

**The Implementation of Verdict Execution on Providing
Maḍiyah Maintenance Following Divorce According to
Islamic Law (Case Study in Syar’iyyah Court Banda Aceh)**

Soraya Devy

Dwi Mekar Suci

Universitas Islam Negeri Ar-Raniry

Email: soraya.devy@ar-raniry.ac.id

dwimekarsari@gmail.com

Abstract

The article discusses the procedures of filing a plea to execute verdicts on providing *māḍiyah* maintenance and the effort to implement the verdicts in Syar’iyyah Court Banda Aceh. The study was conducted with a qualitative approach and the collected data were analyzed with a descriptive-analysis method based on Islamic law perspective. The result shows that the procedure and the legal effort to file an execution toward the verdict related to *māḍiyah* maintenance in Syar’iyyah Court are distinguished into two types of divorce, i.e. *talak* divorce and filed divorce. In *talak* divorce, the execution of the verdict related to maintenance is conducted during the reading of the *talak* pledge. In filed divorce, the ex-wife’s lawsuit related to maintenance which is neglected by the ex-husband is entitled to be legally sued through filing a plea on execution. The phases as follows: (1) the ex-wife files a plea of execution to the court, (2) pay the execution cost, (3) *aanmaning* (a warning to the defendant), (4) the ex-husband and ex-wife comply with the summons by the court, (5) the court establishes *executorial beslag* (executing confiscation), (6) the court establishes an execution order, (7) an auction. According to the Islamic perspective, the execution of *māḍiyah* maintenance can be conducted following the ex-wife’s lawsuit to the court. The execution of *māḍiyah* maintenance can be performed by the court based on the valid provisions of executing *māḍiyah* maintenance in Syar’iyyah Court upon consideration of benefit and expediency principles.

Keywords: *The implementation of execution, Court Verdict, The Provision of Maḍiyah Maintenance, Divorce*

**Pelaksanaan Eksekusi Putusan Pemberian Nafkah Maḍiyah
Pasca Perceraian Menurut Hukum Islam
(Studi Kasus di Mahkamah Syar'iyah Banda Aceh)**

Soraya Devy

Dwi Mekar Suci

Universitas Islam Negeri Ar-Raniry Banda Aceh

Email: soraya.devy@ar-raniry.ac.id

dwimekarsari@gmail.com

Abstrak

Artikel ini membahas tentang prosedur permohonan eksekusi putusan nafkah māḍiyah dan upaya pelaksanaan eksekusi putusannya dan tinjauan hukum Islam yang difokuskan pada Mahkamah Syar'iyah Banda Aceh. Penelitian ini dilakukan dengan pendekatan kualitatif, data yang telah terkumpul dianalisis melalui metode deskriptif-analisis dalam perspektif hukum Islam. Hasil penelitian menunjukkan bahwa prosedur dan upaya pemohonan eksekusi putusan nafkah māḍiyah di Mahkamah Syar'iyah dibedakan dalam dua bentuk, yaitu cerai talak dan cerai gugat. pada cerai talak, eksekusi putusan nafkah dilakukan pada saat pembacaan ikrar talak. Dalam kasus cerai gugat, gugatan isteri atas nafkah yang tidak dipenuhi suami dapat dilakukan upaya hukum berupa mengajukan permohonan eksekusi. Tahapannya adalah: (1) isteri mengajukan permohonan eksekusi ke pengadilan, (2) membayar biaya eksekusi, (3) aanmaning, (4) suami dan isteri memenuhi panggilan pengadilan, (5) pengadilan menetapkan sita eksekusi, (6) pengadilan menetapkan perintah eksekusi, (7) pevelangan. Eksekusi nafkah māḍiyah dalam pandangan Islam bisa dilakukan dengan gugatan pihak isteri kepada pengadilan. Eksekusi nafkah māḍiyah dapat dilakukan oleh pihak pengadilan sebagaimana yang berlaku dalam eksekusi nafkah māḍiyah di Mahkamah Syar'iyah atas pertimbangan asas kemanfaatan dan kemaslahatan.

Kata Kunci: Pelaksanaan Eksekusi, Putusan Mahkamah, Pemberian Nafkah Maḍiyah dan Perceraian.

Introduction

A divorce is a legal case that possibly occurs in a marriage. A divorce not only lasts in the form of dissolution of marriage but also results in a few lawsuits, one of which is maintenance. Maintenance is something provided and spent by an individual for his family. Meanwhile, several versions of maintenance definitions are explained by some *fiqh* (Islamic Jurisprudence) scholars based on Sharia. One of them explains maintenance as sufficiency of food, clothing, and housing provided by an individual.¹

Once divorce occurs, several legal consequences are obliged to be fulfilled by an ex-husband toward his ex-wife, one of which is providing maintenance. There are several types of maintenance namely *iddah*, *mut'ah*, maintenance for children, past-time maintenance (*māḍiyah*).² *Māḍiyah* maintenance is past-time maintenance (past/*maḍī*) which is not fulfilled by a husband to his wife during their marriage. According to *ulamas* (Muslim scholar), maintenance will not be called off when the husband is incapable to provide it to his wife; it even becomes the husband's debt.³ The unfulfilled maintenance by a husband is still an obligation even though the divorce has taken place. The legal basis on maintenance refers to chapter al-Baqarah verse 228. The verse is generally referred to be *dalil* (reference) on the obligation of a father (a husband) to support a mother (a wife) after a divorce.

In *fiqh* literature, the verse becomes the main reference about the maintenance, including the *māḍiyah* maintenance or past-time maintenance after divorce that must be fulfilled, unless the condition of *nusyuz* (disobedience of a wife to her husband).⁴ Marriage law 1974 and the compilation of Islamic law (KHI) do not contain a clear

¹ Wahbah al-Zuhailī, *al-Fiqhu al-Islāmī wa Adillatuh*, (Terj. oleh Abdul Hayyie al-Kattani, dkk), Volume 10, (Jakarta: Gema Insani, 2011), p. 94.

² Muhammad Nuruddin, *Nafkah Māḍiyah Isteri Sebelum Perceraian Perspektif Keadilan (Studi Analisis Pandangan Fikih Islami dalam Mazhab Hanafiyah dan Syafiiyah)*, *Sakina: Journal of Family Studies*, Vol 3, No. 2, 2019. Soraya Devy dan Doni Muliadi, *Pertimbangan Hakim dalam Menetapkan Nafkah Anak pasca Percerian (Studi Putusan Hakim Nomor 0233/Pdt.G/2017/MS-MBO)*, *El-Ussrah: Jurnal Hukum Keluarga*, Vol. 2, No. 1, Januari-Juni 2019.

³ Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer*, (Jakarta: Kencana Prenada Media Group, 2010), p. 161.

⁴ Imām al-Ghazālī, *al-Wasīṭ fi al-Maḥab*, *Juz VI*, (Mesir: Dar al-Salam, 1997), p. 214.

regulation related to the lawsuit of *māḍiyah* maintenance. However, the lawsuit of *māḍiyah* maintenance is originated from the interpretation of Article 34 verse (3) of marriage law and becomes junctional to article 77 verse (5) KHI which states, “*if a husband or a wife neglects their obligation, they are respectively able to file a lawsuit to the court*”.⁵ Based on the condition in that article, the *māḍiyah* maintenance can be filed as a lawsuit, especially by a wife.

