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BEYOND JUDICIAL RECOGNITION: A *MAQĀṢID*-BASED MODEL OF POST-DIVORCE CHILD MAINTENANCE ENFORCEMENT

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ABSTRACT

Religious Court judgments concerning post-divorce child maintenance obligations are frequently not effectively enforced because enforcement mechanisms depend on applications submitted by mothers as primary caregivers and continue to rely on civil procedural rules designed for the execution of tangible assets rather than periodic payment obligations. This study aims to identify the enforcement of child maintenance obligations in Indonesia from the perspectives of *maqāṣid al-sharīʿah* and the best interests of the child principle, while also formulating a more effective and equitable enforcement model. This study employs normative juridical research with statutory and conceptual approaches through an analysis of legislation, Supreme Court regulations, and secondary literature. The findings indicate that substantive legal protection of children's maintenance rights is relatively adequate; however, enforcement mechanisms remain reactive, costly, and inconsistent. Furthermore, income withholding and inter-agency monitoring lack a standardized legal basis. The principal contribution of this study is the development of a model for enforcing post-divorce child maintenance obligations that strengthens the protection of children's rights through effective, sustainable, and equitable enforcement mechanisms.

Keywords: Child Maintenance, Judgment Enforcement, *Maqāṣid al-Sharīʿah*

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A. Introduction

Divorce dissolves the marital bond but not the responsibilities of parents toward their children. Islamic jurisprudence and Indonesian statutory law both place the primary financial burden of child maintenance on the father, including after the marriage has ended (Al-Zuḥaylī, 1989; Republic of Indonesia, 1974, art. 41; Republic of Indonesia, 1991, arts. 105, 149, 156). The main challenge in Indonesia is not the absence of legal norms, but the failure to translate those norms into effective protection for children.

The scale of the problem is considerable. Oktavia et al. (2026), citing official data, report that the Religious Courts received more than 516,000 divorce cases in 2023, roughly 70 percent of them initiated by wives. For 2024, a webinar of the Directorate General of Religious Courts reported nearly 500,000 divorce cases decided, of which 77 percent were wife-initiated petitions and 23 percent husband-initiated; a study by the Australia Indonesia Partnership for Justice 2 estimated that more than one million children were affected, and only 11.19 percent of decisions contained orders on the consequences of divorce (Wahyudi, 2025). An earlier study of 150 decisions of the East and Central Jakarta Religious Courts found that only 14 percent required fathers to provide child maintenance, a share that had barely changed after Supreme Court Circular No. 4 of 2016 (Nasution & Muchtar, 2020). Two gaps are therefore visible: many judgments do not address maintenance at all, and those that do are not necessarily carried out.

The theoretical foundation of this study rests on two principal frameworks. First, *maqāṣid al-sharīʿah,* or the objectives of Islamic law, provides a hierarchy of needs and a systems-based approach for evaluating legal institutions (Auda, 2008; Kamali, 2008). Second, the principle of the best interests of the child, as enshrined in the Convention on the Rights of the Child and interpreted by the United Nations Committee on the Rights of the Child, establishes a substantive right, an interpretive principle, and a procedural rule (United Nations Committee on the Rights of the Child, 2013). Drawing upon these two frameworks, this study addresses three principal research questions: (1) What is the normative framework governing post-divorce child maintenance in Indonesia, and what obstacles hinder its enforcement? (2) How do *maqāṣid al-sharīʿah* and the best interests of the child principle evaluate existing child maintenance enforcement practices? and (3) What model of child maintenance enforcement can be formulated in accordance with both theoretical frameworks?

This study is a normative juridical (doctrinal) study that uses statutory, conceptual, and limited comparative approaches. It collects no primary field data. Statements about court practice, such as compliance rates or the operation of regional cooperation agreements, are drawn from published empirical studies and official reports and are attributed to the sources that report them; they are not the authors' own findings. Two kinds of material were analyzed. Primary legal materials

include the Marriage Law and its amendment, the Compilation of Islamic Law, the Child Protection Law, the *Herzien Inlandsch Reglement*, a government regulation, Supreme Court regulations and circulars, and the Convention on the Rights of the Child with its General Comment No. 14. These were analyzed as sources of norms, by examining their content, their place in the hierarchy of norms, and their consistency with one another. Secondary materials consist of journal articles, dissertations, books, and publications of the Supreme Court and the Directorate General of Religious Courts. They were used to identify obstacles to enforcement, practices of individual courts, and comparative experience.Secondary sources were limited to studies directly concerned with the enforcement of child maintenance after divorce and closely related child support research, with priority given to journal sources of the last ten years. From Google Scholar, Scopus, Garuda, or institutional repositories. Information on Malaysia and Brunei Darussalam comes from reported official presentations rather than academic studies, so it serves as comparative illustration, not in-depth comparison.

