

## ***Nafkah Madyiyah* for Children in Supreme Court Plenary Session 2019 as a Reform of Islamic Family Law in Indonesia**

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### **Abstract**

This study is intended to examine the formulation of the results of the 2019 Plenary Meeting of The Supreme Court of the Republic of Indonesia relating to the *nafkah madhiyah* for children. This formulation is important, because previously the Supreme Court through its decision number 608K/AG/2003 stated that a child's *nafkah madhiyah* cannot be prosecuted after a husband and wife divorce, so this Supreme Court decision is often used as jurisprudence by judges to reject lawsuits about *nafkah madhiyah* for child. However, by issuing the formulation of the results of the plenary meeting, The Supreme Court opened up the opportunity for a lawsuit regarding the *nafkah madhiyah* for child. This study is a normative legal study by relying on library data, then providing an *ushul fiqh* approach, especially *mashlahah* analysis. This study shows that the plenary meeting of the Supreme Court chambers in 2019 not only provided a different formulation from the previous decision, but also showed a different paradigm in viewing the livelihood of children. If the previous The Supreme Court decision views the *nafkah madhiyah* for child as *li al-intifa'*, that is, living as the fulfillment of benefits only and cannot be prosecuted if the benefits have been fulfilled even though the material is not provided, then the formulation of the Plenary Meeting of the Supreme Court positions the *nafkah madhiyah* for child as *li al-tamlik*, namely maintenance as a child's property that can be sued if the material is not fulfilled. This formula contains useful values, in accordance with Islamic law, and is relevant to laws and regulations related to children's rights, human rights, and the elimination of domestic violence.

**Keywords:** *Nafkah Madhiyah*; Supreme Court Plenary Session; Reform of Islamic law;

### **Abstrak**

Studi ini dimaksudkan untuk menelaah rumusan hasil rapat pleno mahkamah Agung Republik Indonesia 2019 yang berkaitan dengan *nafkah madhiyah* anak. Rumusan ini penting artinya, karena sebelumnya Mahkamah Agung melalui putusannya nomor 608K/AG/2003 menyatakan bahwa *nafkah madhiyah* anak tidak dapat dituntut setelah terjadi perceraian antara suami dan istri, sehingga putusan Mahkamah Agung ini sering dijadikan yurisprudensi oleh para hakim untuk menolak gugatan tentang *nafkah madhiyah* anak. Namun, dengan dikeluarkannya rumusan hasil rapat pleno, Mahkamah Agung membuka peluang terjadinya gugatan perihal *nafkah madhiyah* anak. Studi ini merupakan studi hukum normatif dengan mengandalkan data-data kepustakaan, lalu memberikan pendekatan *ushul fiqh*, terutama analisis *mashlahah*. Studi ini menunjukkan bahwa rapat pleno kamar Mahkamah Agung pada 2019 tidak hanya telah memberikan rumusan yang berbeda dari putusannya sebelumnya, tetapi juga menunjukkan paradigma yang berbeda dalam memandang *nafkah* anak. Jika putusan Mahkamah Agung sebelumnya memandang

nafkah anak dalam posisi *li al-intifa'*, yaitu nafkah sebagai pemenuhan manfaat saja dan tidak dapat dituntut kalau manfaatnya sudah terpenuhi walaupun materinya tidak diberikan, maka rumusan Rapat Pleno Mahkamah Agung memprosisikan nafkah anak sebagai *li al-tamlík*, yaitu nafkah sebagai hak milik anak yang dapat dituntut jika materinya tidak dipenuhi. Rumusan ini mengandung nilai kemanfaatan, sesuai dengan syariat Islam, serta relevan dengan peraturan perundang-undangan terkait hak-hak anak, Hak Asasi manusia, dan Penghapusan Kekekerasan Dalam Rumah Tangga.

**Kata Kunci:** Nafkah Madhiyah; Rapat Pleno Mahkamah Agung; Pembaruan Hukum Islam



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## Introduction

*Rapat pleno kamar* (the chamber plenary meeting) is one of the instruments created in the chamber system to maintain the unity of law enforcement and consistency of decisions. One of the agendas discussed in the plenary meeting of the chambers is the legal issues that arise in each of the chambers that have potential lead to decision disparities. Discussion in each room produce legal formulations that will serve as guidelines in handling cases in each chamber of the Supreme Court. The Supreme Court then issued a Circular Letter to enforce the results of the plenary chamber meeting as a guideline in handling cases for courts of first instance and appeals. Since the Supreme Court implemented the chamber system at the end of 2011, eight Supreme Court Chamber Plenary Meetings have been held. The Supreme Court has issued six Circular Letters to enforce each formulation of the results of the plenary chamber meeting. However, the Supreme Court Plenary Meeting in 2019 will be the object of research (Sekretariat Kepaniteraan Mahkamah Agung RI, 2020).