The divorce cases in the court consist of a great number of *māḍiyah* maintenance-related cases, two of which were cases on the *talak* divorce (a husband dissolves a marriage by simply announcing before his wife) and filed divorce (dissolving a marriage through filing a lawsuit) in 2017 and 2018. The verdict decided that the ex-wife demanded the *māḍiyah* maintenance, on the other hand, the ex-husband refused it by proposing certain excuses. In the verdict, the judge in the Syar’iyyah Court Banda Aceh sentenced an amount of the *māḍiyah* maintenance neglected by the ex-husbands on three previous verdicts for IDR five million, IDR ten million, and IDR eighteen million respectively.⁶

By understanding the condition, it was apparent that the ex-husband was not willing to comply with the verdicts on providing the *māḍiyah* maintenance. In this condition, the ex-wife certainly holds an opportunity to file a plea of execution and the court, particularly the head of the court together with the clerk and the bailiff, is entitled to execute the verdict on providing the *māḍiyah* maintenance neglected by the ex-husband.⁷

Based on the case above, this study intends to explain the procedures of filing a plea to execute the verdict related to the *māḍiyah* maintenance, the effort to implement the verdict execution and Islamic law perspective related to which in the Syar’iyyah court Banda Aceh.

The Definition and the Types of Execution in Courts

⁵Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Instruksi Presiden No. 1 Tahun 1999 tentang Kompilasi Hukum Islam.

⁶Putusan Mahkamah Syar’iyyah Nomor 41/Pdt.G/2018/MS.Bna. Putusan Mahkamah Syar’iyyah Nomor 109/Ptd.G/2018/MS.Bna. Putusan Mahkamah Syar’iyyah Nomor 196/Ptd.G/2017/MS.Bna.

⁷Mahkamah Agung, *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama*, (Jakarta: Mahkamah Agung, 2013), p. 120-121.

The word “*eksekusi*”, before being standardized in Bahasa Indonesia dictionary, is the absorbed element of English word “execution”.⁸ The word is rooted from latin word “*ex sequi*”. In the Dutch language, the term is *executie*, meaning carrying out judge’s verdicts (*tenuitvoerlegging van dat vonnis*).⁹ In Bahasa Indonesia dictionary, there are two definitions of the word “*eksekusi*”, (1) Carrying out judge’s verdicts or carrying out the penalty of a court, especially a death penalty, and (2) selling confiscated properties.¹⁰

The definitions of execution explained above lead to a single definition i.e. carrying out court verdicts. It corresponds to Anwar and Susanto’s explanation that the word execution correlates to the court verdicts, or can be translated as carrying out the verdicts.¹¹ Besides, the word execution is generally defined as an action, a job or an implementation to realize a plan or program established in advance. Therefore, the general definition of execution consists of all matters that can be executed. However, the term execution can be used to refer to carrying out court verdicts.

Many terminological definitions of the word execution stated by experts, one of whom is Hariyani defining that the meaning of execution can be given in two ways i.e. narrow and broad meaning. The narrow meaning points out the execution of court verdicts with permanent legal force. Meanwhile, the broad meaning emphasizes fulfilling rights based on court verdicts that possess permanent legal force or based on executory deed.¹² Pitoyo accomodates three experts on explaining the meanings of execution, namely Subekti, Bachar, and Supomo, as follows:¹³

⁸ Krishna Daswara, et al., *Bahasa Sastra*, (Bandung: Institut Teknologi Bandung, 1991), p. 81.

⁹ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum*, (Jakarta: Kencana Prenada Media Group, 2018), p. 347.

¹⁰ Tim Penyusun, *Kamus Bahasa Indonesia*, (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional Jakarta, 2008), p. 379.

¹¹ Khoirul Anwar, *Peran Pengadilan dalam Arbitrase Syariah*, (Jakarta: Kencana Prenada Media Group, 2018), p. 102. AB. Susanto, *Super Leadership: Leading Others to Lead*, (Jakarta: Gramedia Pustaka Utama, 2009), p. 66.

¹² Iswi Hariyani, *Restrukturisasi dan Penghapusan Kredit Macet*, (Jakarta: Elex Media Komputindo, 2010), p. 42.

¹³ Whinbo Pitoyo, *Strategi Jitu Memenangi Perkara Perdata dalam Praktik Peradilan*, (Jakarta: Visimedia, 2012), p. 161.

- a. According to Subekti, execution is the implementation of a permanent verdict requiring genuine submission of disputing parties. The term “execution” addresses the meaning that defendant parties must be genuinely submissive to the verdict, thus it is forced to them with assistance of legal force, police and military.
- b. According to Djazuli Bachar, execution is carrying out court verdicts with force, including forceful actions toward a party who are obliged to fulfill the rights of the other in order to effectively alter a verdict to be an achievement.
- c. According to Supomo, execution which is a regulation consisting of ways and requirements, is employed by the state legal institutions to assist the authorities in executing verdicts provided that defendant sides are not submissive to the verdict within its term.

According to Amran Suadi, execution is forcefully carrying out the contents of a verdict with assistance if the defendant parties are unwilling to comply with the verdict. Execution is a unit of regulations and procedures for investigating a case.¹⁴

Based on the definitions, it is known that execution is defined as carrying out court verdicts. In this context, the execution is applicable on the condition that the defendant parties do not comply with the verdicts willingly and consciously, as the result, the implementation of the verdicts must be forceful by legal institutions to make the defendant comply with the verdicts despite reluctance. Thus, it can be separately re-defined that execution is a court term on carrying out a permanent verdict that is not complied by the defendant sides to fulfill the right of the plaintiff sides, through forceful actions by the authority.

Likewise, according to civil law, execution is classified into three types; execution to pay an amount of money, execution to conduct certain actions, and real execution.¹⁵ However, some literatures reveal only two types of executions i.e., execution to pay an amount of money and real execution since the execution to conduct certain actions looks similar to the real execution. There is

¹⁴ Amran Suadi, *Penyelesaian...*, p. 347.

¹⁵ Mahkamah Agung, *Pedoman Pelaksanaan...*, p. 120-121.

a literature stating four types of executions.¹⁶ Three of which are mentioned above, while the other is parate execution or direct execution. Those are explained as follows:

a. Execution to pay an amount of money

Execution to pay an amount of money is regulated in article 196 of HIR (procedural law for civil case). It is applied on condition that an individual neglects a verdict that obliges one to pay an amount of money. If a confiscation of warranty is conducted prior to the verdict, it inevitably becomes executorial confiscation. Thus, the warranty is permitted to placed in auction to later being set as an element of execution process. The execution is performed by auctioning the properties of a defendant party as the result fulfilling the amount of money that must be paid according to the verdict and reimbursing all costs spent for execution process.

b. Execution to conduct certain actions.

Execution to conduct certain actions is regulated in Article 225 HIR. It regulated that if the verdict that obliges one to conduct certain actions is not fulfilled, the plaintiff party has a right to seek for assistance of the court to realize it. In the context of this execution, the court verdict usually obliges the defendant side to: (1) provide an item, (2) empty a land or a house, (3) conduct certain actions in form of (4) stopping an action or a condition. If the defendant does not become submissive to the verdict willingly, the plaintiff can file a plea of execution to the head of the court.

c. Real execution

Real execution is nearly similar to the condition of the execution to conduct certain actions. Basically, the execution to conduct certain actions obliges one to conduct it in real. For instance, the defendant is obliged to give an item to the plaintiff, one must conduct the obligation by really giving the item to the plaintiff.

