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Reconstructing Post-Divorce Maintenance Enforcement in Indonesia: A Maslahah Mursalah-Based Comparative Study with Malaysia

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Abstract: This study examines the gap between court-awarded post-divorce maintenance, comprising iddah maintenance, mut'ah, and madhiyah maintenance for the ex-wife and child support, and its actual fulfillment after the judgment becomes final. Using normative legal research with statutory, comparative, and conceptual approaches, it analyzes Indonesian and Malaysian legislation and judicial regulations as primary legal materials, and books, journal articles, and institutional publications as secondary materials, collected through library research and evaluated qualitatively against maslahah indicators. The findings show that Indonesia has execution, seizure, and limited income-deduction mechanisms, but these remain reactive, depend on the entitled party's initiative, and are poorly suited to periodic child support. Malaysia provides institutional support through the Family Support Division (BSK), earnings withholding orders, judgment debtor summonses, and advance maintenance, although their effectiveness depends on court processes and employer cooperation. Evaluated through rights protection, effectiveness, accessibility, proportionality, harm prevention, and conformity with sharia and national law, together with ḥifẓ al-māl, ḥifẓ al-nasl, and ḥifẓ al-nafs, the study proposes a staged model comprising post-judgment institutional support, income-based payment, compliance monitoring, a tiered response distinguishing inability to pay from willful evasion, and conditional interim assistance. It thereby shifts post-divorce maintenance from a right merely established by judicial decree to an obligation whose fulfillment is actively secured.

Keywords: Post-Divorce Maintenance, Maintenance Enforcement, Indonesia–Malaysia, Maslahah Mursalah, Protection Of Wives And Children.

Abstrak: Penelitian ini mengkaji kesenjangan antara penetapan nafkah pasca perceraian, yaitu nafkah iddah, mut'ah, dan nafkah madhiyah bagi mantan istri serta nafkah anak, dengan realisasinya setelah putusan berkekuatan hukum tetap.

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Penelitian hukum normatif dengan pendekatan perundang-undangan, perbandingan, dan konseptual ini menganalisis peraturan perundang-undangan dan regulasi peradilan Indonesia dan Malaysia sebagai bahan hukum primer, serta buku, artikel jurnal, dan publikasi kelembagaan sebagai bahan hukum sekunder, yang dikumpulkan melalui studi kepustakaan dan dianalisis secara kualitatif berdasarkan indikator kemaslahatan. Hasil penelitian menunjukkan bahwa Indonesia memiliki mekanisme eksekusi, sita, dan pemotongan penghasilan yang terbatas, tetapi masih reaktif, bergantung pada inisiatif pihak yang berhak, dan kurang sesuai untuk nafkah anak yang periodik. Malaysia menyediakan dukungan kelembagaan melalui Bahagian Sokongan Keluarga (BSK), perintah tahanan pendapatan, saman penghutang penghakiman, dan pendahuluan nafkah, meskipun efektivitasnya bergantung pada proses mahkamah dan kerja sama pemberi kerja. Berdasarkan indikator perlindungan hak, efektivitas, aksesibilitas, proporsionalitas, pencegahan kemudaratan, dan kesesuaian dengan syariah dan hukum nasional, serta ḥifẓ al-māl, ḥifẓ al-nasl, dan ḥifẓ al-nafs, penelitian ini menawarkan model penegakan bertahap yang meliputi dukungan kelembagaan pasca putusan, pembayaran melalui penghasilan, pemantauan kepatuhan, respons berjenjang yang membedakan ketidakmampuan dari penghindaran yang disengaja, serta bantuan sementara bersyarat. Dengan demikian, nafkah pasca perceraian bergeser dari hak yang sekadar ditetapkan putusan menjadi kewajiban yang pemenuhannya dijamin secara aktif.
Kata Kunci: Nafkah Pasca Perceraian, Penegakan Nafkah, Indonesia–Malaysia, Maslahah Mursalah, Perlindungan Istri Dan Anak.

A. Introduction

Court decisions granting maintenance are thus poorly matched by actual payment. Gushairi's study of 55 informants in Riau found that in 2020, 60 per cent of fathers did not pay child support after divorce and a further 30.9 per cent paid irregularly,[1] while at the Sidenreng Rappang Religious Court only 6.21 per cent of ex-wives' maintenance awards in 2019–2023 were actually fulfilled.[2]

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[1] Ridwan Anwar, "Direktur Pembinaan Administrasi Peradilan Agama Fokuskan Kegiatan Subdit Tata Kelola Pada Kepastian Pelaksanaan Putusan Pasca Perceraian Bagi Mantan Istri Dan Anak," Direktorat Jenderal Badan Peradilan Agama MA RI, October 25, 2026, https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/direktur-pembinaan-administrasi-peradilan-agama-fokuskan-kegiatan-subdit-tata-kelola-pada-kepastian-pelaksanaan-putusan-pasca-perceraian-bagi-mantan-istri-dan-anak.