On November 2<sup>nd</sup>-5<sup>th</sup> 2019, the Supreme Court of the Republic of Indonesia has formulated several important points regarding family law contained in the formulation of the law of the religious chamber. In the formulation of the law, several things were produced, namely regarding the madhiyah maintenance of children, Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Cases of Women Against the Law, Marriage and Divorce Permits for Civil Servants, Requests for Determination of Heirs (voluntair) cannot be combined with the application for itsbat marriage heir, marriage annulment submitted after the marriage to be annulled has been broken must be declared acceptable, sirri polygamy cannot cause law (Sekretariat Kepaniteraan Mahkamah Agung RI, 2020).

From the results of the formulation of the plenary meeting, there is an interesting formula for further study, namely regarding the child's madliyah income. According to this formulation, the child's madhiyah maintenance can be sued by the mother or the party that actually takes care of the child. This discussion is urgent because most judges in various religious courts generalize every case of claims for a child's madhiyah maintenance or past maintenance

that was neglected by a father. Legal Reasoning or arguments built by Judges always refer to the Decision of the Supreme Court of the Republic of Indonesia No. 608K/AG/2003 dated March 23<sup>rd</sup>, 2005 which reads “the obligation of a father to provide for his child is *lil intifa'*, not *lit-tamlik*, then the negligence of a father who does not provide a living to their children (the child's madhiyah income) cannot be sued” (Religion, Set of Decisions That Have Permanent Legal Force in the Field of Civil Religion, 2009). For some judges, the decision of the Supreme Court of the Republic of Indonesia No. 608K/AG/2003 on March 23<sup>rd</sup> 2005 is jurisprudence that is right on target, and therefore it is appropriate for Religious Court Judges to follow it. Of course, such a judge's legal attitude cannot be justified, because what the judge does is a textualization of the substance of the law or can be said to be old-fashioned in *ijtihad*.

This old-fashioned attitude is proven by looking at various previous studies. For Arya Gandi, the rejection of the claim for a child's madhiyah maintenance which was carried out by the Bengkulu Religious Court Judge was a *taqlid* attitude by following what the previous judge had done, namely making the Supreme Court Decision No.608K/AG/2003 dated 23 March 2005 as the basis for rejecting the lawsuit (Gandi, 2020). Another study conducted by UIN Imam Bonjol Padang academics, they mentioned that in the PTA area of West Sumatra many Religious Court Judges refused to provide for madhiyah children. Of the 291 decisions (2013-2015) there were 190 wives demanding madhiyah support for their children. Of the 190 lawsuits for a child's madhiyah maintenance, there were several that were rejected as stated in Padang Panjang PA decision Number 236/Pdt.G/2012/PA, Padang PTA decision Number 22/Pdt.G/2013/PTA Pdg, District Court Decision Fifty Cities Number 22/Pdt.G/2013/PA LK, Pariaman PA decision Number 422/Pdt.G/2012/PA Prm, Padang PTA decision Number 16/Pdt.G/2013/PTA Pdg. The basis for this refusal is RI Supreme Court Decision No.608K/AG/2003 dated 23 March 2005. Refusal under the same pretext shows the judge's *ijtihad* pattern is rigid and monotonous (Afifah Djalal, 2017). Based on some of these decisions, it is only natural that the Decision of the Supreme Court of the Republic of Indonesia No.608K/AG/2003 dated March 23 2005 is considered obsolete and no longer relevant because it collides with other laws and regulations such as Law No. 23 of 2002 concerning Child Protection, Law No. 39 of 1999 concerning Human Rights especially article 51 paragraph 1, Law no. 23 of 2004 concerning the Elimination of Domestic Violence as stated in article 49 (Firdaus, 2020).