¹⁶ Bambang Sugeng and Sujayadi, *Pengantar Hukum Acara Perdata & Contoh Dokumen Litigasi Perkara Perdata*, (Jakarta: Kencana Prenada Media Group, 2015), p. 109. Amran Suadi, *Penyelesaian...*, p. 347-349.

Procedures of Execution in Syari'yyah Court

It has been identified in advance that the execution takes place on behalf of a permanent verdict. The execution of the verdict is valid on the condition that the defendant neglects to be compliant, either to pay an amount of money or to conduct certain actions. In this context, the process of execution takes place starting from filing a plea to execute by the plaintiff, calling the defendant, and ending with complying with execution order forcefully. The procedures of execution in Syar'iyah court as follows:¹⁷

- a. The plaintiff files a plea of execution and the mechanism of which is regulated in *bindalmin* pattern (pattern of developing and controlling case administration) and the related regulations.
- b. The head of religious court issues the establishment of *aanmaning* (a warning or calling to the defendant) that consists of ordering the bailiff to call the defendant of execution to attend the trial of *aanmaning*.¹⁸
- c. The bailiff/substitute bailiff calls the defendant of execution.
- d. The head of religious court implements *aanmaning* by holding incidental trial attended by the head, the clerk and the defendant of the execution. In the trial *aanmaning*:
 - 1) The plaintiff had better be called to attend.
 - 2) The head of religious court says the warning that in term of 8 (eight) days, starting from the day after the warning, the defendant of execution fulfill the verdict.
 - 3) The clerk writes the document of trial *aanmaning* which is signed by the head and the secretary.
- e. If the plaintiff reports that the defendant does not fulfill the verdict within 8 (eight) days term following the warning, the head of religious court issues the order of execution.

The Consequence of a Divorce in Islamic Law

The term divorce means dissolution or separation.¹⁹ It means that the dissolution or the separation of a marriage. The meaning is

¹⁷ Mahkamah Agung, *Pedoman...*, p. 121.

¹⁸ The word *aanmaning* generally means a warning, a warning to fulfill an obligation. M. Fauzan dan Baharuddin Siagian, *Kamus Hukum dan Yurisprudensi*, (Jakarta: Kencana Prenada Media Group, 2017), p. 737.

¹⁹ Tim Penyusun, *Kamus Bahasa...*, p. 616.

still general that explains the dissolution of marriage due to filed divorce or *talak* divorce. Nevertheless, the term divorce in this study covers the *talak* divorce. The word *talak* is derived from arabic word الطَّلَاق, the source of which (*maṣḍar*) is طَلَّقَ-طَلَّقًا طَلَّقًا. Ibn Manẓūr states that source of the word from the word الطَّلُوق.²⁰ Another language expert says that the source of the word *talak* is أَطْلَقَ with the plural الإِطْلَاق.²¹ The word طَلَّقَ or أَطْلَقَ etymologically means giving in, separation from a bond, separate, divorce, or distant, releasing, letting go, independent, detach, apart, and disclosed.²² Al-Barkatī and al-Jurjānī interpret *talak* etymologically as a removal إِزَالَةٌ or disregard النَّكْلِيَّةُ.²³ Despite the difference, the word الطَّلُوق and الإِطْلَاق have a similar meaning (*muradif*). The two words is just differentiated in term of its character, the word الطَّلُوق is firm (*ṣarīḥ*), while الإِطْلَاق is figurative (*kināyah*).²⁴

Terminologically, there are several formulations. According to al-Jazīrī, *talak* is the term of abolishing the marriage or reducing the detachment by a particular word. Abolishing the marriage means negating the marriage contract (*akad*) in which the wife is not legal to the husband anymore.²⁵ In this meaning, *talak* means the action to detach the bond of marriage where the permit to perform wife-husband relationship is invalid/illegal. Wahbah al-Zuhailī states that *talak* is detaching the bond of marriage by using the word *talak*, divorce, or the like.²⁶ The formulation also refers to the dissolution of marriage done a husband to his wife by declaring the word *talak*, and kinds of which.

²⁰Ibn Manẓūr al-Ifrīqī, *Lisān al'Arb, Juz' 12*, (Kuwait: Dār al-Nawādir, 2010), p. 95.

²¹ Ahmad Warson al-Munawwir, *Kamus al-Munawwir*, (Surabaya: Pustaka Progressif, 2007), p. 862.

²² Ibn Manẓūr, *Lisān..., Juz' 12*, p. 95.

²³ Muḥammad 'Amīm al-Barkatī, *al-Ta'rīfāt al-Fiqhiyyah: Mu'jam Yasraḥ al-Fāz al-Muṣṭalaḥ 'Alaihā baina al-Fuqahā' wa al-Uṣūliyyīn*, (Bairut: Dār al-Kutb al-'Ilmiyyah, 2003), p. 136. Muḥammad al-Jurjānī, *Mu'jam al-Ta'rīfāt*, (Mesir: Dār al-Faḍīlah, 2004), p. 119.

²⁴ Wizārah al-Auqāf, *Mausū'ah al-Fiqhiyyah, Juz' 29*, (Kuwait: Wizārah al-Auqāf, 1995), p. 5.

²⁵ Abdurrahmān al-Jazīrī, *al-Fiqh 'alā al-Maẓāhib al-Arba'ah*, (Translated. by Faisal Saleh), (Jakarta: Pustaka al-Kautsar, 2017), p. 576-577.

²⁶ Wahbah al-Zuhailī, *al-Fiqh al-Syāfi'ī al-Muyassar*, (Translated. by Muhammad Afifi and Abdul Hafiz), (Jakarta: Almahira, 2017), p. 579.

The definitions have different words yet similar intention, they similarly say it as dissolution of marriage. Another definition stated that *talaq* is a legal clause on the dissolution of marriage based on a husband's will toward his wife. Therefore, even all of the *fiqh* literature state that *talak* is the husband's right. Related to that, *talak* is only possessed by those entitled to maintain a marriage or dissolve it. The way to do so is by declaring certain words and showing the intention of which as the consequence the wife is not *halal* (legal) anymore to have intercourse with the husband.

Divorce in Islamic law is legal and allowed. It is entitled to husband and wife who are unable to maintain the marriage. The divorce can take place on condition that the marriage is impossible to maintain, for instance, it occurs due to a dispute, bickering, neglecting the duty, or other causes. Divorce not only lasts in the form of the dissolution of marriage but also results in legal consequence.

Basically, a great number of consequences related to *talak* divorce exist in Islam, either consequence related to husband-wife or related to their descendants. the ex-husband and ex-wife are still attached legally. The consequences of *talak* divorce for an ex-wife as follows:²⁷

- a. It requires an ex-wife to observe *iddah*, a waiting period that must be observed to identify the emptiness of the womb and not allow an ex-wife to marry to another man.
- b. It requires an ex-wife to stay at her ex-husband's house during *iddah* period.
- c. It requires an ex-wife not to accept a marriage proposal from another man during the period and not to make a wedding contract before *iddah* is over.

Meanwhile, the consequences of *talak* divorce for an ex-husband as follows:

²⁷ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, (Jakarta: Kencana Prenada Media Group, 2014), p. 165-166. Amiur Nurudin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia; Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 sampai KHI*, (Jakarta: Kencana Prenada Media Group, 2012), p. 206.

- a. It is an obligation to an ex-husband to provide *iddah*, *mut'ah* maintenance (providing entertainments for his ex-wife), and *māḍiyah* maintenance (past-time maintenance).
- b. It is an obligation for an ex-husband to provide maintenance for his children.