This article is concerned with the second gap, which existing studies document from several angles. Fauzan (2024) observes that many child maintenance orders are not complied with voluntarily by former husbands, wholly or partly, so that forced execution becomes necessary. Abiyyutsani (2021), studying the East Jakarta Religious Court, found that judgments gave no automatic guarantee because children still had to file an execution request. Sinambela et al. (2026) attribute weak enforcement to low voluntary compliance, weak coercive mechanisms, administrative obstacles to withholding income, difficulty identifying executable objects, and the absence of integrated monitoring. In Batam, Oktavia et al. (2026) document arrears, delayed payments, and avoidance of enforcement procedures even though judgments consistently recognize child support, and Rahayu and Yul (2026) address problems in implementing Religious Court decisions on the execution of child support.

Recent scholarship has also proposed remedies. Asrori et al. (2023) describe E-Mosi Caper, an electronic monitoring application of the Bengkulu Religious Court built on agreements with a regional bank and local government; in one reported case it led to the monthly debiting of a civil servant father's account for his children. Helmi (2025) argues that the privatistic paradigm has failed and proposes a state-guaranteed, layered model that combines private obligation, judicial supervision, automatic income withholding, digital payment monitoring, a temporary public guarantee fund, and specialized administrative enforcement. Two recent doctoral dissertations propose a special enforcement instrument and institution (Muizzudin, 2024) and a model of enforcement against fathers who are civil servants in the Bengkulu region (Rahman, 2024). Comparative studies have examined Indonesia and Malaysia, including technological approaches to payment (Syahrin et al., 2025)

and the enforcement of arrears through judgment debtor summons in Malaysian Syariah courts (Ismail et al., 2026).

These studies establish that enforcement is the weak point of the system and that income withholding, institutional monitoring, and state guarantees are plausible remedies. To the extent that the reviewed literature shows, they leave three matters less developed. First, proposals are seldom derived from an explicit normative standard that can both evaluate existing practice and guide the design of new mechanisms; Oktavia et al. (2026) move maqāṣid analysis from the reasoning of judgments to the enforcement stage in a single court, and the present article builds on that step. Second, most studies of income withholding and institutional monitoring examine a single mechanism, court, or category of fathers, while Helmi (2025) offers the most integrated proposal, built around state responsibility. Third, the position of fathers who are genuinely unable to pay, and the legal authority and safeguards that each mechanism requires, receive comparatively little attention.

The present article addresses this gap in three respects. It pairs maqāṣid al-sharīʿah with the principle of the best interests of the child as twin standards and converts both into explicit evaluative criteria. It derives from these criteria an integrated, tiered enforcement model, instead of treating income withholding or monitoring as isolated remedies. And it specifies the legal authority that each element of the model requires and builds in proportionality safeguards for fathers who are genuinely unable to pay.

B. Child Maintenance in Islamic Jurisprudence

The textual foundations of child maintenance lie in several verses and a well-known hadith. Qur'an 2:233 stipulates that the father bears the provision and clothing of nursing mothers in a fair manner (*bil-maʿrūf*) and that no one is burdened beyond capacity. Qur'an 65:7 requires the person of means to spend according to his means, while the person whose provision is restricted spends from what God has given him. In the hadith of Hind bint ʿUtbah, whose husband was stingy, the Prophet allowed her to take what was sufficient for herself and her child in a fair manner. Three indicators follow: the obligation falls primarily on the father, its measure is fair sufficiency, and its amount is linked to capacity.

In classical jurisprudence the obligation is discussed under the maintenance of relatives, including children (*nafaqat al-awlād*) (Al-Zuḥaylī, 1989). Because it arises from descent rather than from the marriage contract, it does not lapse with divorce. The standards of *maʿrūf* and capacity make the amount flexible: it follows the child's needs and the father's means rather than being fixed once and for all. This flexibility matters for enforcement design because it calls for mechanisms that can adjust amounts rather than merely collect a fixed sum. Some jurists, notably within the Hanafi school, regard arrears of relatives' maintenance as lapsing with time unless fixed by a judge or agreed upon (Al-Zuḥaylī, 1989). If this view is accepted, a

judgment does more than set an amount: it binds the obligation so that arrears become a collectible liability, which gives enforcement a firm footing in the jurisprudence itself.