Given the number of decisions that ignore the maintenance of madhiyah children on the pretext of being *lil intifa'* so that they cannot be sued, the author feels the need to invite the reader to glance at the formula The Plenary Meeting of the Supreme Court Chamber in 2019 as a discourse on refreshing Indonesian Islamic family law. This is because this formulation assumes that if the maintenance is *li al-tamlik* in nature then the *nafkah madhiyah* can be sued by the mother or the party who cares for the child.

## Method

By using the Library Research method, namely research by collecting data originating from library sources in the form of books, articles, and other documents. The primary data in this study is the Compilation of the Formulation of Results Supreme Court Plenary Meeting in 2019 one of which discusses the maintenance of children's *mdhiyah*. While the secondary data is all the literature related to research. With a normative approach and an analytical *maslaha*, so this research is descriptive analytic. Of course with the aim of digging deeper into the concept of providing for a father to a child, is it *lil intifa'* in nature which makes the child's *madhiyah* maintenance non-contestable or *littamlik* which can be sued? then what is the formulation of Results The 2019 Supreme Court Plenary Meeting contains good value? and what is no less important is how relevant this formulation is to the discourse on reforming Indonesian Islamic family law?

## Results and Discussion

### Status of Child's *Madliyah* Income

Dissolution of a marriage creates new legal consequences for the husband, including the maintenance of the child's *madhiyah*. *Madhiyah* income for children, namely past maintenance or previous maintenance which is the obligation of the father to his child when he is in a marriage bond. This subsistence has not been fulfilled by the father, or was deliberately neglected by the father when his parents were in a marriage (Syafitri & Riyan Ramdani, 2021).

As for the maintenance of the child's *madhiyah* which is formulated in The Plenary Meeting of the Chamber of Religion of the Supreme Court is a father's past maintenance which was not fulfilled or deliberately neglected by the father when his parents were still married. After the breakup of the marriage, the Supreme Court gave an instrument if a mother or parenting party may demand the *madliyah* maintenance of the father that had been promised to his child (Sekretariat Kepaniteraan Mahkamah Agung RI, 2020). In the laws and regulations, a husband is obliged to protect his wife and meet household needs in order to carry out the survival according to his ability, if this is not implemented, the wife has the right to challenge this matter to the court, this is as stated in Article 34 Marriage Law No. 1 1974. Then it is specified in article 80 paragraph 4 of the Compilation of Islamic law which states the form of maintenance that is the husband's obligation, namely the *kiswah* and housing, household expenses, care, treatment and education costs for children. So that the meaning of a child's *madhiyah* maintenance is a living that has not been fulfilled pre-divorce. For example, when they are still husband and wife, the husband

does not fulfill the living expenses of his child's education so that the child does not go to school or the education costs are borne by the wife or the wife's family,

Among the 'ulama', there is a difference regarding whether a child's maintenance can be turned into debt or not. The Hanafi school of thought considers that the father's income for the child cannot be turned into a debt, whether it is determined or not determined by the judge. Father's income for children is different from husband's income for wife, husband's income that has not been paid can turn into debt if it has been determined by a judge. The Syafi'i school of thought is of the opinion that if the father's income cannot be turned into debt unless it has been determined by a judge or has received permission to owe it because the father is not at home or is deliberately reluctant to provide a living. Meanwhile, other jurists are of the view that if the child's maintenance is lost when the time has passed, because the maintenance is a father's obligation for his child, if the time has passed then the need is no longer there so it is not counted debt. However, the maintenance is lost if the period before it is determined by the judge or agrees with each other. Meanwhile, Malikiyah scholars stated that the maintenance of relatives does not fall even though the period has passed (Zuhaili, 2011).

#### **Lil Intifa' and Littamlik Concepts in Children's Madhiyah Support**

All scholars agree that the law on providing for children is obligatory. Referring to Surah Al-Baqarah verse 223 which talks about the obligation of breastfeeding for a mother and the obligation of a father to provide maintenance in the form of food and clothing. Followed by the Hadith from Ibn Majah and al-Nasai which tells that Hindun's wife from Abu Sofyan came to complain to the Messenger of Allah because her husband was reluctant to provide for herself and her child, then the Messenger of Allah said to Hindun: "Take your husband's property according to your needs and your child in a good way" (Zuhaili, 2011).