The consequences for both an ex-husband and an ex-wife are nurturing children until they become independent. This obligation is observed similarly by both, even though the right to nurture children is preferably conducted by an ex-wife. An ex-wife is the priority to nurture children on condition that she does not marry another man yet or not becomes an apostate.²⁸ So that, the core problem in this study both husband and wife bear some consequences following divorce in form of obligation that must be observed. It means that divorce not only lasts at the dissolution of marriage but also continues to fulfilling rights and obligations.

The Definition and Legal Basis of Maintenance

a. The Definition of Maintenance (*Nafkah*)

The word “*nafkah*” (maintenance) is derived from arabic word, *al-nafqah* “النَّفَقَةُ”. It is a derivation of *nafaqa* “نَفَقَ”, meaning spending or expense.²⁹ Abdurrahmān al-Jazīrī states that terminologically the meaning of *nafkah* is “الإِخْرَاجُ وَالدَّهَابُ”, meaning “spending” or “going”. The word “النَّفَقَةُ” is the source and plural form of “النَّفَقَاتُ”, which becomes part of the word “دَخَلَ” like the word “نُفُوقَ” and “دُخُولَ”.³⁰ Another perspective by al-Zuhailī states that the word *nafkah* is derived from the word *infaq* “إِنْفَقَ”, meaning “spending”, and the word is not applied unless for a good deed.³¹ According to al-Barkatī, *nafkah* is the call for spending, a term meaning providing in order to make settle and continue”.³²

The definitions of maintenance (*nafkah*) as mentioned above are addressed to action or deed not to treasure as an object. It is can be understood that the word *nafkah* is defined as “spending” because *nafkah* is the treasure spent by an individual as an obligation to those

²⁸ Abu Ahmad Najih, *Fikih Mazhab Syafi'i*, (Jakarta: Marja, 2018), p. 679.

²⁹ Ahmad Warson Al-Munawwir, *Kamus...*, p. 1449.

³⁰ Abdurrahmān al-Jazīrī, *al-Fiqh...*, Volume 5, p. 1069.

³¹ Wahbah al-Zuhailī, *al-Fiqh al-Islāmī...*, p. 94.

³² Muḥammad ‘Amīm al-Barkatī, *al-Ta'rifāt...*, p. 231.

in right, like from a husband to a wife, a father to his child, and others. *Nafkah* also means “reduced” because the treasure of those who spend *nafkah* is reduced. *Nafkah* also means “going” that a husband’s treasure goes away because giving to his wife as the right. Perhaps, etymology meaning of *nafkah* is in accordance with an action to spending treasure.

The word *nafkah* is later absorbed and becomes standard. In Bahasa Indonesia Dictionary, the word “*nafkah*” has some meanings, one of which is an expense for living, or income money, and expense provided by a husband for his wife, sustenance, and daily provision.³³ Those meanings are associated to an object like money, food, clothing and other kinds that switch from the source. Meanwhile, the source meanings relate to an action to spend. Interpreting *nafkah* (maintenance) as a spent object or treasure looks in accordance with the terminological meaning of *nafkah* itself.

Terminologically, there are a great number of formulations, one is stated by al-Jazīrī that *nafkah* is a burden, in form of bread, meals, clothing, housing, and the other like costs for water, oil and so on, fulfilled by an individual who is obliged to do so.³⁴ The meaning above remains general, general in term of the provider and the receiver. The meaning above may refer to maintenance from parents to children, from children to old and indigent parents, from husband to wife and so on. Those all are contained in the formulation. A similar definition is defined by al-Jazā’irī that *nafkah* (maintenance) is giving by an individual in form of clothing, food, and housing to the right.³⁵ The definition by al-Jazā’irī is also general. However, *nafkah* (maintenance) in this study refers to *maintenance* from husband to wife. The formulation, which particularly accommodates it, is formulated by al-Asyqar. He mentioned that *nafkah* (maintenance) in the context of marriage is a treasure for a wife, like food, clothing, housing, protection, and so on that must be provided by her husband.³⁶

³³ Tim Penyusun, *Kamus...*, p. 992.

³⁴ Abdurrahmān al-Jazīrī, *al-Fiqh...*, Volume 5, p. 1069.

³⁵ Abū Bakr Jabir al-Jazā’irī, *Minhāj al-Muslim*, (Translated by Syaiful, et al), (Surakarta: Ziyad Books, 2018), p. 584.

³⁶ Umar Sulaimān al-Asyqar, *Aḥkām al-Zawāj fī Ḍau’ al-Kitāb wa al-Sunnah*, (Translated by Iman Firdausi), (Solo: Tinta Medinam, 2015), p. 310.

b. Legal Basis of Maintenance (*Nafkah*)

Maintenance (*nafkah*) in this study refers to maintenance from a husband to his wife. Scholars agree to classify maintenance from husband to wife as an obligation because it is part of Sharia (الشريعة).³⁷ A great of *fiqh* literature show *ijmak* or consensus of scholars on this matter. For instance, Ibn Munzīr emphasizes that a man marrying a woman and has undergone sexual intercourse must provide maintenance for her.³⁸ As mentioned by other scholars like Ibn Qudāmah, al-Syaibānī, al-Ghazālī, and many others that a husband must provide maintenance for his wife as his capability. Ibn Ḥazm in his book, “*Marātib al-Ijmā*” emphasizes that scholars agree that an independent man, who owns established treasure and is considered mature and mentally fine must provide his wife maintenance as a consequence of a legal marriage.

Al-Qaḥṭānī shows at least eighteen scholars’ opinion namely Ibn Ḥazm, Ibn Munzīr, al-Kassānī, Ibn Rusyd, Ibn Qudāmah, al-Rāfi’ī, al-Nawawī, and many others. In conclusion, those scholars say that maintenance is a man’s duty based on Sharia and fulfilled according to his capability.³⁹ Based on several opinions from the scholars above, it can be defined that maintenance is an obligation established based on references in the Koran and hadith hence the scholars are in consensus related to the obligation of maintenance. The consensus emerges due to the existence of several references in the Al Quran and hadith that explain the obligation to provide maintenance for a wife. One of which is in *Al Quran* as follow:

³⁷ Yūsuf al-Qaradāwī, *Madkhal li Dirāsah al-Syarī’ah al-Ilāmiyyah*, (Translated by Ade Nurdin and Riswan), (Bandung: Mizan Pustaka, 2018), p. 13. Al Yasa’ Abubakar, *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan dalam Ushul Fiqh*, (Jakarta: Kencana Prenada Media Group, 2016), p. 19. Abdul Manan, *Pembaruan Hukum Islam di Indonesia*, (Jakarta: Kencana Prenada Media Group, 2017), p. 30.

³⁸ Ibn Munzīr, *al-Ijmā’*, (Bairut: Dār al-Kutb al-‘Ilmiyyah, 1985), p. 42.

³⁹ Ibn Qudāmah, *al-Muqni’ fī Fiqh al-Imām Aḥmad bin Ḥambal al-Syaibānī*, (Jeddah: Maktabah al-Suwādī, 2000), p. 389. Muḥammad bin al-Ḥasan al-Syaibānī, *al-Aṣl*, Volume 10, (Beirut: Dār Ibn Ḥazm, 2012), p. 325. Abū Ḥamid al-Ghazālī, *al-Wasīṭ fī al-Maḏhab*, Juz 6, (Mesir: Dār al-Salām, 1997), p. 203.

