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Enforcing Post-Divorce Child Maintenance under Islamic Family Law and Criminal Sanctions for Domestic Neglect[1]

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Abstract:
Divorce ends the marriage but not the father's duty to maintain his child, a duty that classical jurisprudence grounds in descent (*nasab*), the child's need, and the father's capacity. In Indonesia, however, final maintenance judgments are often left unpaid, and proposals invoke criminal sanctions for domestic neglect under Law Number 23 of 2004. This article asks how such a sanction can be justified in Islamic legal terms and where its limits lie. It is normative legal research that combines a literature synthesis with the analysis of statutes and three criminal decisions, and it builds the argument in the order of Islamic legal method: Qur'anic and prophetic texts, the positions of the four Sunni schools, the Compilation of Islamic Law, and the tools of legal theory, with modern legal-system, legal-purpose, and restorative-justice theories used afterward as tests. Four findings emerge. First, the Compilation of Islamic Law is a jurisprudential guideline for judges, not a penal statute, so the real problem is weak enforcement rather than a lack of sanctions. Second, the decisive distinction is between the father who is unable and the father who is able but unwilling. Third, criminal liability under the Domestic Violence Law faces an unresolved household element after divorce, while the Child Protection Law offers a more direct basis. Fourth, the sanction can be understood as a discretionary punishment (ta'zir) enacted by state legislation, but only as a last, graduated step that never waives the child's rights. The article proposes a graduated model.

Keywords: *Child maintenance; Compilation of Islamic Law; Domestic neglect; Restorative justice; Ta'zir*

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A. INTRODUCTION

Islamic law places the maintenance of children (*nafaqah al-awlad*) on the father, and it does so on explicit textual grounds. The Qur'an states that the father must provide for the nursing mother and the child "in a fair manner" and that "no soul is burdened beyond its capacity" (Q. 2:233), and it ties maintenance to means: "Allah does not burden a soul except with what He has given it" (Q. 65:7). When Hind bint 'Utbah complained that her husband gave too little, the Prophet told her to take what suffices her and her child in a fair manner (al-Bukhari, no. 5364; Muslim, no. 1714). From these texts, the classical jurists derive that the duty arises from descent (*nasab*) and the child's need, not from the marriage, and that it therefore survives divorce (al-Kasani, 1986; Ibn Qudamah, 1968; al-Zuhayli, n.d.).

The difficulty lies in enforcement. Religious Court judgments that fix a father's monthly contribution are widely described as a "paper victory" for the caregiving parent (Arifin, 2023). Decision Number 802/Pdt.G/2011/PA.Ptk illustrates the pattern: the Pontianak Religious Court, ruling by default, ordered a father to pay Rp2,500,000 per month, and the order, although final, was not performed (Rovyantri, 2020). We use it only as an illustration: the source does not show whether the father could pay, and one case cannot show how common non-performance is (see Section C.2).

Much of the existing discussion locates the cause in the "absence of sanctions" in the Compilation of Islamic Law (*Kompilasi Hukum Islam*, hereafter KHI) (Rahman et al., 2026). That framing needs correction. The KHI, issued by Presidential Instruction Number 1 of 1991, is a compilation of jurisprudence that guides Religious Court judges. It is not a penal statute, and criminal sanctions can be created only by legislation. The more precise question is why the mechanisms that do exist, namely civil execution, administrative deduction, and the criminal provisions found in other statutes, fail to secure payment, and which of them Islamic law can accept and on what conditions.

Two criminal provisions are potentially relevant. Article 9(1) of Law Number 23 of 2004 on the Elimination of Domestic Violence (hereafter the PKDRT Law) prohibits neglecting a person within one's household whom one is obliged by law or agreement to support, and Article 49 punishes it with up to three years' imprisonment or a fine of up to Rp15,000,000. The Child Protection Law (Law Number 23 of 2002, as amended) separately prohibits placing or leaving a child in a situation of mistreatment or neglect (Art. 76B), and such conduct is punishable under Article 77B. Whether either provision reaches a divorced father whose child lives with the mother, and whether punishment of this kind is compatible with the jurisprudence of maintenance, are open questions.

