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Reconstructing Muslim Family Maintenance Obligations amid Economic Uncertainty: Integrating the Fiqh of Mu'sir, Maqāṣid al-Usrah, and Household Economics

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Abstrak

Kehilangan pekerjaan dapat mengurangi kemampuan suami memenuhi nafkah, tetapi tidak selalu berarti tidak mampu. Sebaliknya, bekerja belum menjamin kebutuhan keluarga terpenuhi. Persoalan timbul ketika keadaan ekonomi langsung digunakan untuk menentukan kelalaian suami, kewajiban istri, atau kelanjutan perkawinan. Penelitian ini menguji ukuran kemampuan nafkah dan batas kerja sama ekonomi pasangan melalui penelitian hukum normatif dengan pendekatan perundang-undangan, perbandingan fikih, dan konsep ekonomi rumah tangga. Analisis mempertemukan fikih mu'sir, maqāṣid keluarga Ibn 'Asyur, pendekatan sistem Auda, alokasi waktu Becker, serta pemikiran Sen tentang kerja sama dan konflik kepentingan dalam keluarga. Kemampuan harus dinilai dari sumber daya yang dapat digunakan dan kecukupannya bagi kebutuhan dasar, sedangkan kelalaian diperiksa melalui tindakan serta hambatan yang terbukti. Empat kuadran pekerjaan dan kecukupan sumber daya menunjukkan bahwa pengangguran tidak identik dengan ketidakmampuan maupun kesalahan. Keringanan bagi suami yang mengalami kesulitan tidak menghapus perlindungan istri dan anak. Nafkah kolaboratif dapat ditempuh dengan pembagian biaya dan pengasuhan yang adil, disertai penentuan sumber harta, dasar penggantian, serta peninjauan ketika keadaan berubah. Presumsi penggantian diusulkan setelah dana pribadi, kebutuhan dasar, dan kekurangan pemenuhan oleh suami terbukti, dengan kesempatan membantah. Rekonstruksi ini mempertahankan kewajiban nafkah sekaligus mencegah pemindahan seluruh risiko ekonomi kepada istri atas nama ketahanan keluarga.

Kata Kunci: nafkah keluarga; fikih mu'sir; kemampuan ekonomi; maqāṣid al-usrah; nafkah kolaboratif.

Abstract

Unemployment does not necessarily establish a husband's inability to provide maintenance, while employment does not guarantee sufficient provision. This doctrinal study examines capacity, fault, and legal consequences under economic uncertainty. It combines Indonesian marriage law and comparative fiqh with Ibn Ashur's family-oriented maqāṣid, Auda's systems approach, Becker's allocation of time, and Sen's account of cooperation and conflict. Capacity depends on accessible resources sufficient for basic needs; fault requires separate examination of conduct and constraints. Four quadrants distinguish employment status from capacity and culpability. Relief for hardship must preserve wives' and children's rights.

Collaborative maintenance should specify expenditure and care responsibilities, property sources, reimbursement grounds, and review arrangements. A rebuttable presumption of reimbursement is proposed for proven expenditure of separate property replacing the husband's unfulfilled maintenance obligation. The reconstruction retains maintenance duties while preventing family resilience from justifying the transfer of economic risk to wives. Its implementation requires further legal development.

Keywords: *family maintenance; insolvent husbands; economic capacity; maqāṣid al-usrah; collaborative maintenance.*

INTRODUCTION

A husband who loses his job may still possess savings or receive rental income. Conversely, stable employment does not guarantee that a household's needs are met. The Indonesian Marriage Law and Compilation of Islamic Law (KHI) link the provision of maintenance to financial capacity,[1] but this criterion must be applied to the actual circumstances of the household.[2] The central problem is how families can continue meeting their needs when income declines without treating financial hardship as culpable neglect or shifting the entire burden onto wives.

Spousal economic cooperation has been extensively discussed. Al Mustaqim, together with Risbyantoro, Bela, and Firdaus, considers wives' income-generating roles through the perspectives of mubādalah and the protection of family welfare.[3] Fadhilah and colleagues document varied financial arrangements among seven female Muslim scholars,[4] while Fadhilah and Alamsyah connect those arrangements to maqāṣid al-usrah.[5] Hermanto and Subhan,[6] Abidin and colleagues, and Nizami and colleagues likewise propose more flexible interpretations of maintenance, financial-conflict resolution,[7] and engagement with household economics.[8] Accordingly, simply combining maintenance obligations, maqāṣid, and cooperation does not by itself establish an original scholarly contribution.[9]

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[1] Republik Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan sebagaimana diubah dengan Undang-Undang Nomor 16 Tahun 2019, art. 34 paragraph (1).

[2] Kompilasi Hukum Islam (KHI), art. 80 paragraph (2) and (4).

[3] Dede Al Mustaqim, "Peran Istri Sebagai Pencari Nafkah Dalam Kesejahteraan Ekonomi Keluarga Perspektif Qira'ah Mubadalah Dan Maqashid Syariah," *JURNAL SIPAKALEBBI* 8, no. 1 (2024), 11.

[4] Hendro Risbyantoro, Fitri Mutiah Salsa Bela, dan Delfa Firdaus, "PERAN ISTRI SEBAGAI PENCARI NAFKAH UTAMA DALAM PERSPEKTIF MAQASHID AL-SYARI'AH : (Studi Kasus di Cinere Depok)," *Sahaja: Journal Sharia and Humanities* 2, no. 2 (2023), 198.

[5] Nur Fadhilah et al., "Reevaluating Nafkah Obligations: Female Muslim Scholars' Insight and Ethics of Gendered Finance in Indonesian Families," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2025), 466–471.

[6] Nur Fadhilah dan Muhammad Nurravi Alamsyah, "Reinterpreting Financial Responsibilities in Islamic Marriage: A Maqasid al-Usrah Perspective," *Al-Syakhsiyyah: Journal of Law and Family Studies* 7, no. 1 (2025), 13–18.

[7] Rendy Dwi Hermanto dan Ahmad Subhan, "Dekonstruksi Konsep Nafkah: Analisis Systematic Literature Review terhadap Keadilan Gender dalam Rumah Tangga Muslim," *Jurnal Antologi Hukum* 5, no. 1 (2025), 155.

[8] Achmad Azis Abidin et al., "Reframing Qur'anic Family Financial Responsibility: A Mubadalah-Based Approach to Marital Conflict Resolution," *IJoIS: Indonesian Journal of Islamic Studies* 7, no. 1 (2026), 170–173.

More closely related studies reveal the unresolved issue. Humaida and Fathoni, using Auda's systems approach, frame maintenance as a shared responsibility adjusted to capacity. Afabih and colleagues expand the analysis to wives' educational maintenance, whereas Murdiana and colleagues examine women's contributions, family resilience, and cultural constraints.[10] These works broaden the understanding of family well-being. Yet acceptance of flexible roles does not resolve the legal characterization of each payment, the distribution of childcare,[11] or the protection of recovery rights when economic cooperation arises under financial pressure.[12] A broader conception of welfare does not necessarily answer the question of whether a contribution is a gift, a loan, performance of an obligation, or a use of marital property. Each characterization may affect available evidence and remedies. The doctrinal challenge is thus to connect a flexible arrangement to legally intelligible consequences without assuming that informal cooperation eliminates legally protected interests.

Determining ability to provide maintenance and protecting property rights also generate distinct controversies. Wahyudi, Fatmawati, and Fitriyah distinguish structural inability from abandonment;[13] Syarafuddin and colleagues examine obligations exceeding a father's actual means.[14] Rouf and Khairina and colleagues assess the recognition of contributions when joint property is divided.[15] The issue addressed here is the connection between financial capacity,[16] allocation of expenses and care time, and the legal grounds on which rights remain protected during temporary adjustments. This connection matters because a wife's increased earnings do not necessarily reduce her domestic workload or increase her control over family finances.