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِمَّ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَالِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدَيْهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْرِعُوا بِالْوَالِدَاتِ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

Translation: Divorced' mothers will breastfeed their offspring for two whole years, for those who wish to complete the nursing 'of their child'. The child's father will provide reasonable maintenance and clothing for the mother 'during that period'. No one will be charged with more than they can bear. No mother or father should be made to suffer for their child. The 'father's' heirs are under the same obligation. But if both sides decide—after mutual consultation and consent—to wean a child, then there is no blame on them. If you decide to have your children nursed by a wet nurse, it is permissible as long as you pay fairly. Be mindful of Allah and know that Allah is All-Seeing of what you do. (QS. al-Baqarah [2]: 233).

According to al-Syaukānī, quoted by al-Barūdī, some *ulamas* believe that the verse above is specifically to divorced women.⁴⁰ So that, the verse informs the obligation of a father (husband) to provide a mother (wife) maintenance either after a divorce (if undergoing breastfeeding) or during marriage.

The Scholars' Opinions on *Māḍiyah* Maintenance Following Divorce

Māḍiyah maintenance is defined as previous maintenance or past-time maintenance that is not provided by a husband to his wife and becomes his debt. Based on that, the *māḍiyah* maintenance is usually termed as owed maintenance. The word *māḍiyah* or “الْمَاضِيَّةُ” is sourced from the word “مضى”, meaning go, pass, past or

⁴⁰ Imad Zakī al-Barūdī, *Tafsīr al-Qur'ān al-'Azīm li al-Nisā'*, (Translated by Tim Penerjemah Pena), Volume 1, (Jakarta: Pena Pundi Aksara, 2013), p. 200.

preceding.⁴¹ Terminologically, the *māḍiyah* maintenance is past-time maintenance that is not provided by a husband during marriage.

This maintenance *māḍiyah* takes place under several circumstances. Among other things, the husband does not want to provide a living to his wife for some time, even though he is able to fulfill it because of sufficient wealth. In addition, it can also be caused by a husband who is in poverty. In this condition, usually the husband is unable to provide his wife for some time so that some ulemas establish it as husband's debt that must be provided when he is rich or capable. Another reason is where the husband disappears without a trace or the husband goes to prison. As the result of the husband's disappearing or going to prison the wife is not provided. When the husband returns or free from prison, the maintenance becomes maintenance *māḍiyah* for the wife.⁴²

The *ulemas* differ in determining whether this maintenance *māḍiyah* is still the husband's obligation to provide or not. Some scholars view that the wife is not entitled to the maintenance *māḍiyah*. As mentioned by al-Ṭaḥṭāwī, the previous maintenance for a wife (مضى) ends. It means that the maintenance does not become the wife's right that must be provided by the husband anymore.⁴³ Ibn Qayyim also states that the previous maintenance for a wife ends and is called off. He explains that the past-time maintenance is called off as the wife is impossible to claim her previous right. Besides, no explicit reference shows the maintenance that is mandatorily provided by a husband.⁴⁴

Meanwhile, other ulemas have the view that the previous maintenance is still obliged to the husband and becomes a debt for him. One of whom is Imām al-Nawawī. In his book "*al-Majmū'*", al-Nawawī states that the past maintenance (*māḍī*) for the wife does not end.⁴⁵ It means that Imām al-Nawawī considers the past

⁴¹ Ahmad Warson Al-Munawwir, *Kamus...*, p. 1342-1343.

⁴² Wahbah al-Zuhailī, *al-Fiqh al-Islāmī...*, p. 104-105.

⁴³ Abd al-'Al al-Ṭaḥṭāwī, *Fath al-Khallāq Syarḥ Fatāwā al-Nabī fī al-Ṭalāq*, (Beirut: Dār al-Kutb al-'Ilmiyyah, 2004), p. 213.

⁴⁴ Ibn Qayyim al-Jauziyyah, *Zād al-Ma'ād fī Hadī Khair al-Ibād*, *Juz' 5*, (Beirut: Mu'assasah al-Risālah, 1998), p. 450.

⁴⁵ Syarf al-Nawawī, *al-Majmū'*, *Juz' 18*, (Madinah: Maktabah Salafiyyah, t. tp), p. 275.

maintenance provided by a husband or *māḍiyah* not ending, the husband is still obliged to fulfill his debt.

A husband in normal condition; physically, mentally, and financially normal, is obliged to provide maintenance for his wife. However, the ulemas still debatable about fulfilling the maintenance if the husband is poor. In this context, being poor is a lack of wealth. In the book “*Aḥkām al-Zawāj*”, Sulaimān al-Asyqar reviews the views of ulemas on the maintenance of poor husband very well. According to Ḥanafī school of thought, a poor husband is entitled to not provide maintenance, however, the wife is entitled to establish it as debt when the husband is incapable to provide the wife.⁴⁶ Thus, the unprovided maintenance when the husband is poor becomes debt for him and will be maintenance *māḍiyah*.

According to the Mālikī, Syāfiī, and Ḥanbalī school of thought, indigent husbands are freed or are not obliged to fulfill their wives' maintenance during their poverty and hardship. However, they differ whether the income is owed to their husbands or not.⁴⁷ According to the Syāfiī and Ḥanbalī, the income that is not fulfilled by the husband will become maintenance *māḍiyah* and must be fulfilled and become a debt for the husband which must be covered when he is able. Meanwhile, According to the Mālikī, the obligation to provide maintenance by the poor husband ends and no debt for him.⁴⁸

Based on the view of ulemas above, it can be understood that maintenance *māḍiyah* may take place in several conditions: Firstly, the husband deliberately does not provide for the wife for some time. This maintenance in its position will lead to maintenance *māḍiyah*, the previous maintenance that is obliged to be provided. Secondly, the maintenance *māḍiyah* takes place if the husband disappear (*ghaib*), or the husband is in prison. The maintenance when the husband disappears or imprisoned becomes *māḍiyah* or past maintenance. Third, the *māḍiyah* maintenance can also occur when the husband is in a state of incapacity or poor. The condition will cause the unprovided maintenance becomes *māḍiyah* for the wife.

⁴⁶ Umar Sulaimān al-Asyqar, *Aḥkām...*, p. 318-319.

⁴⁷ Ibn Rusyd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, (Translated by Fuad Syaifudin Nur), Volume 2, (Jakarta: Pustaka al-Kautsar, 2016), p. 94.

⁴⁸ Umar Sulaimān al-Asyqar, *Aḥkām al-Zawāj...*, p. 318-319.

Related to the three condition of *māḍiyah*, the ulemas differs in establishing fulfillment. Some ulemas view that maintenance *māḍiyah* is obliged to be fulfilled by the husband. On the other hand, other ulemas opine that maintenance *māḍiyah* has passed and is not an obligation of a husband anymore. That opinion rises due to the absence of firm reference related to this matter.

The Procedures of a Verdict and execution on the *Māḍiyah* Maintenance in The Syar'iyah Court Banda Aceh

The implementation of the verdicts of the Syar'iyah Court in all the jurisdictions of Aceh, or religious courts throughout the jurisdiction of Indonesia, is carried out in two ways, namely the implementation of verdicts on a voluntary basis and the implementation of verdicts using the execution mechanism by the court. According to Amran Suadi, as the Supreme Court Judge of the Supreme Court of the Republic of Indonesia, the point of implementing the verdicts is actually voluntary implementation. Nevertheless, the prevalence of voluntary implementation does not show a significant number in reality. Actually, the defendant may not want to fulfill or implement the verdict voluntarily. Hence this situation leads to execution.

