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## Judicial Considerations in Granting and Rejecting Child Māḍiyah Support Claims from a Progressive Legal Theory Perspective (A Normative Juridical Study of Decision No. 1172/Pdt.G/2018/PA.Smd. and Decision No. 41/Pdt.G/2014/PA.Tkl.)

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**Abstract:** This study titled "Judges' Considerations in Granting and Rejecting Child Māḍiyah Support Claims from a Progressive Legal Theory Perspective" focuses on analyzing judicial considerations in two Religious Court decisions, specifically Decision Number 1172/Pdt.G/2018/PA.Smd. and Decision Number 41/Pdt.G/2014/PA.Tkl. The research aims to identify how progressive legal theory influences judicial decisions regarding child *māḍiyah* support and its implications for justice for neglected children. The study employs a normative juridical method with case study and comparative approaches, offering a deep exploration of the judicial reasoning that shapes outcomes in sensitive family law cases. The findings reveal that applying progressive legal theory can result in fairer and more responsive decisions to children's needs, highlighting the critical role of judicial discretion in interpreting the law beyond its literal text. In Decision Number 1172/Pdt.G/2018/PA.Smd., the claim was rejected on formalistic grounds, reflecting a rigid adherence to precedent, whereas in Decision Number 41/Pdt.G/2014/PA.Tkl., the claim was granted based on substantive justice considerations, prioritizing the child's welfare. The study concludes by emphasizing the importance of applying progressive legal theory to ensure the protection of children's rights and achieve social justice within the context of Islamic and positive law in Indonesia. Furthermore, it suggests that a more dynamic and empathetic approach in judicial decision-making can significantly impact the realization of equitable outcomes in family law.

**Keyword:** Judicial Considerations, Child Māḍiyah Support, Progressive Legal Theory, Normative Juridical Study, Indonesian Religious Courts

### INTRODUCTION

The obligation of a husband and/or father to provide financial support is a fundamental duty in both Islamic and Indonesian legal contexts, deeply rooted in the principles of family law. This obligation persists even after the dissolution of a marriage through divorce,

underscoring the ongoing responsibility of a father to ensure the well-being of his children and, in some cases, his ex-wife. This responsibility becomes particularly significant in cases where the divorce is precipitated by the husband and/or father's failure to fulfill his duty of providing for his family. The neglect of this obligation can lead to significant legal and social consequences, prompting legal action from the wife or child against the husband or father to secure the financial support that was not provided during the marriage.

*Nafkah māḍiyah* (past support) refers to the support that should have been provided during the marriage but was neglected. In Islamic jurisprudence, this support is recognized as a debt owed by the husband or father, which must be repaid unless explicitly forgiven by the wife or child. The concept of *nafkah māḍiyah* is firmly established in Islamic law, where scholars like Wahbah al-Zuhaili have emphasized that the obligation to provide support does not expire with time but remains a binding duty until it is fulfilled (al-Zuhaili, 2002). This perspective is critical in understanding the moral and legal imperatives that govern the responsibility of providing for one's family, particularly in the context of divorce and separation.

However, the legal interpretation of *nafkah māḍiyah* becomes more complex when considering the distinctions between the obligations of a husband towards his wife and those of a father towards his children. In Islamic law, as articulated by scholars such as Muḥammad al-Khatib al-Syarbini, the obligation of a father to provide support for his child is not automatically recognized as a debt that can be claimed unless it is formally determined by a judge or agreed upon by the father (al-Khatib al-Syarbini, 1997). This distinction has significant implications for legal practice in Indonesia, where the interpretation and application of Islamic law intersect with the country's positive legal framework.

In Indonesian Religious Courts, the handling of *nafkah māḍiyah* claims has often been guided by Supreme Court Decision No. 608 K/G/2003, which has set a precedent that many judges follow. According to this decision, a father's obligation to provide financial support for his children is categorized as *lil intifa'* (for benefit), meaning that it is intended for the immediate and direct benefit of the child rather than as an entitlement that can be claimed retroactively. Consequently, if the support is not provided at the appropriate time, it is not recognized as a debt that the child can claim later. This interpretation has led to numerous cases where children are unable to secure the support that was rightfully theirs, highlighting a potential gap in the protection of children's rights under the current legal framework.

This strict adherence to the Supreme Court's decision, while ensuring consistency in legal rulings, may inadvertently overlook the substantive rights of children, particularly in cases where their welfare is at stake. The emphasis on maintaining legal consistency through adherence to precedent can sometimes come at the cost of delivering justice that is attuned to the unique circumstances of each case. This has prompted discussions among legal scholars and practitioners about the need for a more flexible and progressive approach to interpreting the law, especially in cases involving vulnerable parties such as children.