Previous studies have examined the problem mostly from a civil-law standpoint. Maretna (2026) analyses Religious Court decisions on post-divorce child maintenance and finds that courts determine the obligation, but that implementation meets obstacles. Sebriyani (2023) and Lubis (2024) discuss the protection of wives and children after

divorce. Rahman et al. (2026) argue that the lack of sanction norms weakens the protection of children after divorce, and Muizzuddin (2025) addresses the enforcement of post-divorce financial obligations, including child maintenance. As far as we could identify, these studies do not derive the case for criminal enforcement from the jurisprudence of maintenance and of compulsion, do not organize the problem around the difference between the able and the unable father, and do not test the household element of the PKDRT Law against the position of a child who lives with the divorced mother.

This article therefore builds its argument in the order that Islamic legal method requires: texts first, then the schools, then the tools of legal theory, and only afterward modern theories as tests. It poses four questions. First, what do the texts and the four Sunni schools require of the father after divorce, and how did the KHI receive them? Second, how do the able, the unable, and the absent father differ, and where do the existing civil mechanisms fall short? Third, under what conditions can the PKDRT Law, compared with the Child Protection Law and the Criminal Code, apply to a divorced father, and how can its sanction be characterized in jurisprudential terms? Fourth, what limits do the objectives of the Shari'ah (*maqasid al-shari'ah*), legal-system and legal-purpose theory, and restorative justice place on such enforcement?

Our argument is that, because the texts condition the duty on capacity and treat the delay of the able as a wrong that the ruler may punish, criminal enforcement is defensible as discretionary punishment (*ta'zir*) only against the able but unwilling father, only after civil mechanisms have been exhausted, and only in forms that neither deprive the child nor allow the child's right to be waived.

B. METHOD

This is normative legal research with a descriptive-analytical design (Efendi & Rijadi, 2022). It is not an empirical study: it collects no interview or field data, and statements about how neglect occurs in practice are drawn from published literature and decisions. We therefore treat Section C.2 as a literature synthesis, not as findings of our own fieldwork.

Three kinds of material were used. Sharia sources comprise the Qur'an, the hadith collections of al-Bukhari, Muslim, Abu Dawud, al-Nasa'i, and Ibn Majah, and works of the four Sunni schools on maintenance, custody, and the compulsion of debtors: al-Kasani (Hanafi), al-Dasuqi (Maliki), al-Nawawi (Shafi'i), and Ibn Qudamah (Hanbali), supplemented by al-Zuhayli's comparative survey. Hadith are cited by collection and number, and the grading of a report outside the two Sahih collections is noted. Legal materials comprise the KHI, Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, the Child Protection Law (Law Number 23 of 2002 as amended by Law Number 35 of 2014 and Law Number 17 of 2016), the PKDRT Law,

the former Criminal Code and the new Criminal Code (Law Number 1 of 2023, applicable since January 2026), Government Regulation Number 10 of 1983, Supreme Court circulars, and four court decisions. Secondary materials are books and articles on these subjects.

The case approach is purposive, not statistical. Decision Number 802/Pdt.G/2011/PA.Ptk is a civil decision used to illustrate non-performance. Three criminal decisions, Numbers 1485/Pid.Sus/2015/PN Medan, 943/Pid.B/2015/PN Palembang, and 252/Pid.Sus/PN KAG were taken from the Supreme Court Decision Directory because they concern the neglect of a maintenance obligation. We read each for four points: the relationship between offender and victim at the time of the offense, the treatment of the household element, the proof of ability and intent, and the sentence. Three decisions cannot show a trend. They are used to show how the elements are argued, and we draw no conclusion about frequency or deterrence.