Differences among classical jurists demonstrate that legal consequences do not depend entirely on fault. Ibn Qudamah discusses a wife's option to seek separation when maintenance is unavailable even where the husband's inability does not prove deliberate abandonment. Meanwhile, a division of labor that raises

[9] Auliya Ghazna Nizami, Hidayatulloh, dan M. Kurnia Rahman Abadia, "Strengthening Family Resilience through Family Finance Norms: Between Traditions and Modernity," *ADDIN* 19, no. 2 (2025), 362–363 dan 373–375.

[10] Leila Nizzatul Humaida dan Muchammad Chusnul Fathoni, "Repositioning the Obligation of Family Financial Support (Nafkah) Through the Perspectives of Islamic Feminism and Jasser Auda's Systems Approach," *Jurnal Hawa : Studi Pengarus Utamaan Gender dan Anak* 8, no. 1 (2026), 56 dan 58–59.

[11] Abdillah Afabih et al., "Educational Alimony for Wives: A Study of Jasser Auda's Maqāshid As-Syariah," *International Journal of Islamic Khazanah* 16, no. 1 (2026), 8–9.

[12] Elfa Murdiana et al., "Reconstructing the Concept of Nafkah in Islamic Legal Thought: Gender Reciprocity and Female Breadwinners In the Javanese Priyayi Society Culture, Java," *Justicia Islamica* 22, no. 2 (2025), 493–496.

[13] Wahyudi, Fatmawati, dan Alfina Wildatul Fitriyah, "Gugurnya nafkah atau nafinya qiwamah: eksaminasi ketidakproduktifan suami dalam optik fiqh dan relasi gender," *LexIslamica: A Multidisciplinary Approach to Islamic Law and its Contemporary Applications* 1, no. 2 (2025), PDF 5 dan 10.

[14] Muhsan Syarafuddin et al., "Between Duty, Capacity, and Inability: Post-Divorce Child Support in Indonesian Religious Courts," *Indonesian Journal of Islamic Law* 9, no. 1 (2026), 54 dan 58.

[15] Abd. Rouf, "Jurimetrics in the Reconstruction of the Joint Property Division Model for Wage-Earner Wives in Indonesia," *Al-Ahkam* 34, no. 1 (2024), 1.

[16] Khairina et al., "Reforming the Rules on the Division of Joint Property: A Progressive Legal Approach," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024), 193–194.

total household income says little about whether its burdens are equitably distributed.[17] Sen's framework of cooperative conflict recognizes that cooperation and contestation over the distribution of benefits coexist within families. Maintenance protection must therefore connect adequacy, bargaining position, and access to legal remedies. The tension becomes acute where both spouses agree that a temporary change is needed but disagree over what happens when their finances improve. A normative model must distinguish an immediate response to hardship from a permanent reallocation of obligations.[18] Otherwise, short-term solidarity may become the legal basis for one spouse to bear an indefinite burden.

This study addresses two questions: how should capacity to provide maintenance be assessed by distinguishing employment, usable resources, and fault; and how can collaborative maintenance be formulated without compromising family members' rights? The legal points of departure include capacity, joint decision-making, and property ownership under the KHI. The article argues that any adjustment of maintenance must connect the allocation of expenses with caregiving responsibilities, protection of funds, and restoration of economic capacity.[19] Becker and Sen illuminate resources and conflicts over their distribution, while Ibn ‘Ashur and Auda help assess the objectives and interpretive limits of the proposed framework. The resulting model is a legally grounded reconstruction of family-maintenance arrangements rather than a replacement for existing positive law. Rather than supplying a single numerical threshold, the framework first clarifies what must be proved and then distinguishes adjustments that are permissible under current law from recommendations requiring future legal reform.

RESEARCH METHOD

This normative legal study combines statutory analysis, comparative Islamic jurisprudence, and conceptual analysis. It examines the Marriage Law and the KHI provisions governing spousal and child maintenance, property, family debts,[20] and divorce.[21] The analysis begins by identifying the duty bearer, the available funding sources, and the circumstances restricting performance. It then evaluates whether proposed adjustments continue to protect the individuals entitled to maintenance.

The comparative fiqh analysis draws on the discussions of maintenance in al-Mughnī, al-Muḥallā, and Badā’i‘ al-Ṣanā’i‘.[22] Divergent schools of law are also traced through al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah,[23] particularly its treatment of istidānah (borrowing to meet maintenance) and separation on grounds of financial hardship.[24] Ibn ‘Ashur's discussion of the objectives of family regulation and Auda's

[17] Ibn Qudamah, *Al-Mughnī*, ed. 1 (Dār Iḥyāʾ al-Turāth al-‘Arabī, 1985), vol. 8, 163, issue 6472.

[18] Amartya Sen, *Gender and Cooperative Conflicts*, WIDER Working Paper 18 (Helsinki: UNU-WIDER, 1987), 16–24.

[19] KHI, art. 80 dan art. 85–93.

[20] UU Perkawinan, art. 34–36, 41, dan 45.

[21] KHI, art. 80, 85–93, 116, dan 156.

[22] Wizarat al-Awqaf wa al-Shu’un al-Islamiyyah, *Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah*, salinan elektronik, vol. 3, 264–265; vol. 29, 58–61.

[23] Muhammad al-Tahir Ibn Ashur, *Treatise on Maqasid al-Shariah*, trans. Mohamed El-Tahir El-Mesawi (London dan Washington: International Institute of Islamic Thought, 2006), 247–248.

[24] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London dan Washington: International Institute of Islamic Thought, 2008), 45–52.

systems approach are used to examine family functions, the interdependence of duties, and the protection owed to each family member.

Becker's allocation-of-time model is employed to evaluate contributions of goods and time, while Sen's cooperative-conflict theory tests the distribution of benefits and spouses' bargaining positions.[25] Supporting scholarship was reviewed through October 27, 2026,[26] using search terms concerning nafkah, mu'sir, female breadwinners, household economics, and maqāṣid al-usrah. Sources were selected for their relevance to capacity, labor allocation, ownership, or remedies. Empirical studies and official statistical data are used only for contextual support, within their documented scope. The final analysis integrates fiqh doctrines, Indonesian law, and economic theory to identify defensible limits of collaborative maintenance.

The four-quadrant model is a doctrinal analytic tool proposed by the authors, not a judicial test already enacted in the Marriage Law or the Compilation of Islamic Law (KHI). Primary materials are read hierarchically, and classical fiqh positions are compared as doctrinal authorities whose consequences cannot be imposed directly on Indonesian spouses without an applicable legal basis. The household-economics literature informs the choice of indicators—available income, liquid assets, unavoidable needs and care work—but this normative study did not measure actual households. National employment statistics supply background, not proof of any individual spouse's ability. The original editions, translations and pinpoint pages of the classical works should be checked when available.

RESULTS AND DISCUSSION

Economic Uncertainty and the Problem of Meeting Maintenance Obligations

Employment status alone cannot determine an individual's ability to provide maintenance. Statistics Indonesia (BPS) recorded 147.67 million employed persons and an open unemployment rate of 4.68 percent in February 2026; its employment classification includes economic activity performed for at least one hour during the reference week.[27] The unemployment category also encompasses persons without work who are seeking employment or preparing a business.[28] These categories describe labor-market participation, whereas a maintenance assessment asks whether accessible resources suffice for particular dependants. Treating all unemployed individuals as unwilling to work would improperly convert a statistical classification into a finding of fault. The statistical measure of working for one hour, for example, says nothing about the amount, predictability, or legal availability of income for recurring family expenses.