However, the legal status based on the Qur'an and Hadith needs to be embodied in responding to the various cases that have occurred (Shihab, 1998). As is the case regarding the negligence committed deliberately by a father to his child, namely ignoring his obligations to meet the needs of his child while the father is in normal condition. So the question arises, namely whether the neglect of maintenance made by the father becomes a debt, which makes the mother or the person who cares for the child or is allowed to collect or demand maintenance that was neglected by the father in the past?

Initially, the father's neglect of maintenance could not be sued for any reason because the maintenance was considered *lil intifa'*. *lil intifa'* here has the meaning of simply providing benefits or living for the child, the obligation is only limited to fulfilling the benefits, if it is fulfilled, then it cannot be sued or considered a debt (Panitera Muda Perdata Agama, 2009). This view is due to the many Hadiths which state that children and their assets belong to their parents (Narrated by Ibn Majah). The connotation of property in this hadith is not *milk at-tammi* or perfect ownership, as is the ownership of a master over his slaves

who can be treated as they please. Besides that, according to the Hanbali school of thought, parents' debts to their children cannot be collected (Kuwaitiyah, 2020). The view of the Hanbali school of thought does not imply that parents are not obliged to pay debts to their children, but that the object is the child, where the child does not deserve to collect debts from the parents who have raised him. So that the debt must be paid but the child should not collect on his father.

Even though this maintenance is considered a debt, in the book *Nihayaah al-Muhtaj* written by Sheikh Syamsuddin Ar-Ramli, the debt of parents to children has a specificity that distinguishes it from debts to other people, namely regarding the right to give sanctions by children to parents. In the fiqh literature, the punishment is *habsu* (detention/imprisonment). In the current context, the sanction can be equated with dragging him to a legal case or confiscating goods that are still needed by the *muqtaridl* (the person who owes money). Shari'a does not justify the existence of punishments carried out by children against their parents. The meaning is that the father's debt to the child must be paid, but the child cannot bring this case to the realm of law (court). This is the reason so far *madhiyah* maintenance cannot be sued because the concept of living up to now has been considered as a *candle tifa'* as stipulated in the RI Supreme Court Decision No.608K/AG/2003 dated 23 March 2005.

On the other hand as stated in the Formula Supreme Court Plenary Meeting on 2019 it is stated that the child's *madhiyah* maintenance can be sued by the mother or the party who cares for it. Thus, indirectly this formulation characterizes living as a *litamlik*. Regarding the obligation to pay debts, the scholars categorize the debt owed by parents to children as debts to other people. That is, parents have the responsibility to pay off, and the child has the right to collect if the parents are deemed capable of paying it (according to those other than the Hanbali school of thought) (Kuwaitiyah, 2020).

Even though they have a legal basis, the two formulations of the Supreme Court appear to be contradictory. Because in a book called "Set of Decisions That Have Permanent Legal Force in the Civil-Religious Field" there is a decision namely Decision of the Supreme Court of the Republic of Indonesia No.608K/AG/2003 dated 23 March 2005 the second point which states that "a father's obligation to provide for his child is a *Lilintifa'* not *littamlik*, then the negligence of a father who does not provide a living for his child (*madhiyah nafkah anak*) cannot be sued." Meanwhile in Compilation of the Results of the Plenary Meeting of the Supreme Court of the Republic of Indonesia, precisely in the 2019 Legal Formulation of the Religious Chamber (SEMA No. 2 of 2019) states that "a child's past maintenance (*nafkah madhiyah*) who was neglected by his father can be filed for a lawsuit by his mother or someone who actually raise the child." A significant difference lies in whether or not it is permissible to sue for *madhiyah* maintenance which is deliberately neglected by a father. In the discipline of *ushul fiqh* there is a method that is *taarudh al-dilalah*.

That happens when there are two arguments that have the same position but there is a paradox in the argument, especially in terms of halal and haram, nafyu and itsbat (Barzanji, 1993). The two arguments (formulation of the Supreme Court) are equally strong but there is an anomaly between the two, one argument indicates an order while the other argument indicates not an order, one states that there is a demand while the other says there is not.

Seeing the contradictions between the two arguments, Usul al-Fiqh scholars offer several ways to solve them, either by correlating the two or by leaving them both. However, in brief, the scholars of ushul fiqh provide four steps in resolving the conflict, namely by looking at the types of verses based on texts, Tarjih, Tatsaqut al-Dalalaini, and Al-jam'u wa al-taufiq (Barzanji, 1993).