The analysis follows the order of Islamic legal method (*istinbath*). First, we state the textual rules and read the schools' positions against them. Second, we apply the tools of legal theory relevant to enforcement: the ruler's authority to legislate in the public interest (*taqnin*), the prohibition of harm, custom (*'urf*) in fixing the amount, and the objectives of the Shari'ah as a criterion for choosing among enforcement measures. Third, we analyze the elements of the statutes by textual, systematic, and purposive interpretation, bounded by the principle of legality. Fourth, Hadjon's (1987) distinction between preventive and repressive protection is used descriptively, while Friedman's (1975) legal-system theory and Radbruch's (2006) values of justice, expediency, and legal certainty are used as tests that the proposed model must pass, not as support for a conclusion fixed in advance. Restorative justice is drawn from Zehr (2002) and Braithwaite (2002), its risks in domestic-violence cases from Stubbs (2007), and its Islamic counterpart from the concepts of *sulh* and *islah*.

C. RESULTS AND DISCUSSION

The discussion follows the research questions: Section C.1 states what the texts and schools require and how the KHI received them; C.2 separates the able, unable, and absent father and tests the civil mechanisms; C.3 analyses the criminal provisions; C.4 characterizes the sanction in jurisprudential terms; and C.5 tests the resulting graduated model, in which criminal sanction comes last.

C.1 The Texts, the Four Schools, and the Compilation of Islamic Law on Child Maintenance

The texts establish four propositions. First, the duty falls on the father: he bears the provision of the mother and the child "in a fair manner" (Q. 2:233). Second, it is bound to capacity: "no soul is burdened beyond its capacity" (Q. 2:233; Q. 65:7). Third, it is need-based and does not depend on the father's consent, since the Prophet allowed Hind

to take from her husband's property what suffices her and her child (al-Bukhari, no. 5364; Muslim, no. 1714). Fourth, neglect is a sin: "It is enough sin for a man to neglect those whom he supports" (Abu Dawud, no. 1692; a similar wording in Muslim, no. 996). The same verse adds that neither parent may be harmed through the child (Q. 2:233), a limit that returns in Section C.4.

The four schools agree on the core. The duty rests on the father when the child is poor and unable to earn, whether or not the mother holds custody, because its cause is descent and need, not the marriage (al-Kasani, 1986; Ibn Qudamah, 1968, who reports the agreement). They differ, as Table 1 shows, in duration, in whether past maintenance survives as a debt, and in who bears the duty when the father cannot. These differences are not slight. The answer on past maintenance decides whether a father who paid nothing for years owes arrears, and the answer on the next obligor decides whether the child has any claim at all when the father is destitute.

Table 1. Child maintenance in the four schools and in Indonesian law

Issue	**Classical positions**	**KHI and Law Number 1 of 1974**	**Consequence**
Cause and condition	Descent plus the child's need and the father's capacity; the duty does not depend on marriage or custody (all four schools)	Arts. 105(c) and 156(d) KHI: cost borne by the father according to his ability; Art. 41(b) Marriage Law	The duty survives divorce, and ability is an element of the duty
Duration	Common formulation: boys until puberty and ability to earn, girls until marriage; Shafi'i and Hanbali texts frame it by need and inability to earn, so a disabled or studying adult child may remain entitled	Art. 98(1) KHI: twenty-one years if the child has no physical or mental disability and has not married	The KHI replaces puberty and earning capacity with a fixed age and keeps the marriage and disability exceptions
Past maintenance	Majority: a relative's maintenance lapses with time unless fixed by the judge, agreed, or borrowed with judicial permission, whereas a wife's maintenance is a debt	No express rule on arrears of child maintenance	A sum fixed by judgment becomes an enforceable debt, which makes a clear judgment essential
Next obligor if the father cannot pay	Maliki confines the duty to parents and children; the others extend it to other relatives (by order of closeness in Shafi'i, by inheritance share in Hanbali); Hanafi texts allow the mother to be ordered to spend and later recover from the father	Art. 41(b) Marriage Law: the court may require the mother to share the cost if the father cannot	Poverty of the father does not end the child's claim; safety nets are needed

Issue	Classical positions	KHI and Law Number 1 of 1974	Consequence
Custody and wage	Custody may pass between parents while maintenance stays with the father; several schools recognize a separate wage for the custodian or nurse (cf. Q. 65:6) but differ on whether the mother may claim it	Arts. 105(c) and 156(d) KHI speak of the costs of custody and maintenance together	The custodial wage is not separated and must be included in the total amount
Age of discernment	Most jurists place discernment (*tamyiz*) at about seven; Shafi'i and Hanbali let the child choose at that age (Abu Dawud, no. 2277)	Art. 105(a)-(b) KHI: a child "not yet *mumayyiz* or not yet twelve years old" is with the mother; a *mumayyiz* child chooses	Twelve is the KHI's own marker; it governs custody, never the father's financial duty