C. *Maqāṣid al-Sharīʿah* as an Evaluative Framework

The idea that the law of the *sharīʿah* aims at human welfare was systematized by al-Shāṭibī, who classified the objectives into necessities, needs, and refinements and named five essential interests: religion, life, intellect, lineage, and property (Masud, 1977). Kamali (2008) explains that the protection of lineage (*ḥifẓ al-nasl*) includes the upbringing and education of the next generation, while the protection of life (*ḥifẓ al-nafs*) and property (*ḥifẓ al-māl*) relate directly to sufficiency of food, shelter, and continuity of livelihood. Ibn ʿĀshūr (2006) widens the scope of maqāṣid from the protection of individuals to the ordering of society.

Auda (2008) offers a systems approach that is useful for assessing policy. He proposes six features of a system: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. Auda does not formulate criteria for assessing enforcement mechanisms. The five test criteria used in this article are therefore the authors' analytical adaptation of his features, not an established framework proposed by Auda. Building on Auda's systems approach, this study operationalizes five analytical criteria—priority, wholeness, openness, multidimensionality, and purposefulness—to assess the adequacy of existing enforcement mechanisms. Four of these retain the corresponding feature: wholeness, openness, multidimensionality, and purposefulness. Interrelated hierarchy is operationalized as priority, because the ordering of necessities, needs, and refinements in maqāṣid thought answers the practical question of which needs of the child must be met first. Cognitive nature, which concerns the status of juristic deduction as human understanding open to revision, is not turned into a separate criterion, because it describes how legal knowledge is produced rather than how an enforcement mechanism performs.

The criteria are as follows. The first is *priority*: needs bearing on the survival of the child, such as food, shelter, and basic health, come before complementary needs. The second is *wholeness*: protection does not end with the judgment but extends to actual fulfillment. The third is *openness*: contemporary instruments such as digital data and inter-agency integration may be used so long as they do not contradict the objectives of the law. The fourth is *multidimensionality*: the interests of the child, the caregiving mother, and the father are weighed together, including the father who is genuinely unable to pay. The fifth is *purposefulness*: success is measured by maintenance reaching the child, not by procedural completeness.

D. The Best Interests of the Child and the Normative Framework in Indonesia

Article 3(1) of the Convention on the Rights of the Child provides that in all actions concerning children, the best interests of the child shall be a primary consideration (United Nations General Assembly, 1989). Indonesia ratified the Convention through Presidential Decree No. 36 of 1990 (Republic of Indonesia, 1990a; Fauzan, 2024). The Committee on the Rights of the Child describes the best interests of the child as a substantive right, a fundamental interpretative legal principle, and a rule of procedure (United Nations Committee on the Rights of the Child, 2013). The third function is relevant to enforcement because the process of taking and implementing decisions should include an assessment of the likely impact on the child.

The Convention also contains a provision that bears directly on this subject. Article 27(4) requires states parties to take all appropriate measures to secure the recovery of maintenance for the child from parents or other responsible persons, including abroad (United Nations General Assembly, 1989). Article 27 as a whole concerns the child's right to a standard of living adequate for development (Arkadas-Thibert & Lansdown, 2022). International standards therefore do not stop at recognizing a right to maintenance; they require the means to recover it. The two frameworks meet in three respects: both are outcome oriented, both give priority to the vulnerable, and both judge law by the benefit actually received. Maqāṣid supplies normative weight and a hierarchy of priorities from within the Islamic legal tradition, while the best interests principle supplies procedural structure and indicators recognized in national and international law.

To avoid conceptual overlap, the two frameworks are given different tasks in the analysis. The maqāṣid criteria ask what protection must prioritize and how the interests of the child, the caregiving mother, and the father are weighed; they assess the substance and purpose of enforcement. The best interests principle asks whose right is at stake, how unclear rules should be interpreted, and how enforcement decisions should be made; it assesses the child's position as a rights-holder and the decision process. Where both point in the same direction, as with the priority given to the child's necessities, the convergence strengthens the conclusion and is not counted twice.

The Marriage Law provides that after divorce the father remains responsible for the costs of maintaining and educating the children; that if the father is in fact unable to meet this obligation the court may determine that the mother shares the costs; and that the court may require a former husband to provide living costs (Republic of Indonesia, 1974, art. 41, as amended by Republic of Indonesia, 2019). The Compilation of Islamic Law is consistent: maintenance costs are borne by the father (art. 105), a former husband must provide custody costs for a child below the age of 21 (art. 149), and all custody and maintenance costs are the father's

responsibility according to his capacity at least until the child is an adult and able to care for himself or herself (art. 156) (Republic of Indonesia, 1991). Fauzan (2024) notes that for maintenance disputes the age limit applied is the Compilation's 21 years under the *lex specialis* principle.