An interruption in earnings may require adjustment of household financing. Amalia, Shofi, and Redhwan identify alternative work, wives' economic participation, and social assistance among families affected by the Semeru eruption. This experience illustrates the need to examine constraints and the measures

[25] Gary S. Becker, "A Theory of the Allocation of Time," *The Economic Journal* 75, no. 299 (1965), 493–495.

[26] Sen, *Gender and Cooperative Conflicts*, 16–24.

[27] Badan Pusat Statistik, *Keadaan Angkatan Kerja di Indonesia Februari 2026*, vol. 48, no. 1 (Jakarta: BPS, 2026), vii dan 215.

[28] BPS, *Keadaan Angkatan Kerja Februari 2026*, 217.

undertaken by both spouses.[29] A shortfall in household expenditure does not by itself establish whether the husband has refused to perform his duty or genuinely lacks usable resources. A defensible response must be assessed by the continuity of essential provision, not simply by preserving a traditional distribution of roles. Any accommodation should be accompanied by a realistic assessment of its likely duration and of the family's ability to restore ordinary provision. This approach accommodates the possibility of assistance by relatives or community institutions while avoiding an assumption that support from others necessarily substitutes for the husband's personal legal duty.

Additional income does not invariably reduce a wife's vulnerability. Muafiah and colleagues document the workload of female lecturers and their responsibility for children's learning during the pandemic.[30] Rofiq highlights the burdens experienced by breadwinning wives in dysfunctional families.[31] These contexts demonstrate that an arrangement concerned exclusively with financial contributions can overlook unpaid caregiving. If all domestic work remains with the wife, household consumption may be maintained only at the cost of her rest, health, and opportunities for personal development.

Spousal agreements must also be assessed in light of the circumstances in which they are formed. Van Huis identifies bargaining-power difficulties in claims for maintenance,[32] while Sarah and colleagues examine gender justice in maintenance determinations.[33] Dependency on a partner's earnings and unequal access to financial information may restrict genuine choice. This does not mean that every agreement is unfair. The relevant questions are whether the spouse accepting additional obligations had sufficient information about the family's finances and retained meaningful access to legal protection or renegotiation. Accordingly, a wife's signature cannot be used as a substitute for examination of the arrangement's actual content and consequences.

The Meaning of Mu'sir and the Divergent Consequences in Islamic Jurisprudence

The term mu'sir refers to a person in financial hardship, whereas mūsir denotes a person of means. Maintenance analysis must begin with resources that can actually be spent, not with an occupational label. Qur'an 65:7 requires a person of ample means to provide according to that abundance, while also relating obligations to the resources granted to the person. Capacity consequently entails two complementary requirements: available resources must be used to meet the

[29] Fadia Imtila'ul Amalia, Muhammad Aminuddin Shofi, dan Habeb Sufyan Mohamed Redhwan, "Force Majeure and the Duty of Spousal Maintenance: A Sociological Jurisprudence Study of Semeru Eruption Survivors in Lumajang," *Fenomena* 25, no. 1 (2026), 140.

[30] Evi Muafiah et al., "The Role of Female Lecturers of IAIN Ponorogo in Family Care During The Covid-19 Pandemic Period," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023), 1067–1068.

[31] Khoirun Nisa' Binti Moch. Rofiq, "Peran Istri sebagai Pencari Nafkah dalam Keluarga Disfungsional Perspektif Maqashid Syari'ah," *Minhaj: Jurnal Ilmu Syariah* 6, no. 2 (2025), 250.

[32] Stijn Cornelis van Huis, "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance," *The Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2024), 16, atau PDF 18.

[33] Sarah et al., "Pluralisme Hukum dan Keadilan Gender Dalam Penetapan Nafkah Istri di Indonesia," *JURNAL USM LAW REVIEW* 8, no. 3 (2025), 2800–2801.

obligation, and the obligation must not be assessed as though every husband possessed identical resources.[34] This distinction matters in adjudication because an obligation fixed without inquiry into available means may be formally expressed but practically impossible to perform.

In al-Mughnī, Ibn Qudamah discusses individuals who earn their living from day to day and artisans who sell their work to meet the needs of a week. These circumstances do not automatically justify dissolution while the family's needs are being met. He likewise distinguishes short interruptions in income from prolonged deficiency.[35] The relevant considerations are actual sufficiency and the duration of impediments. Unstable earnings therefore do not necessarily prove incapacity, just as modest earnings cannot be presumed sufficient without considering the number and needs of dependants.

An unemployed husband may fulfill his obligations using savings or rental receipts. Inherited assets under his control may likewise constitute resources for maintenance even if they did not originate from employment. The legal distinction between inherited property and joint marital property concerns ownership; it does not categorically exempt the owner from maintenance duties. Where the obligation is met, the absence of paid work alone does not demonstrate neglect. This conclusion concerns maintenance only: other legally recognized grounds for divorce must be considered independently.[36] Evidence of capacity may include the availability of liquid funds, regular income from assets, and the possibility of accessing property without undermining minimum housing security. The inquiry is practical, but its results must still be expressed in legal terms: whether maintenance was due, whether sufficient means were accessible, and whether the duty was performed.

Assets, however, should not be evaluated solely from documentary title. Disputed land, undivided co-owned property, and the family's principal residence have different implications from immediately accessible bank balances. Ibn Qudamah discusses provision from property and judicial intervention when a husband who is able to pay refuses to do so, including references to movable property and land. That discussion supports examination of property as a possible source of maintenance.[37] It does not authorize ordering the sale of every asset without considering accessibility, essential housing, and applicable Indonesian legal procedures. The same approach avoids the opposite error: allowing assets of substantial practical value to escape scrutiny merely because the husband currently receives no salary.

The following four-quadrant framework cross-classifies employment status and the sufficiency of accessible resources. Sufficiency is evaluated against the household's basic needs during the relevant period, taking account of reasonable requirements of the income provider and dependants.[38] The table is an analytical

[34] *Al-Qur'an*, QS at-Talaq [65]:7.

[35] Ibn Qudamah, *Al-Mughnī*, vol. 8, 164, issue 6473.

[36] KHI, art. 80 paragraph (2), art. 85, dan art. 87.

[37] Ibn Qudamah, *Al-Mughnī*, vol. 8, 164, issue 6473, discussion of suami yang menolak nafkah ketika mampu.

[38] *Al-Qur'an*, QS at-Talaq [65]:7.

device developed for this study;[39] deliberate fault is excluded as a quadrant because it is neither an employment category nor an inference that can be drawn from the amount of property alone.

Table 1. Employment Status and Sufficiency of Resources for Family Maintenance

Category	Employment	Accessible resources	Implication for the maintenance assessment
I	Employed	Sufficient for essential needs	Actual capacity exists; verify whether payments were made.
II	Not employed	Sufficient through savings, rent, inheritance, or other resources	Unemployment does not demonstrate inability to provide maintenance.
III	Employed	Insufficient for essential needs	Examine shortfall, constraints, and efforts; employment does not guarantee adequacy.
IV	Not employed	Insufficient for essential needs	Examine causes and efforts; inability may or may not involve negligence.

Source: authors' analytical classification[40] based on capacity[41] under the Marriage Law and[42] the KHI and the discussion of sufficiency in al-Mughnī.

The third quadrant demonstrates that employment and income may coexist with inadequate maintenance. In the fourth, the reasons for shortage must be distinguished: illness, involuntary job loss, limited employment opportunities, rejection of suitable work, or concealment of assets. Classifying every job seeker as a blameless mu'sir would close off necessary scrutiny, while treating all nonworking husbands as negligent ignores genuine restrictions on their ability to work.[43] Research on husbands' economic inactivity and duties exceeding capacity supports the need for these separate inquiries.[44] A finding of financial insufficiency and a finding of negligence should therefore appear as separately reasoned determinations, not as interchangeable labels.