[2] P. A. Situbondo, "Jangan Ragu Tuntut Hak Perempuan Dan Anak Saat Perceraian, Ini Caranya!," Direktorat Jenderal Badan Peradilan Agama MA RI, October 25, 2026, https://badilag.mahkamahagung.go.id/suara-pembaca-badilag/jangan-ragu-tuntut-hak-perempuan-dan-anak-saat-perceraian-ini-caranya.

irregularly,[3] while at the Sidenreng Rappang Religious Court only 6.21 per cent of ex-wives' maintenance awards in 2019–2023 were actually fulfilled.[4]

The literature attributes this gap to recurring enforcement problems. No mechanism guarantees timely payment to ex-wives, so fulfillment depends on the ex-husband's good faith.[5] Similar findings come from Pekalongan, where limited knowledge of execution procedures leaves rights unfulfilled,[6] and from Batam, where arrears persist despite consistent judicial recognition.[7] Violations of children's maintenance rights are linked to weak law enforcement, the obligor's financial hardship, low public awareness, and guardians' reluctance to take legal action,[8] as well as to weak coercive instruments and the passive posture of the court.[9] The obligor's assets are often untraceable, many obligors have no assets or only irregular income,[10] and the cost and duration of execution frequently exceed the value of the maintenance at stake.[11]

Indonesia does not lack a legal basis: the Marriage Law, the Compilation of Islamic Law (KHI), and Supreme Court circulars authorize the courts to determine these rights. The Supreme Court has also used payment before the pronouncement of talak or the issuance of the divorce certificate as procedural leverage, but these reforms still rely on individual claims and cannot yet be regarded as effective

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[3] - Gushairi, "Rekonstruksi Regulasi Tentang Pemenuhan Hak Nafkah Anak Pasca Perceraian (Studi Kasus Di Beberapa Pengadilan Agama Di Provinsi Riau)" (disertasi, Universitas Islam Negeri Sultan Syarif Kasim Riau, 2023), https://repository.uin-suska.ac.id/69236/.

[4] Mindriani Amin et al., "Analisis Realisasi Eksekusi Putusan Hak Nafkah Iddah, Nafkah Mut'ah Dan Nafkah Madhiyah Pasca Perceraian Di Pengadilan Agama Sidenreng Rappang," *RIO LAW JURNAL* 6, no. 1 (2025): 662–72, https://doi.org/10.36355/rlj.v6i1.1655.

[5] Rahmawati Mohd Yusoff et al., "An Analysis Towards Patterns Of Violation Of Maintenance Rights After Divorce Within Islamic Marriage In Indonesia," *Malaysian Journal of Syariah and Law* 12, no. 3 (2024): 678–88, -, https://doi.org/10.33102/mjsl.vol12no3.707.

[6] Syukrawati Syukrawati et al., "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, no. 1 (2024): 121–46, https://doi.org/10.21580/ahkam.2024.34.1.20624.

[7] Dewi Oktavia et al., "When Judgments Are Not Enough: Enforcement, Legal Culture, and Substantive Justice in Islamic Family Law," *Fikri : Jurnal Kajian Agama, Sosial Dan Budaya* 11, no. 1 (2026): 139–53, https://doi.org/10.25217/jf.v11i1.7477.

[8] Mohammad Hidir Baharudin and Ahmad Munjin Nasih, "Violation Of Children's Maintenance Right Upon Divorce In Indonesia," *Malaysian Journal of Syariah and Law* 14, no. 1 (2026): 47–60, -, https://doi.org/10.33102/mjsl.vol14no1.877.

[9] Muizzuddin, Ahmad Haris, *Enforcement of Post-Divorce Financial Obligations in Indonesian Islamic Family Law: A Case Study of Child Maintenance*, 4, no. 1 (2025): 1–13.

[10] Fikri Ahmad Islami et al., "Realizing Post-Divorce Enforcement Justice through Progressive Law Enforcement within the Framework of Risalah al-Qadha," *Begawan Abioso* 17, no. 2 (2026): 305–26, https://doi.org/10.37893/abioso.v17i2.1540.

[11] Abdul Rahman, "Diskusi Panel Hari Ke 3 Sydney Visit, Kepentingan Terbaik Untuk Anak Dalam Perkara Hukum Keluarga," Direktorat Jenderal Badan Peradilan Agama MA RI, December 13, 2019, https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/diskusi-panel-hari-ke-3-sydney-visit-kepentingan-terbaik-untuk-anak-dalam-perkara-hukum-keluarga.

enforcement without evidence of compliance after the judgment.[12] Inconsistent judicial reasoning on nusyuz, ex officio authority, and the husband's financial capacity further shows that protection depends on whether operative rulings are enforceable.[13] The weakness therefore lies after the judgment: execution is a reactive remedy that begins only when the entitled party applies, with no institution monitoring compliance, no general mechanism for periodic payment from income, and no interim protection while enforcement is pending.

Malaysia is a relevant comparator because both countries apply Islamic family law through specialized courts on comparable fiqh foundations, and because Malaysia has developed a dedicated enforcement institution, the Family Support Division (Bahagian Sokongan Keluarga, BSK), with instruments such as earnings withholding orders, judgment debtor summonses, and advance maintenance. Its system also has weaknesses, so the comparison aims not at transplantation but at identifying which elements suit Indonesia's legal structure.

These elements are evaluated through maṣlaḥah mursalah, a benefit neither endorsed nor rejected by a specific text but consistent with the objectives of the sharia. Al-Ghazālī accepted it only where it protects the essential objectives of the sharia, whereas al-Shāṭibī placed it within a holistic reading of the law's purposes, an approach modern reformers developed into a framework for legal change.[14] It has thus become the basis of maqāṣid-oriented reform concerned with the welfare of society as a whole.[15] Because enforcement instruments are not regulated in detail by the classical texts, their legitimacy depends on whether they realize benefit and prevent harm; this study therefore operationalizes the framework into indicators that test each mechanism, with ḥifẓ al-māl, ḥifẓ al-nasl, and ḥifẓ al-nafs as the protected interests.

