

REVIEW OF *MAQASID AL-SYARI'AH* CONCERNING THE FULFILLMENT OF CHILD RIGHTS POST-DIVORCE IN BUDI AJI VILLAGE, SIMPANG PEMATANG DISTRICT, MESUJI REGENCY

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Abstract: Divorces is often lead to multiple violations of children's rights due to parental conflicts. Therefore, this research reviewed *maqāsid al-syarī'ah* on the fulfillment of children's rights after divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency. It was field research and employed a descriptive qualitative method. Data were gathered by observation, in-depth interviews, and documentation, and accompanied by inductive analysis. Subsequently, this research found that the fulfillment of children's rights following parental divorce in the village has been sub-optimal. The majority of fathers are unemployed and unable to fulfill their obligations of providing a living, attention, and affection for children. The contributing factor is the fathers' irresponsibility, which impedes the achievement of maintenance benefits to the children's life (*hifz an-nafs*). These findings may have implications for the need to increase the understanding of divorced parents regarding the fulfillment of children's rights and the importance of the role of the extended family in ensuring offspring are not neglected.

Keywords: Children's Rights, Post-Divorce, *Maqāsid al-Syarī'ah*, Maintenance

Abstrak: Perceraian seringkali berujung pada pelanggaran hak anak yang berlipat ganda akibat konflik orang tua. Oleh karena itu, penelitian ini mengkaji *maqāsid al-syarī'ah* tentang pemenuhan hak anak pasca perceraian di Desa Budi Aji Kecamatan Simpang Pematang Kabupaten Mesuji. Itu adalah penelitian lapangan dan menggunakan metode kualitatif deskriptif. Pengumpulan data dilakukan dengan observasi, wawancara mendalam, dan dokumentasi, serta disertai dengan analisis induktif. Selanjutnya, penelitian ini menemukan bahwa pemenuhan hak anak pasca perceraian orang tua di desa belum optimal. Mayoritas ayah menganggur dan tidak dapat memenuhi kewajibannya untuk mencari nafkah, perhatian, dan kasih sayang kepada anak-anak. Faktor penyebabnya adalah sikap ayah yang tidak bertanggung jawab sehingga menghambat tercapainya manfaat nafkah bagi kehidupan anak (*hifz al-nafs*). Temuan ini dapat berimplikasi pada

perlunya peningkatan pemahaman orang tua yang bercerai mengenai pemenuhan hak anak dan pentingnya peran keluarga besar dalam memastikan keturunan tidak terlantar.

Kata Kunci: Hak Anak, Pasca Perceraian, *Maqāsid al-Syari'ah*, Nafkah

Introduction

Marriage creates rights and obligations concerning the husband and wife, joint property, children's position, and parents. It also involves relations, inheritance customs, kinship, and neighbors, as well as the obligation to obey religious orders and prohibitions in human relationships with God (worship) and fellow humans (*mu'amalah*) to ensure safety in this world and the hereafter.¹ Meanwhile, divorce has legal consequences for the parties involved and the children born during the relationship. The right and obligation to support children and provide attention and affection must not be broken, as its applicability is not limited to the duration of marriage but extends even after divorce.²

In Budi Aji Village, Simpang Pematang District, Mesuji Regency, the fulfillment of the needs and education of most children whose parents are divorced and experiencing economic difficulties is hindered. In other words, most divorced parents do not provide adequate "nurturing." Therefore, the majority of the children in this village are neglected, as their fathers have failed to fulfill the obligation to provide. Generally, the women or wives most often apply or register for divorce. This leads to huge impacts, particularly on the children, with symptoms of bad behavior, due to a reduction in the parents' love for one another. In Budi Aji Village, the responsibility of childcare for separated parents falls on the mothers, as the fathers usually default on the obligation to provide for the offspring.

One of the references explored in this research was "A Review of Islamic Law about Divorce outside the Court and its Implications for Children's Rights (Study in Pekon Ulok Mukti, Ngambur District, Pesisir Barat Regency)" by Maria Ulfa. This research concluded that out-of-court divorce is illegal in Pekon Ulok Mukti, Ngambur District, Pesisir Barat Regency because it causes more harm than benefit. The reason is that out-of-court divorce violates the rights of the affected children. The children are victimized by the non-fulfillment of the right to a living, education, health, inheritance rights, and the neglect of the other obligations of parents as mentors.³ Redho Suhendrick's research enti-

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- ¹ Jarar Ali, "Impact of Divorce on Children," *Child Welfare*, vol. 39, 2021, <https://doi.org/10.13140/RG.2.2.34276.50568>; Agus Hermanto A. Kumedi Ja'far, "Reinterpretation Of The Rights And Duties Of Contemporary Husbands And Wives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 648-67, <https://doi.org/10.22373/sjhc.v5i2.9124>.
- ² Nang Naemah Nik Dahalan Izzah Nur Aida Zur Raffar, Salasiah Hanin Hamjah, Ahmad Dzaky Hasan, "Parenting Skills According to The Islamic Perspective Towards Family Well-Being," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 552-78, <https://doi.org/10.22373/sjhc.v5i2.9576>; Fauzul Hanif Noor Athief and Resti Hedi Juwanti, "Court Decisions on Post-Divorce Children's Livelihood: Islamic Law Analysis on Their Practices in Indonesia and Malaysia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 2 (2020): 151-73, <https://doi.org/10.18326/ijtihad.v20i2.151-173>.