Source: compiled by the authors from al-Kasani (1986), al-Dasuqi (n.d.), al-Nawawi (n.d.), Ibn Qudamah (1968), al-Zuhayli (n.d.), the KHI, and Law Number 1 of 1974.

It can be seen from Table 1 that the KHI keeps the core of the classical rule, the separation of custody from the financial duty and the dependence of the duty on the father's capacity, but makes three choices that the texts do not dictate. The first is the fixed age of twenty-one in Article 98(1), which replaces the classical test of puberty plus earning capacity with an administrable cut-off while keeping the exceptions for marriage and disability. The second is the age of twelve in Article 105, later than the classical seven. The third is the silence regarding arrears and the next obligor, which leaves the judge to fill the gap under Article 41(b) of the Marriage Law. The KHI gives no reasons for these choices. We read them as the product of a state-sponsored compilation process, which is *ijtihad* exercised through administrative rule-making and therefore open to revision where a better enforcement design requires it.

These results refine earlier work. Rauf (2022) and Subaidi (2014) present the father's duty and the concept of maintenance in general terms; Table 1 shows that the unity they describe holds for the cause of the duty but not for arrears or the next obligor, the points that matter for enforcement. The results also align with Rahman et al. (2026), who interpret the KHI's lack of sanctions as a normative vacuum. The KHI states the obligation as the classical sources do. The consequence of non-performance belongs, in jurisprudence, to the judge's and the ruler's power of compulsion, discussed in Section C.4, and not to the compilation of the duty.

C.2 The Able, the Unable, and the Absent Father: Where Civil Mechanisms Fall Short

This section is a literature synthesis, not a report of field data. The causes and forms of non-performance below are those reported in published studies (Gowasa, 2024; Hadi, 2024; Arifin, 2023; Maretna, 2026; Sukmawati, 2021; Rahman et al., 2026) and in the single decision examined. We do not claim to have measured their frequency.

The literature explains non-performance by unequal post-divorce power relations, the father's new family obligations, lost contact between father and child, and conflict over access (Gowasa, 2024; Hadi, 2024). Reported consequences include constrained access to education, health care, and nutrition, psychological distress, and a heavy burden on the caregiving mother (Sukmawati, 2021). These accounts treat non-performance as one phenomenon. The texts show that it is at least three, and the response differs for each.

The first is the father who is able but unwilling. He has income or assets and withholds payment. The Prophet called the delay of the able an injustice (*zulm*) (al-Bukhari, no. 2287; Muslim, no. 1564), and enforcement against him is both permitted and needed. The second is the father who is unable to pay because of unemployment, illness, or poverty. The Qur'an relieves him of what exceeds his capacity (Q. 2:233; Q. 65:7), and commands respite for a debtor in hardship (Q. 2:280). Punishing him would punish poverty and would not feed the child. The third is the absent father, whose whereabouts or income are unknown, so that ability cannot be proved. Here enforcement fails not because of unwillingness but because the system cannot trace assets or income. Table 2 summarizes the response each calls for.

Table 2. Father types, jurisprudential characterization, and response

Father	Characterization	First response	Role of criminal law
Able but unwilling	Delay of the able (*zulm*); the judge may compel	Execution, salary deduction, escalation clause, court-ratified payment plan	Last resort, after a final judgment has not been performed
Unable	Capacity-bound duty (Q. 2:233; 65:7); respite for the debtor in hardship (Q. 2:280)	Reduced amount; mother's share under Art. 41(b) Marriage Law; relatives; social funds	None
Absent or untraceable	Ability not proved	Tracing of assets and employer; administrative deduction	Only after the father is identified and ability and intent are proved

Source: authors' analysis of Q. 2:233, 2:280, 65:7, Law Number 1 of 1974, and the literature cited above.