Previous studies have examined post-divorce maintenance through the judge's ex officio authority,[16] the gap between the father's normative obligation and actual

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[12] A. Hashfi Luthfi, "Protective Judicial Lawmaking: Post-Divorce Financial Rights and Enforcement in Indonesia's Religious Courts," *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia* 12, no. 2 (2023): 323–55, https://doi.org/10.14421/inright.v12i2.5142.

[13] Novi Yanti et al., "Patterns and Determinants of Judicial Reasoning in Deciding Women Economic Rights in Religious Courts," *Islamica: Jurnal Studi Keislaman* 20, no. 2 (2026): 212–42, https://doi.org/10.15642/islamica.2026.20.2.212-242.

[14] Felicitas Opwis, "Maslaha in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12, no. 2 (2005): 182–223, https://doi.org/10.1163/1568519054093699.

[15] Muhammad Harfin Zuhdi and Mohamad Abdun Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1818–39, https://doi.org/10.22373/sjhk.v8i3.24918.

[16] Imadudin, Agung Nursufa, "Pemenuhan Nafkah Istri Dan Anak Pasca Perceraian Melalui Hak Ex Officio Hakim (Studi Putusan No. 6073/Pdt. G/2019/Pa. Jr Dan 239/Pdt. G/2020/Pta. Sby)" (Diss, Uin Sunan Kalijaga Yogyakarta, n.d.).

practice,[FN2] and the perspectives of Islamic and positive law.[17] Muhammad Farid Novian analyzed the problems of fulfilling wife and child maintenance from the perspectives of Islamic law and positive law.[18] These studies show that post-divorce maintenance has been examined from the angles of judicial decisions, empirical conditions, and legal perspectives.

More recent studies approach enforcement directly: Musaddad and colleagues compare guarantees for women and children after divorce in Indonesia and Malaysia;[19] Saputra and Ramadhani propose an "enforceable justice" model combining conditional execution before divorce, asset security, and income deduction;[20] and Helmi proposes a state-guaranteed child support model with automatic income withholding and temporary public guarantee funds.[21] None of them, however, combines a functional comparison with Malaysia covering both the ex-wife's maintenance and child support with an explicit maṣlaḥah mursalah evaluation of each mechanism. This is the gap the present study addresses.

This study therefore aims (1) to analyze the legal construction of post-divorce maintenance and the enforcement gap in Indonesia, (2) to compare Indonesian and Malaysian enforcement mechanisms, and (3) to evaluate the transferable elements through maṣlaḥah mursalah and formulate a reconstructed enforcement model. It contributes an operational use of maṣlaḥah mursalah as an evaluative tool and a staged model that can inform the Supreme Court, the Directorate General of Religious Courts, and lawmakers.

B. Research Methods

This study is normative legal research, as it concerns the adequacy of the norms, institutions, and procedures for enforcing post-divorce maintenance rather than the behavior of the parties. It employs a statutory approach to examine Indonesian and Malaysian rules; a functional comparative approach that examines

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[17] Fadilah Puspitasari and Abdul Waid, "Pemenuhan Hak Nafkah Anak Pasca Perceraian Perspektif Sosiologi Hukum Keluarga Islam: Studi Kasus Di Desa Adikarto Kecamatan Adimulyo Kabupaten Kebumen," *Kawruh: Jurnal Kajian Syariah, Ushuluddin, dan Dakwah* 4, no. 1 (2025): 58–71.

[18] Muhammad Farid Novian, "Analisis Hukum Islam Dan Positif Terhadap Problematika Pemenuhan Hak Nafkah Istri Dan Anak Pasca Perceraian: Studi Kasus Di Kecamatan Mojoroto Kota Kediri" (undergraduate, UIN Sunan Ampel Surabaya, 2025), https://digilib.uinsa.ac.id/id/eprint/80462/.

[19] Endad Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, April 18, 2025, 1–14, https://doi.org/10.24090/volksgeist.v8i1.12214.

[20] Novendri Eka Saputra and Ilham Ramadhani, "Protection of Women's and Children's Rights After Divorce in Religious Courts: Challenges in Implementation and Legal Reconstruction," *Istinbath: Jurnal Hukum* 23, no. 1 (2026): 185–210, https://doi.org/10.32332/istinbath.v23i01.13370.

[21] Muhammad Helmi, "Beyond Privatized Obligation: Reconstructing State-Guaranteed Post-Divorce Child Support Protection in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity*, June 28, 2025, 118–40, https://doi.org/10.24042/smart.v5i1.31582.

how each system responds to non-payment after the judgment across six aspects, namely legal basis, enforcing institution, post-judgment procedure, income-based payment, asset seizure, and interim assistance; and a conceptual approach that constructs maṣlaḥah mursalah as an evaluative framework.

The primary legal materials comprise, for Indonesia, Law No. 1 of 1974 on Marriage, the KHI, SEMA No. 3 of 2018, No. 2 of 2019, and No. 5 of 2021, and the rules of civil execution; and for Malaysia, the Islamic Family Law (Federal Territories) Act 1984 (Act 303), the Syariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585), and official provisions on the BSK, with the Federal Territories used as a single reference jurisdiction because Islamic family law is a state matter. The secondary legal materials comprise books, journal articles, theses, and official institutional publications. The materials were collected through library research and analyzed qualitatively in three stages: identifying the enforcement gap for ex-wives and children, comparing the two systems across the six aspects, and evaluating each transferable element against six maṣlaḥah indicators, namely rights protection, effectiveness, accessibility, proportionality, harm prevention, and conformity with sharia and national law.