The assessment of negligence should consider whether a genuine job opportunity existed, whether the person could meet its requirements, and whether the work was suitable and safe. Health, skills, mobility barriers, and caregiving commitments are also relevant. These are evidentiary questions rather than a new formula displacing procedural law. Nafhani and colleagues discuss income records, cash flows, and asset ownership in maintenance determinations. Such evidence must be read alongside constraints and actual conduct; fault should not be inferred from appearances or social-media posts alone. An evidentiary approach should also avoid imposing an unreasonable documentation burden on households whose

[39] Ibn Qudamah, *Al-Mughnī*, vol. 8, 164, issue 6473.
[40] UU Perkawinan, art. 34 paragraph (1).
[41] KHI, art. 80 paragraph (2) and (4).
[42] Ibn Qudamah, *Al-Mughnī*, vol. 8, 163–164, issue 6472–6473.
[43] Wahyudi et al., "Gugurnya nafkah atau nafinya qiwamah", PDF 5 dan 10.
[44] Muhsan Syarafuddin et al., "Between Duty, Capacity, and Inability", 54 dan 58.

income is informal.[45] Inconsistent receipts or irregular deposits may require clarification but should not alone demonstrate wrongdoing. The court's task is to assess the total evidence, including explanations consistent with the family's circumstances, rather than privilege one form of employment or banking record.

Islamic jurisprudence does not prescribe one uniform consequence of i'sār. Al-Kasani discusses judicial fixing of maintenance and the use of a wife's resources or borrowing to defer performance without extinguishing her entitlement.[46] Al-Mawsū'ah contrasts this Hanafi approach with views allowing marital separation when essential maintenance cannot be provided. The divergence concerns how an outstanding obligation is handled, who bears the consequences of hardship, and when the marriage may be brought to an end.[47] The relative importance assigned to deferred payment, an opportunity to borrow, and dissolution consequently depends on the underlying school of law, not a generalized notion of Islamic fairness.

Under the views permitting dissolution, the husband need not have deliberately neglected his wife. Ibn Qudamah recognizes her choice to remain patient or request separation when the husband has no maintenance available.[48] Genuine hardship may therefore be relevant to an assessment of fault, while the wife's continuing needs remain grounds for legal protection. The proposition that an innocent husband necessarily obliges his wife to wait indefinitely until economic conditions improve does not represent the full diversity of classical fiqh.

Table 2. Differences among Juristic Doctrines on Inability to Provide Spousal Maintenance

School / scholar	Separation due to i'sār	Debt and financing	Funding provided by the wife
Hanafi	Financial hardship alone does not justify separation; judicial fixing and istidānah are available.	Court-determined maintenance may become a deferred claim.	Separate funds advanced under an order may be recovered when the husband has means.
Maliki	Separation may be permitted after inquiry and a waiting period appropriate to the circumstances.	Maintenance not imposed during proven hardship is not necessarily accrued as arrears.	Payments do not automatically create a claim for a proven period of i'sār.
Shafi'i	Fasakh is permitted; the azhar opinion allows three days after examination.	Borrowing is considered together with the duty to work where capacity remains.	The wife's own wealth does not extinguish her option to seek fasakh.

[45] Ahmad Nafhani et al., "Ensuring Justice in Child Support After Divorce: A Jurimetric Review of at Religious Court of Demak Decision," *Jurnal Hukum dan Peradilan* 14, no. 3 (2025), 535–536.

[46] Al-Kasani, *Badā'i' al-Ṣanā'i' fi Tartīb al-Sharā'i'*, ed. 2 (Dār al-Kutub al-'Ilmiyyah, 1986), kitab al-nikāḥ, fasal mā yabṭulu bihi al-khiyār, discussion of ketidakmampuan nafkah.

[47] Wizarat al-Awqaf, *Al-Mawsū'ah*, vol. 3, 264–265, entri istidānah; vol. 29, 58–61, entri ṭalāq.

[48] Ibn Qudamah, *Al-Mughnī*, vol. 8, 163, issue 6472.

School / scholar	Separation due to i'sār	Debt and financing	Funding provided by the wife
Hanbali	Fasakh is permitted; short disruptions are distinguished from prolonged deficiency.	Istidānah to cover the husband's obligations may give rise to reimbursement.	The wife's wealth does not automatically bar a claim for fasakh.
Ibn Hazm	Obligations depend on capacity; issues 1924 and 1926 specify no uniform waiting period for fasakh.	Amounts not obligatory during i'sār do not become debts; obligations accrued while solvent differ.	A wealthy wife must maintain a husband unable to support himself; she cannot recover those costs.

Source: al-Kasani, al-Mawsū'ah,[49] *Ibn Qudamah,*[50] *and Ibn Hazm.*[51] *The summary*[52] *remains subject to the qualifications of each doctrine.*

Ibn Hazm offers a further approach. He requires a wealthy wife to provide for a husband who cannot maintain himself and does not recognize a right to reclaim that expenditure after the husband becomes solvent.[53] This illustrates a model of responsibility different from a loan or deferred debt. It would be inconsistent to adopt Ibn Hazm's account of a wife's obligation while simultaneously claiming that every payment automatically becomes a recoverable loan under a supposedly uniform Islamic rule. Each position must be considered with its own conditions and effects. Ibn Hazm also distinguishes obligations not imposed during insolvency from arrears already due while the husband had means; the latter do not disappear merely because he subsequently becomes poor, although collection may be deferred. Qur'an 2:280, which addresses respite for a debtor in hardship, concerns debts that have actually arisen.[54] It cannot by itself establish that every unpaid maintenance expense is extinguished, that a wife must carry costs without limit, or that her right to seek separation is lost.[55] The distinction between an existing debt and an obligation never legally imposed is indispensable in any attempt to borrow from one juristic view while proposing another.

Maintenance Obligations and the Legal Status of Wives' Contributions under Indonesian Law

Indonesian law connects maintenance to capacity without displacing the party originally responsible. Article 34(1) of the Marriage Law refers to the husband's ability, while Article 80(2) and (4) of the KHI considers capacity and earnings.[56] Important household matters are also to be decided jointly.[57] Adaptation therefore requires a clear distinction between resources that are inadequate, resources temporarily inaccessible, and refusals to use funds that are in fact available.

[49] Al-Kasani, *Badā'i' al-Ṣanā'i'*, kitab al-nikāḥ, fasal mā yabṭulu bihi al-khiyār, discussion of ketidakmampuan nafkah.
[50] Wizarat al-Awqaf, *Al-Mawsū'ah*, vol. 3, 264–265; vol. 29, 58–61.
[51] Ibn Qudamah, *Al-Mughnī*, vol. 8, 163–164, issue 6472–6473.
[52] Ibn Hazm, *Al-Muḥallā bi al-Āthār* (Dār al-Fikr, n.d.), vol. 9, 254–255, issue 1924 dan 1926.
[53] Ibn Hazm, *Al-Muḥallā*, vol. 9, 254–255, issue 1926.
[54] Ibn Hazm, *Al-Muḥallā*, vol. 9, 254, issue 1924.
[55] *Al-Qur'an*, QS al-Baqarah [2]:280.
[56] UU Perkawinan, art. 34 paragraph (1).
[57] KHI, art. 80 paragraph (1), (2), and (4).

Fathurrahman identifies differences between fiqh and positive-law measures of maintenance.[58] Ansori and Zulkarnaen reread scriptural passages in light of changes in economic roles and marital responsibility.[59] Yasin and Adi likewise examine wives' breadwinning in relation to family needs and positive law. Adjustments may legitimately be adopted as a means of discharging family responsibilities.[60] Nevertheless,[61] acknowledging that a wife may work does not provide a legal basis for allocating every shortfall in maintenance to her.