If using the concept of texts (cancellation or deletion) (Syafe'i, 1998), so Formula Supreme Court Plenary Meeting on 2019 is stronger and that must be used, because of the formula this comes after (latest) Decision of the Supreme Court of the Republic of Indonesia No.608K/AG/2003 dated March 23<sup>rd</sup>, 2005, the new law abolishes the old law. However, an objective way of addressing the two formulations is to use or correlate the two arguments (formulation of the Supreme Court), because practicing two arguments is better than leaving the two propositions, this is what is known as the concept *al-jam'u wa al-taufiq* (Barzanji, 1993).

The concepts contained in Formula Supreme Court Plenary Meeting on 2019 concerning the maintenance of madhiyah children is an instrument that is in accordance with the ushul fiqh concept, namely *Al-jam'u wa al-taufiq*. Whatever the reason, the father's debt to the child must be paid, even though the scholars argue that these debts cannot be sued in court on the grounds of the impropriety of a child dragging a parent in a legal case. But what's inside Formula Supreme Court Plenary Meeting on 2019 is not the child who is suing for madhiyah maintenance but the mother or party who is actually caring for the child. So Formula Supreme Court Plenary Meeting on 2019 regarding the maintenance of madhiyah for children is in accordance with the concept of ushul fiqh.

From this it can be seen that what the Supreme Court has done is to correlate the concepts of *Lilintifa'* and *littamlik*. The concept of *Lilintifa'* which has the consequence of being rejected in a lawsuit to collect the child's madhiyah maintenance because the child is not worthy of dragging the father into the realm of law. While the *littamlik* concept with the consequence that the child's madhiyah income can be sued. Both of these concepts have a legal basis, so the Supreme Court responded by making the mother or the person caring for the child sue, not the child. Here the Supreme Court uses the opinion of the Hanafi and Madzhab Syekh Syamsuddin Ar-Ramli (living income) also uses the opinion of other schools of thought that consider livelihood to be *littamlik*.

In essence, the judge must show his integrity as a mujtahid in assessing a case. Judges are certainly not allowed to easily conclude that madhiyah income must be accepted or rejected. Judges must assess existing legal facts both

materially and formally. Moreover, it was easy to refuse the lawsuit on the grounds of following the decision of the previous Judge who rejected the claim for a child's madhiyah maintenance on the basis of adhering to the Decision of the Supreme Court of the Republic of Indonesia No. 608K/AG/2003 dated March 23 2005. In the writer's opinion, the father can be said to be "not negligent or unintentional" " Neglecting the maintenance of his child due to an emergency situation, for example, the father is physically, mentally, financially or materially incapacitated. If the father is sick or paralyzed, then the negligence was not done on purpose.

### **The Relevance of the Plenary Meeting of the Supreme Court for the Reform of Indonesian Islamic Family Law**

Reform regarding Indonesian Islamic family law has been proclaimed for a long time, especially in terms of legal exploration methods. For some people, Indonesia, which is predominantly Muslim, needs to have an identity in terms of products of legal exploration. Hazairin and Hasbi Ash-Shiddiqi, for example, both offer a concept of Indonesian jurisprudence and a national school of thought, the meaning of which is a method of extracting laws that produce Indonesian-style laws. Because so far Indonesian people are still shackled to the fiqh of the four schools of thought which are representatives of Arab society. Of course, the socio-cultural of Arab society is not all compatible with Indonesian socio-cultural, Arab society uses a patrilineal kinship system, while Indonesia has a variety of kinship systems. For example, in the case of marital guardianship, So far, people have only followed the doctrine that if the guardian of the marriage is a man, there is no question why this should be the case? is there no other way? while it is not mentioned in the Qur'an that the guardian of marriage must be from the male side of the family (Najib, 2016).

This view needs to be revived because of the doctrine of fiqh which has so far made people taqlid. It should be noted that fiqh is a formulation of Islamic understanding extracted from the Qur'an and Sunnah, because of course it is not absolute and uncertain (zanni). As a result of intelligent engineering by human thought, there is no guarantee that this view does not contain errors or mistakes in itself. A result of ijtiḥad is usually always influenced by socio-cultural and socio-historical factors in the surrounding community or during the life of the scholar. Therefore, a result of ijtiḥad may not apply eternally to all human beings at all times. It may be that the results of ijtiḥad are suitable for a certain period of time, but not necessarily suitable for other periods of time. It may be that an ijtiḥad is suitable for a certain society, but it is not certain for other people who have different cultures and needs. That is, we can accept a result of ijtiḥad, but that acceptance does not have to prevent us from being critica. (Noble, 2013).