C. Results and Discussion

The Legal Construction of Post-Divorce Maintenance in Indonesia

Divorce gives rise to post-divorce maintenance rights and obligations which, in Islamic law, protect the ex-wife and children from economic hardship caused by the dissolution of the marriage.[22] In positive law, they are regulated in the Marriage Law and the KHI and developed through Religious Court practice and Supreme Court circulars.

Two categories must be distinguished. The first is the ex-wife's maintenance. In a divorce initiated by the husband (cerai talak), Article 149 of the KHI requires the ex-husband to provide mut'ah, maintenance, housing (maskan), and clothing (kiswah) during the iddah period, as well as hadhanah costs for minor children. Her entitlements thus comprise mut'ah, iddah maintenance owed during the waiting period,[23] and madhiyah maintenance owed but unpaid during the marriage.[24] In a divorce initiated by the wife (cerai gugat), SEMA No. 3 of 2018 allows mut'ah and

[22] Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Prenada Media, 2007).
[23] Syarifuddin, *Islamic Marriage Law in Indonesia*, 305.
[24] Nurdin Nurdin et al., "Peran Lembaga Pendidikan Islam Dalam Pencegahan Pernikahan Anak: Kajian Hukum Islam Dan UU Perkawinan," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 1516–38, https://doi.org/10.62976/ijijel.v3i2.1140.

iddah maintenance unless she is proven nusyuz.[25] These entitlements are generally determinate and payable once or within a limited period.

The second category is child support, which remains the father's responsibility after divorce under Article 41(b) of the Marriage Law and Article 156(d) of the KHI, according to his ability, until the child reaches adulthood.[26] Unlike the ex-wife's maintenance, it is periodic and long-term, so a mechanism capable of collecting a lump sum once is not necessarily capable of securing payments that fall due every month.

Both categories are enforced through execution in the Religious Courts. If the obligor does not comply after the decision becomes final, the ex-wife, or the mother acting for the child, may apply for execution, which proceeds through a warning (aanmaning), executorial seizure, and auction; civil servants may also be subject to salary deduction if proven negligent.[27] The norms are therefore complete; the question is whether this mechanism can bridge the decision and actual payment, particularly for child support.

The Enforcement Gap in Indonesia

Studies at the Pekanbaru[28] and Makassar Religious Courts[29] found low compliance among ex-husbands and fathers, rooted in their economic condition, limited communication between the parties, and the cost and time of execution.[30]

For ex-wives, the problem is the non-payment of determined amounts, as the Sidenreng Rappang data show. For children, it is more severe because the obligation recurs: non-payment shifts the burden to the caregiver while basic needs must still be

[25] Dewi Muniarti and Siti Maryam Qurotul Aini, "Analisis Surat Edaran Mahkamah Agung No. 3 Tahun 2018 Tentang Hak Nafkah Iddah Bagi Istri Cerai Gugat," *USRATUNA: Jurnal Hukum Keluarga Islam* 8, no. 1 (2024): 72–90, https://doi.org/10.65356/usratuna.v8i1.706.

[26] Abdurrahman, *Kompilasi hukum Islam di Indonesia* (Akademika Pressindo, 1992).

[27] Seki Mutianingsih et al., "Pelaksanaan Putusan Nafkah Anak Pasca Perceraian : (Studi Putusan Pengadilan Agama Makassar)," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 3284–90, https://doi.org/10.61104/alz.v4i2.4774.

[28] Muhammad Azani Azani and Cysillia Anggaraini Novalis Cysillia, "Pelaksanaan Putusan Pengadilan Agama Mengenai Pemenuhan Hak Nafkah Anak Pasca Perceraian Di Pengadilan Agama Pekanbaru," *Jotika Research in Business Law* 1, no. 2 (2022): 46–59, https://doi.org/10.56445/jrbl.v1i2.43.

[29] Mutianingsih et al., "Pelaksanaan Putusan Nafkah Anak Pasca Perceraian."

[30] Fairuza 'Alima Fardindaputri and Fuat Hasanudin, "Legal Protection of Children's Rights Post-Divorce: A Study of Single Mothers in Malang Regency," *Prophetic Law Review*, July 9, 2025, 70–94, https://doi.org/10.20885/PLR.vol7.iss1.art4.

met.[31] The issue is therefore whether a binding decision provides real economic protection for children.[32]

The design of enforcement also produces the gap. The State's remedy is an application for execution filed by the entitled party,[33] yet many entitled parties do not understand the procedure, the executable objects, or the costs and time required,[34] and the obligor's assets are often untraceable or unavailable.[35]

Aanmaning depends on the obligor's willingness to comply, seizure and auction require assets that can be found, and periodic child support would require the entitled party to return to court as arrears accumulate, while income deduction is not yet a general mechanism.[36] Effectiveness thus depends on the obligor's employment, capacity, and assets, and on the entitled party's initiative.