Decision Number 802/Pdt.G/2011/PA.Ptk cannot be classified under Table 2. It records a default judgment against a father who never appeared, and the secondary source does not show his income (Rovyantri, 2020). It shows that a final judgment can remain unperformed; it does not show that the father was able and unwilling. This is why proof of ability must be central. A court that fixes a sum by default has not tested capacity, and a prosecutor who relied on that judgment would be assuming what the texts require him to prove. Fixing the amount also engages custom (*'urf*): the fair amount depends on local standards and the father's means (Q. 2:233), and a judgment that records how capacity and custom were weighed is a better foundation for later enforcement than a bare figure.

The civil toolkit is wider than the "absence of sanctions" narrative suggests. The court determines the sum having regard to the father's ability (KHI, Art. 156(f)) and may order the mother to share the cost if the father cannot (Law Number 1 of 1974, Art. 41(b)). Supreme Court circulars on the religious chamber permit a judgment to provide an annual increase of the child's maintenance of ten to twenty per cent (Mahkamah Agung, 2015) and to make payment of divorce-related obligations a condition for pronouncing *talak* or collecting the divorce certificate (Mahkamah Agung, 2019), although the second practice protects chiefly the wife. Execution proceeds by seizure and auction (HIR, Art. 197). Government Regulation Number 10 of 1983, Article 8, obliges a civil servant father to pay a portion of his salary to his former wife and children.

Gaps nevertheless remain. Execution depends on the caregiving parent's application and costs. A periodic penalty (*dwangsom*) is not available for judgments that order the payment of money (Rv, Art. 606a). Civil imprisonment for debt under Supreme Court Regulation Number 1 of 2000 was designed for large debts and rarely suits a maintenance claim. Salary deduction does not reach the father in the informal sector. The first finding is therefore this: what is missing is not a sanction in the KHI, which could not contain one, but a coherent ladder of enforcement. Before concluding that criminal law is needed, the system should show that the civil rungs have been used and have failed against an able father. Our analysis agrees with Maretna (2026), who finds that courts protect the child by determining the obligation but meet obstacles in implementation, and adds a diagnosis by father type: the obstacles differ, and so must the response.

C.3 Criminal Liability for Neglect of Child Maintenance: Elements, Household, and Alternative Provisions

Article 9(1) of the PKDRT Law has five elements: any person; who neglects; a person within his household; whom he is obliged to support, care for, or maintain by the law applicable to him or by agreement; and a state of mind that, although the article does not use the word "deliberately", we read as knowledge and intention to withhold, because a failure caused by inability is not neglect in the sense of the article. Article 49 attaches imprisonment of up to three years or a fine of up to Rp15,000,000. Neglect and intent mirror the distinction between the able and the unable father: the prosecution must prove ability and refusal. The element of obligation is met by the KHI and the Marriage Law. This is the sense in which the KHI is absorbed into the offense: the phrase "the law applicable to him" imports the duty but does not supply the penalty, and because the principle of legality demands a clear duty, a final civil judgment fixing the sum is the safest proof of it.

The decisive question is the household element. Article 2(1) of the PKDRT Law defines the household as the husband, wife, and child; persons related by blood, marriage, suckling, care, or guardianship who live in the household; and domestic workers who

live in it. Two readings are possible. On the narrow reading, the victim must be within the offender's household at the time of the neglect. A child who lives with the divorced mother is then outside it, and Article 9(1) applies only if the parents still share a home, for example when they are separated in fact but not yet divorced. On the broad reading, the word "child" in Article 2(1)(a) is not qualified by residence, since the requirement of living in the household is attached to the categories in letters (b) and (c). A father's child then remains within his household for the purposes of the offense. The broad reading is textually arguable and protects the child, but it strains the rule that penal provisions are interpreted strictly (Moeljatno, 2008), and a court may reasonably reject it. In our view, the broad reading is defensible for the child, unlike the former wife, but it is uncertain enough that prosecutors should not rest a case on it alone.