The Child Protection Law adopts the best interests of the child as a principle (Republic of Indonesia, 2014, art. 2) and affirms that a child whose parents are separated retains the right to financial support from both parents (art. 14). The duty of child maintenance thus has a double footing: a civil obligation in marriage law and a right of the child in child protection law. The Supreme Court has also written the principle into Religious Court procedure in another child-related field: Supreme Court Regulation No. 5 of 2019 lists the best interests of the child first among the principles that judges must follow in marriage dispensation cases (Hasanah et al., 2023). That regulation shows that the principle can be translated into court procedure, although it does not concern enforcement.

The Supreme Court has reinforced this footing through a series of circular letters and one regulation, which are summarized by Wahyudi (2025). Circular No. 3 of 2015 directs that maintenance orders include an annual increase of 10 to 20 percent, excluding education and health costs (Supreme Court of the Republic of Indonesia, 2015). Circular No. 4 of 2016 allows judges to set child maintenance *ex officio* where the child is in fact in the mother's care (Supreme Court of the Republic of Indonesia, 2016). Circular No. 1 of 2017 allows iddah, *mutʿah*, and past maintenance to be paid before the pronouncement of the divorce (Supreme Court of the Republic of Indonesia, 2017b), and Circular No. 2 of 2019 extends this pattern to wife-initiated divorce (Supreme Court of the Republic of Indonesia, 2019). Circular No. 3 of 2018 accommodates Supreme Court Regulation No. 3 of 2017 and directs judges to weigh fairness by examining the husband's economic capacity and the basic needs of the wife and children (Supreme Court of the Republic of Indonesia, 2017a, 2018). Circular No. 5 of 2021, invoking the best interests of the child, allows a petition to seize the husband's assets as security for child maintenance (Supreme Court of the Republic of Indonesia, 2021).

Two observations follow. First, the mechanism of payment before the pronouncement of divorce addresses the former wife's post-divorce rights; periodic future child maintenance has no direct equivalent apart from security by seizure under Circular No. 5 of 2021. Second, these guidelines operate at the stage of determining rights. The stage of implementation still depends on general civil procedure.

E. Enforcement under Civil Procedure

The law on Religious Courts does not regulate remedies against a party who fails to comply with a judgment in any special way, so that the *Herzien Inlandsch Reglement* applies (Fauzan, 2024). A maintenance order is a condemnatory order

that can be executed once the judgment has permanent legal force, subject to exceptions such as provisional judgments (Fauzan, 2024). Execution proceeds upon the petition of the entitled party: the head of the court summons the respondent for an admonition (*aanmaning*) of no more than eight days (art. 196 HIR) and, if the obligation remains unfulfilled, orders the seizure of the respondent's property (art. 197 HIR) for auction until the amount awarded is met (Herzien Inlandsch Reglement, 1941; Fauzan, 2024).

This design assumes a debt of fixed amount with an identifiable object. A penalty payment (*dwangsom*) under the Dutch-era Code of Civil Procedure is in principle intended for orders other than the payment of money (art. 606a Rv; Reglement op de Burgerlijke Rechtsvordering, 1847) and so cannot readily be used to press the payment of maintenance, which is a payment rather than an act.The literature identifies eight prominent obstacles.

First, execution depends on a petition. The entitled party must file personally and is often reluctant because the claim is perceived to be worth less than the cost of execution (Fauzan, 2024; Wahyudi, 2025). Second, the object of execution is unclear. The procedural rules are oriented toward tangible property, whereas salary or income does not exist as an object when the judgment is read (Fauzan, 2024). Former wives frequently do not know the former husband's assets, and respondents may claim to have none (Fauzan, 2024). Third, periodic nature. Maintenance falls due repeatedly, so execution must be repeated whenever arrears arise (Oktavia et al., 2026; Wahyudi, 2025). Fourth, cost and coordination. Execution costs are considered large compared with the amount claimed, and courts need cooperation from agencies outside the judiciary (Oktavia et al., 2026; Wahyudi, 2025). Fifth, vacuum upstream. Many claims omit petitions for the consequences of divorce, most cases are decided by default so that those consequences are barely examined, and some judges still fear exceeding the petition even though the Marriage Law gives *ex officio* authority (Nasution & Muchtar, 2020; Wahyudi, 2025). Sixth, Disparity by employment status. For civil servants, Government Regulation No. 45 of 1990 provides for dividing the salary into thirds among the male civil servant, the former wife, and the children under stated conditions, with severe disciplinary sanctions for refusal. State-owned enterprise employees are not bound by civil service rules, so withholding requires the employee's consent or a court order, and private employees face similar difficulties (Republic of Indonesia, 1990b; Fauzan, 2024). Seventh, no integrated monitoring. No system tracks compliance continuously from the moment a judgment becomes final (Sinambela et al., 2026; Oktavia et al., 2026). Eighth, judgments do not run automatically. The child must pursue further legal action to enjoy a right that has already been decided (Abiyyutsani, 2021).

