ijtihad* the freedom of judges to adjudicate cases within a legal vacuum grounded in the values of justice, public benefit (*maslahah*), and legal protection. Therefore, in *nafkah māḍiyah* cases lacking normative parameters, discretion plays a crucial role in guaranteeing women's post-divorce civil rights in a fair and proportional manner.<sup>3</sup>

Several prior studies have discussed the legal aspects of *nafkah māḍiyah* rights. Mutmainnah (2021) examined the rejection of past maintenance due to lack of evidence.<sup>4</sup> Iftiar Fauzi (2021) discussed the husband's economic capacity as the basis for the maintenance amount in *ceraf talak* cases.<sup>5</sup> Meanwhile, Ramadhani (2023) highlighted factors such as the wife's lifestyle and the husband's financial condition. These three studies have not specifically addressed the discrepancy between the amount requested and the amount granted, nor their conformity with Islamic legal principles.<sup>6</sup> Consequently, there is no research that specifically compares the magnitude of *nafkah māḍiyah* decided by judges against the basis of Islamic law and principles of substantive justice, particularly in the context of the Banda Aceh Syar'iyah Court. This constitutes the research gap addressed by this study.

This research aims to analyze the determination of the quantum of *nafkah māḍiyah* across three categories of decisions by the Banda Aceh Syar'iyah Court rejected, partially

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<sup>3</sup> Cut Aja Sela Nirmala, "Diskresi Hakim Dalam Memutuskan Perkara Dispensasi Nikah," *Syahsiyyah: Jurnal Hukum Keluarga* 3, no. 1 (2023): 121–31, <https://repository.metrouniv.ac.id/id/eprint/6284/>.

<sup>4</sup> MUTHMAINNAH, "TUNTUTAN ISTRI TERHADAP NAFKAH MADIYAH (Analisis Putusan Mahkamah Syar'iyah Kota Banda Aceh Nomor 45/Pdt.G/2021/MS.Bna)," 2, no 1 2016, 2–5.

<sup>5</sup> iftiar fauzi, "PERTIMBANGAN HAKIM DALAM MENENTUKAN BESARAN NAFKAH MAD}IYAH PADA CERAf TALAK DI PENGADILAN AGAMA BANYUMAS ( Studi Kasus Putusan Nomor : 1364/Pdt.G/2020/PA.Bms ) SKRIPSI," 2021, 1–23.

<sup>6</sup> Ramadhani, "Ramadhani, 190101045, FSH, HK," no. ANALISIS PERTIMBANGAN PUTUSAN HAKIM DALAM MENETAPKAN NAFKAH MADIYAH ISTRI DI MAHKAMAH SYARIAH JANTHO ACEH BESAR (2023).

granted, and fully granted and to evaluate these decisions based on Islamic law (*mazhab Shafi'i*) and the principle of substantive justice. The focus of this article is to examine the determination of *nafkah māḍiyah* amounts in these three versions of decisions and to assess them from the perspectives of Islamic law and substantive justice. The first novelty will be addressed through a description of the decisions and a comparison between the amounts requested and those granted by the judges. Subsequently, the second aspect is analyzed using the principles of maintenance *fiqh* in Islam, specifically the *mazhab Shafi'i*, as well as the theory of substantive justice, which assesses the propriety of a decision based on the concrete conditions of the parties.

This research contributes to strengthening the discourse on judicial discretion in Islamic civil cases by highlighting how judges apply principles of substantive justice amidst a normative vacuum regarding *nafkah māḍiyah*. The Aceh context was selected due to its specificity in implementing Islamic Sharia, making it a significant reference for the development of Islamic family law in Indonesia. This study not only sheds light on the practices of judges in Aceh but also serves as a foundation for future research on the intersection of Sharia law and modern legal principles. By examining these dynamics, it paves the way for a more nuanced understanding of how Islamic legal frameworks can adapt to contemporary societal needs.

This research also holds practical value for various stakeholders. For judicial institutions, the findings can serve as a reference in formulating more consistent guidelines or parameters regarding the determination of *nafkah māḍiyah*, thereby reducing disparities in decisions between panels of judges. For judges, this study helps enrich perspectives on applying discretion in a manner that is more measured, proportional, and aligned with substantive justice principles. Meanwhile, for the public, particularly justice seekers, this research provides a clearer picture of the maintenance rights that can be claimed in divorce cases, promoting transparency and predictability in decisions within the Religious/Syar'iyah Court environment. This research can also be utilized by academics and policymakers as a basis for drafting more comprehensive regulations regarding post-marital maintenance in Indonesian Islamic family law.