The procedure to execute the verdict of the *māḍiyah* maintenance after divorce in court can be divided into two categories, namely *talak* divorce and filed divorce. This also applies to the Banda Aceh Syar'iyah Court. In the context of *talak* divorce, the procedure is usually put forward by the wife during the answering process in court. In this process, the wife who has objections can ask in her answer about the *māḍiyah* maintenance. This has been elaborated by Muthmainnah, as the judge of the Banda Aceh Syar'iyah Court. According to her, the *māḍiyah* maintenance is the past maintenance which is the husband's obligation and the wife's right yet not given by the husband. Lawsuits for *māḍiyah* maintenance in *talak* divorce case can be understood in the statement as follows:

“For example, in the case of *talak* divorce, there is a process of answering the matter, and usually in the process the wife, for example, asks for some things, including maintenance for the past 10 (ten) months, with the amount of 1 (one) million per month, and granted by the judge then puts in a verdict,

with request such as giving permission to the plaintiff (husband) to pronounce a pledge of divorce, punishing the plaintiff (husband) to pay maintenance *māḍiyah* to the wife (the defendant) an amount of 10 (ten) million rupiahs as the accumulation of 10 (ten) months earlier, and the money must be paid at the time of the divorce pledge. After it is decided, after the next 14 (fourteen) days, the verdict is legally binding. Later on, the plaintiff and the defendant are called to attend the divorce pledge trial, for example, it will take place next week. At the time of the divorce pledge, the judge asks the plaintiff whether he brought the 10 (ten) million money, if not brought, the judge asks the defendant (wife) whether she wants not to be paid, for example, she answers that she does not want. Then the case is postponed by the judge and the pledge cannot be decided that day. Then the judge asks the husband again when he is able to pay it, for example, he answers next week and the trial was postponed until next week, and the husband brings the money at that moment. Furthermore, if at the trial the husband did not bring the money, or only bring 5 (five) million, then the judge asks the wife whether she accepts it or not, if she accepts 5 (five) million finally the divorce pledge could be pronounced, and it was considered to have been paid in full. However, if the wife doesn't want to accept it, it is impossible for the trial to be postponed all the time. The trial has a time limit of 6 (six) months since the first summoned for the pledge. If the maintenance is also not paid, then this verdict is invalid, and both are still considered husband and wife. If you don't pay, you won't get divorced, and that is the consequence".⁴⁹

By understanding the explanation above, it is known that the procedures of lawsuit related to the *māḍiyah* maintenance in *talak* divorce case are carried out in the court. During the trial, the wife who feels aggrieved in term of maintenance can file a plea on past maintenance or *māḍiyah*. If the plea on *māḍiyah* maintenance is granted, it is an obligation for the husband to fulfill it during the pronounce of *talak* pledge. If the husband neglects it, the court can

⁴⁹ Interview with Muthmainnah, The Judge at Syar'iyah Court Banda Aceh, on July 17th, 2019.

postpone the pledge for 6 (eight) months at maximum. The consequence of unproviding the maintenance is the rejection of *talak* plea by the husband. Thus, the procedures of execution of *māḍiyah* maintenance in *talak* divorce are carried out based on the phases as follows:

- a. A wife can request or file plea related to *māḍiyah* maintenance in *talak* divorce.
- b. If the court considers this maintenance, it can be put on and granted in the *petitum* (request) of the decision.
- c. Providing *māḍiyah* maintenance is carried out in the next trial during the pledge of *talak*.
- d. If the husband does not fulfill it, or cannot be executed in the near future, the trial will be postponed until the husband is able to pay the maintenance, however, within the limit time of 6 (six) months from the first summoned to the pledge.
- e. If the husband cannot afford it, while the wife remains in her position to demand the fulfillment of the *māḍiyah* maintenance, then the *talak* plea is dropped or rejected. In this case, on one hand, *māḍiyah* maintenance cannot be executed. On the other hand, their marriage or relationship cannot be dissolved by *talak*.

According to Muthmainnah, the *māḍiyah* maintenance is not fulfilled because the husband is unable to fulfill it. A similar statement is also explained by Budiman, as the judge at the Banda Aceh Syar'iyah Court, that the *māḍiyah* maintenance is sometimes not provided for the wife due to incapability. He also explained that the establishment of the amount of maintenance was adjusted to the husband's capability. The judge puts the husband's job and the amount of income into consideration. In this way, the amount of *māḍiyah* maintenance must really be established by the husband's ability, as well as the wife's needs.⁵⁰

The second procedure, filed divorce, is related to the procedure of executing past maintenance or *māḍiyah* which was sued by the wife along with filed divorce, this is more complicated than the execution of *talak* divorce. The wife can file a lawsuit related to *māḍiyah* maintenance to the husband. In this condition,

⁵⁰ Interview with Idris Budiman, The Judge at Syar'iyah Court Banda Aceh, on July 17th, 2019.

the procedure is similar to the previous one during which the judge considers the husband's condition, work, and income so that the amount of demanded maintenance can be adjusted to the husband's income and also the wife's needs. The difference is the continued implementation if the husband does not voluntarily comply with the verdict. In this case, according to Budiman, an attempt must be made to execute the verdict, and prior to that, there must be an execution plea submitted by the wife. If there is no plea for execution, then the suit for maintenance of *māḍiyah* cannot be continued.⁵¹

Muthmainnah stated that the execution of *māḍiyah* maintenance in filed divorce cases is quite rare compared to *talak* divorce. However, the procedures and efforts to carry out the execution are usually preceded by the husband's unwillingness to comply with the verdict. It means that the husband does not voluntarily comply with the verdict on the *māḍiyah* maintenance. In this condition, the wife can submit a plea for the execution. Once a plea is made, to meet the cost of execution, *aanmaning* or summons of the executed party (husband) is carried out to comply with the verdict, the last is the auction. In detail, the procedures and efforts to execute the *māḍiyah* maintenance in filed divorce are as follows:

- a. If the husband does not voluntarily carries out the verdict related to the *māḍiyah* maintenance, by meeting all requirements including the costs, the wife can file a plea or execution to the court.
- b. After the plea, the next phase is *aanmaning*, summons the husband to attend the trial.
- c. Regardless his attending or not, the court establishes execution confiscation at the time of execution order.
- d. If the execution is taking some objects, the objects will be auctioned to meet the amount of *māḍiyah* maintenance that has been decided by the judge.

The above phases are probably similar to those carried out by the Syar'iyah Court or other religious courts in Indonesia. This is in line with Abdul Manan's statement that the execution of the payment for the maintenance of *mut'ah*, *iddah* or owed maintenance (*māḍiyah*) at the Religious Court will go through several phases,

⁵¹ Interview with Idris Budiman, The Judge at Syar'iyah Court Banda Aceh, on July 17th, 2019.

namely application for execution, paying the execution cost, *aanmaning*, determining the execution confiscation, determining the execution order, announcing the auction, auction requests, registration of auction requests, determining auction days, auction buyers and determining the winner, and payment. The procedures are carried out to meet the existing regulations so that it does not violate the law, makes it easier, and is able to fulfill the wife's right after divorce.⁵²

Based on the explanation above, it can be understood that the procedures and efforts to execute the maintenance after divorce can be divided into two criteria. The first criterion is in *talak* divorce case. In *talak* divorce, if the husband does not want to fulfill the contents of the verdict voluntarily, then the step should be taken is postponing the trial until the husband is able to fulfill it, with a specified time limit of six months. If the *māḍiyah* maintenance is still not fulfilled, then the husband's will to divorce his wife cannot be sentenced.