The decisions reviewed show how the element is argued, but they do not settle it. What the decisions can support is limited: that the route has been used (No. 1485) and that proof of deliberate neglect is contested (Nos. 943 and 252). They cannot support a claim that the route is reliable or that it deters.

Table 3 compares the provisions. The Child Protection Law offers a more direct route for the child. Article 76B prohibits placing or leaving a child in a situation of mistreatment and neglect, and the Elucidation of Article 13(1) defines neglect as the deliberate disregard of the obligation to maintain, care for, or look after the child. Article 77B punishes it with up to five years' imprisonment and/or a fine of up to Rp100,000,000. This provision has no household element, carries a heavier penalty than the PKDRT Law, and names the child as the protected person. The view that the statutes lack coercive consequences (Rahman et al., 2026) therefore cannot be maintained for the Child Protection Law, though it holds for the Marriage Law. The former Criminal Code (Art. 304) punished the neglect of a person whom one is obliged to maintain, and the new Criminal Code contains corresponding provisions. The special statutes take precedence over the general code in case of overlap (*lex specialis*), but the prosecutor must still choose between the two.

Table 3. Provisions relevant to post-divorce child maintenance

Instrument	Norm	Protected person and key element	Sanction	Gap
KHI, Arts. 98, 105(c), 156(d) and (f)	Father bears the costs of custody and maintenance according to his ability, until twenty-one	Child; no penal element	None; guideline for Religious Courts	Depends on civil procedure
Marriage Law, Arts. 41(b) and 45	Duty of parents continues after the marriage ends; court may charge the mother if the father cannot	Child	None	Declaratory

Instrument	Norm	Protected person and key element	Sanction	Gap
Child Protection Law, Arts. 76B and 77B; Elucidation of Art. 13(1)	Prohibits placing or leaving a child in mistreatment and neglect	Child; no household element; deliberate disregard	Up to 5 years and/or Rp100,000,000	Link to the civil judgment not regulated
PKDRT Law, Arts. 2(1), 9(1), 49, 50	Prohibits neglect of a person in the household owed maintenance by law or agreement	Household member; household after divorce contested	Up to 3 years or Rp15,000,000; additional measures in Art. 50	Household element
Former Criminal Code, Art. 304; new Criminal Code	Neglect of a person one is obliged to maintain	Any person owed maintenance	Former Code: up to 2 years 8 months	General statute (*lex generalis*)

Source: authors' analysis of the statutes' texts.

Article 9(2) concerns economic dependence created by restricting a person's work. Reading it by analogy to cover conduct that obstructs a caregiver's earnings would offend the prohibition of analogy in penal law, so we confine it to its text and do not rely on it. As for deterrence, the penalty has not been tested: we have no data on post-prosecution compliance, and the form of the sanction matters to the child. A fine is paid to the state, not to the child, and imprisonment removes the father's earnings. Article 50 of the PKDRT Law, which allows additional measures such as restrictions on the offender, mandatory counseling, and conditional sentences where available, is better suited to the aim of securing payment.

Maretna (2026), Sebriyani (2023), and Lubis (2024) stop at the civil dimension. The criminal route has a definable structure and definable weak points, namely proof of ability and intent and the household element, so the proposition that the PKDRT Law simply fills the gap is too strong. It fills the gap only for the able but unwilling father, only where the household element can be satisfied, and the Child Protection Law fills it more directly.

C.4 Characterizing the Sanction in Jurisprudential Terms: Compulsion of the Able, Ta'zir, and Taqnin

The justification for criminal enforcement should be built on the categories supplied by jurisprudence, not on a single maxim. The maxim that what is needed to complete an obligation is itself obligatory (*ma la yatimm al-wajib illa bihi fahuwa wajib*) concerns means that are conditions for performing a duty, as ablution is for prayer. It supports procedures that make maintenance effective, but it does not by itself establish a penal sanction, so we do not rely on it for that purpose.