## Method

This research employs a juridical normative empirical research type.<sup>7</sup> Furthermore, this study utilizes a case approach by conducting an in-depth examination of decisions from the Banda Aceh Syar'iyah Court as the primary material to observe patterns and consistency in judicial reasoning regarding *nafkah māḍiyah* cases. This

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<sup>7</sup> Rifa'i Abubakar, *Pengantar Metodologi Penelitian* (SUKA-Press UIN Sunan Kalijaga, 2020), 7.

approach enables the researcher to identify both differences and similarities in the legal reasoning bases employed in each decision. This study also applies a statute approach by reviewing relevant positive legal provisions,<sup>8</sup> such as Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and other regulations related to the obligation of providing maintenance. This approach is utilized to assess the extent to which judicial decisions align with prevailing legal norms and how they are applied in judicial practice.

The object of this study comprises nine decisions from the Banda Aceh Syar'iyah Court for the period 2020–2025, encompassing decisions that were rejected, partially granted, and fully granted. The five-year period was selected via purposive sampling, deemed sufficient to reflect the patterns of judicial consideration in determining *nafkah māḍiyah*. The research employs a library research method.<sup>9</sup> The data sources include primary: Copies of Banda Aceh Syar'iyah Court Decisions. Secondary: Law Number 1 of 1974, KHI, and *fiqh* literature of the Shafi'iyah school of thought along with *qaidah fiqhiyah*. Tertiary: Supreme Court jurisprudence and literature related to judicial discretion and substantive justice. Data collection was conducted through document studies and semi-structured interviews with three judges and one clerk of the Banda Aceh Syar'iyah Court (June-July 2025).

Data analysis proceeded through the stages of data reduction, case classification, cross-case comparison, and normative interpretation based on Islamic law and substantive justice principles. This was done to assess whether judicial decisions considered the real conditions of the parties fairly, rather than relying solely on formal legality. Data validity was maintained through source triangulation comparing decision documents, legal literature, and interviews and member checking, confirming initial interpretations with informants to ensure accuracy.

This method allows the research to depict the practice of determining *nafkah māḍiyah* comprehensively while simultaneously assessing its conformity with Islamic law and substantive justice. This assessment not only enhances the understanding of financial obligations within marriage but also encourages a more equitable approach to family law. By integrating these principles, it aims to foster greater harmony and fairness in domestic relationships.

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<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2017), 35-37.

<sup>9</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram-NTB: Mataram University Press, 2020), 45.

## Discussion

### A. Determination of Nafkah Māḍiyah Quantum in Banda Aceh Syar'iyah Court Decisions

An analysis of nine Banda Aceh Syar'iyah Court decisions reveals significant disparities in the amount of *nafkah māḍiyah*, whether granted partially, rejected entirely, or granted fully. These differences are not merely nominal figures but reflect judicial discretion and variations in the interpretation of evidence regarding neglect, the husband's capacity, and the wife's *nusyuz* status.

#### 1. Decisions Granted Partially

Decision Number 287/Pdt.G/2024/MS.Bna involves a plaintiff claiming *nafkah māḍiyah* for neglect committed by the defendant while the marriage was still valid. However, there were inconsistencies in the claim: the *posita* (statement of facts) mentioned a claim of Rp.40.000.000 for the period from January 2021 to August 2024; the *petitum* (prayer for relief) listed Rp.50.000.000; whereas the conclusion of the claim focused only on March to July 2024 for Rp.25.000.000. Nevertheless, the panel of judges did not use these inconsistencies as grounds to reject the lawsuit. Instead, the judges identified the most relevant and legally proven fact: that since March 2024, when the Defendant pronounced *talak* and left the house, neglect of the wife had occurred for five months until July 2024.

Based on the examination, the panel of judges was convinced that during those five months, the Defendant provided no maintenance to the Plaintiff. Consequently, the judges ruled that the Defendant was obligated to pay *nafkah māḍiyah* of Rp.2.000.000 per month, totaling Rp.10.000.000. This amount did not refer to the figure requested by the Plaintiff but was determined based on principles of propriety and the Defendant's economic capacity.

A similar occurrence is found in Decision Number 344/Pdt.G/2024/MS.Bna, where the Plaintiff claimed *nafkah māḍiyah* of Rp.12.000.000 for neglect experienced while serving as a wife. From the examination results, the panel of judges found that the primary issue in the household related to economic factors. Witnesses presented by the Plaintiff stated that the Defendant had no fixed income and, although he had worked in a motorbike workshop, his earnings were inadequate. This was the main cause of household tension, eventually leading to divorce.

Considering these conditions, the judge did not grant the claim fully but utilized principles of justice and propriety in the assessment. The judge determined that the Defendant was obliged to pay *nafkah māḍiyah* of Rp.2.000.000. This amount was far lower than the original claim but was viewed as relevant to the Defendant's economic

condition and intended to prevent the decision from becoming illusory (*illusoir*) or unenforceable. This determination reflects judicial attention to women's post-divorce rights while acknowledging the limits of the male party's financial capacity.

Partial acceptance of *nafkah māḍiyah* also occurred in Decision Number 144/Pdt.G/2024/MS.Bna. In this case, the Plaintiff claimed *nafkah māḍiyah* of Rp.37.500.000 for neglect experienced during approximately two years of separation from the Defendant. In proving her case, the Plaintiff presented two witnesses who stated that the Defendant never provided maintenance during the separation. The Defendant did not deny this; in his response, he explicitly admitted to not providing maintenance for two years because he had divorced the Plaintiff outside the court.