If we look at the Formula Supreme Court Plenary Meeting on 2019, the author is of the view that this formulation has relevance to the renewal of Islamic families in Indonesia because it pays attention to the rights of children



who have been neglected intentionally by their fathers. Because, if you still use the old jurisprudence (Decision of the Supreme Court of the Republic of Indonesia No. 608K/AG/2003 dated March 23<sup>rd</sup>, 2005) by generalizing all cases of claims for a child's madhiyah maintenance without looking at the relevant facts, it will lead to tyranny against children, where the child who should get their rights to be neglected. As has been explained, that in cases of claims for a child's madhiyah maintenance, not all fathers who had the obligation to provide for their children in the past really proved unable to provide for their children's maintenance. Sometimes a father actually has the financial ability to provide for his child, but deliberately neglects this obligation. So in the opinion of the facts like this, according to the author it is not a wise attitude if the judge still bases his decision on the existing jurisprudence, namely the Decision of the Supreme Court of the Republic of Indonesia No.608K/AG/2003 on March 23<sup>rd</sup> 2005.

The true task of the judge is not only to decide and lead the course of the trial, but to provide a sense of justice, certainty and protection for all parties to the case (Harahap, 2017). To realize a sense of justice and benefit, judges are required to have the ability to build legal arguments or legal research that is good and right, one way is to look at the facts objectively.(Shidarta, 2004)In addition, what is done by law enforcers must also contain a benefit. What is in the FormulaSupreme Court Plenary Meeting on2019 has a benefit value because it is in line with UU no. 23 of 2002 concerning Child Protection, Law No. 39 of 1999 concerning Human Rights especially article 51 paragraph 1, Law no. 23 of 2004 concerning the Elimination of Domestic Violence. Because all these regulations are a consensus or *ijma'* of Indonesian scientific experts (Nasution, 2020). That is the true concept of benefit which does not conflict with the sources of Islamic law.

What was formulated by the Supreme Court was a re-actualization of several ideas that required renewal, not stability. By taking into account the socio-cultural context of the community in understanding and concluding law from sources of Islamic law in the humanitarian field, even though it seems that they do not practice the original meaning of the Al-Qur'an and Hadith texts. Indeed, in the Hadith literature it is stated that children and their assets belong to the parents, so many conclude that there is no debt owed by the father to the child, let alone maintenance debt. If the conclusions from the Hadith are true, it would be better for us not to use this argument in dealing with the maintenance of a child's madhiyah. This attitude does not mean *Inkar As-sunnah*, but we use other arguments in addressing the child's madhiyah maintenance, such as the concept of welfare.

The Supreme Court occupies a strategic position in creating legal products, because they are *ulil amri*. As explained in the Qur'an, obedience to *ulil amri* is a guide. Therefore, legal products made by the government must be obeyed, because the government in Indonesia, although not based on Islam, is not against sharia. If one day the formulation of the Supreme Court is deemed to be contrary

to Islamic law, Muslims will undoubtedly change it and adapt it. Therefore there are two components that must synergize with each other in the application of a law, namely the ulama' (in this case are legal experts) and umara (government) (Najib, 2016).

### **Draft Maslahah in Formula Supreme Court Plenary Meeting on 2019 about the maintenance of Madhiya's inner child**

Role *masahah* in establishing law is very dominant and very decisive, because the Qur'an and al-Sunnah as the main sources of Islamic law pay close attention to this principle of benefit. The benefit that Islamic law wants to achieve is universal and true, covering worldly and spiritual, physical and spiritual, material and spiritual welfare. Maslahah is a method of reforming Islamic law, has been proven to be able to answer various contemporary problems, and at the same time make Islamic law capable of adapting to developments and progress of the times. So that all problems that arise in the midst of society can be legally resolved. Therefore, benefit is a factor that must even be considered in establishing law. Because with the realization of benefit, justice and peace will also be established as the main objectives of Islamic law (Azhar, 2018).