F. Innovative Practices

Some courts have built workarounds. The Institute for Independence of the Judiciary (Jebabun et al., 2018) recorded courts that send a copy of the judgment with a request to the employer's treasurer so that salary is withheld monthly, as reported by Fauzan (2024). According to Fauzan (2024), the idea originated in articles by Religious Court judges published by the Directorate General of Religious Courts (Choiri, 2015; Joni & Iman, 2021; Wahyudi, 2021), but it lacks a clear basis in the procedural code and may burden a father who is in genuine economic difficulty.

Wahyudi (2025) reports several practices that are presented as good practices. In the Bengkulu High Religious Court region, E-Mosi Caper was launched on 7 November 2022 as an inter-agency application founded on a memorandum of understanding with the provincial government; it sends notifications of judgments to the former husband, the former wife, the employer's treasurer, and the regional bank, so that monitoring no longer depends on the former wife's complaint. Asrori et al. (2023) report that in one case the former wife used the application in February 2023 and by April 2023 the father's account was debited Rp1,000,000 per month for his children. In Surabaya, a 2022 memorandum with the city government led to the inclusion of national identity numbers in judgments, payment of child maintenance every six months stated in the operative part, and integration of judgment data with a city service application that can hold services until the court issues a statement. In Gresik, cooperation with the district government and 50 companies covers income withholding for civil servants and monitoring by employers. In Bontang, final judgments are sent to the city government and a fertilizer company, which withhold salaries and report each semester.

These practices share a direction: enforcement shifts from collection by the mother to supervision by a system. The sources reviewed here describe how the arrangements work and report isolated cases, but, as far as they show, they do not provide systematic outcome data such as payment regularity or arrears. The practices are therefore treated in this article as indications of direction, not as evidence of effectiveness. At the same time, withholding public services as a sanction carries legal risks and social effects, which are considered in the next section.

G. Evaluating Enforcement Practice through *Maqāṣid al-Sharīʿah* and the Best Interests of the Child

According to a comparative presentation reported by Wahyudi (2025), post-divorce maintenance in Malaysia rests on the Islamic Family Law Act 1984 (Act 303) and state enactments. Claims are made after the divorce is decided, through negotiation and, failing that, a hearing. The amount is calculated from the former husband's income and capacity, the basic needs of the former wife and children, the pre-divorce standard of living, the number of dependants, other expenses, and compulsory deductions. If the former husband does not pay voluntarily, four

instruments are available: an order withholding income or deducting salary at the workplace, seizure and sale of property, an order of *ḥiwālah* (transfer of the obligation to another party), and imprisonment. In 2024, three persons were reported jailed for failing to pay maintenance: 30 days in Kelantan, 20 days in Terengganu, and 30 days in Selangor. In Brunei Darussalam, the father's duty to maintain a child is set out in Chapter 217 of the Islamic Family Law Act (sections 75 and 82), a maintenance order in principle ends when the child reaches eighteen, with possible extension for further education, and income withholding is carried out on a court order directed to the employer. A recognized difficulty is the former husband who lives abroad, because no mechanism exists for recognizing Syariah court orders across borders (Wahyudi, 2025).

Malaysian scholarship has also examined how maintenance amounts are assessed from a Shariah perspective (Ahmad et al., 2020) and how arrears are enforced through judgment debtor summons (Ismail et al., 2026), while court decisions on children's livelihood after divorce in Indonesia and Malaysia have been compared in Islamic-law analysis (Athief & Juwanti, 2020; Syahrin et al., 2025). Beyond Muslim jurisdictions, comparative research shows that child support systems differ widely in institutional design, including how enforcement and cost recovery are organized (Hakovirta et al., 2022; Meyer et al., 2022), and studies of ways to improve enforcement point to income withholding and administrative monitoring as important tools (Cancian & Doar, 2024). The same literature carries a caution. Middlemass and Josephson (2021) argue that enforcement practices toward poor parents can contribute to poverty and operate as a new debtor's prison, and Vogel et al. (2022) discuss enforcement approaches that support rather than punish parents.

Three lessons emerge. First, income withholding is treated as a mainstream instrument rather than an occasional innovation. Second, heavy coercion such as imprisonment is a last resort and is used sparingly in Malaysia. Third, the cross-border weakness noted for Brunei recalls Article 27(4) of the Convention on the Rights of the Child, which requires recovery of maintenance including from abroad, an agenda that has barely entered Indonesian studies of child maintenance enforcement. Because the Malaysian and Bruneian material derives from an official presentation rather than academic comparison, these lessons are treated as comparators, not as models to be copied.