As Fauzi, Choeri, and Hudi and Umam and colleagues argue, a wife's earnings do not automatically discharge the husband's obligation.[62] The legal character of funds she contributes must be determined from how those funds were acquired.[63] Article 35 of the Marriage Law and Articles 85–87 of the KHI distinguish joint marital property from premarital assets, gifts, and inheritance. Money deposited in an account in the wife's name is consequently not necessarily all her separate property; conversely, property she inherited does not automatically become joint property merely because it is used to help the family.[64] Careful tracing of funds is particularly important where wages,[65] savings, inherited property, and ordinary household expenditures pass through the same bank account.

Joint marital property should not simply be equated with the Islamic-law contract of shirkah. Tarantang and colleagues underscore the importance of precise sources when tracing the genealogy of joint property.[66] Food purchased and consumed does not become a divisible asset merely because the wife financed it. The evaluation of contributions to the division of assets, discussed by Rouf, concerns a different legal object from reimbursement of separately funded household expenditure.[67] Each form of protection must follow the particular right at issue so that the same payment is not counted twice.

Article 93 of the KHI distinguishes personal debt from debt incurred for family interests. Responsibility for family debt falls successively on joint property, the

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[58] Nandang Fathurrahman, "Perbandingan Kewajiban Nafkah Perspektif Hukum Islam dan Hukum Positif di Indonesia," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, no. 2 (2022), 193–194.

[59] Ikhwan Ansori dan Zulkarnaen, "Membaca Ulang Ayat-Ayat Nafkah: Tinjauan Metode Penafsiran Fazlur Rahman dan Amin Abdullah," *Ushuluna: Jurnal Ilmu Ushuluddin* 11, no. 1 (2025), 82–83.

[60] Ahmad Alamuddin Yasin, "Tinjauan Maqashid Syari'ah Dalam Kasus Perempuan Sebagai Pencari Nafkah Keluarga," *Oasis : Jurnal Ilmiah Kajian Islam* 7, no. 2 (2023), 81.

[61] Rudi Adi, "Tinjauan hukum positif terhadap peran istri sebagai pencari nafkah dalam keluarga serta relevansinya dengan surat al-baqarah paragraph 233," *el-Bait: Jurnal Hukum Keluarga Islam* 3, no. 1 (2024), 34–35.

[62] Ahmad Fauzi, Imron Choeri, dan Hudi, "The Obligation of Husband to Provide Financial Support in IslamicFamily Law Perspective toward a Financially Independent Wife," *MAQASIDI: Jurnal Syariah dan Hukum* 5, no. 2 (2025), 282 dan 286–287.

[63] Muchamad Khoirul Umam, Hari Widiyanto, dan Ahmad Nursobah, "Fenomena Istri sebagai Pencari Nafkah Utama dalam Perspektif Mazhab Syafi'i," *El-Faqih: Jurnal Pemikiran dan Hukum Islam* 11, no. 2 (2025), 413–414.

[64] UU Perkawinan, art. 35–36.

[65] KHI, art. 85–87.

[66] Jefry Tarantang et al., "Rereading the Concept of Joint Property: Fiqh Literacy in the Book of Sabilal Muhtadin and the Genealogy of Sheikh Arsyad's Thoughts," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024), 1840–1841.

[67] Abd. Rouf, "Jurimetrics in the Reconstruction", 1 dan PDF 17.

husband's property, and the wife's property where the legal conditions are met. This rule concerns liability to creditors and must be distinguished from the maintenance relationship between spouses.[68] Routine expenditure from joint assets differs from a loan of the wife's inherited funds to the husband. In the latter situation, the loan's legal basis and use require proof; any private arrangement must also preserve independently enforceable rights of third parties. A distinction must also be maintained between obligations owed to an outside creditor and internal adjustments between spouses. A payment that discharges a household debt may have consequences for a creditor without establishing whether a spouse has a separate reimbursement claim. Clear records of the purpose and legal character of funds reduce the risk that the same transaction acquires incompatible meanings in later proceedings.

Khairina and colleagues demonstrate how contributions may be considered when dividing joint property in particular proceedings.[69] Ritonga and colleagues discuss postponement of property division where children's interests are implicated.[70] These studies illuminate the connection between assets and family protection, but neither establishes a universal division percentage applicable to every breadwinning wife. Asset division must remain distinct from the enforcement of unfulfilled maintenance duties.

Children's rights limit the legal consequences of agreements between spouses. Article 45 of the Marriage Law preserves parental duties of care and education, while Article 41(b) allows a mother to share post-divorce costs when the father is unable to pay. Gunawan and Al Amin emphasize deliberation and mutual consent in interpreting Qur'an 2:233 on caregiving.[71] Consent must nevertheless be evaluated alongside children's needs.[72] The waiver of rights personal to the wife contemplated by Article 80(6) of the KHI cannot be treated as surrendering all rights belonging to her children.[73] A private adjustment between parents cannot eliminate a child's independent interest in receiving food, healthcare, housing, and education.

The distinction between spousal and child maintenance also extends to arrears. Nasution, Triana, and Muchtar, together with Fardindaputri, Nawawi, and Salsabila, document difficulties involving claims and additional burdens on caregivers when fathers fail to provide support.[74] Syafiuddin prioritizes the child's

[68] KHI, art. 93 paragraph (1)–(4).

[69] Khairina et al., "Reforming the Rules on the Division of Joint Property", 193–194.

[70] Bakti Ritonga et al., "Islamic Family Law Reform in Indonesia: A Review of the Supreme Court's Decision on the Postponement of the Distribution of Joint Property," *Al-Qadha : Jurnal Hukum Islam dan Perundang-Undangan* 11, no. 2 (2024), 292–293.

[71] UU Perkawinan, art. 41 huruf b dan art. 45.

[72] Rieza Rizki Gunawan dan Habibi Al Amin, "Praktek Pemenuhan Hak Nafkah Anak Pasca Perceraian Oleh Ibu Menurut Q.S. Al-Baqarah Ayat 233 (Studi Di Pondok Pesantren Al-Mahrusiyah III Ngampel Kota Kediri)," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 10, no. 2 (2023), 214.

[73] KHI, art. 80 paragraph (6) dan art. 84 paragraph (2).

[74] Hotnidah Nasution, Windy Triana, dan Ahmad Rifqi Muchtar, "Ensuring Children's Rights after Divorce in Indonesia: Religious Court Decisions on Nafkah Madiyah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024), 41 dan 50–53.

best interests in maintenance decisions,[75] while Andriyani, Barkah,[76] and Ifrohati examine intentional neglect.[77] Fault matters to the allocation of responsibility, but children whose fathers genuinely lack means still require support. Doctrines concerning the inability to maintain a wife therefore cannot automatically eliminate a father's obligations toward his children.

Financial inability does not dissolve a marriage by itself. Article 34(3) of the Marriage Law allows legal action when a spouse neglects marital obligations,[78] while separate grounds for divorce are specified in the KHI.[79] Nelli and colleagues demonstrate that pressures on a wife to work may coexist with dishonesty, harsh treatment, and abandonment.[80] Such conflicts are not resolved solely by adjusting the household budget. Conversely, the fact that material needs are met does not exclude examination of independent legally recognized grounds for marital relief.