Indonesia does not, however, rely solely on court rulings. SEMA No. 2 of 2019 allows the ex-wife's maintenance to be paid before the divorce certificate is issued, and SEMA No. 5 of 2021 allows the father's assets to secure child support. These instruments operate at or before judgment and protect lump-sum entitlements better than periodic child support; after judgment, the burden returns to the entitled party. The gap between das sollen and das sein therefore lies chiefly in the post-judgment phase, where legal protection risks remaining formal.

Post-Divorce Maintenance Enforcement in Malaysia

In Malaysia, Islamic family law is a state matter; in the Federal Territories, maintenance is governed by Part VI of the Islamic Family Law (Federal Territories) Act 1984 (Act 303).[37] Enforcement is supported by the Family Support Division (BSK)

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[31] Muhammad Zaky Alfathan and Uswatun Hasanah, "Implementasi Upaya Eksekusi Terhadap Kewajiban Nafkah Anak Pasca Perceraian (Studi Pengadilan Agama Medan)," *Verdict: Journal of Law Science* 5, no. 4 (2026): 781–96, https://doi.org/10.59011/vjlaws.5.4.2026.781-796.

[32] Ahsanul Fahmi et al., "Judicial Practices In Enforcing Post-Divorce Maintenance Rights For Women And Children In Indonesia," *Indonesia Private Law Review* 6, no. 2 (2025): 103–16, https://doi.org/10.25041/iplr.v6i2.4608.

[33] Sandi Yoga Pradana et al., "Maintenance Rights of Wife and Children After Divorce in Islamic Family Law," *International Journal of Health, Economics, and Social Sciences (IJHESS)*, April 24, 2025, 816~820-816~820, https://doi.org/10.56338/ijhess.v7i2.7309.

[34] Gushairi, "Rekonstruksi Regulasi Tentang Pemenuhan Hak Nafkah Anak Pasca Perceraian (Studi Kasus Di Beberapa Pengadilan Agama Di Provinsi Riau)."

[35] Ahmad Nafhani et al., "Ensuring Justice in Child Support After Divorce: A Jurimetric Review of at Religious Court of Demak Decision," *Jurnal Hukum Dan Peradilan* 14, no. 3 (2025): 531–48, Https://Doi.Org/10.25216/Jhp.14.3.2025.531-548.

[36] Nafhani et al., "Ensuring Justice in Child Support After Divorce."

[37] Toto Dwi Pamudi, "Penjaminan Hak-Hak Istri Dan Anak Pasca Perceraian Dalam Hukum Keluarga Islam: Studi Komparatif Antara Indonesia Dan Malaysia," *Moderasi : Journal of Islamic Studies* 4, no. 2 (2024): 178–93, https://doi.org/10.54471/moderasi.v4i2.73.

under the Department of Syariah Judiciary Malaysia (JKSM).[38] which does not replace the Syariah Court but connects entitled parties to enforcement through legal advice, syariah legal aid, assistance with execution, and coordination of syariah lawyers and bailiffs.[39]

When an obligor defaults, the entitled party may lodge a complaint with the BSK.[40] which first attempts negotiation and otherwise brings enforcement proceedings under the 1998 Act. The instruments include a judgment debtor summons (saman penghutang penghakiman), seizure and sale, hiwalah through third parties holding the obligor's funds, a committal order, and advance maintenance paid while maintenance remains unpaid,[41] which is time-limited and later recovered from the obligor rather than a gratuitous transfer from the State.[42]

These measures rest on the 1998 Act, including sections 175–185 on enforcement and section 161 on hiwalah,[43] while section 159 of Act 585 empowers the court to order the bailiff to withhold the judgment debtor's income.[44] Salary deduction is therefore a court order, not a power the BSK exercises unilaterally..

The effectiveness of these mechanisms should not be overstated. The literature shows that the implementation of earnings withholding orders depends heavily on employer cooperation and on payment systems that allow funds to be disbursed directly to the entitled party; by its nature, the instrument reaches only obligors who receive income from an identifiable payer. Data on the BSK's mediation of maintenance arrears point in the same direction: of the 69 arrears cases registered with the BSK in 2024 that Ismail examined, mediation resolved about 37.7 per cent, while about one third stalled because a party failed to attend; when both parties attended, the success rate rose to about 56.5 per cent.[45] Institutional accompaniment therefore improves outcomes, but it cannot by itself compel an unwilling obligor.

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[38] Eki Nurdiansyah, "Penguatan Perlindungan Hak Anak Pasca Putusan Perceraian melalui Pembentukan Badan Jaminan Nafkah Anak (Studi Komparatif Negara Malaysia)," *Forschungsforum Law Journal* 2, no. 03 (2025): 270–81, https://doi.org/10.35586/flj.v2i03.12208.

[39] Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce."

[40] Seilla Nur Amalia Firdaus et al., "Pembaharuan Hukum Keluarga Islam: Studi Perbandingan Hukum Keluarga Di Brunei Darussalam Dan Malaysia," *Zaaken: Journal of Civil and Business Law* 5, no. 2 (2024): 188–206, https://doi.org/10.22437/zaaken.v5i2.35264.

[41] Ermida Yustri et al., "Innovation in the Enforcement of Child Support Orders after Divorce in Interfaith Marriages: A Comparative Study of Indonesia and Malaysia," *Islam Transformatif : Journal of Islamic Studies* 9, no. 2 (2025): 269–88, https://doi.org/10.30983/islamtransformatif.v9i2.10287.

[42] Yustri et al., "Innovation in the Enforcement of Child Support Orders after Divorce in Interfaith Marriages."