Priority. A child's need for food, shelter, and basic health is a necessity, since it concerns the protection of life and the continuity of lineage (Kamali, 2008). Under current procedure, however, child maintenance is treated like an ordinary civil debt: it waits for a petition, an admonition, and a seizure. There is no fast track for needs that cannot be deferred. Circular No. 3 of 2015 and Circular No. 5 of 2021 show sensitivity to priority at the stage of determining rights, but that sensitivity has not carried over to the stage of implementation. *Wholeness.* Protection that ends with

the operative part of a judgment is protection that is cut off. The figures reported by Wahyudi (2025) and Nasution and Muchtar (2020), together with the finding of Abiyyutsani (2021) that children must still pursue execution, show an incomplete chain from claim to fulfillment. Oktavia et al. (2026) reach the same conclusion in Batam, where the operative parts of judgments are clear but are not accompanied by automatic enforcement mechanisms. *Openness.* E-Mosi Caper, the integration of identity data in Surabaya, and the cooperation with companies in Gresik and Bontang are consistent with the openness feature: the Islamic legal tradition does not close itself to new instruments so long as the objectives are protected (Auda, 2008). Their weakness lies in a legal foundation that is not uniform, as shown by the criticism that income withholding has no clear reference in the procedural code (Fauzan, 2024). *Multidimensionality.* The interests of three parties must be weighed. Rahman (2024) identifies causes of non-compliance among civil servant fathers, including economic factors, lack of awareness, understanding, and distrust. This diversity matters because the father who is unwilling and the father who is unable require different responses. Qur'an 65:7 itself ties the amount of maintenance to means, so an enforcement regime that treats all defaulters uniformly would contradict the very text on which the obligation rests. On the other side, suspending public services as a sanction may harm the persons it is meant to protect when it reaches documents or services also used by the child. *Purposefulness.* The measure of success should be regular receipt of maintenance by the child, not the number of execution orders issued. The present framework regulates procedure far more than it measures results; there are almost no performance indicators for post-judgment fulfillment of child maintenance.

As a *substantive right*, maintenance belongs to the child and is not merely the mother's claim or a civil debt. A mother's reluctance to petition for execution because of cost (Fauzan, 2024) must therefore not result in the loss of the child's right. As an *interpretive principle*, when the procedural code is unclear on whether income may be the object of execution, the interpretation that best serves the child should be preferred. This argument is consistent with the interpretive latitude that Religious Court judges exercise in applying the Compilation of Islamic Law (Nurlaelawati, 2010), although such latitude must be kept from overriding legal certainty. As a *rule of procedure*, every enforcement decision should include an assessment of its impact on the child, including whether the means chosen relieves or burdens the household of the caregiver.

Two analytical conclusions follow. Existing enforcement practice moves in the right direction but is not yet systemic. And the different treatment of the children of civil servants, state-owned enterprise employees, and private employees cannot be justified by either maqāṣid or the best interests principle, because a child's right should not depend on the type of work the father does. These findings extend Oktavia et al.'s (2026) analysis by situating automatic income withholding,

administrative integration, and systematic monitoring within a broader normative framework that combines maqāṣid al-sharīʿah with the best interests of the child. Their conclusion also appears to hold beyond a single court, since comparable arrangements are reported in Bengkulu, Surabaya, Gresik, and Bontang (Asrori et al., 2023; Wahyudi, 2025), although, as noted above, these reports do not establish how effective the arrangements are. The findings also support Helmi (2025) on the need for the state to share responsibility, but adopt a more incremental position: much can be achieved within the Religious Court system through existing circulars and cooperation agreements, whereas a public guarantee mechanism requires legislation and budget. Finally, the findings add what the reviewed studies treat only partly, namely proportionality for the father who cannot pay and the principle that enforcement is part of the child's right, not only a question of institutional effectiveness. Read in the terms of Sinambela et al. (2026) and Muizzudin (2024), the proposal below is a normative framework for the special enforcement instruments those studies call for.

H. Reconstruction through a Five-Pillar Enforcement Model

Pillar 1: Executable Judgment. Effective enforcement begins with an operative part that leaves no new dispute. A maintenance order should state the exact monthly amount, the due date, the annual adjustment directed by Circular No. 3 of 2015 (10 to 20 percent), education and health costs as a separate component, the respondent's full identity including the national identity number, and the source of income and, where possible, the recipient's account. The practice of the Surabaya Religious Court of stating identity numbers and six-monthly payment in the operative part (Wahyudi, 2025) shows that this can be done. Judges should also use their *ex officio* authority under article 41 of the Marriage Law and Circular No. 4 of 2016 so that a child does not lose maintenance merely because the petition was poorly drafted.