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- ³ Maria Ulfa, "Tinjauan Hukum Islam Tentang Perceraian Di Luar Pengadilan Dan Implikasinya Terhadap Hak-Hak Anak (Studi Di Pekon Ulok Mukti, Kecamatan Ngambur, Kabupaten Pesisir Barat)" (2020).

tled "Legal Protection of Children as a result of the Divorce of Their Parents in Bengkulu City" concluded that parents' protection through the provision of children support after a divorce is damaged when the parties responsible are inactive in implementing the decisions of the Religious Court (PA). Therefore, PA must be proactive in overseeing the execution of decisions.⁴ Ulfie Ahdie's research entitled "Legal Protection for Children After Divorce in PA in 2011" also concluded that legal protection regulation material for children under the jurisdiction of PA must have more executive and binding power, alongside criminal sanctions for violators.⁵ Rahmadi Indra Tektona's research titled "Legal Certainty against the Protection of the Rights of Children Victims of Divorce" recognized that the fulfillment of post-divorce children's rights has a permanent legal force because the children need a home, care, love, and protection. This means a guardianship decision must be requested in court by the appointed party. In addition, Sri Wahyuni focused on the custody of under-age children and dissented from previous research by examining the effect of divorce on children's rights.⁶ Firli Rasharendi's research entitled "A Juridical Review of a Father's Legal Responsibilities to a Child after

Divorce according to the Compilation of Islamic Law" established that fathers' legal responsibility towards children after a divorce involves bearing the costs of maintenance and education until adulthood based on Article 156 letter d of the KHI. The nominal amount is determined by the judge after a marriage is dissolved in court and adjusted to the father's financial ability. The court may require the mother to share the costs, supposing the fathers are deemed unable, or appoint a guardian to cater for the children until the age of 21 years in cases where both parents are considered equally incompetent based on article 107 KHI.⁷ Therefore, the focus of this research was to review the *maqāsid al-syarī'ah* towards the fulfillment of children's rights after parental divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency.

Method

This was field research,⁸ which used the descriptive qualitative method. The informants comprised 18 (eighteen) residents of Budi Aji Village, Simpang Pematang District, Mesuji Regency, separated into 9 divorcees and neglected children whose rights were not fulfilled. The data collection methods used were observations⁹, interviews¹⁰, and docu-

⁴ Redho Suhendrick Joko Susetyanto, dan Hamdani Maakir, "Perlindungan Hukum Terhadap Anak Sebagai Akibat Perceraian Kedua Orang Tuanya Di Kota Bengkulu, *Thesis*, (Bengkulu: Program Pasca Sarjana Strata Dua Universitas Bengkulu Tahun 2013), <http://repository.unib.ac.id/1241/>, Accessed November 15, 2021

⁵ Ulfie Ahdie, "Perlindungan Hukum Untuk Anak Pasca Perceraian di Pengadilan Agama," *Dissertation*, (Malang: Fakultas Hukum Universitas Brawijaya, 2011), <https://prasetya.ub.ac.id/disertasi-ulfie-ahdie-perlindungan-hukum-untuk-anak-pascaperceraian/>, Accessed July 14, 2021

⁶ Rahmadi Indra, "Kepastian Hukum Hukum Terhadap Perlindungan Hak Anak Korban Perceraian," *Jurnal Muwazah* Vol. 4, No. 1, tahun 2012, <http://e-journal.iainpekalongan.ac.id/index.php/Muwazah/article/view/148>, Accessed March 05, 2021

⁷ Firli Rasharendi, Sugijono, Ikarini Dani Widiyanti, "Tinjauan Yuridis tentang Tanggung Jawab Hukum Seorang Ayah Terhadap Anak Setelah Perceraian Menurut Kompilasi Hukum Islam," *Skripsi* (Jember: Universitas Jember 2013), <https://repository.unej.ac.id/handle/123456789/59229>, Accessed November 15, 2021

⁸ Mardalis, *Metode Penelitian Suatu Pendekatan Proposal*, Cetakan ke-10, Edisi 1 (Jakarta: PT Bumi Aksara, 2008), p. 28.

⁹ Husaini Usman, *Metode Penelitian Sosial* (Jakarta: PT. Bumi Aksara, 2008), p. 52

¹⁰ Abdul Qadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: PT Citra Aditya Bakti, 2004), p. 86.

mentation.¹¹ Finally, the collected data were processed, analyzed inductively, and concluded.

Result and Discussions

Theory of *Maqāsid al-Syari'ah*

Syari'ah linguistically consists of two words, namely *maqāsid* and *syari'ah*. *Maqāsid* is the plural form of *maqṣad*, which originated from the word *qasḍ*, and has several meanings, such as towards a direction or goal, middle, balanced, fair, not transgressing, straight path, or in the middle between exaggeration and lack.¹² Explanations of the word "*qasada*" were also provided in Qur'an Surah Luqmān/31 verse 19, as follows:

واقصد في مشيك

"And make it simple in walking."

The sentence "*waqṣid fī masyika*" above simply connotes walking in the middle, not too fast or slow.¹³

Meanwhile, *syari'ah* etymologically has many meanings, such as the way to a spring, a place visited by humans and animals to obtain water, *al-atabah* (doorways and stairs), or *al-tariqah al-mustaqīmah* (straight path, *haq*, and right).¹⁴ The term can be described as a road to a spring or a place where river water passes. Its use in the Qur'an is interpreted as a clear path to victory.¹⁵ Therefore, the con-

cept of *maqāsid al-syari'ah* as *al-syari'ah* is based on its recognition as a straight, unbent law that contains wisdom and purpose.¹⁶

The terminology of *maqāsid al-syari'ah* was interpreted by Izzuddin bin Abd al-Salam as the meaning and wisdom of *syari'ah* in all legal stipulations, though most of it is not devoted to maintaining every type of *shari'ah* law.¹⁷ According to ash-Syatibi, *maqāsid al-syari'ah* is aimed at realizing the benefit of human life in the world and the hereafter based on clear arguments¹⁸. The definitions above show that the essence of *maqāsid al-syari'ah* is the formulation of Islamic law according to the purpose of Allah SWT and His Messenger.