Collaborative Maintenance with Measurable Protection of Rights

Collaborative maintenance should be understood as an allocation of performance that connects expenditure, caregiving, and the protection of legal entitlements. Dyana and Diantika discuss reciprocity, while Firdaus and colleagues consider wives' employment and husbands' domestic participation through maṣlaḥah. The concept of al-nafaqah al-tashārukiyyah developed here builds on these approaches. Its measure of success is the satisfaction of family needs without transferring disproportionate sacrifice onto one spouse.[81] The distribution of responsibilities should be revisable when resources and constraints change.[82] Collaborative maintenance is accordingly neither a wholesale replacement of the husband's duty nor an assertion that the wife has no responsibility for the well-being of the household. It is a method of allocating concrete performance during changing circumstances while retaining the ability to identify who owes what, whose property is used, and which rights cannot be waived.

Becker explains household production as a combination of purchased goods and time.[83] Money alone does not produce meals or childcare without the labor accompanying those goods. If a wife increases her hours of paid work, the family may require paid substitute care or a transfer of domestic responsibilities to the husband. Contributions must therefore be evaluated through changes in both

[75] Fairuza 'Alima Fardindaputri, Muhammad Nawawi, dan Farhah Salsabila, "Reconstructing al-Ijbar ala al-Nafaqah After Divorce: Shafii Jurisprudence and the Double Burden of Single Mothers," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-undangan dan Ekonomi Islam* 18, no. 3 (2026), 95 dan 99–100.

[76] M. Nur Syafiuddin, "Accentuation of the Best Interest of Children in Livelihood Decision as an Effort to Guarantee Children's Human Rights," *Jurnal HAM* 13, no. 2 (2022), 235–236 dan PDF 9.

[77] Andriyani, Qodariah Barkah, dan Ifrohati, "Pengabaian Nafkah Anak Secara Sengaja oleh Ayah Pasca Perceraian," *Journal of Judicial Review* 27, no. 1 (2025), 187–188 dan 194.

[78] UU Perkawinan, art. 34 paragraph (3).

[79] KHI, art. 116.

[80] Jumni Nelli et al., "The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023), 125–126.

[81] Burhanatut Dyana dan Devi Eka Diantika, "Women in the fulfillment of family living mubadalah's perspective," *Profetika: Jurnal Studi Islam* 24, no. 01 (2023), 46 dan 52.

[82] Firdaus et al., "The Principles of the Concept of Maslahah in Islamic Family Law of a Wife Looking for Living Husband Taking Care of Household Work," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024), 259 dan 280.

[83] Gary S. Becker, "A Theory of the Allocation of Time", 493–495.

income and time. Greater efficiency in allocating household resources may identify feasible arrangements, but it cannot by itself determine whether the resulting distribution of benefits is fair. Recognition of unpaid care prevents financial contribution from becoming the sole measure of a spouse's performance or sacrifice.

Sen's analysis deepens this inquiry. Family cooperation generates shared benefits, but their distribution depends on bargaining positions and the recognition each spouse receives for their contribution.[84] A wife who pays urgent expenses may agree to the arrangement because the alternative would prejudice her children. Her agreement deserves respect, yet it does not conclusively establish equitable allocation. Legal analysis must ask who loses time, property security, or the chance to rebuild earning capacity while the household maintains consumption.

Ibn ‘Ashur treats the strengthening of marital and kinship ties as a purpose of family law while acknowledging the necessity of rules for dissolving those ties.[85] His account supports evaluating maintenance by the actual protective functions of the family. At the same time, his discussion maintains differentiated roles, including the husband's position as a moral protector.[86] Completely symmetrical financial obligations cannot therefore be attributed directly to him. The present reconstruction uses the objective of protecting the family to evaluate adjustments, while independently examining the legal foundation of each person's rights.

Auda's systems approach connects interpretation, social circumstances, and legal objectives. By treating fiqh as a product of human understanding and emphasizing wholeness, openness, and multidimensional evaluation, it provides a useful method for maintenance disputes. Openness requires consideration of reliable financial information rather than assumptions derived from employment status.[87] Wholeness requires a combined examination of expenses, childcare, education, and control over money. Capacity and culpability must then be assessed separately so that relief for the husband does not negate the protection owed to maintenance beneficiaries. The resulting assessment remains legal in character: systems thinking informs how evidence and consequences are considered but does not erase statutory requirements.

The use of maqāṣid must nonetheless remain subject to identifiable legal reasoning. Halim, Amrulloh, and Sado distinguish the broad objective of family welfare from the technical legal cause (‘illah) relevant to maintenance. Auda allows relevant disciplines to inform interpretation, as also explained by Aslati and colleagues.[88] This enables evaluation of an arrangement's consequences,[89] but establishing a wife's legal duty or a right to reimbursement still requires a distinct legal basis.[90] An appeal to family protection must not bypass questions concerning the holder of a right and the person legally burdened. This limitation protects

[84] Sen, *Gender and Cooperative Conflicts*, 16–24.
[85] Ibn Ashur, *Treatise on Maqasid al-Shariah*, 247–248.
[86] Ibn Ashur, *Treatise on Maqasid al-Shariah*, 257–258.
[87] Auda, *Maqasid al-Shariah*, 45–52.
[88] Imam Mahfuz Halim, Moh. Asyiq Amrulloh, dan Arino Bemi Sado, “Basic Preconstruction Of Taʿlīl Alimony In Islamic Family Law: Maqāṣidī Readings On The Iḥtibās Paradigm And Maṣlaḥat Al-Usrah In Indonesia And Tunisia,” *el Mudawanat* 3, no. 1 (2026), 60–61.
[89] Auda, *Maqasid al-Shariah*, 47–52.
[90] Aslati et al., “Utilizing Science and Maqāṣid al-Sharī’ah in Resolving Contemporary Issues of Islamic Family Law,” *Al-Manahij: Jurnal Kajian Hukum Islam* (2024), 17 dan 22.

doctrinal coherence. A general purpose such as family welfare may justify choosing a less harmful way to implement an established duty, but it cannot alone establish a new cause of action. The claim that an expenditure should be reimbursed must therefore be separated from the normative argument that reimbursement would promote more equitable family cooperation.

Humaida and Fathoni propose allocating financial responsibilities in accordance with capacity and evolving family roles.[91] Aulia and Romadloni likewise connect material support and moral responsibility.[92] The present study extends that dialogue by rejecting the proposition that the wife's ability to assist automatically transfers the entire maintenance duty to her. Ability to contribute, voluntary consent to spend separate funds, and the legal foundation of an obligation are separate questions. A protective reconstruction must connect financial contributions to caregiving, recovery rights, and control over assets instead of stopping at the observation that spouses can cooperate.

Essential needs provide the starting point. The KHI includes support, housing, care, medical treatment, and children's education among the relevant responsibilities.[93] Afabih and colleagues broaden consideration to the wife's education through Auda's approach, highlighting the importance of family members' long-term capabilities.[94] A temporary adjustment should not destroy those capabilities merely to preserve immediate consumption. Where resources are limited, nonessential expenditure and payment schedules may be modified, but urgent needs must remain covered by an identifiable funding source.

The report concerning Hind emphasizes the beneficiary's entitlement to adequate maintenance. The Prophet permitted her to take an amount sufficient for herself and her child according to what was reasonable (maʿrūf). The narrative concerns a husband withholding provision, so miserliness should not be confused with genuine inability.[95] The standard of reasonableness demands an explainable assessment of need rather than acceptance of any proposed amount. In Indonesian disputes, the implementation of this principle remains subject to the applicable substantive rules and legal procedures. The principle of adequacy must therefore be translated into a fact-sensitive determination of reasonable needs, available means, and the existence or absence of withholding.

The prohibition on causing harm to a parent through the child is also relevant to allocating caregiving. Qur'an 2:233 provides that neither a mother nor a father should suffer on account of their child.[96] The verse links breastfeeding and care with expenses, capacity, and mutual consultation. This relationship supports examining unpaid childcare alongside financial maintenance. In the proposed model, children's

[91] Leila Nizzatul Humaida et al., "Repositioning the Obligation of Family Financial Support", 56 dan 58–59.