The panel of judges assessed the Defendant's admission as a pure confession possessing perfect and binding evidentiary value based on Article 311 of the Regulation on Civil Procedure (R.Bg). Thus, the judge concluded it was proven that the Defendant had neglected his obligation to provide maintenance during the separation. Although the Plaintiff's claim reached Rp.37.500.000 the judge only granted part of the claim, setting *nafkah māḍiyah* at Rp.12.000.000 for the two years, which had to be paid before the *ikrar talak* (divorce pledge) was pronounced.

## 2. Decisions Rejected Entirely

Decision Number 215/Pdt.5/2020/MS.Bna is a case where the claim was rejected entirely. In case No. 215/Pdt.G/2020/MS.Bna, the Plaintiff in Reconvention claimed *nafkah māḍiyah* of Rp.10.000.000 based on neglect during a separation of residence from August 2019 until the case obtained permanent legal force. The Panel of Judges identified that the maintenance claim was divided into two: maintenance for the child and maintenance for the wife. In its legal considerations, the judge stated that maintenance for the child is *lil intifa'* (for direct benefit), which cannot be claimed retroactively, whereas maintenance for the wife is *littamluk* (proprietary right), meaning it becomes ownership and can be claimed if negligence by the husband is proven.

However, the panel of judges concluded that the wife had committed *nusyuz* (disobedience to the husband), based on the testimony of two witnesses and the wife's own admission that she left the house for Banda Aceh and Malaysia without the husband's permission due to physical violence. Using the basis of Article 80 paragraphs (4) and (5) of the KHI, which states that a husband's obligation to provide maintenance lapses if the wife is in a state of *nusyuz*, the panel of judges rejected the claim for *nafkah māḍiyah* from the Plaintiff in Reconvention.

Similarly, in Decision Number 30/Pdt.G/2023/MS.Bna, the judge considered rejecting the *nafkah māḍiyah* claim entirely. In this case, the wife as Plaintiff in Convention claimed *nafkah māḍiyah* of Rp.96.000.000 for neglect during eight years of

separation. However, during the trial, it was revealed that in the last two months before the lawsuit was filed, the husband (Defendant in Convention) still provided maintenance ranging from Rp.2.000.000 to Rp.2.500.000 per month. Witnesses also mentioned that the wife rejected the husband's presence and even locked the door to stay separated from him. Based on these facts, the Panel assessed that the wife had implicitly released the husband from the maintenance obligation and did not fulfill her wifely duties. Thus, the claim for *nafkah māḍiyah* was declared inadmissible.

Furthermore, Decision Number 142/Pdt.G/2025/MS.Bna also involved the total rejection of a *nafkah māḍiyah* claim. In this case, the Plaintiff filed for divorce while simultaneously claiming *nafkah māḍiyah* (past maintenance) of Rp.78.000.000 calculated as 26 months  $\times$  Rp.3.000.000 per month. This claim was included in the *petitum* asking the Panel of Judges to sentence the Defendant to pay said past maintenance. However, after examining trial facts, the Panel of Judges assessed that the evidence submitted by the Plaintiff was inadequate to prove her argument.

In the legal considerations, the Panel scrutinized the testimony of two witnesses presented by the Plaintiff. Both turned out to be unaware of the amount of maintenance provided by the Defendant, or even whether maintenance was provided at all during the marriage. Due to the lack of certainty and clarity from the witnesses, the Panel of Judges concluded that the Plaintiff's argument regarding maintenance arrears was unproven. Therefore, the Plaintiff's lawsuit regarding *nafkah māḍiyah* was declared rejected entirely.

### 3. Decisions Granted Fully

Decision Number 360/Pdt.G/2024/MS.Bna is one where the *nafkah māḍiyah* claim was accepted entirely. In this case, the Plaintiff claimed *nafkah māḍiyah* of Rp.10.000.000 for ten months of neglect since January 2024. This claim was filed concurrently with a divorce petition. The Panel of Judges considered that during the separation period, based on witness testimony, the Defendant never provided maintenance to the wife. This fact was reinforced by the Defendant's own admission in his response, stating he had remarried another woman. Additionally, the trial did not prove that the Plaintiff was a *nusyuz* wife or had violated her obligations.

The Panel of Judges then referred to Article 34 paragraphs (1) and (3) of Law Number 1 of 1974 concerning Marriage, which asserts that a husband is obliged to provide maintenance to the wife according to his ability, and disputes can be submitted to the court. This provision is reinforced by Article 77 paragraph (5) of the Compilation of Islamic Law (KHI), which provides a legal basis for the court to determine *nafkah māḍiyah*. In its consideration, the Panel also cited Al-Qur'an Surah Al-Baqarah verse 233 as a normative basis, stating that the obligation to provide food and clothing to mothers is the father's responsibility in a *ma'ruf* (proper) manner according to capability.