Syari'ah was established to eliminate human difficulties, reject harmful elements, create benefits, allow good things, and forbid evil in order for humans to benefit in this world and the hereafter.¹⁹ Syatibi also explained that the ultimate goal of the law is one, namely *mashlahah*, or the goodness and welfare of mankind.²⁰

In addition, Usul Fiqh experts stated that all the commands and prohibitions of Allah and His Messenger contained in the Qur'an and Sunnah have a specific purpose, and none is in vain. They all have wisdom and benefit for people, which has two forms, namely realizing benefits (*jalb al-manāfi'*) and

¹¹ Suharsimi Arikunto, *Prosedur Penelitian suatu Pendekatan Praktik*, (Jakarta: Rineka Cipta, 1991), p. 75

¹² Fayruz Abadi, *Al-Qamus al-Muhit*, Beirut: Muassasah al-Risalah, 1987, p. 396; Abu al-Fadl Muhammad bin Mukrim bin Mandzur, *Lisan al-Arab*, vol.3, Dār Shādir, 1300 H, p. 355

¹³ Muchlis Bahar, "Perkembangan Teori Maqasid Syari'ah dan Perubahan Sosial," *Paper*, International Seminar Faculty of Sharia UIN IB Padang, November 20, 2021.

¹⁴ Mahmud Syaltut, *Al-Islam Aqidah wa Shari'ah* (Kairo: Dar al-Qalam, 1966), p. 12

¹⁵ Abdurrohman Kasdi, "Actualization of Maqasid Al-Shariah in Modern Life; Maqasid Al-Shariah Theory as A Method of The Development of

Islamic Laws and Shariah Economics," *Justicia Islamica Jurnal Kajian Hukum Dan Sosial* 16, no. 2 (2019): 247-68, <https://doi.org/10.21154/justicia.v16i2.1666>.

¹⁶ Muhammad Ali as-Sais, *Tarikh al-Fiqh al-Islamy* (Mesir: Maktabah Ali Shobih, tt.), p. 5

¹⁷ Izzuddin bin 'Abd al-Salam, *Al-Qawa'id al-Shugra* (Beirut: Dar al-Fikr al-Mu'ashirah, 1996), p. 11

¹⁸ Abu Ishaq al-Syatibi, *Al-Muwafaqat fi Ushul al-Syariah* (Dar al-Kutub al-Alamiyah, Beirut, t.th), Vol 2, p. 6

¹⁹ Abdurrahman Kasdi, "Actualization of Maqasid Al-Shariah..."

²⁰ Abu Ishaq al-Syatibi, *Al-Muwafaqat...*, p. 3

avoiding evil (*dar'u al-mafāsīd*).²¹ According to ash-Syatibi, the benefits of *maqāsīd al-syari'ah* can be viewed from two perspectives, namely *maqāsīd al-syari'* (the purpose of Allah as the maker of *syari'ah*) and *maqāsīd al-mukallaf* (human goals/*mukallaf*).

The benefits or goals of *syari'ah* can be summarized in five categories known as *al-maqāsīd al-khamsah*, namely:

1. *Hifz ad-dīn* (maintaining religion). Its benefit is to preserve religion, which is the main goal of Islamic law and a guide for human life. Izzuddin mentioned that the pillars of Islam are prescribed to maintain the first main element, *hifz ad-dīn*.²²
2. *Hifz an-nafs* (maintaining the soul). The laws relating to *diyat* and *qishash* are prescribed to maintain the soul.
3. *Hifz an-nasl* (maintaining offspring and honor). This refers to the rules regarding marriage, the prohibition of adultery, cohabitation, domestic violence, etc.
4. *Hifz al-māl* (maintaining property). This section concerns the obligation to seek lawful fortune, prohibition of stealing, and seizing the property of others.
5. *Hifz al-'aql* (maintaining reason). This refers to the prohibition of consuming liquor and drugs, such as crystal meth, and the obligation to study.²³

Obedience to the five safeguards above is called *maslahah*, while disobedience is described as *mafsadah*.²⁴ The benefits achieved

by maintaining these five pillars are categorized into three levels of human needs:²⁵

1. *Darūriyyah* needs are the elements required in human life. It refers to the enforcement of the benefit of religion and the world. The loss of *darūriyyah* implies that the benefit of the world and even the hereafter will also disappear, leading to the damage and destruction of life.²⁶ *Darūriyyah* is also a basic or primary need for humans, and its neglect will cause dangers and disasters. The needs in this category are *hifz ad-dīn*, *hifz an-nafs*, *hifz al-'aql*, *hifz an-nasl*, and *hifz al-māl*. The fulfillment of these five pillars will ensure prosperity in this world and the hereafter.
2. *Hajiyah* needs are indispensable for humans to eliminate difficulties and reject all threatening dangers. However, their absence will not threaten life but cause difficulties. The main principles in this aspect are to eliminate difficulties, lighten the *taklif* burden, and facilitate human affairs.²⁷ Several factors must be in place to fulfill the needs, such as the *syari'ah* rules for buying and selling, leasing, borrowing, marriage, and most of the *muamalat*, with the stipulation that *maslahat al-hajiya* follows *maslahah darūriyah*. The goal of the *hajiya* concept is to maintain the five pillars in order to satisfy human needs better.²⁸
3. *Tahsniyah* needs encompass all objects or actions that are principally related to noble character, as well as recommended

²¹ Jadzil Baihaqi Nor Hadi, "The Motive of CSR Practices in Indonesia:," *Qudus International Journal of Islamic Studies (QIJIS)* 8, no. 2 (2020): 327–52.