Pillar 2: Early Security. Security should be arranged before arrears arise. Circular No. 5 of 2021 already opens seizure of the husband's assets as security for child maintenance (Wahyudi, 2025), and judges can actively raise this option with the parties and examine it from the outset. As a complement, payment of the initial period of child maintenance before the divorce certificate is collected or the pledge of divorce is pronounced could be considered, following the pattern of Circulars No. 1 of 2017 and No. 2 of 2019 for the wife's rights. This option is a proposal that requires further regulation; its rationale is that the interval between judgment and first payment is often the most precarious period for the child.

Pillar 3: Continuous Income-Based Enforcement. The core of the reconstruction lies here. Instead of repeating the cycle of petition, admonition, and seizure whenever arrears arise, the court issues one *standing execution order* binding the employer or treasurer to withhold and remit maintenance every month

until the child reaches the age limit or the judgment is modified. Arrears are settled in stages, in the way that instalments are known in Brunei (Wahyudi, 2025). The legal basis differs by employment status. For civil servants, Government Regulation No. 45 of 1990, article 8, already provides for dividing salary and carries disciplinary sanctions (Republic of Indonesia, 1990b; Fauzan, 2024). For employees of state-owned enterprises, Fauzan (2024) shows that the employee's consent or a court order is needed, so the operative part may include a direct withholding order and consent need not be a separate condition. For private employees, memoranda of understanding such as those in Gresik and Bontang (Wahyudi, 2025) can serve as a temporary bridge, but in the longer term a norm binding on employers is required. Under this scheme the burden of initiative moves from the mother to the court and the employer, and the execution costs that deter petitions (Fauzan, 2024) fall because the process is not repeated.

Pillar 4: Inter-Agency Integration. Monitoring should not depend on complaints. The E-Mosi Caper model, which notifies all relevant parties (Asrori et al., 2023; Wahyudi, 2025), could be developed into a national platform with a judgment database, an employer register, payment status, and arrears flags. Rahman (2024) points to four developmental steps: harmonizing regulations, forming an implementation team, strengthening the information system, and raising public awareness. Because the system would hold financial and identity information, including that of children, it should comply with the Personal Data Protection Law (Republic of Indonesia, 2022), collect only the data needed to monitor payment, and limit access to the parties, the employer or treasurer, and authorized court staff. Monitoring of outcomes matters because the effects of a regulation cannot be assumed: after the 2019 amendment of the minimum marriage age and the issuance of Supreme Court Regulation No. 5 of 2019, which was meant to tighten dispensation, applications for marriage dispensation rose from 23,126 in 2019 to 64,211 in 2020 (Hasanah et al., 2023). Whatever its causes, the case shows why results should be measured. Administrative sanctions such as holding public services, as applied in Surabaya and Gresik (Wahyudi, 2025), are justifiable only in graduated form, limited to services that serve the father's interests, and never preventing basic services for the child or the caregiving household. They also require an explicit legal basis, as discussed below.

Pillar 5: Graduated Escalation and Proportionality Safeguards. Enforcement must distinguish the father who is unwilling from the father who is unable. The court should provide a fast route for petitions to modify the amount for a father who has lost income, so that arrears do not accumulate under a judgment that no longer matches capacity. Where the father is truly unable, article 41 of the Marriage Law allows the mother to share the costs, and the state needs to be present through child social protection so that the child does not bear the consequences of the father's failure. A public guarantee of child support, which UN Women (2022) presents as a

policy tool for women's economic empowerment and child well-being, and the temporary public guarantee fund proposed by Helmi (2025), point in this direction, although they require legislation and funding beyond the Religious Courts. Against the father who can pay but will not, escalation proceeds in stages: automatic reminders, income withholding, seizure and auction, proportionate restriction of services, and, only as a last resort, heavy sanctions with a clear legal basis. The limited use of imprisonment in Malaysia (Wahyudi, 2025) is a comparator rather than a recipe, because its use in Indonesia would require study of existing provisions, including the prohibition of child neglect in the Child Protection Law (Republic of Indonesia, 2014). The cautions of Middlemass and Josephson (2021) and Vogel et al. (2022) support this ordering.

I. Legal Authority and Safeguards

The model combines elements that existing law already permits, practices that individual courts have already adopted, and reforms that this article proposes. Table 2 keeps the three apart and identifies the legal authority that each proposed reform would require. The distinction matters because circulars and Supreme Court regulations bind the judiciary, whereas duties imposed on employers, other agencies, and the state itself need a statutory footing. Three proposals call for fuller justification, because they interfere most with the father's interests or require the state to assume new responsibilities.