[43] "Syariah Court Civil Procedure (Federal Territories) Act 1998," accessed October 25, 2026, https://www.commonlii.org/my/legis/consol_act/sccpta1998502/.

[44] "Syariah Court Civil Procedure (Federal Territories) Act 1998."

[45] Yustri et al., "Innovation in the Enforcement of Child Support Orders after Divorce in Interfaith Marriages."

Advance maintenance likewise does not extinguish the ex-husband's obligation; it is a temporary payment from the BSK trust fund to eligible applicants during enforcement proceedings. JKSM generally grants it for up to six months, with recovery from the judgment debtor, and eligibility takes into account specific conditions, such as the incapacity of the entitled party, the bankruptcy or inability to work of the obligor, or the inability to locate the obligor or his assets.[46] The same study of Sarawak shows that the BSK continues to face practical challenges in enforcing Syariah Court judgments concerning the rights of women and children.[47] Advance maintenance is therefore best understood as a temporary safety net that prevents enforcement proceedings from interrupting the fulfillment of basic needs, not as a substitute for the father's liability.

Comparative Analysis of Indonesian and Malaysian Enforcement Mechanisms

Malaysia's advantage lies not in uniformly effective mechanisms but in institutional support that links the court order with enforcement and interim assistance, while coercive measures remain with the Syariah Court Indonesia, for its part, has developed preventive instruments through SEMA No. 2 of 2019 and No. 5 of 2021. Table 1 summarizes the comparison.

Table 1. Comparison of Post-Divorce Maintenance Enforcement Mechanisms in Indonesia and Malaysia

Aspect	Indonesia	Malaysia
Legal basis	Marriage Law, KHI, civil procedural law, and SEMA No. 3/2018, No. 2/2019, and No. 5/2021, which progressively strengthen protection.	State Islamic family law and syariah civil procedure enactments; Act 303 and Act 585 apply to the Federal Territories, and provisions vary across states.
Enforcing institution	Religious Courts determine and execute maintenance; no dedicated unit monitors compliance after the judgment.	BSK under JKSM handles complaints, assistance, enforcement, and execution of maintenance orders.
Post-judgment procedure	The entitled party must apply for execution after non-compliance occurs.	The entitled party lodges a complaint with the BSK, which negotiates and, if necessary, brings enforcement proceedings.
Income-based payment	Salary deduction available mainly for civil servants; not a general mechanism for all obligors.	Earnings withholding order directed by the court to the party paying the judgment debtor's

[46] Zulzaidi Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah: Kajian Peranan Bahagian Sokongan Keluarga Terhadap Hak Wanita Dan Kanak-Kanak Di Sarawak," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 6, no. 10 (2021): 252–67, https://doi.org/10.47405/mjssh.v6i10.1075.

[47] Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah."

Aspect	Indonesia	Malaysia
		income.
Asset seizure	Executorial seizure and auction; security over the father's assets for child support (SEMA No. 5/2021).	Seizure and sale; *hiwalah* through third parties holding the obligor's funds.
Summons of the obligor	*Aanmaning* under civil procedural law.	Judgment debtor summons; committal order for disobedience of a court order.
Interim assistance	No equivalent mechanism.	Advance maintenance from the BSK fund under specific conditions, generally up to six months, recoverable from the obligor.
Main weakness	Heavy procedural burden on the entitled party; continuity of periodic child support is difficult to guarantee.	Dependence on court processes, eligibility conditions, and employer or third-party cooperation; practice varies across states.
Transferable lesson	Strengthen the post-judgment phase rather than the determination of rights.	Institutional accompaniment, court-ordered income-based payment, and recoverable interim assistance; coercive measures are secondary.

Source: compiled by the authors from the legislation and literature discussed above.

Both systems treat maintenance as a court-determined obligation enforceable through the court, and both provide asset seizure and, under certain conditions, income-based payment.[48] They differ in institutional support and timing: in Indonesia, enforcement is a remedy the entitled party must activate, whereas the BSK accompanies the entitled party, monitors orders, and may provide advance maintenance. Indonesia's strength lies in preventive instruments at judgment and its weakness in post-judgment continuity; Malaysia's strength lies in institutional accompaniment and its weakness in dependence on court processes, eligibility rules, and variation across states.[49]

The transferable lessons are therefore functional rather than institutional: post-judgment support, payment through income, and temporary assistance, provided they are backed by employer cooperation, reliable payment channels, and clear eligibility rules.[50] Their suitability for Indonesia is tested below through *maṣlaḥah mursalah*.

[48] Pamudi, "Penjaminan Hak-Hak Istri Dan Anak Pasca Perceraian Dalam Hukum Keluarga Islam."

[49] Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah."

[50] Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah."