²² Izzuddin, *Al-Qawa'id*..., p. 11

²³ HA Djazuli, *Ilmu Fiqh; Penggalan, Perkembangan dan Penerapan Hukum Islam* (Jakarta: Prenada Media, 2015), p. 27.

²⁴ Efrinaldi, "Regional Regulations with a Sense of Sharia: Contextualization of Al-Mashlahah Theory in the Era of the Covid-19 Pandemic in West Sumatera, Indonesia," *Baltic Journal of Law & Politics* 15, no. 3 (2022): 353–71, <https://doi.org/10.2478/bjlp-2022-00209>.

²⁵ Izzuddin *Al-Qawa'id*, h. 11

²⁶ Al-Syathibi, *Al-Muwafaqat*, p. 324; Juhaya S. Praja, *Filsafat Hukum Islam*, (Bandung: LPPM Universitas Islam Bandung, 1995), pp. 101-105.

²⁷ TM. Hasbi Ash Shiddieqy, *Falsafah Hukum Islam*, (Jakarta: Bulan Bintang, 2015), h.174- 175.

²⁸ M. Miftakhuddin, Khofifah Trisnah Lestari, Aniroh Aniroh, Hendri Hermawan Adinugraha, "Pendayagunaan Wakaf di Tengah Pandemi Covid-19 dalam Perspektif Maqashid Syari'ah," *Jurnal Iqtishaduna: Jurnal Ilmiah Ekonomi*, Vol. 10, No.1 (2021): 76-90, <https://ejournal.stiesyariahbengkalis.ac.id/index.php/iqtishaduna/article/view/313>

and virtuous activities in the field of worship and *muamalah*. The failure to meet these needs will not result in the destruction of life as in *darūriyyah* or difficulties such as *hajiyyah*²⁹. Instead, the absence of this aspect will lead to disharmony in personal and social life.³⁰ *Tahsiniyyah* generally includes avoiding excessive, extravagant, or stingy lifestyles, setting *sekufu* in marriage, eating and drinking etiquettes, and other commendable morals.³¹ This shows that *tahsniyyah* needs are related to noble character and good customs. The concept aims at perfecting the five elements in the *maqāsid al-syārī'ah* theory.³² Therefore, its benefit is connected to *darūriyyah*, which is the origin or principal. Purification, covering *aurat*, and wearing jewelry is also based on the main benefit of *darūriyyah* and *hifz ad-din*. *Tahsniyyah* needs do not threaten the existence of any of the five main pillars or lead to difficulties when unfulfilled. As stated by ash-Syatibi, this level of need is complementary and encompasses actions that are appropriate according to customs. They include avoiding visibly unpleasant objects and decorating or beautifying based on the demands of norms and morals in various fields of life, such as *muamalah* worship and *uqūbah*. Allah SWT prescribed matters relating to *tahsniyyah* needs. Examples include suggestions for decorating when attending the mosque, recommendations for increasing sunnah worship, and prohibiting the torture of corpses in war.³³

Efforts to Fulfill Children's Post-Divorce Rights in Budi Aji Village

The following contains the summary of interviews conducted with the informants in this research, particularly caregivers:

1. Rajab and Marni

Rajab and Marni are a divorced couple whose marriage was blessed with a 7-year-old child named Ira. The child is being cared for by the aunt, Liswati, aged 37, who works as a housewife at Budi Aji Village RT/RW 001/002.³⁴ Marni filed for divorce from her husband at PA Mesuji due to frequent quarrels and disputes. In order to meet her personal needs and those of the child, the respondent became an Indonesian Migrant Worker (TKI) in Saudi Arabia.

According to Liswati, the father of the child has not provided financially, and the mother has been the major breadwinner to date. Following the divorce, the father sent only one or two months' income, after which there has been no other support. Rajab has also never visited his son since the separation even when the child fell ill.³⁵

Meanwhile, the father asserted that his irregular and seasonal job as a farm laborer left no spare time for visitation. This led to various shortcomings in caring for himself and his children. As a result, the rights of the concerned child are being fulfilled by the aunt as the caregiver.³⁶

2. Nuruddin and Ayuk

Nuruddin and Ayuk had a 3-year-old son at the time of their divorce. The mother traveled to Saudi Arabia to become a migrant worker. After the divorce, the child began living with his aunt, Iqroyah, who

²⁹ Efrinaldi, "Regional Regulations..."

³⁰ Abd al-Wahhâb Khallâf, *Ilm Usûl al-Fiqh*, p. 200.