The second criterion is filed divorce. In the filed divorce, the husband who does not fulfill the verdict for the maintenance of *māḍiyah*, then the wife can make an effort to file a plea for execution, then the court can take action to summon the husband or *aanmaning*, if it is still not fulfilled then the court can confiscate the husband's valuables to then carry out the auction phase. So, it can be understood that in the filed divorce case, the husband is obliged to carry out the verdict inevitably, otherwise the court can legally confiscate and auction off the husband's property.

Execution of Māḍiyah Maintenance According to Islamic Law Perspective

The maintenance of the *māḍiyah* or the past maintenance is an integral part of the study related to husbands' maintenance either during the marriage or already divorced. This considers the obligation to fulfill it because the obligation to provide it applies both to the poor or rich husband and becomes debt if not fulfilled. In a divorce case, sometimes the husband is in economic hardship so

⁵² Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, (Jakarta: Kencana Prenada Media Group, 2005), p. 320-325.

that maintenance for the wife during the marriage is unfulfilled. When a divorce occurs, the wife can demand or sue for the maintenance as *maḍiyah* maintenance, which is the past maintenance that the husband did not provide to his wife. Therefore, this maintenance must be fulfilled by the husband.

Related to the execution of maintenance of *māḍiyah*, Islamic law stipulates that its origin applies when there is a demand from the wife. If there is no demand from the wife, the maintenance of the *māḍiyah* is considered finished, because the wife is considered to be willing for the absence of maintenance from her husband at that time. However, if the ex-wife demands the maintenance, the judge can sentence that the husband must fulfill the *maḍiyah* maintenance. If the wife gives in the maintenance, it ends. It means that if the wife gives in the maintenance that has not been paid by the husband, the maintenance will be invalid. It occurs because the willingness and releasing maintenance make the husband's obligation to provide his wife end.

According to al-Rāfi'ī, one of the scholars of Syāfi'iyyah, in his book "al-Azīz" which is an explanation of the book "al-Wajīz" by Abū Ḥāmid al-Ghazālī, explains that the maintenance of *māḍiyah* or past maintenance is not removed from the husband's obligations. The wife is entitled to demand her right to it. So, the maintenance of *māḍiyah* occurs when there is a lawsuit from the wife. This lawsuit is important to later become the material for the judge to decide on the maintenance of *māḍiyah*. It can be said that the maintenance of *māḍiyah* should be preceded by a lawsuit to the court. In this regard, al-Mardāwī also states that there is no maintenance of *māḍiyah* for the wife if it is not decided by the judge as an obligation fulfilled by the ex-husband to her. So, it is obvious that the determination of maintenance of *māḍiyah* in Islam must be done through the procedure of the wife's lawsuit to the court, and the judge can accept and decide that the maintenance must be borne by the ex-husband.

The execution of *māḍiyah* maintenance in Islamic law is not as coherent as it is in the Syar'iyah Court or Religious Court today. For instance, Islamic law does not extend to confiscation or auction arrangements as they apply in Syar'iyah Court Banda Aceh. However, the main point in Islamic law is that a leader or judge can determine a policy, including a policy regarding confiscating the husband's property and auctioning off the property to later give the

proceeds from the auction to the ex-wife. Although it is not clearly stated in the Al-Quran and hadith and also not found in the opinion of the classical scholars, this kind of policy can be enforced on the basis of creating benefits. All actions and policies of a leader or judge must be carried out with a reference to benefit, as one of the fiqh rules states "Government decisions or policies are built with the benefit of considerations".⁵³

Based on the explanation above, it can be identified that execution of the *māḍiyah* maintenance in Islamic law can be carried out on condition that the wife file lawsuit to the court, later the judge will assess and establish the amount of *māḍiyah* maintenance which is adjusted to the husband's capability and wife's need. The execution of *māḍiyah* maintenance can be carried out by the court as it applies in Syar'iyah court today. The leader or the judge can decide the verdict related to *māḍiyah* maintenance based on benefit and expediency principles.

Conclusion

Understanding and analyzing this study, it can be concluded that the procedure and effort to file an execution of *māḍiyah* maintenance in Syar'iyah court Banda Aceh can be distinguished to two types of divorce, *talak* divorce and filed divorce. In *talak* divorce, the execution of the verdict related to maintenance is carried out during *talak pledge*. If a husband neglects to provide *māḍiyah* maintenance, the divorce cannot be sentenced. In filed divorce, if the husband does not fulfill the wife's lawsuit related to the maintenance, the wife can file an execution. The phases are as follows: (1) the wife file a plea on execution to the court, (2) pay the execution fee, (3) *aanmaning*, (4) the husband and wife comply with the court's call, (5) the court establishes execution confiscation, (6) the court establishes execution order, (7) carrying out auction. Related to execution of *māḍiyah* maintenance, according to Sharia law, it can be carried out if the wife file a lawsuit to the court, the judge later examine and establish the amount of maintenance

⁵³ Jalāluddīn al-Suyūṭī, *al-Asybah wa al-Nazā'ir fī Qawā'id wa Furū' Fiqh Syāfi'iyyah, Juz' 1*, (Riyad: Mamlakah al-'Arabiyyah al-Su'ūdiyyah, 1997), p. 202. Abd al-Majīd Jam'ah al-Jazā'irī, *Qawā'id al-Fiqhiyyah*, (Bairut: Dār Ibn al-Qayyim, 1991), p. 440. Quṭb al- Raisūnī, *Qā'idah Taṣarruf al-Imām 'alā al-Ru'iyyah Manūṭ bi al-Maṣlaḥah*, (Mesir: Dār al- Kalimah, 2012), p. 5-6.

māḍiyah which is adjusted to the husband's capability and wife's need. The execution of *māḍiyah* maintenance can be carried out by the court as applies in Syar'iyah court upon consideration of benefit and expediency principles.

References

- AB. Susanto, *Super Leadership: Leading Others to Lead*, Jakarta: Gramedia Pustaka Utama, 2009.
- Abd al-'Āl al-Ṭaḥṭāwī, *Fath al-Khallāq Syarḥ Fatāwā al-Nabī fī al-Ṭalāq*, Beirut: Dār al-Kutb al-'Ilmiyyah, 2004.
- Abd al-Majīd Jam'ah al-Jazā'irī, *Qawā'id al-Fiqhiyyah*, Bairut: Dār Ibn al-Qayyim, 1991.
- Abdul Manan, *Pembaruan Hukum Islam di Indonesia*, Jakarta: Kencana Prenada Media Group, 2017.
- Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, Jakarta: Kencana Prenada Media Group, 2005.
- Abdulkarīm al-Rāfi'ī, *Azīz Syarḥ al-Wajīz, Juz' 10*, Beirut: Dār al-Kutb al-'Ilmiyyah, 1997.
- Abdurrahmān al-Jazīrī, *al-Fiqh 'alā al-Mazāhib al-Arba'ah*, (Translated by Faisal Saleh), Voume. 2, Jakarta: Pustaka al-Kautsar, 2017.
- Abu Ahmad Najih, *Fikih Mazhab Syafi'i*, Jakarta: Marja, 2018.
- Abū Bakr Jabir al-Jazā'irī, *Minhāj al-Muslim*, (Translated by Syaiful, et al), Surakarta: Ziyad Books, 2018.
- Abū Ḥāmid al-Ghazālī, *al-Wasīṭ fī al-Mazḥab*, Juz 6, Mesir: Dār al-Salām, 1997.
- Ahmad Warson al-Munawwir, *Kamus al-Munawwir*, Surabaya: Pustaka Progressif, 2007.
- Al Yasa' Abubakar, *Metode Istislahiah: Pemanfaatan Ilmu Pengetahuan dalam Ushul Fiqh*, Jakarta: Kencana Prenada Media Group, 2016.
- Alā'uddīn al-Mardāwī, *al-Inṣāf fī Ma'rifah al-Rājiḥ min al-Khilāf*, Riyadh: Bait al-Afkār al-Dauliyyah, 2004.
- Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Jakarta: Kencana Prenada Media Group, 2014.
- Amiur Nurudin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari*