Maṣlaḥah Mursalah as a Framework for Evaluating Enforcement

Within *maṣlaḥah mursalah*, an enforcement mechanism is legitimate to the extent that it realizes benefit (*jalb al-maṣāliḥ*) and prevents harm (*dar' al-mafāsid*) for the parties without contradicting the sharia, which requires that the reasoning linking a legal measure to its objectives be made explicit rather than assumed.[51] Post-divorce maintenance itself serves a protective purpose: it ensures that the ex-wife and children do not fall into economic hardship because of the dissolution of the marriage.[52] The interests protected are *ḥifẓ al-māl*, because maintenance is a property right that must not be lost through non-payment; *ḥifẓ al-nasl*, because child support secures the upbringing and welfare of the next generation; and *ḥifẓ al-nafs*, because maintenance meets basic needs for subsistence and health. To make the evaluation operational, this study applies six indicators: (1) rights protection, whether the mechanism actually delivers the maintenance awarded; (2) effectiveness, whether payment can be secured regularly and continuously; (3) accessibility, whether the entitled party can use it without disproportionate cost, knowledge, or effort; (4) proportionality, whether the burden imposed on the obligor matches his ability and conduct; (5) harm prevention, whether it prevents harm to the wife and children without creating new harm to the obligor or third parties; and (6) conformity with sharia principles and national law. These indicators translate the classical conditions for *maṣlaḥah mursalah* into operational terms: the benefit must be real rather than presumed, general rather than serving a particular party, and consistent with the established objectives of the sharia.[53] Rights protection and effectiveness test whether the benefit is real; accessibility and proportionality test whether it is general and fairly distributed between the parties; and harm prevention and conformity with sharia and national law test whether it remains within the purposes of the law.[54]

Measured against these indicators, a post-judgment support unit modeled on the BSK scores highest on accessibility and rights protection, because it relieves the entitled party, typically a mother who already bears the child's daily needs,[55] of navigating execution alone. Income-based payment scores highest on effectiveness for periodic child support, since it converts a recurring obligation into a regular deduction rather than a series of execution applications; its limitation is that it

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[51] Adi Harmanto et al., "Reconstructing the Epistemology of MUI Family Law Fatwas: Integrating Ushul Fiqh, Maqāṣid, and Social Context," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam*, December 8, 2025, 379–90, https://doi.org/10.25217/jm.v10i2.6802.

[52] Syarifuddin, *Hukum Perkawinan Islam Di Indonesia*.

[53] Opwis, "Maslaha in Contemporary Islamic Legal Theory."

[54] Zuhdi and Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context."

[55] Alfathan and Hasanah, "Implementasi Upaya Eksekusi Terhadap Kewajiban Nafkah Anak Pasca Perceraian (Studi Pengadilan Agama Medan)."

reaches only obligors with identifiable income.[56] Interim assistance directly serves *ḥifẓ al-nafs* and *ḥifẓ al-nasl* by preventing the interruption of children's basic needs while enforcement is pending;[57] however, it raises questions of proportionality and public funding, so it must be limited in duration and coupled with recovery from the obligor so that public funds do not replace the father's liability. Coercive measures such as committal score lowest on proportionality and are justified only against willful evasion, never against a genuine inability to pay.[58] Finally, every instrument must be weighed against the cost and time it imposes: an instrument whose cost is out of proportion to the maintenance collected fails the accessibility indicator even if it is legally available.[59] Table 2 summarizes this evaluation.

Table 2. *Maṣlaḥah Mursalah* Evaluation of Transferable Enforcement Elements

Element	Maṣlaḥah served (indicators and maqāṣid)	Harm to prevent / safeguard required
Post-judgment support unit	Rights protection and accessibility; *ḥifẓ al-māl*, *ḥifẓ al-nasl*.	Must not displace judicial authority; requires a clear mandate within the Religious Courts.
Income-based payment	Effectiveness and continuity of payment; *ḥifẓ al-māl*, *ḥifẓ al-nasl*.	Only by court order; deduction capped to leave the obligor a reasonable subsistence.
Asset security and seizure	Rights protection for arrears and lump-sum entitlements; *ḥifẓ al-māl*.	Proportional to the amount owed; limited to identifiable assets.
Compliance monitoring	Effectiveness and harm prevention through early detection of default.	Personal data accessed only with judicial authorization and for this purpose alone.
Interim assistance	Harm prevention; *ḥifẓ al-nafs*, *ḥifẓ al-nasl*.	Time-limited, needs-based, recoverable from the obligor; requires a statutory basis and budget.
Coercive measures	Deterrence against willful evasion; justice for the entitled party.	*Ultimum remedium*, only after proof of ability to pay and willful refusal.

Source: authors' analysis.

The evaluation shows that *maṣlaḥah mursalah* functions here as a filter rather than a label: it admits post-judgment institutional support, income-based payment, compliance monitoring, and conditional interim assistance, while restricting coercive

[56] Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah."
[57] Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah."
[58] Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah."
[59] Rahman, "Diskusi Panel Hari Ke 3 Sydney Visit, Kepentingan Terbaik Untuk Anak Dalam Perkara Hukum Keluarga."

measures to cases of proven willful evasion. The elements that satisfy the indicators are precisely those that move enforcement from a reactive remedy dependent on the entitled party toward a system that actively secures the economic rights of children and ex-wives.[60]

Reconstructing Indonesia's Post-Divorce Maintenance Enforcement

On the basis of the comparison and the *maṣlaḥah* evaluation, the reconstruction of post-divorce maintenance enforcement in Indonesia should target the post-judgment phase, where the gap is located. Its guiding premise is that divorce ends the marriage but not the responsibilities it created.[61] Unlike proposals that focus primarily on establishing a new national child support guarantee agency,[62] the model proposed here is staged and builds on existing institutions, so that each component can be adopted according to its legal basis and available resources. It consists of five components.

First, determination with enforcement in view. At the time of judgment, judges should assess the obligor's economic capacity, specify the mode and schedule of payment, use their *ex officio* authority to protect the maintenance of the ex-wife and children,[63] and, where appropriate, impose security over the father's assets for child support as permitted by SEMA No. 5 of 2021.[64] Saputra and Ramadhani similarly identify conditional execution before divorce and asset security as core instruments of enforceable protection.[65] For the ex-wife's lump-sum entitlements, the requirement that payment be made before the divorce certificate is issued should be applied consistently.