³¹ Subagiyo, Rokhmat, *Ekonomi Mikro Islam* (Jakarta: Alim's Publishing, 2016)

³² Aprilianto, Ersya Dwi, and Tika Widiastuti, "Pemberdayaan Ekonomi Masyarakat Melalui Pendistribusian Zakat, Infaq Dan Sedekah Pada Masa Pandemi Covid-19 Studi Kasus: LAZISMU Surabaya," *Jurnal Ekonomi Syariah Teori Dan Terapan* 8 (2) 2021: 221-30, <https://ejournal.unair.ac.id/JESTT/article/view/24475>, diakses 06 November 2021

³³ Al-Syatibi, *Al-Muwafaqat...*, p. 3

³⁴ Interview with Liswati, April 3th, 2021, Budi Aji Village.

³⁵ Ibid.

³⁶ Interview with Rajab, April 3th, 2021, Desa Budi Aji Village.

is 25 years old, married, has a child aged 2 years, and resides at Budi Aji Village RT/RW 001/002.³⁷

Ayuk filed for a divorce to PA Mesuji against her husband due to incessant quarrels. Iqroyah explained that, after parting, Nuruddin came often and provided money to purchase the necessities for his son. However, the visits and pocket monies have diminished to once every two or three months. "I fully take care of the children's needs. I am grateful that the father still wants to visit and provide for his son."³⁸

Nuruddin stated that "initially, I gave pocket money monthly for my son's needs. Due to my unsteady income, I visit and give pocket money to my child when I am capable. Although the provision is not much, I can still meet my child."³⁹

3. Maesum and Masi'ah

Masi'ah filed for divorce from Maesum because of frequent disputes and failure to fulfill his obligations as the head of the family. They have a 6-year-old son, who is being raised by his grandmother named Jaelah. This is because his biological mother left abruptly, and her whereabouts are still unknown.⁴⁰

Jaelah stated that the father rarely visited his son after the divorce. "Since the separation, there have been only two visits and provision of pocket money. I also rarely communicate with my former daughter-in-law. I fulfill the needs of my grandson. Although my income as a farmer is meager, it covers his basic needs and food."⁴¹

The father Maesum explained that he did not fully support his son, considering Jaelah was able to fully provide for the child's needs. "Besides, my income as a driver is only sufficient for my personal needs."⁴²

4. Sabri and Nurus

The divorced couple, Sabri and Nurus, have 2 children aged 14 and 8 years. Nurus traveled abroad to seek a job and meet the needs of her family. Since the divorce, the children have lived with their aunt, Aini, who has 2 children.

Aini mentioned that Sabri had not been able to provide for himself and his children since the divorce. Instead, Aini's family supports the children.⁴³ The aunt uses her income as an entrepreneur and a housemaid, with occasional assistance from the grandmother.⁴⁴

5. Suparyadi and Senimah

Suparyadi and Senimah divorced at PA Mesuji due to infidelity issues. They are blessed with a 14-year-old child who lives with his grandmother named Alipah at Budi Aji Village RT/RW 003/002.

After the divorce, Senimah left her child and has failed to communicate to date. This transferred the burden of child-care to Alipah. Suparyadi was stated to have visited only twice since the divorce at the beginning of the separation. He offered pocket money to his son and has failed to visit after. The last news of Suparyadi was concerning his remarriage.⁴⁵ A similar explanation was given by the son regarding meeting his father twice during Eid since his parents' divorce. Af-

³⁷ Interview with Iqroyah, April 4th, 2021, Budi Aji Village.

³⁸ Ibid.

³⁹ Interview with Nuruddin, April 5th, 2021, Budi Aji Village.

⁴⁰ Interview with Jaelah, April 6th, 2021, Budi Aji Village.

⁴¹ Interview with Jaelah, April 6th, 2021, Budi Aji Village

⁴² Interview with Maesum, April 7th, 2021, Budi Aji Village

⁴³ Interview with Aini, April 8th, 2021, Budi Aji Village.

⁴⁴ Interview with Mutiah, April 8th, 2021, Budi Aji Village.

⁴⁵ Interview with Alipah, April 9th, 2021, Budi Aji Village.

ter these occurrences, Suparyadi has failed to visit or support his son.⁴⁶

6. Johar and Ilmiyah

The couple, Johar and Ilmiyah, divorced in PA Mesuji. Their two children were aged 5 and 7 at the time and were sent to live with their uncle. After the divorce, Ilmiyah worked abroad for 14 years and only returned to Indonesia 2 years ago. During her time abroad as a migrant worker, the two children were entrusted to Ilmiyah's brother Dedi.⁴⁷

Dedi and his wife Nana stated that the couple separated on the grounds of infidelity, and Johar was already remarried. The provision of income was fulfilled by the mother, while the father has not visited or provided for the children. The family was also unaware of Johar's whereabouts.⁴⁸

7. Epul and Holisoh

Divorced couple Epul and Holisoh have a 3-year-old child being raised by his aunt named Haulah, who works as a trader and resides at Budi Aji Village RT/RW 001/002.⁴⁹

Holisoh filed for divorce at PA Mesuji due to frequent quarrels and disputes. In order to meet personal and family needs, she became a migrant worker in Saudi Arabia.

According to Haulah, the father has not visited or provided for his son, even when the child was ill.⁵⁰ Meanwhile, Epul revealed economic struggle as the reason for his neglect. "I work odd jobs, and my income is uncertain. Although I want my child to live with me, I am worried about

being unable to meet his needs as my income is barely sufficient for me."⁵¹

8. Jaini and Yayuk

Divorced Jaini and Yayuk are blessed with a 6-year-old child. The child is cared for by Yayuk, his biological mother, and a grandmother named Fitri, who lives at Budi Aji Village RT/RW 002/003.⁵² Yayuk filed for divorce from Jaini at PA Mesuji due to incessant quarrels and her ex-husband's irresponsibility.