- Fikih, UU No. 1/1974 sampai KHI*, Jakarta: Kencana Prenada Media Group, 2012.
- Amran Suadi, "The Role of Religious Court in Women and Children Rights Protection Through Partial and Executable Decision". *Jurnal Hukum dan Peradilan*, Volume 7, Nomor 3, November 2018.
- Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum*, Jakarta: Kencana Prenada Media Group, 2018.
- Bambang Sugeng dan Sujayadi, *Pengantar Hukum Acara Perdata & Contoh Dokumen Litigasi Perkara Perdata*, Jakarta: Kencana Prenada Media Group, 2015.
- Ibn Manẓūr al-Ifriqī, *Lisān al'Arb, Juz ' 12*, Kuwait: Dār al-Nawādir, 2010.
- Ibn Munẓir, *al-Ijmā'*, Bairut: Dār al-Kutb al-'Ilmiyyah, 1985.
- Ibn Qayyim al-Jauziyyah, *Zād al-Ma'ād fī Hadī Khair al-Ibād, Juz ' 5*, Beirut: Mu'assasah al-Risālah, 1998.
- Ibn Qudāmah, *al-Muqni' fī Fiqh al-Imām Aḥmad bin Ḥambal al-Syaibānī*, Jeddah: Maktabah al-Suwādī, 2000.
- Ibn Rusyd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, (Translated by Fuad Syaifudin Nur), Volume 2, Jakarta: Pustaka al-Kautsar, 2016.
- Imad Zakī al-Barūdī, *Tafsīr al-Qur'ān al-'Aẓīm li al-Nisā'*, (Translated by Tim Penerjemah Pena), Volume 1, Jakarta: Pena Pundi Aksara, 2013.
- Imām al-Ghazālī, *al-Wasīṭ fī al-Maẓhab, Juz VI*, Mesir: Dar al-Salam, 1997.
- Instruksi Presiden No. 1 Tahun 1999 tentang Kompilasi Hukum Islam.
- Iswi Hariyani, *Restrukturisasi dan Penghapusan Kredit Macet*, Jakarta: Elex Media Komputindo, 2010.
- Jalāluddīn al-Suyūfī, *al-Asybah wa al-Nazā'ir fī Qawā'id wa Furū' Fiqh Syāfi'iyyah, Juz ' 1*, Riyad: Mamlakah al-'Arabiyyah al-Su'ūdiyyah, 1997.
- Khoirul Anwar, *Peran Pengadilan dalam Arbitrase Syariah*, Jakarta: Kencana Prenada Media Group, 2018.
- Krishna Daswara, et al., *Bahasa Sastra*, Bandung: Institut Teknologi Bandung, 1991.
- M. Fauzan dan Baharuddin Siagian, *Kamus Hukum dan*

- Yurisprudensi*, Jakarta: Kencana Prenada Media Group, 2017.
- Mahkamah Agung, *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama*, Jakarta: Mahkamah Agung, 2013.
- Muhammad ‘Amīm al-Barkatī, *al-Ta’rīfāt al-Fiḥiyyah: Mu’jam Yasrah al-Fāz al-Muṣṭalah ‘Alaihā baina al-Fuqahā’ wa al-Uṣūliyyīn*, Bairut: Dār al-Kutb al-‘Ilmiyyah, 2003.
- Muhammad al-Jurjānī, *Mu’jam al-Ta’rīfāt*, Mesir: Dār al-Faḍīlah, 2004.
- Muhammad bin al-Ḥasan al-Syaibānī, *al-Aṣl*, Volume 10, Beirut: Dār Ibn Ḥazm, 2012.
- Muhammad Nuruddien, Nafkah Mādliyah Isteri Sebelum Perceraian Perpektif Keadilan (Studi Analisis Pandangan Fikih Islami dalam Mazhab Hanafiyah dan Syafiiyah), *Sakina: Journal of Family Studies*, Vol 3 Nomor 2, 2019.
- Putusan Mahkamah Syar’iyyah Nomor 109/Ptd.G/2018/MS.Bna.
- Putusan Mahkamah Syar’iyyah Nomor 196/Ptd.G/2017/MS.Bna.
- Putusan Mahkamah Syar’iyyah Nomor 41/Pdt.G/2018/MS.Bna.
- Quṭb al-Raisūnī, *Qā’idah Taṣarruf al-Imām ‘alā al-Ru’iyyah Manūṭ bi al-Maṣlahah*, Mesir: Dār al-Kalimah, 2012.
- Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer*, Jakarta: Kencana Prenada Media Group, 2010.
- Soraya Devy dan Doni Muliadi, Pertimbangan Hakim dalam Menetapkan Nafkah Anak pasca Percerian (Studi Putusan Hakim Nomor 0233/Pdt.G/2017/MS-MBO), *El-Usrah: Jurnal Hukum Keluarga*, Vol. 2, No. 1, January-June 2019.
- Syarf al-Nawawī, *al-Majmū’*, *Juz’ 18*, Madinah: Maktabah Salafiyah, t. th.
- Tim Penyusun, *Kamus Bahasa Indonesia*, Jakarta: Pusat Bahasa Departemen Pendidikan Nasional Jakarta, 2008.
- Umar Sulaimān al-Asyqar, *Aḥkām al-Zawāj fī Ḍau’ al-Kitāb wa al-Sunnah*, (Translated by Iman Firdausi), Solo: Tinta Medinam, 2015.
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.
- Wahbah al-Zuhailī, *al-Fiqh al-Syāfi’ī al-Muyassar*, (Translated by Muhammad Afifi dan Abdul Hafiz), Volume 2, Print. 3, Jakarta: Almahira, 2017.
- Wahbah al-Zuhailī, *al-Fiqhu al-Islāmī wa Adillatuh*, (Translated by

Abdul Hayyie al-Kattani, dkk), Volume 10, Jakarta: Gema Insani, 2011.

Interview with Idris Budiman, The Judge at Syar'iyah Court Banda Aceh, on July 17th 2019.

Interview with Muthmainnah, The judge at Syar'iyah Court Banda Aceh, on July 17th 2019.

Whinbo Pitoyo, *Strategi Jitu Memenangkan Perkara Perdata dalam Praktik Peradilan*, Jakarta: Visimedia, 2012.

Wizārah al-Auqāf, *Mausū'ah al-Fiqhiyyah, Juz' 29*, Kuwait: Wizārah al-Auqāf, 1995.

Yūsuf al-Qaraḍāwī, *Madkhal li Dirāsah al-Syarī'ah al-Ilāmiyyah*, (Translated by Ade Nurdin dan Riswan), Bandung: Mizan Pustaka, 2018.