[92] Nur Hayati Aulia dan Moh. Fawwaz Khitam Romadloni, "The Substance and Relevance of the Concept of Maintenance in the Family: A Thematic- Holistic Combination Study," *PALAR (Pakuan Law Review)* 12, no. 1 (2026), 218.

[93] KHI, art. 80 paragraph (4) dan art. 81.

[94] Abdillah Afabih et al., "Educational Alimony for Wives", 8–9.

[95] Al-Bukhari, *Ṣaḥīḥ al-Bukhārī*, ed. Muhammad Zuhayr ibn Nasir al-Nasir, ed. 1 (Dār Ṭawq al-Najāh, 1422 H), kitab al-nafaqāt, hadis 5364.

[96] *Al-Qur'an*, QS al-Baqarah [2]:233.

interests must be preserved without using those interests to force all caregiving onto a single parent.

The wife's consent must not automatically be construed as the surrender of all legal rights. Murdiana and colleagues show that acceptance and spiritual commitment can reflect active strategies through which Javanese women navigate family pressures.[97] Resilience therefore should not always be dismissed as passivity. Respect for their choices must, however, be accompanied by scrutiny of access to information, control over funds, and meaningful opportunities to renegotiate an arrangement.[98] Following Sen, the benefits of cooperation must be evaluated in light of the circumstances of the family member whose available alternatives are most limited.

A lack of receipts for every household purchase does not dispense with the requirement of proof. Mansari, Sari, and Muthalib discuss the rejection of claims where witness evidence did not adequately support the assertions, while Haq, Bahar, and Azwar stress the importance of identifying funds previously used for the wife's support. Initial proof should therefore address the origin and amount of separate property, its application to basic needs,[99] and the portion of the husband's obligation left unpaid.[100] These elements distinguish an established contribution from a merely asserted shortfall. Bank statements, admissions, and corroborating witness testimony may demonstrate the source and use of funds; a receipt for each purchase need not be the exclusive means of proof. A payment record has limited probative value unless its context is understood. For example, proof that the wife paid rent does not alone show that the money came from her separate property, that the payment replaced an unmet obligation, or that reimbursement was expected. Those propositions may require different evidence. Treating them separately protects both parties against unsupported presumptions.

As a proposal for legal reform, expenditure satisfying those three requirements would give rise to a rebuttable presumption that the wife advanced funds recoverable from her husband. Its rationale lies in the protection of separate property and the continuing maintenance obligation, rather than any assumption that marriage merges all assets. Once initial evidence is established, the husband would have an opportunity to show that he already paid or that the wife freely agreed to make an irrevocable contribution.[101] The proposed presumption would exclude expenditures paid from joint property and amounts exceeding reasonable essential needs. Under this proposal, the presumption would arise only after the claimant has presented the specified preliminary proof, rather than merely alleging that she paid household expenses.

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[97] Elfa Murdiana et al., "Reconstructing the Concept of Nafkah", 493–496.

[98] Sen, *Gender and Cooperative Conflicts*, 20–24.

[99] Mansari, Elidar Sari, dan Salman Abdul Muthalib, "Analisis Yuridis Terhadap Penolakan Nafkah Madhiah Isteri Dan Anak: Kajian Putusan Nomor 251/Pdt.G/2021/MS.Mbo," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 9, no. 2 (2022), 316–318.

[100] Muhammad Zhilal Haq, Muchlis Bahar, dan Zainal Azwar, "Hak Nafkah Madhiyah Istri dalam Konsep Hukum Islam dan Implikasinya pada Putusan Pengadilan Agama," *El-Faqih: Jurnal Pemikiran dan Hukum Islam* 10, no. 1 (2024), 19, abstrak.

[101] KHI, art. 80 paragraph (2) and (4), serta art. 85–87.

The concept of istidānah provides doctrinal support for protecting claims arising from advances, although al-Kasani associates it with judicial determination.[102] The reform proposed here would allow urgent needs to be met immediately and examined subsequently, without requiring judicial permission before every expense. Proven hardship would be considered when scheduling repayment, not treated as automatically transforming expenditure into a gift. The presumption must remain rebuttable: a claim should fail if evidence is insufficient or voluntary donation is established. Nor may the same payment be recovered twice through both reimbursement and division of marital property. This is expressly a proposal to develop evidentiary rules, not a claim that such a reversed burden of proof is currently in force. The distinction between a suggested rebuttable presumption and current rules on evidence should be stated expressly by any court, policy maker, or later researcher using this model.

Adjustments in financing should be accompanied by a review of the division of work. If the wife increases her paid working hours, a husband who has sufficient time and capacity should assume an appropriate share of childcare and household labor. Becker's time-allocation approach reveals the burdens shifted by such decisions.[103] Care should not merely be transferred to children. In a study of seven individuals who had served as caregivers before turning eighteen, Kameyama found that dependency and weak bargaining positions constrained their ability to withdraw from caregiving.[104] The Japanese study provides a conceptual warning rather than evidence about the frequency of similar situations in Indonesia.

The amount of maintenance and the duration of adjustments require reasons capable of scrutiny. Nafhani and colleagues address evidence of need and financial capacity, while Napsiyah and colleagues highlight the importance of examining acts of neglect. Cash flows must be distinguished from borrowing or gross business turnover before being used as measures of income. Review may be linked to recovery from illness or the restoration of earnings and should have an agreed evaluation date.[105] Differences among juristic waiting periods cannot justify imposing one uniform period on every family.[106] A reasoned review mechanism also guards against two extremes: rigid demands unaffected by hardship and indefinite postponement that leaves beneficiaries without meaningful protection. Reviewing the arrangement does not require the parties to treat every change in income as a dispute. Instead,[107] a written or clearly established review date can permit cooperative readjustment without sacrificing the ability to seek judicial intervention where basic needs remain unmet.[108] The design is flexible in timing but firm in requiring reasons for continued shortfalls.

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[102] Al-Kasani, *Badā'i' al-Ṣanā'i'*, vol. 2, 330.

[103] Gary S. Becker, "A Theory of the Allocation of Time", 494–495.

[104] Yuki Kameyama, "The Constraints Children Face in Intrafamily Bargaining over Care: An Analysis Using A. Sen's Concept of Cooperative Conflicts," *Japanese Journal of Social Welfare* 64, no. 2 (2023), 13, English abstract.

[105] Ahmad Nafhani et al., "Ensuring Justice in Child Support", 535–536.

[106] Siti Napsiyah, Syamsudin, dan Baehaqi, "Hak nafkah istri dan anak yang dilalaikan suami dalam perspektif hukum islam di desa teter kecamatan simo kabupaten boyolali," *IBLAM LAW REVIEW* 4, no. 1 (2024), 119–120.

[107] Ibn Qudamah, *Al-Mughnī*, vol. 8, 163–164, issue 6472–6473.

[108] Wizarat al-Awqaf, *Al-Mawsū'ah*, vol. 29, 61, paragraf 85.

The allocation of responsibilities must preserve each spouse's decision-making capacity. Nuroniyah describes varied interpretations of qawwām within pesantren,[109] while Warman and colleagues critique subordination in popular fiqh literature.[110] The status of head of household should not be invoked to control all the wife's earnings or time. Equally, the wife's higher earnings do not establish that the husband makes no contribution. The legally relevant question is whether responsibilities are performed and rights respected, including where one spouse principally contributes unpaid caregiving.

If the spouses' combined resources remain insufficient, support outside the nuclear household should be considered. Arrasyid and Kamaluddin propose subsidies for child support;[111] Jannah and colleagues compare post-divorce maintenance policies in three countries.[112] Syarafuddin and colleagues examine the mismatch between judicially determined duties and the payer's financial capacity.[113] These studies support exploring additional funding sources and enforcement mechanisms, but do not demonstrate that all such assistance schemes already operate in Indonesia. Genuine inability should not be addressed simply by shifting every shortfall to the wife.