Child support has not been provided often by Jaini, except on a few occasions, such as Eid al-Fitr or Eid al-Adha, when assistance was required to purchase or provide new clothes. The daily needs of the child are fulfilled by the results of Yayuk's wages obtained from working in other people's fields or harvesting from coffee plantations. Her mother, Fitri, helps in caring for the children.⁵³

Furthermore, Jaini relayed that there has been no routine concerning child support since the divorce and after the child began living with his mother and grandmother. Instead, he provided money twice a year before Eid al-Fitr or Eid al-Adha. "Sometimes I buy new clothes for the holidays." Although Jaini wishes to support his child, like other fathers, his unstable work and unfixed income pose a hindrance.⁵⁴

9. Samsuddin and Susiana

Samsuddin and Susiana are a divorced couple blessed with a 6-year-old child who is catered for by his biological mother at Budi Aji Village RT/RW 003/002. Susiana filed for divorce from her hus-

⁴⁶ Interview with Mila, April 9th, 2021, Budi Aji Village.

⁴⁷ Interview with Ilmiyah, April 10th, 2021, Budi Aji Village

⁴⁸ Interview with Dedi dan Nana, April 10th, 2021, Budi Aji Village.

⁴⁹ Interview with Haulah, April 11th, 2021, Budi Aji Village.

⁵⁰ Ibid.

⁵¹ Interview with Epul, April 11th, 2021, Budi Aji Village

⁵² Interview with Yayuk, April 12th, 2021, Budi Aji Village

⁵³ Interview with Yayuk, April 12th, 2021, Budi Aji Village

⁵⁴ Interview with Jaini, April 12th, 2021, Budi Aji Village.

band at PA Mesuji due to frequent quarrels and disputes.⁵⁵

Susiana stated that the father supported his son after the divorce until he was 5 years old, after which no provision has been made. However, the need increases with time. According to Susiana, "I live with my parents and join in the jobs they engage in. My parents own rice fields and oil palm plantations."

Samsuddin corroborated these statements by affirming that his support ended after the child became 5 years old. "Since my son clocked 5 years old, I have not provided financially. I only call occasionally."⁵⁶

A Review of Maqāsid al-Syari'ah on the Fulfillment of Children's Rights Post-Divorce of Parents in Budi Aji Village

From the perspective of *maqāsid al-syarī'ah*, opportunities that may lead to arbitrary and tyrannical behavior must be prevented as early as possible for the benefit of human life can be achieved. Islamic law aims to attract benefits and avoid harm.⁵⁷ Survival after divorce can be achieved through the implementation of several fiqh rules, particularly regarding the fulfillment of the rights of children who are victims of their parent's divorce. Children should be prevented from becoming victims as a result of divorce by ensuring all matters relating to their rights are resolved properly.⁵⁸

Every divorce law must be profitable, reject evil, and close all loopholes that could destroy this common goal. The rules taken must be beneficial to the parties involved and devoid of any harmful aspects. One of the objectives of the *syari'ah* is to provide justice for anyone subject to the *khitāb*, such as ex-husbands or ex-wives.⁵⁹ Therefore, every divorce regulation must adhere to and result in the principle of justice, as well as avoid giving one-sided rules or harming the parties involved.

One of the obligations of a father to his son is provision. A father is obliged to guarantee maintenance for his child. Health, education, and other needs are the rights of children that must be provided by parents regardless of divorce. This means a divorce should not result in the loss of a father's obligation to provide for his children until adulthood or independence.⁶⁰

There is no gap, space, or excuse for parents to evade their obligations and responsibilities to their children. This is explained in at-Talāq/65 verse 7 of the Qur'an that despite the breakup of a marriage, a husband still must support or meet the needs of the children according to his ability:

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ۝

"Let people who can provide a living according to their abilities. And the person whose sustenance is limited should provide a living from the wealth that Allah

⁵⁵ Interview with Susiana, April 13th, 2021, Budi Aji Village.

⁵⁶ Interview with Samsuddin, April 13th, 2021, Budi Aji Village.

⁵⁷ Abdurrahman Kasdi, "Actualization of Maqasid Al-Shariah in Modern Life; Maqasid Al-Shariah Theory as A Method of The Development of Islamic Laws and Shariah Economics." Abdul Aziz bin Abdurrahman bin Ali bin Rabi'ah, *'Ilmu Maqāsid al-Sharī'ah* (Riyad: Maktabah al-'Abikan, 2010), 194

⁵⁸ Holilur Rohman, "Analisis Kritis Terhadap Fikih Perceraian Responsif Gender: Studi Penerapan Kaidah Maqasid Al-Syari'ah," *AL-HUKAMA The Indonesian Journal of Islamic Family Law* 10, no. 1 (2020).

⁵⁹ Muhammad Tahir Bin 'Ashur, *Maqāsid al-Sharī'ah al-Islāmiyah*, (Yordania: Dār al- Nafāis, 2001), h. 317

⁶⁰ Aah Tsamrotul Fuadah Aziz Sholeh, Dian Rachmat Gumelar, "Pendampingan Hak-Hak Perempuan Dan Anak Pasca Perceraian," *JurnalCIC Lembaga Riset dan Konsultan Sosial*, no. 1 (2019). Achmad Asfi Burhanudin, "Kewajiban Orang Tua Atas Hak-Hak Anak Pasca Perceraian," *E Journal Kopertais IV*, 2015, <https://d1wqtxts1xzle7.cloudfront.net/44620332/648-1899-1-PB-with-cover-page-v2.pdf>

has given him. Allah does not carry a burden on a person but only what Allah has given him. Allah will provide space after the hardships."