With this normative foundation and irrefutable trial facts, the Panel of Judges declared the Plaintiff entitled to past maintenance for the period of neglect. Consequently, the Panel granted the *nafkah māḍiyah* claim of Rp.10.000.000 in full, consistent with the duration and amount requested by the Plaintiff. The decision underscores the Panel's commitment to ensuring that justice is served in matters of familial responsibility. It also sets a precedent for similar cases, emphasizing the importance of accountability in financial support obligations.

Next is Decision Number 159/Pdt.G/2025/MS.Bna. Here, the Plaintiff demanded the Defendant pay *nafkah māḍiyah* of Rp.2.000.000. because the Defendant rarely provided financial maintenance during the marriage. The Defendant stated his ability to meet this demand, and during the proceedings, the Panel of Judges facilitated a reconciliation effort through mediation. The mediation resulted in an agreement regarding the Defendant's obligation to pay *nafkah māḍiyah* of Rp.2.000.000, which was then affirmed by the Panel of Judges in the decision's verdict. Thus, in this case, *nafkah māḍiyah* was granted fully through the mechanism of mutual agreement.

Similar to the two decisions above, Decision Number 141/Pdt.G/2023/MS.Bna also accepted the *nafkah māḍiyah* claim entirely. The Plaintiff in Reconvention claimed *nafkah māḍiyah* of Rp.13.500.000, calculated from monthly needs of Rp.1.500.000 over nine months of neglect. The Panel of Judges granted the claim fully without providing a detailed elaboration on the evidence or legal reasoning behind it. The judge simply stated that the determination of the *nafkah māḍiyah* amount was based on the principle of propriety.

**Table. 1 Decision *Nafkah Māḍiyah***

No	Case Number	<i>Nafkah Māḍiyah</i> Claimed	Amount Granted
1	287/Pdt.G/2024/MS.Bna	50.000.000	10.000.000
2	344/Pdt.G/2024/MS.Bna	12.000.000	2.000.000
3	144/Pdt.G/2024/MS.Bna	37.500.000	12.000.000
4	215/Pdt.5/2020/MS.Bna	10.000.000	0
5	30/Pdt.G/2023/MS.Bna	96.000.000	0
6	142/Pdt.G/2025/MS.Bna	78.000.000	0
7	360/Pdt.G/2024/MS.Bna	10.000.000	10.000.000
8	159/Pdt.G/2025/MS.Bna	2.000.000	2.000.000
9	141/Pdt.G/2023/MS.Bna	13.500.000	13.500.000

Moreover, the variability in the judicial determination of *nafkah māḍiyah* indicates the absence of a standardized regulatory benchmark; instead, decisions rely on contextual considerations, such as the husband's economic condition and evidence presented in court. These factors contribute to a diverse range of outcomes in similar

cases, underscoring the need for clearer guidelines to ensure equitable treatment. As a result, parties involved often seek legal counsel to navigate this complex landscape effectively.

In interviews with three judges and a clerk of the Banda Aceh Syar'iyah Court, it was emphasized that the primary factor considered in determining the amount of *nafkah māḍiyah* is the husband's capacity. One judge stated: *"The factor entirely depends on the husband's capacity regarding that maintenance. Perhaps in his position, the husband is no longer working, which is why he seeks to reduce the nafkah māḍiyah."*<sup>10</sup>

Another judge emphasized that *nafkah māḍiyah* cannot be diverted to the child, as the child has separate maintenance rights: *"Regarding nafkah māḍiyah, it cannot be included in the realm of the child because nafkah māḍiyah is specifically for the wife, not for the wife and child, as the child has other maintenance such as child support."*<sup>11</sup>

The clerk added that there is no fixed regulatory stipulation regarding the nominal amount of *nafkah māḍiyah* in the Banda Aceh region, unlike in other regions such as Jakarta: *"Regarding maintenance, there is no regulatory stipulation, because everything is in accordance with the husband's capacity. This differs from other regions, for example, Jakarta, where they have stipulations through custom, culture, and sociological aspects."*<sup>12</sup>

The third judge asserted that if the wife is proven *nusyuz*, the entire lawsuit, including *nafkah māḍiyah* and child rights, is voided: *"If the wife is nusyuz, the entire lawsuit, including nafkah māḍiyah or child rights even though regulations state children under 12 are the mother's right is voided and cannot be considered in court."*<sup>13</sup>

## **B. Islamic Law Review of Nafkah Māḍiyah Determination**

In Islamic law, the provision of maintenance is an absolute obligation of the husband toward his wife as long as the marriage bond persists. This obligation does not lapse unless the wife is proven *nusyūz* (disobedient without valid Sharia grounds). The maintenance provided covers physical needs, such as food, clothing, shelter, and other basic necessities.<sup>14</sup> The scriptural evidence asserting this obligation includes: Q.S. Al-Baqarah: 233

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

<sup>10</sup> M.A. Cut Rahmi, S.H.I., "Hakim Mahkamah Syar'iyah Banda Aceh" (n.d.).