Second, a post-judgment support unit. Rather than creating a new body outside the judiciary, a maintenance support desk can be established within the Religious Courts under the coordination of the Directorate General of Religious Courts to receive complaints of non-payment, facilitate negotiation, assist entitled parties in applying for execution, and monitor compliance. Its authority would be administrative and facilitative; all coercive measures would remain decisions of the court, mirroring the division of roles between the BSK and the Syariah Court. Such a unit can initially

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[60] Mahmod et al., "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah."

[61] ANTARA News Agency, "Cerai Usai, Tanggung Jawab Tidak Selesai - ANTARA News Megapolitan," Antara News, accessed October 25, 2026, https://megapolitan.antaranews.com/berita/522429/cerai-usai-tanggung-jawab-tidak-selesai.

[62] Nurdiansyah, "Penguatan Perlindungan Hak Anak Pasca Putusan Perceraian melalui Pembentukan Badan Jaminan Nafkah Anak (Studi Komparatif Negara Malaysia)."

[63] Imadudin, Agung Nursufa, "Pemenuhan Nafkah Istri Dan Anak Pasca Perceraian Melalui Hak Ex Officio Hakim (Studi Putusan No. 6073/PDT. G/2019/PA. JR DAN 239/PDT. G/2020/PTA. SBY)."

[64] Puspitasari and Waid, "Pemenuhan Hak Nafkah Anak Pasca Perceraian Perspektif Sosiologi Hukum Keluarga Islam."

[65] Saputra and Ramadhani, "Protection of Women's and Children's Rights After Divorce in Religious Courts."

be regulated by a Supreme Court Regulation within the judiciary's existing mandate, whereas any extension of its powers beyond the court would require statutory amendment.

Third, income-based payment. Salary deduction, which is currently available mainly for civil servants, should be extended through a court order directed to any employer or payer of regular income, with payments channeled through a designated account. To protect personal data, access to employment and payroll information should be limited to what is necessary to execute a specific order and should require judicial authorization.

Fourth, a tiered response that distinguishes inability from evasion. Non-payment should be addressed according to its cause. Where the obligor is genuinely unable to pay, the appropriate response is rescheduling or adjustment of the amount through the court, consistent with Article 156(d) of the KHI, which links child support to the father's ability. Where the obligor is able to pay but willfully evades, by concealing income or assets, the court may escalate to *aanmaning*, seizure, and, as an *ultimum remedium*, referral under existing criminal provisions on neglect. This distinction answers the proportionality concern: coercion is directed at bad faith, not at poverty, which matters because many obligors have no assets or only irregular income.

Fifth, conditional interim assistance for children. An advance maintenance scheme inspired by the Malaysian model can be piloted for children whose fathers cannot be located or are temporarily unable to pay, limited in duration, based on need, and accompanied by the State's right to recover the amounts paid from the father. Because it involves public funds, this component requires a statutory basis and a budget allocation, and its design must ensure that it does not weaken the father's primary liability. This component converges with proposals for child maintenance insurance schemes[66] and temporary public guarantee funds,[67] but differs from them in making assistance conditional, time-limited, and recoverable, so that it satisfies the proportionality indicator.

Taken together, these components shift Indonesian enforcement away from a model that depends on the good faith of the ex-husband[68] and the initiative of the entitled party toward one in which the legal system actively secures fulfillment. The reconstruction is not a transplant of the Malaysian system but an adaptation of its functional elements to the authority of the Religious Courts, the Indonesian hierarchy

[66] Baharudin And Nasih, "VIOLATION OF CHILDREN'S MAINTENANCE RIGHT UPON DIVORCE IN INDONESIA."

[67] Helmi, "Beyond Privatized Obligation."

[68] Yusoff Et Al., "AN ANALYSIS TOWARDS PATTERNS OF VIOLATION OF MAINTENANCE RIGHTS AFTER DIVORCE WITHIN ISLAMIC MARRIAGE IN INDONESIA."

of regulations, and the protection of both parties' rights, yielding a *maṣlaḥah mursalah*-based enforcement model that is relevant to the needs and character of Indonesian law.

D. Conclusion

The main problem of post-divorce maintenance in Indonesia lies not in the judicial recognition of the right but in the weakness of the mechanisms that ensure its realization: execution is reactive, depends on the entitled party's initiative, and is ill-suited to periodic child support. The comparison with Malaysia shows that effective enforcement requires post-judgment institutional support, assessment of the obligor's capacity, tracing of income and assets, structured payment and monitoring, and temporary assistance, while also depending on court processes and third-party cooperation. Evaluated through maṣlaḥah mursalah and oriented toward ḥifẓ al-māl, ḥifẓ al-nasl, and ḥifẓ al-nafs, these elements are justified, whereas coercive measures are confined to willful evasion. The resulting model comprises enforcement-oriented determination, a post-judgment support unit within the Religious Courts, court-ordered income-based payment, a tiered response to non-payment, and recoverable interim assistance. The study thus shifts the understanding of maintenance from a right established by judicial decree to an obligation that is enforced effectively, proportionately, and in the public interest. As a normative study, it calls for empirical research on the model's feasibility, costs, and impact in the Religious Courts.

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