The following proposed guide clarifies the examination of financial capacity and its legal implications in maintenance disputes. It begins with the relevant statutory duties and means of demanding performance. Courts should identify accessible resources, unmet needs, and proven impediments before determining the appropriate remedy.[114] The four quadrants provide a sequence of inquiry;[115] the legal foundation of each claim must nevertheless be tested independently. For each quadrant, courts should avoid treating the proposed classification as an independent legal cause of action. It helps structure examination of evidence, while the substantive claim must remain grounded in the Marriage Law, the KHI, or another applicable legal rule. This also prevents an analytical table developed by researchers from being mistaken for a binding rule of procedure.

Table 3. Proposed Assessment Guide Based on the Four Quadrants

Category	Proposed evidentiary inquiry	Direction of protection
I	Verify actual income received, essential needs, and proof of payment.	Employment is not proof of compliance. Determine unpaid obligations under the relevant legal basis.

[109] Wardah Nuroniyah, "Gender Discourses within Pesantren in Cirebon: Understanding the Typologies of Kyais' Interpretations of the Concept of Qawwām," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023), 875 dan 883–887.

[110] Arifki Budia Warman et al., "PERPETUATING WOMEN'S SUBORDINATION: Husband-Wife Relation in Pop Fiqh Literature," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023), 259–260.

[111] Fauzan Arrasyid dan Kamaluddin, "Child Support Subsidies: The State's Constitutional Obligation to Protect Children's Rights in Indonesia," *Judex Laguens* 3, no. 2 (2025), abstrak pada laman penerbit.

[112] Shofiatul Jannah et al., "Implementation of Post-Divorce Alimony Policies from a Gender Justice Perspective: A Comparative Legal Study of Indonesia, Malaysia, and Brunei Darussalam," *Ulumuna* 29, no. 2 (2025), PDF 7–8.

[113] Muhsan Syarafuddin et al., "Between Duty, Capacity, and Inability", 58.

[114] KHI, art. 80 paragraph (2) and (4).

[115] UU Perkawinan, art. 34 paragraph (3).

Category	Proposed evidentiary inquiry	Direction of protection
II	Examine savings, rental receipts, inheritance, accessibility, and adequacy.	Absence of employment does not discharge duties where resources suffice; identify usable funding.
III	Calculate the shortfall and examine barriers to sufficient earnings.	Adjust contributions to proven capacity while protecting urgent needs and caregiving.
IV	Distinguish genuine impediments from refusal to use available means or suitable work.	Specify protections and a review date; absence of fault does not automatically bar family remedies.

Source: the author's proposed development[116] *of rules on financial capacity and performance of obligations;*[117] *this is not an enacted judicial guideline.*

An adjustment should identify the essential needs that remain payable, its funding source, the allocation of caregiving, and a date for reconsideration. Children's rights and the wife's access to remedies require separate legal assessments. A review timetable does not turn temporary financial hardship into an indefinite waiver of rights.[118] The proposed guidance and presumption would require further regulatory development,[119] while their practical effectiveness must be tested through empirical research. In any future implementation, documentation should be proportionate to the family's circumstances so that the evidentiary process does not itself exclude vulnerable claimants.

An evidentiary pathway must be realistic where both spouses work informally. The first tier includes accessible bank and salary records, recurring transfers, bills and contracts; the second includes business ledgers, mobile-wallet histories, rent receipts, verified household messages and other contemporaneous records; the third includes mutually corroborated testimony where documents are unavailable. This ranking does not displace the trial judge's assessment of admissibility or weight. A household's essential needs should be assessed against actual dependants, local living costs and assets readily usable without disproportionate sacrifice. Illiquid land, future inheritance and uncertain receivables should not automatically be equated with cash available for immediate maintenance. Illustrative quadrant assignments therefore remain rebuttable on evidence of capability, refusal, illness and other lawful explanations.

Reimbursement for maintenance temporarily advanced by the wife must be distinguished from gifts, ordinary voluntary cooperation, expressly agreed loans and payments made under judicial authorization. Any proposed rebuttable presumption favoring recovery where a wife paid an established duty of the husband is a de lege ferenda recommendation, not a rule already found in Indonesian positive law. Safeguards should require transparent accounting, the wife's meaningful consent, opportunities to renegotiate, prevention of duplicate claims, and recognition of unpaid caregiving. A court must separately determine the existence of an obligation, capacity at the relevant time, the legal character of

[116] KHI, art. 80 paragraph (2) and (4).
[117] UU Perkawinan, art. 34 paragraph (1) and (3).
[118] UU Perkawinan, art. 41 dan art. 45.
[119] KHI, art. 80 dan art. 116.

payment, and the appropriate remedy under Indonesian law. A wife's right to seek protection or divorce must not be obscured simply because the husband's inability was not culpable.

Table 4. Status of the Proposed Maintenance Assessment (Normative Clarification)

Question	Existing legal analysis	Authors' proposal
Ability	Marriage Law and KHI obligations are applied to circumstances proven in court	Four quadrants are an aid for organizing evidence only
Resources	Income, assets, essential needs and constraints are fact-dependent	Prioritize accessible rather than merely nominal resources
Wife's payments	Character of gift, support, loan or obligation depends on applicable law and evidence	Conditional rebuttable presumption of reimbursement, requiring future legal adoption
Remedies	Court assesses legally recognized maintenance and marital remedies	Written review dates, transparent records and consent safeguards

CONCLUSION

Maintenance capacity must be assessed from accessible resources, their sufficiency to cover essential needs, and the duration of impediments. Employment status may describe a person's economic circumstances, but cannot by itself establish ability or culpability. Cross-classifying employment and resource sufficiency produces four situations requiring distinct inquiries. Divergent fiqh positions show that the absence of fault does not automatically extinguish the wife's ability to request protection or marital separation. Accordingly, relief for a husband facing hardship cannot be equated with cancellation of the rights of those entitled to maintenance. The first practical implication is methodological: courts and advisers should ask about actual resources and dependants before discussing the husband's occupational status as evidence of responsibility. The second is remedial: proving genuine hardship may influence the form and timing of relief without eliminating the need to protect children and other maintenance beneficiaries.[120] These distinctions make the model applicable to different household circumstances without pretending that every dispute has the same solution.

Collaborative maintenance can be developed by linking the allocation of costs to caregiving, protection of property, and review as circumstances change. Becker demonstrates the importance of contributions in both money and time;[121] Sen explains why cooperation does not necessarily produce a fair distribution.[122] Ibn 'Ashur's objective of family protection and Auda's systems approach strengthen the

[120] Ibn Qudamah, *Al-Mughnī*, vol. 8, 163–164, issue 6472–6473.
[121] Gary S. Becker, "A Theory of the Allocation of Time", 493–495.
[122] Sen, *Gender and Cooperative Conflicts*, 16–24.

assessment of interconnected needs.[123] Implementation must continue to distinguish maintenance duties,[124] family debts, and joint property according to their respective bases in Indonesian law. A rebuttable presumption of reimbursement is proposed where the wife establishes that she used separate funds to meet essential needs left unprovided by her husband; the husband retains the right to contest that evidence. Guidance implementing the KHI should clarify these distinctions while preserving children's rights and wives' remedies. Further empirical research is necessary because the normative framework has not yet demonstrated its effectiveness in mediation or litigation.

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[123] Ibn Ashur, *Treatise on Maqasid al-Shariah*, 247–248.

[124] Auda, *Maqasid al-Shariah*, 45–52.

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