<sup>11</sup> M.H. Dr. H. Abdullah, S.H., "Hakim Mahkamah Syar'iyah Banda Aceh" (n.d.).

<sup>12</sup> Muhammad Fadhil, S.H., M.H., "Panitera Mahkamah Syar'iyah Banda Aceh" (n.d.).

<sup>13</sup> M.H Hj. Nur Aisyah, S.Ag., "HAKIM Mahkamah Syar'iyah Banda Aceh" (n.d.).

<sup>14</sup> Hasanah Hajar, "Nafkah Madhiyah Perspektif Imam Empat Mazhab," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 5 (2023): 3779, <https://doi.org/10.35931/aq.v17i5.2695>.

Meaning: "Upon the father is the mothers' provision and their clothing according to what is acceptable."

Q.S. At-Thalaq: 7

لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

Meaning: "Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease".<sup>15</sup>

These verses assert that maintenance must be given in a *ma'rūf* (proper and capable) manner. This provision is measured not only by the husband's capacity but also by the needs of the wife and children according to local custom. However, Imam al-Shafi'i stated that the quantum or measure of maintenance is gauged solely by the husband's financial constraint or abundance, and the judge is not authorized to set its measure based on the quality of the wife's needs, based on the phrasing لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ Al-Shafi'i's view is countered by other scholars who argue that this verse does not determine the difference in quantity and quality of maintenance between the rich and poor but explains the state of the husband's wealth or poverty, not the quality of the wife's needs. The verse connects the husband's obligation to the term بِالْمَعْرُوفِ. Commentaries consistently explain that this verse elucidates the husband's obligation to provide food and clothing properly (*ma'ruf*), meaning effectively and decently. "Decent" here implies accordance with Allah's command, as Allah knows the state of each person, whether rich or poor. In practice, *ma'rūf* is interpreted as maintenance that meets the standard of living adequacy based on social, economic conditions, and local customs. If the husband is less capable, he may provide maintenance as he is able.<sup>16</sup>

Furthermore, Islamic law emphasizes the principle of *mashlahah* (public benefit) and the maxim *al-darar yuzāl* (harm must be eliminated). The Hadith of Prophet Muhammad SAW states:

لَا ضَرَرَ وَلَا ضِرَارَ

Meaning: "There should be neither harming nor reciprocating harm."<sup>17</sup>

In the context of *nafkah māḍiyah*, this principle provides an analytical framework regarding the wife's rights (maintenance prevents economic or social loss due to neglect),

<sup>16</sup> Salma A, Elfia A, and Afifah Djalal, "PERLINDUNGAN HUKUM BAGI PEREMPUAN DAN ANAK (Analisis Putusan Hakim Tentang Nafkah Madhiyah Pada Pengadilan Agama Di Sumatera Barat )," *Istinbath* 16, no. 1 (2017): 106–208, <https://doi.org/10.20414/ijhi.v16i1.77>.

<sup>17</sup> Wildan Jauhari, "Kaidah Fikih Dharar Itu Dihilangkan," *Rumah Fiqih Publishing*, 2018, 6.

the balance of the husband's obligations (he is not burdened beyond his financial capacity to avoid harm to himself), and family welfare/conflict prevention. By adjusting the maintenance amount to the husband's real condition and the wife's reasonable needs, court decisions prevent loss for both parties while upholding substantive justice.

This principle emphasizes that judicial discretion in determining *nafkah māḍiyah* must be grounded in *maslahah* (benefit/welfare), rather than relying solely on nominal figures or local tradition. An appropriate decision will mitigate the risk of loss for the wife while remaining fair to the husband, thus achieving the objective of Islamic law to protect the rights of all parties.

### 1. *Nafkah Māḍiyah* According to the *Mazhab Shafi'i*

In the Shafi'i school of thought, found in various *fiqh* books both primary texts like *al-Muhazzab* and those written by later generations opinions are frequently referenced by judges in Religious Courts to ground their legal assessments, including granting *nafkah māḍiyah* claims. In excerpts from *al-Muhazzab* cited by judges, it is found that if sexual intercourse has occurred perfectly (between husband and wife) obligating maintenance, and the husband does not pay it until the period passes, the maintenance becomes a debt upon the husband toward his wife. This debt does not lapse with the passage of time because it is property that must be paid as a substitute for the marriage contract. Therefore, the debt does not expire with time, similar to a sale price, wages, and dowry.