The verse above clearly states that a person must provide a living for those under his responsibility according to his ability. This explanation applies to persons with little ability or limited sustenance, who remain obliged to provide a living, according to their limitations. In this verse, Allah shows unconditional love and hope for believers.

Many disadvantages are experienced after divorce, related to mental and economic aspects. In this research on *maqāsid*, the terms *hifz al-aql* and *hifz al-māl* were described.⁶¹ *Hifz al-aql* concerns cases of divorce for reasons that are unfavorable to the wife. The economic disadvantages of divorce may be suffered by a wife who is unemployed or lacks work experience. This may lead to financial difficulty and the inability to support her children. In this research on the divorced population of Budi Aji Village, 78% of mothers without a higher education diploma or specific skills became migrant workers abroad or worked odd jobs to meet personal and family needs.

Islam established the rights of the child in the Hadith narrated Abu Hurairah, where the Messenger of Allah said:

حَدَّثَنَا آدَمُ حَدَّثَنَا ابْنُ أَبِي ذَعْبٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ
بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ قَالَ النَّبِيُّ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُلُّ مَوْلُودٍ يُوَلَّدُ عَلَى الْفِطْرَةِ فَأَبَوَاهُ
يُهَوِّدَانِهِ أَوْ يُنَصِّرَانِهِ أَوْ يُمَجِّسَانِهِ. (البخاري مسلم)

"It has been narrated to Adam that he told us Ibn Abu Dza'bin from Az-zuhriyyi from Abu Salamah bin Abdur Rahman from Abu Hurairah said: The Prophet SAW said: every child is born in a state of

fitrah. Then it is his parents who make the child a Jew, Christian, or Magian (Narrated by Bukhari and Muslim)".⁶²

The verse above indicates that parents have a very huge influence on the morals and religion of children. This is because children imitate the behavior of their parents. Parents who hold religion in high esteem and adhere to commendable morals will birth noble and religious children and vice versa.

Fiqh scholars also agree that children have the right to obtain support from their fathers based on the following conditions:

1. A father who can provide a living or work to earn pay is obliged to provide for his children.
2. A father is not obliged to pay for children who earn or have permanent jobs.
3. According to the Hanbali school of thought, children who are of similar religions as their fathers must be provided for. However, the *jumhur* states that religious differences do not prevent the provision of a living for children.⁶³

Most of the jurists agree that the child's livelihood is determined by a measure of the adequacy of bread, side dishes, drinks, clothes, and home according to the father's circumstances. Rasulullah SAW. pronounced to Hindun, "Take your husband's wealth according to the needs that can provide for yourself and your child." This signifies determining the level of living according to needs.⁶⁴

⁶² Muhammad Fuad Abdul Baqi, *Al-Lulu Wal Marjan: Mutiara Hadis Sahih Bukhari dan Muslim* (Jakarta: PT. Aqowam Medika, 2014), p. 965

⁶³ Bahder Johan dan Sri Warjiyati, *Hukum Perdata Islam, Kompilasi Peradilan Agama Tentang Perkawinan, Waris, Hibah, Wakaf dan Shodaqoh* (Bandung : Madar Maju, 1997), p. 35

⁶⁴ Azhari Yahya Muhammad Irvan Hidayana, Iman Jauhari, "Analisis Yuridis Terhadap Aspek Perlindungan Anak Pasca Perceraian Orangtua," *Jurnal IUS Kajian Hukum Dan Keadilan Volume 8*

⁶¹ Abdul Aziz bin Abdurrahman bin Ali bin Rabi'ah, *'Ilmu Maqāsid...*, p. 194

In addition, Imam Hanafi declared that the level of living provided was in accordance with the needs, based on the judge's estimate of the sufficient amount. A father may ask to reduce an excessive income, and children may demand the increment of insufficient provision.⁶⁵

Meanwhile, Shafi'i scholars believe that the mother must bear the expenses of a child whose father is absent or weak and unable to work. As stated by the majority of the scholars, children who are directly from a father, as well as grandchildren downwards, are obliged to receive support because their livelihood is part of the unity, not because of inheritance.⁶⁶

Meanwhile, Imam Malik opined that the obligation of child maintenance only concerns direct children, and grandchildren are excluded.

According to *ashah*, the expenses of a child with a mother and grandfather from the father's side should be borne by the grandfather in order to represent the provision of the father. Supposing all the grandparents of the child are alive, the expenses will be borne by the closest.⁶⁷

Based on the data obtained, the mother worked to provide in some cases where the father failed to meet the child's living needs. Although this action is supported by Islamic law, the father is supposed to fulfill all the integrity of the child's livelihood because it is his obligation.

In the social order of society, a mother is obligated to care properly for her children to ensure they become good people for personal benefit as well as to positively impact their parents, nation, and religion. The increasing needs of present society force mothers to work and leave home to satisfy the needs of their children after divorce. In such cases, Islam requires women to assume jobs or careers that are compatible with their feminine nature. Although the obligation to provide is the father's, a deviation may prevent the fulfillment of a child's rights. This is experienced when a father fails to support, care for, and love his child after divorce. Therefore, children become victims when either or both parents neglect their obligations.