The direct ground is the law on the able debtor. The Prophet said that the delay of one who is able to pay is an injustice (al-Bukhari, no. 2287; Muslim, no. 1564), and that the delay of one who is able makes lawful his dishonor and his punishment (Abu Dawud, no. 3628; al-Nasa'i, no. 4689; Ibn Majah, no. 2427), a report that hadith critics generally accept as sound. Jurists derive from these texts the judge's power to compel an able debtor to pay, to sell his property for that purpose, and to detain him (*hubs*) until he pays (al-Mawardi, n.d.; Ibn Qudamah, 1968). Child maintenance is a duty of this kind once it is fixed by judgment: the sums then due are a debt owed by one who is able (Table 1).

Neglect of maintenance is not among the fixed-penalty offenses (*hudud*) or retaliation (*qisas*). It belongs to discretionary punishment (*ta'zir*), the category in which the ruler defines the offense and sets the penalty in accordance with the public interest (al-Mawardi, n.d.; Kamali, 2008). A statutory penalty such as Article 49 of the PKDRT Law or Article 77B of the Child Protection Law can then be understood as *ta'zir* enacted by legislation (*taqnin*). It is lawful under the principle that the ruler's action toward his subjects is bound to the public interest (*tasarruf al-imam 'ala al-ra'iyyah manut bi al-maslahah*) (al-Suyuti, 1983). The ruler's governance within the Shari'ah (*siyasah shar'iyyah*) thus supplies both the competence and the boundary of the sanction. This also addresses the difficulty raised in Section C.1: the KHI is a jurisprudential guideline, and the penalty is not included because, in the jurisprudential scheme, penalties for *ta'zir* offenses are created by the ruler, not by the compilation of the duty.

Three limits follow from the same sources. The first is capacity. Because the duty is bound to capacity (Q. 2:233; Q. 65:7) and the Qur'an commands respite for the debtor in hardship (Q. 2:280), detention or punishment of a father who is truly unable is unjustified. The sanction answers *zulm*, and the unable father commits none. The second is the prohibition of harm (*la darar wa la dirar*) (Ibn Majah, no. 2340), together with the verse that neither parent shall be harmed through the child (Q. 2:233). A sanction must not deprive the child of the very support it is meant to secure, and imprisonment that ends the father's earnings fails that test. The third is certainty. The duty must be fixed before it is punished, since a penal statute that depends on an unfixed duty invites arbitrary use.

Other Muslim jurisdictions pair administrative and fund-based tools with penal sanction, for example attachment of earnings under Malaysia's Islamic Family Law (Federal Territories) Act 1984 and the family fund created by Egypt's Law Number 11 of 2004. A fuller comparison lies beyond the scope of this article.

C.5 Testing the Integrative-Restorative Model: Maqasid, Legal System, Legal Purpose, and the Limits of Restoration

The objectives of the Shari'ah are used here to choose among measures, not to bless a conclusion. Child maintenance serves the preservation of life (*hifz al-nafs*) and of lineage and offspring (*hifz al-nasl*) (al-Shatibi, 1997; Auda, 2008). A measure should be preferred to the extent that it secures the child's support reliably and with the least harm. Applied to the measures in play, the ranking is as follows. First come prevention and safety nets: an ability-tested judgment, the contribution of relatives where the schools allow it, and, for a child who qualifies as poor, social funds such as zakat (Q. 9:60), which secure support without depending on the father. Second come civil measures that act on income, namely salary deduction and escalation clauses, which pay the child directly and harm no one. Third comes restorative settlement under judicial supervision. Criminal sanction comes last. It is the only measure that can remove a father's earning capacity and the only one that imposes punishment, so it is justified only if the lower measures have been tried and have failed against an able father. This ordering gives *maqasid* an analytical role and shows why the objective that supports a criminal threat also limits it.

Friedman's (1975) legal-system theory tests whether the ladder can work in practice. Its structural condition is coordination between the Religious Courts, which fix the sum, and the general courts and prosecutors, who punish neglect. Unless a final civil judgment can be obtained against the prosecutor, the criminal rung cannot be reached. Its cultural condition is that mothers, the usual complainants, must be willing to use it, and they may hesitate for fear of harming the child's relationship with the father. The model fails if introduced as a criminal rule alone, and passes only if coordination and legal education accompany it. Radbruch's (2006) three values test the content. The latter serves justice by tying the sanction to the father's ability, expediency by preferring measures that actually pay the child, and certainty by tying prosecution to a final judgment that fixes the duty. Where these values conflict, as when a certain penalty would fail the child's welfare, the balance favors the measure that serves the child. Both theories thus qualify the complementarity of the KHI and the PKDRT Law instead of simply confirming it: it holds only under these conditions.