This Shafi'i opinion repeatedly asserts that maintenance is the husband's obligation, primarily after the consummation of the marriage. If not paid on time, it becomes a debt. It does not lapse because its position is a substitute for the contract and sexual relations having occurred. The maintenance becomes the wife's property. Maintenance as a debt is equivalent to the purchase price of an item not yet paid, wages not yet rendered, or dowry promised by the husband. This understanding emphasizes the legal and moral responsibilities that spouses hold towards each other within the framework of marriage. Consequently, the failure to fulfill these obligations can lead to significant financial and emotional repercussions for the parties involved.<sup>18</sup>

### 2. Principles of Determining Maintenance Quantum

According to Islamic jurisprudence, the amount of maintenance must not be determined arbitrarily but must consider two factors: (1) The wife's reasonable needs, according to the social and economic standards of her residence; and (2) The husband's financial capacity, including occupation, income, and physical condition. This aligns with

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<sup>18</sup> A, A, and Djalal, "PERLINDUNGAN HUKUM BAGI PEREMPUAN DAN ANAK (Analisis Putusan Hakim Tentang Nafkah Madhiyah Pada Pengadilan Agama Di Sumatera Barat )."

the principle of *ma 'rūf*: proper and proportional maintenance, not merely a nominal figure or irrelevant custom.

### 3. Relevance to Analyzed Decisions

Based on Shafi'i principles and *fiqh* maxims, the Banda Aceh Syar'iyah Court decisions demonstrate varied applications of Islamic law, yet remain attentive to *mashlahah* and the principle *al-ḍarar yuzāl*:

- a. In the three decisions granting partial claims for *nafkah māḍiyah* namely Decision Numbers 287/Pdt.G/2024/MS.Bna, 344/Pdt.G/2024/MS.Bna, and 144/Pdt.G/2024/MS.Bna the panel of judges established a maintenance quantum lower than that requested by the Plaintiff. This adjustment was made in consideration of the defendant's economic capacity and evidence indicating that neglect was proven only for partial periods. In the view of the Shafi'i school of thought, maintenance is a husband's obligation toward his wife as long as the marriage subsists, provided the wife is not *nusyuz* (disobedient without a valid *shar'i* reason). This obligation encompasses food, clothing, and decent shelter. If the husband is negligent in fulfilling this obligation while the wife remains under his responsibility, she is entitled to claim the arrears (*nafkah māḍiyah*). In these cases, the judges granted partial claims because it was proven that the husband failed to provide maintenance during specific periods (such as five months in Decision No. 287). While there were admissions or witness testimonies confirming the defendant neglected the wife, the maintenance quantum requested was deemed excessive or not commensurate with the evidence and the defendant's economic condition. This practice is in alignment with Shafi'i *fiqh*, which emphasizes the significance of *'urf* (prevailing custom) and the husband's financial capacity in the determination of maintenance quantum. In other words, the adjustment of the amount by the judge reflects the principle "*al-nafaqah bi qadr al-yasār wa al-'usr*" (maintenance is adjusted according to the husband's ease or difficulty). The relevance of *maslahah* is evident as this decision protects the wife's rights without inflicting excessive detriment upon the husband. The principle of *al-ḍarar yuzāl* is also applied: the judge avoids harm to the husband resulting from unrealistic impositions, while simultaneously upholding the obligation of spousal maintenance. Consequently, this decision does not merely mechanically apply the law, but integrates considerations of substantive justice.
- b. In the three decisions rejecting the *nafkah māḍiyah* claim namely Decision Numbers 215/Pdt.G/2020/MS.Bna, 30/Pdt.G/2024/MS.Bna, and 142/Pdt.G/2023/MS.Bna the panel of judges fundamentally assessed that the

conditions for granting past maintenance were not met, citing reasons such as unproven neglect, allegations of the wife being *nusyuz*, or insufficient evidence. This consideration can be understood within the perspective of Islamic law, particularly the Shafi'i school of thought, which establishes specific conditions for *nafkah māḍiyah* to be obligatory. According to Shafi'i scholars, maintenance is a husband's obligation as long as the wife is not *nusyuz* and remains under his responsibility. If the wife leaves the home without the husband's permission or refuses her wifely duties without a valid justification, the husband is not obliged to provide maintenance during that period. In *al-Majmū'*, Imam an-Nawawi explains: "Maintenance is not obligatory upon a husband for a wife who is *nusyuz*, that is, refusing to cohabit or being disobedient without a *shar'i* reason." Therefore, in the rejected cases, if the judge assesses that the wife cannot prove neglect or there are indications of *nusyuz*, the rejection of the *nafkah māḍiyah* claim is justifiable according to *fiqh*. Furthermore, in other cases where *nusyuz* is not proven but evidence such as witnesses and the defendant's admission is not sufficiently strong, the judge cannot immediately grant the claim. This aligns with the maxim that the obligation to pay past maintenance must be proven clearly, not merely based on unilateral claims. Thus, the decision to reject the maintenance claims in these three decisions remains in harmony with Islamic law, as the determination of liability for past maintenance must indeed be accompanied by adequate conditions and evidence, as taught in the *fiqh* of the *mazhab* Shafi'i.