Compulsory income withholding. The strongest normative support is that the obligation arises from descent and, once fixed by a judgment, becomes a collectible liability (Al-Zuḥaylī, 1989). The hadith of Hind bint ʿUtbah, discussed above, also supports the principle that a child's sufficient provision may be met from the father's means in a fair manner without his prior agreement. Withholding at source applies this principle through the court and spares the mother from resorting to self-help. As a matter of law, withholding already rests on Government Regulation No. 45 of 1990 for civil servants and, according to Fauzan (2024), on the employee's consent or a court order for employees of state-owned enterprises. No binding norm exists for private employers, which is why the standing order is proposed first as a Supreme Court regulation and, in the longer term, as a statutory duty on employers. Three safeguards respond to the risk of conflict with due process, proportionality, and privacy. The father should be summoned and heard before a standing order is issued, and should be able to object to it or seek its modification when his income changes. The amount withheld should not exceed the amount in the judgment plus a bounded instalment for arrears, so that the father keeps the means to support himself, in line with the capacity standard of Qur'an 65:7. And the employer should receive only the information needed to carry out the order.

Administrative restrictions. Withholding public services is the most contested measure, because it has no clear basis in the procedural code and may harm the

persons it is meant to protect. It is defensible only as a graduated measure that follows income withholding, applies to a father who can pay but will not, and is limited to services that serve the father's own interests. It must never reach services on which the child or the caregiving household depends. Because circulars and local agreements bind the judiciary and the parties that sign them, but not the public at large, a restriction of this kind requires an explicit statutory or equivalent legal basis. It should also come with prior notice, an opportunity to contest it, and automatic lifting once arrears are settled or inability to pay is shown.

Public guarantee. Article 27(4) of the Convention on the Rights of the Child requires states parties to take all appropriate measures to secure the recovery of maintenance, and the best interests principle makes the child's maintenance a primary consideration for the state as well as for the father. Where a father is genuinely unable to pay, a public guarantee prevents the child from bearing the consequences (UN Women, 2022; Helmi, 2025). Such a mechanism needs legislation and a budget and lies beyond the competence of the Religious Courts. It should supplement, not replace, the father's obligation, so that his liability continues and remains subject to proportionate enforcement. Its design, including eligibility, amount, and any recovery from the father, calls for separate study.

The model can be realized in stages, following the classification in Table 2. In the short term, courts can extend regional memoranda of understanding and use the *ex officio* authority and seizure already available. In the medium term, the Supreme Court may issue a dedicated regulation on child maintenance enforcement covering the standing execution order, employer duties, and data integration, in line with the call of Muizzudin (2024) for a special instrument and institution. A dedicated regulation of this kind has a precedent: for marriage dispensation, where legislation did not regulate the adjudication procedure in detail, the Chief Justice issued Supreme Court Regulation No. 5 of 2019 as procedural guidance (Hasanah et al., 2023). In the long term, legislation is needed so that the duties of third parties such as employers and financial institutions have uniform binding force.

J. Conclusion

This study concludes that a fundamental gap persists between the legal recognition of post-divorce child maintenance rights and their effective enforcement in Indonesia. Although the existing legal framework provides substantive protection, enforcement mechanisms remain reactive, institutionally fragmented, and dependent on civil execution procedures that are not designed to accommodate periodic payment obligations. Practices of inter-agency monitoring and income withholding implemented by several courts demonstrate the potential for strengthening enforcement mechanisms; however, they lack a uniform legal basis and have not been systematically evaluated. From the perspectives of *maqāṣid al-sharīʿah* and the best interests of the child, child maintenance enforcement must prioritize the

fulfillment of children's basic needs, continuity of protection from judgment to payment, a balance of the parties' interests, and the realization of substantive justice. Accordingly, judicial decisions should not merely constitute formal recognition of children's rights but must also ensure their effective and continuous fulfillment.

The contribution of this study lies in the development of a normative five-pillar model for child maintenance enforcement, comprising executable judgments, early security, continuous income-based enforcement, inter-agency integration, and graduated enforcement with proportionality safeguards for fathers who are genuinely unable to pay. This model proposes a reconstruction of enforcement mechanisms by shifting the burden of initiative from caregiving mothers to the judicial system, while maintaining fairness toward fathers. Its implementation requires stronger operative provisions in judicial decisions, expanded inter-agency cooperation, dedicated Supreme Court regulations, and the possible establishment of legally binding obligations for employers and a public guarantee mechanism. Nevertheless, the proposed model remains normative and has not yet been empirically tested. Therefore, future research should undertake empirical, comparative, and mixed-method studies across various Religious Courts to assess its effectiveness, institutional feasibility, and legal implications.

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