Maslahah concept that charges benefits and rejects damage in the line of human life. The concept of maslahah is not justified if it is not in line with syara' goals, is not based on lust, and makes reason the main tool in assessing benefit. Putting reason first does not mean setting aside revelation, instead carrying out the revelation's commands in order to maximize the potential of reason (Thufi, 1998).

If we look at the concept of a child's madhiyah maintenance which is formulated in Supreme Court Plenary Meeting on 2019, this formulation pays attention to the rights of children who have been neglected by their fathers in the form of past maintenance. Of course the formula Supreme Court plenary on 2019 provides goodness and benefits to children whose rights are neglected. There are several reasons why the concept of child maintenance is madhiyah madhiyah which is formulated in Supreme Court Plenary Meeting on 2019 contains a benefit, including:

1. Not against the law. As stated in surah Al-Baqarah verse 223 which talks about the obligation of breastfeeding for a mother and the obligation of a father in providing maintenance in the form of food and clothing. Followed by the Hadith from Ibn Majah and al-Nasai which tells that Hindun's wife from Abu Sofyan came to complain to the Messenger of Allah because her husband was reluctant to provide for herself and her child, then the Messenger of Allah said to Hindun: "Take your husband's property according to your needs and your child in a good way " (Zuhaili, 2011). Then this formulation is also in line with laws and regulations related to children's

rights such as Law no. 23 of 2002 concerning Child Protection, Law No. 39 of 1999 concerning Human Rights especially article 51 paragraph 1, Law no. 23 of 2004 concerning the Elimination of Domestic Violence. For 'Abduh, complying with or obeying government law products is the same as obeying/obeying the Qur'an and the Sunnah of the Prophet Muhammad Saw., law is a decree, decision or agreement of the representatives of the people (the House of Representatives [DPR], the legislature) with the government (executive). Complying with the laws stipulated by representatives of the people and the government is a form of obedience to the government (*uli al-amr*). The obligation to obey the government in the form of obeying laws/statutes is the realization of the command to obey Allah, obey the messenger and obey the government (*uli al-amr*), as commanded in al-Nisâ' (4):59 and 83 (Nasution, 2019). So that a decision must meet the juridical requirements. Because, a decision that does not meet the juridical requirements will lose its value as a decision. Juridical requirements imply that a decision must have a legal basis, provide legal certainty, and provide legal protection. When we see. Such is the concept of *mashlahah* bound by detailed arguments (Salam, 2002).

2. In priority, *maslahah* has three levels, *mashlahah dharuriyah* is a *maslahah* that is a basic need (Saputri, 2021). *Mashlahah daruriyah* there are five basic needs including: maintaining offspring, and maintaining property (Rahman, 2019). The meaning is the maintenance of *madhiyah* children which is formulated in Supreme Court Plenary Meeting on 2019 protects property (favor from the father) and protects the child itself (offspring). If the child's *madhiyah* maintenance cannot be sued without considering the related facts that surround it, it will certainly bring a sense of injustice and benefit for children and will even cause a lot of harm. As has been explained, that in cases of claims for a child's *madhiyah* maintenance, not all fathers who had the obligation to provide for their children in the past really proved unable to provide for their children's maintenance. Sometimes a father actually has the financial ability to provide for his child, but deliberately neglects this obligation. So in the opinion of the facts like that, according to the author it is not a wise attitude if the judge still bases his decision on the existing jurisprudence. If *madhiyah*'s income is classified as *waxtifa'* so that it cannot be sued

## Conclusion

Based on the data that has been described, the authors conclude that if the child's *madhiyah* maintenance is *littamlik* in nature, not *lil intifa'*, because the father's maintenance of the child is an obligation to be fulfilled, so that the child's *madhiyah* maintenance can be sued by the mother or the party caring for the

child. This formulation shows the success of the Supreme Court in carrying out old-fashioned and taqlid ijthad, so that what is done by the Supreme Court has relevance to the renewal of Indonesian Islamic family law. What the Supreme Court did was nothing but to protect children's rights, because initially the child's madhiyah maintenance could not be sued. This formulation also has a benefit value, because in addition to protecting children's rights, this formula is in accordance with Islamic law, Code No. 23 of 2002 concerning Child Protection, Code No. 39 of 1999 concerning Human Rights especially article 51 paragraph 1, Code No. 23 of 2004 concerning the Elimination of Domestic Violence.

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