- c. In the three decisions where the *nafkah māḍiyah* claim was granted entirely by the panel of judges in accordance with the amount requested by the wife namely
 

Decision	Numbers	360/Pdt.G/2024/MS.Bna,
		159/Pdt.G/2025/MS.Bna, and
		141/Pdt.G/2023/MS.Bna

 it indicates that the panel assessed that all evidentiary elements had been fulfilled, regarding both the duration of neglect and the quantum demanded. In the Shafi'i school of thought, as asserted in *al-Muhadhdhab* and its commentaries (*syarah*), if a husband does not provide maintenance to the wife while the marriage is still subsisting and the wife is not in a state of *nusyuz*, then said maintenance becomes a debt that remains obligatory to pay, even if the period has passed. These decisions align with that rule. These three decisions reinforce the principle of paying maintenance debt as a consequence of the marriage contract (*akad nikah*) and cohabitation. This also illustrates the application of the opinion of Shafi'i scholars asserting that a wife's maintenance cannot be annulled by reason of the passage of time, provided the wife has not lost her

right due to *nusyuz* or a divorce that severs the period of obligation. Thus, the determination of full *nafkah māḍiyah* by judges in these three cases can be understood as the holistic application of Shafi'i *fiqh* norms: when all elements are fulfilled, the claimed maintenance becomes a *shar'i* debt that must be fully discharged by the husband.

### C. Substantive Justice Analysis of *Nafkah Māḍiyah* Determination

Justice is the primary objective sought in the process of law enforcement. However, many judges still predominantly utilize formal legal provisions in enforcing the law. This impacts legal decisions, creating limitations because judges rely solely on statutes to resolve cases.<sup>19</sup> In enforcing the law through their deliberations, judges may also utilize non-legal or extra-legal aspects such as customs, agreements, traditions, or conventions which, although not recognized by the court as formal law, provide a greater sense of justice by looking beyond the articles of legislation.<sup>20</sup> This aligns with provisions issued by the Supreme Court of the Republic of Indonesia (Mahkamah Agung RI), stating that a judge's decision must consider all juridical, philosophical, and sociological aspects. Thus, the justice achieved, realized, and accounted for in a judge's decision is justice oriented toward legal justice, moral justice, and social justice. Moral justice and social justice are implicit in Article 5 Paragraph (1) of Law No. 48 of 2009 concerning the Amendment to the Law on Judicial Power, which states: "*Judges must explore the legal values that live within society.*"

A judge's decision contains elements of both procedural justice and substantive justice. Procedural justice is derived solely from statutory regulations, whereas substantive justice is based on values originating from sources of law living within society.<sup>21</sup> These two forms of justice often intersect, as a fair legal process can enhance the legitimacy of the outcomes reached. Ultimately, the balance between them is crucial for maintaining public trust in the judicial system.

Judges, in their legal considerations, often side only with procedural justice while ignoring substantive justice, thereby producing formal justice limited to statutes. This is because Indonesia's positive law is still dominated by a colonial legal legacy operating

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<sup>19</sup> Haryono, "PENEGAKAN HUKUM BERBASIS NILAI KEADILAN SUBSTANTIF (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012)," *Jurnal Hukum Progresif* 7, no. 1 (2019): 22.

<sup>20</sup> Agus Riewanto et al., *Hukum Tata Negara* (Depok: PT RAJAGRAFINDO PERSADA, 2023), 45.

<sup>21</sup> Yunanto, "Menerjemahkan Keadilan Dalam Putusan Hakim," *Jurnal Hukum Progresif* 7, no. 2 (2019): 202.

under a conventional (formalistic) school of thought.<sup>22</sup> Consequently, if a person fulfills the provisions of statutory articles, they are deemed guilty and liable for sanctions. Such a law enforcement paradigm is the paradigm of positivism.

The Positivist Paradigm demands that every methodology used to find truth must treat reality as something that exists as an object, detached from any subjective metaphysical preconceptions. This is applied to legal thought, demanding that law be viewed as an objective, existing object, separated from moral or social considerations. Legal norms are positioned as *ius* which has been positivized into *lege* or *lex* (statutes), resulting in decisions that are formally valid but not necessarily substantively justice.<sup>23</sup> Conversely, substantive justice requires judges to balance formal law with moral values, social values, and public interest (*'urf/maṣlahah*), in harmony with the *fiqh* maxim *al-ḍarar yuzāl* (harm must be eliminated) and the principle of *nafkah bil-ma'rūf* (maintenance given properly/reasonably according to ability).

Therefore, in carrying out their duties, law enforcers should courageously apply law enforcement based on the Progressive School of Law. Progressive Law, conceptualized by Prof. Satjipto Rahardjo, holds the grand concept that law enforcement is not merely about the black-and-white words of regulations (*according to the letter*), but must be based on the deeper spirit and meaning (*to the very meaning*) of the textual statute. Law enforcement must not only stem from intellectual intelligence but also spiritual intelligence.<sup>24</sup>

In the context of *nafkah māḍiyah* (past maintenance) cases, substantive justice requires that court decisions:

1. Protect the economic rights of the abandoned party.
2. Consider the information asymmetry between husband and wife.
3. Assess the appropriateness of the nominal amount based on real living needs and the husband's ability.