This research evaluated the fulfillment of children's livelihood rights after the divorce of parents in Budi Aji Village, Simpang Pematang District, Mesuji Regency. Various patterns of fulfilling children's livelihood rights after divorce were discovered. Based on the data obtained, only 3 fathers, or 33%, executed their obligations to provide for their children, albeit incompletely, while the remaining 6 people, or 67%, failed to accomplish this responsibility.⁶⁸ Also, 7 mothers, or

Issue. 2, August 2020, E-ISSN 2 8, no. 2 (2020); Muhammad Nurohim, Yusuf Hanafi Pasaribu, and Asmaiyani Asmaiyani, "The Relationship between a Wife's Satisfaction in the Iddah Period with Marriage and Divorce," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 2 (2021): 208–18, <https://doi.org/10.30631/al-risalah.v21i2.778>.

⁶⁵ Rohman, "Analisis Kritis Terhadap Fikih Perceraian Responsif Gender: Studi Penerapan Kaidah Maqasid Al-Syari'ah."

⁶⁶ K. Anjar, S.C.N; Setiono; Harahap, B.; Tejomurti, "The Development of Child Custody Regulation in Indonesia Divorce Law," *International Journal of Bussiness, Economics, and Law* 18, no. 5 (2019): 77–83, https://www.ijbel.com/wp-content/uploads/2019/04/ijbel5-VOL18_237.pdf.

⁶⁷ Arief Syahrul Alam, Andy Usmina Wijaya, and Fifin Dwi Purwaningtyas, "Harmonization of Law to the Protection of Children's Right Caused by Divorce in Indonesia," *Journal of Law, Policy and*

Globalization 93 (2020): 58–62, <https://doi.org/10.7176/jlpg/93-05>.

⁶⁸ Iskandar Budiman, "The Islamic Perspective On The Improvement Of Family Economy In The New Normal," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 252–75, <https://doi.org/10.22373/sjhk.v5i1.8389>; Liza Erniyanti Ellimartati, Rizal Fahlefi, "Strengthening Family Resilience Through the Tradition of Agricultural Zakat Payment in Nagari Lima Kaum in Tanah Datar District of West Sumatera," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*

78%, worked odd jobs, and the majority became migrant workers to support their children. Although the KHI states a mother can help support her child in cases where the father is unable, 67% of the fathers in this research assumed a slight or no form of responsibility for the maintenance of the children. The reason of economic difficulty was not valid, as they are still obligated to provide for children according to the ability. This shows the absence of any ideal family role, where both parents understand and collaborate to meet the needs of the children.⁶⁹

This condition was worsened by the lack of visitation or communication, depriving the children of the presence and love of a father in their lives. Furthermore, 6 mothers, or 67%, became migrant workers or left without the knowledge of their family, assigning the children to the care of the mothers. Only 3 mothers, or 33%, lived and express their love directly to the offspring. This indicates the nonexistence of an ideal family role in terms of providing love and attention to the children.

The vacancies caused by the inability of parents to fulfill their roles of providing a livelihood and offering affection to children who are victims of divorce are filled by the mother's family. Aunts, uncles, and even grandmothers care for children who have been abandoned by their parents. This ensures that their needs for sustenance and affection are still met, even though not by the parents.

In line with the *maqāsid al-syari'ah*, rules concerning divorce must not cause damage to the offspring of the concerned parties. The offspring in question may refer to children birthed directly or outcomes from another marriage. Therefore, divorce without cause

and discussion is forbidden because it will damage the future of the child. There must be rules in place to protect the property for the care of the wife and children.⁷⁰ The high number of fathers who fail to assume responsibility for the livelihood of the children after divorce in Budi Aji Village should be a concern for regulators. Through PA, the state must force fathers to be accountable for the maintenance, care, and affection of their children⁷¹ and provide strict sanctions for irresponsible ones. Since marriage is an act of adults, they must be prepared to face all its consequences.⁷²

Conclusion

This research was conducted in Budi Aji Village, Simpang Pematang district, Mesuji District, and found that children's rights following parental divorce are not optimally fulfilled. The majority of fathers do not support or attend to their children. The contributing factor is the lack of responsibility, thereby preventing the father from contributing to the child's life through the provision of maintenance (*hifz an-nafs*). Therefore, the role of the extended family is very urgent to ensure there is no neglect.

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Interview

Interview with Aini, on April 8th, 2021, Budi Aji Village.

Interview with Dedi and Nana, on April 10th, 2021, Budi Aji Village.

Interview with Alipah, on April 9th, 2021, Budi Aji Village.

Interview with Epul, on April 11th, 2021, Budi Aji Village

Interview with Haulah, on April 11th, 2021, Budi Aji Village.

Interview with Ilmiyah, on April 10th 2021, Budi Aji Village

Interview with Iqroyah, on April 4th, 2021, Budi Aji Village.

Interview with Jaelah, on April 6th, 2021, Budi Aji Village.

Interview with Jaini, on April 12th, 2021, Budi Aji Village.

Interview with Liswati, on April 3th, 2021, Budi Aji Village.

Interview with Maesum, on April 7th, 2021, Budi Aji Village

Interview with Mila, on April 9th, 2021, Budi Aji Village.

Interview with Mutiah, April 8th, 2021, Budi Aji Village.

Interview with Nuruddin, April 5th 2021, Budi Aji Village.

Interview with Rajab, April 3th, 2021, Budi Aji Village.

Interview with Samsuddin, April 13th, 2021, Budi Aji Village.

Interview with Susiana, April 13th, 2021, Budi Aji Village.

Interview with Yayuk, April 12th, 2021, Budi Aji Village