Restorative justice has an Islamic counterpart in *sulh* (settlement) and *islah* (putting right), which the Qur'an commends ("settlement is best", Q. 4:128) and which are used in family disputes. Restorative theory emphasizes the repair of harm and the participation of the parties (Zehr, 2002; Braithwaite, 2002). In domestic-violence cases, however, critics warn that a power imbalance and pressure to reconcile can make a restorative process unsafe for the victim (Stubbs, 2007). The risk is acute here, because the mother is typically the weaker party in post-divorce relations. Indonesian rules on restorative justice exist for the courts, the prosecution service, and the police (Mahkamah Agung, 2024; Kejaksaan Republik Indonesia, 2020; Kepolisian Negara Republik

Indonesia, 2021) and, as we read them, they condition settlement on the victim's genuine consent.

Jurisprudence adds a limit of its own: the maintenance of a minor is the child's right. A parent or guardian may agree on a schedule for paying arrears, but may not waive the child's claim or settle below the fair standard (Q. 2:233). A restorative agreement should therefore take the form of a court-ratified payment plan, with the criminal rung suspended and revived upon default.

The result is a graduated model, not a single paradigm. Its first rung is an ability-tested judgment with safety nets. The second is civil enforcement that acts on income. The third is restorative settlement under court supervision with a non-waivable core. The fourth is a conditional criminal sanction, selected between the Child Protection Law and the PKDRT Law based on the household element, designed to secure payment. We call it integrative-restorative because it joins the jurisprudential duty, state compulsion, and repair; its contribution to the literature reviewed in the Introduction lies in the sequence and the limits.

D. CONCLUSION

The texts and the four schools make the father's duty one of descent, need, and capacity, and they let it survive divorce. The KHI received the core but made its own choices regarding age and discernment, leaving arrears and the next obligor to the judge. Non-performance is not one phenomenon: the able but unwilling father, the unable father, and the absent father call for different responses. The civil toolkit is broader than the narrative of an absent sanction admits, though it is weak against the informal sector and the absent father.

Criminal enforcement is available through the Child Protection Law, which has no household element, and through the PKDRT Law, whose household element after divorce remains uncertain. The three decisions examined show that the route has been used, not that it is reliable or that it deters. In jurisprudential terms, the sanction can be understood as *ta'zir*, enacted through taqnin, against the able who delay payment, subject to capacity, the prohibition of harm, and certainty. Tested by *maqasid*, legal-system and legal-purpose theory, and restorative justice, the complementarity of the KHI and the PKDRT Law holds only as a graduated model in which the criminal sanction comes last, ability is proved, the child's right is never waived, and the sanction is shaped to secure payment.

Four suggestions follow. First, the Supreme Court and the Religious Courts should strengthen the civil rungs before turning to criminal law: judgments on child maintenance should record findings on ability and custom, include escalation and payment-condition clauses, and use salary deduction wherever possible, and the

Ministry of Religious Affairs should consider revising the KHI on arrears and on the next obligor. Second, the Supreme Court, the Attorney General's Office, and the police should issue joint guidelines that make a final civil judgment and proof of ability the entry point for prosecution, and that guide the choice between the Child Protection Law and the PKDRT Law. Third, zakat and social-welfare institutions should support children of fathers who are truly unable, so that no one is punished for poverty and the child is not left without support. Fourth, restorative processes should be limited to court-ratified payment plans, with safeguards against pressure on the mother and a core of the child's rights that cannot be waived.

This study is limited to normative analysis and three decisions. It offers no measure of compliance after judgment or of the deterrent effect of criminal sanction. Empirical-juridical research with judges, prosecutors, and caregiving mothers, and a systematic comparison with other Muslim jurisdictions, would test the model and refine its rungs.

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