This approach aligns with Ronald Dworkin's theory, which emphasizes that decisions must be morally and socially just, even if the procedure is formally valid.<sup>25</sup> Therefore, the analyzed decisions are categorized based on substantive justice principles as follows:

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<sup>22</sup> Noor Rahmad and Wildan Hafis, "Hukum Progresif Dan Relevansinya Pada Penalaran Hukum Di Indonesia," *El-Ahli : Jurnal Hukum Keluarga Islam* 1, no. 2 (2021): 1.

<sup>23</sup> Haryono, "PENEGAKAN HUKUM BERBASIS NILAI KEADILAN SUBSTANTIF (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012)."

<sup>24</sup> Agus Riyanto, "Pengaruh Positivisme Terhadap Penegakan Hukum," *BUSINESS LAW*, 2018.

<sup>25</sup> SHIDARTA, "RONALD DWORKIN DAN PEMIKIRAN HUKUMNYA," Februari 2024, <https://business-law.binus.ac.id/2025/02/21/ronald-dworkin-dan-pemikiran-hukumnya/>.



### 1. Partially Granted Decisions (Cases 287, 344, 144)

These three decisions show that the judges attempted to find a point of substantive justice by noting the factual conditions of the parties. Although the maintenance demands were not fully granted, the judges established a specific amount based on the fact of neglect and the Defendant's admission. This reflects a fair approach, even if the nominal value is lower than the claim. The judges were not fixated on formal procedures or the exact nominal demand but strove to realize appropriate justice for the wife as the aggrieved party. This demonstrates an integration of:

- a. Legal Justice: Formal procedures and evidence were met.
- b. Moral/Social Justice: Consideration of the socio-economic impact on the wife and the husband's ability.
- c. Fiqh Maxims: Principles of *nafkah bil-ma'rūf* and *al-ḍarar yuzāl*.
- d. Dworkin's Principle: Justice that is moral and social despite not meeting the full claim.

### 2. Fully Rejected Decisions (Cases 215, 30, 142)

In these three cases, the panel of judges rejected the claim for *nafkah māḍiyah* because it was not convincingly proven, either because the wife was deemed *nusyuz* (disobedient) or there was insufficient evidence of the husband's negligence. However, strictly applying substantive justice invites criticism; for instance, in Decision Number. 30/Pdt.G/2023/MS.Bna, the judge rejected the entire maintenance claim due to *nusyuz*. Procedurally, this decision is valid, but from Dworkin's substantive justice perspective, it tends to be formalistic as it ignores the fact that the wife had been neglected for a long time. In other words, while procedures were fulfilled, the socio-economic suffering of the woman was not accounted for.

### 3. Fully Granted Decisions (Cases 360, 159, 141)

These three decisions are closest to the principles of substantive justice. In case No. 360, the judge considered strong evidence that the husband neglected the wife and remarried without providing maintenance, with no element of *nusyuz* from the wife. In No. 159, the decision resulted from an agreement facilitated by the judge, reflecting restorative justice. Meanwhile, No. 141 showed simplicity in proof, where the judge granted the claim without complicating procedures, reflecting an effort to fully grant the wife's rights even if the reasoning was not extensively detailed.

Most judges attempted to integrate substantive justice in their decisions, particularly by not being solely fixated on formal perfection in the *petitum* or mathematical proof. However, there are still decisions that tend to be formalistic and lack consideration for the social and economic suffering of women. It can be concluded that judicial discretion in determining the amount of *nafkah māḍiyah* needs to be

complemented by a more measurable normative framework so that every decision is not only valid but also practically just.

## Conclusion

The results of the research on nine decisions by the Mahkamah Syar'iyah Banda Aceh regarding *nafkah māḍiyah* indicate that there is no standard benchmark for determining the amount of maintenance. Judges still utilize their respective discretion based on trial facts, resulting in variations where claims are fully granted, partially granted, or rejected. In many cases, the basis for calculation and legal argumentation is not detailed, meaning substantive justice is not always reflected.

From the perspective of Islamic Law, specifically the Shafi'i school of thought (*Madzhab Syafi'i*), *nafkah māḍiyah* is the husband's obligation as long as the wife is not *nusyūz*. Judges should determine maintenance based on the wife's decent needs and the husband's ability, yet the practice remains inconsistent. The determination of the maintenance amount still depends on the duration of neglect, the husband's ability, and the wife's reasonable needs, within the frame of the *ma'ruf* principle as recommended in Shafi'i jurisprudence.

This research provides theoretical implications, namely strengthening the application of substantive justice theory within the context of religious courts in Indonesia, demonstrating that judicial discretion can be an instrument of justice as long as it balances formal legal, moral, and social aspects. Additionally, it offers practical and policy implications for the Mahkamah Syar'iyah, suggesting the formulation of technical guidelines for determining *nafkah māḍiyah* based on Shafi'i jurisprudence and substantive justice principles. These guidelines would assist judges in establishing maintenance amounts that are legally and socially just, as well as including rational considerations in their decisions. Thus, decisions will be not only legally valid but also fair for women post-divorce.

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