The concept of *ex officio* rights granted to judges in the Indonesian legal system allows them to make decisions based not only on legal precedents but also on their own reasoning and considerations of justice. These rights provide judges with the flexibility to interpret the law in a way that aligns with broader principles of justice, potentially recognizing overdue support as a debt that must be repaid. However, the use of *ex officio* rights is not uniform across all cases, with some judges remaining bound by rigid jurisprudential doctrines. This adherence to formalistic legal reasoning can lead to outcomes that prioritize procedural correctness over the substantive justice that the legal system aims to achieve.

From a theoretical perspective, the discussion on *nafkah māḍiyah* intersects with broader debates in legal theory, particularly the tension between legal formalism and legal realism. Legal formalism, which is often reflected in the strict adherence to precedents as seen in Decision No. 1172/Pdt.G/2018/PA.Smd., posits that the law is a set of rules that

should be applied uniformly to ensure predictability and consistency in judicial outcomes. This approach is grounded in the belief that the law is objective and should be applied as written, without being influenced by the subjective views of judges.

On the other hand, legal realism and, more specifically, progressive legal theory, challenge this notion by asserting that the law is not a closed system of rules but a dynamic tool that should evolve with changing social contexts to promote justice and equity. Progressive legal theorists argue that strict formalism can lead to unjust outcomes, particularly in cases involving vulnerable individuals such as children. They advocate for a more flexible approach to legal interpretation, where judges are encouraged to consider the broader social implications of their decisions and to prioritize substantive justice over mere procedural correctness.

This research aims to explore the different judicial approaches taken in two contrasting decisions related to *nafkah māḍiyah*: the rejection of a claim in Decision No. 1172/Pdt.G/2018/PA.Smd. and the approval of such a claim in Decision No. 41/Pdt.G/2014/PA Tkl. These cases serve as critical examples of how different interpretations of the law can lead to vastly different outcomes, particularly when viewed through the lens of progressive legal theory. Progressive legal theory emphasizes that the law should be a tool for achieving justice and improving societal welfare, rather than merely a set of rules to be rigidly applied without regard for their impact on the lives of individuals.

The central questions that this research seeks to address include: How are the provisions of *nafkah māḍiyah* for children regulated under both Islamic law and Indonesia's positive law? What are the judicial considerations that lead to the rejection or approval of *nafkah māḍiyah* claims in the cases studied? And how can the principles of progressive legal theory influence judicial decisions to better protect the rights and welfare of children?

By examining these questions, this study aims to contribute to the broader discourse on the application of progressive legal theory within the context of Islamic family law in Indonesia. The study underscores the importance of judicial interpretation that goes beyond the mere application of textual rules, advocating instead for an approach that considers the broader implications of legal decisions for justice and social welfare. The findings of this research highlight the need for judges to actively use their *ex officio* rights to interpret the law in a manner that ensures the legal system functions not only as a mechanism for upholding the rule of law but also as an instrument for achieving true justice and protecting the welfare of children.

## METHOD

This research utilizes a normative legal research approach, focusing on the analysis of legal principles and doctrines. The type of research conducted is doctrinal, involving an in-depth study of legal texts, court rulings, and scholarly opinions to understand how the law is interpreted and applied in cases related to *nafkah māḍiyah* for children. The research is qualitative, emphasizing the interpretation and critical analysis of legal sources rather than quantitative measurement. The study focuses on two significant decisions from Indonesian Religious Courts: Decision No. 1172/Pdt.G/2018/PA.Smd. and Decision No. 41/Pdt.G/2014/PA Tkl. These cases were selected because they present different judicial approaches to handling the issue of *nafkah māḍiyah* for children. The reasoning and application of law by the judges in these cases serve as the primary subjects of this study. The research was conducted over a six-month period, from January to June 2024. The analysis was primarily carried out through the review of legal documents and literature, supplemented by insights from legal experts and practitioners in Indonesia. The research location was not confined to a specific place, as it involved studying materials available in libraries, online databases, and court archives. The primary research instruments were legal texts, including relevant Indonesian laws, court rulings, legal commentaries, and academic papers.

Additionally, legal databases such as HeinOnline, JSTOR, and Indonesian legal repositories were used to access the necessary legal documents. Analytical frameworks from progressive legal theory were employed to interpret the data. The research procedures began with a comprehensive literature review to establish the theoretical foundation. This was followed by the collection of primary legal documents, including court rulings and related statutes. Each document was analyzed using doctrinal methods, focusing on the interpretation of the law and judicial reasoning in the selected cases. The analysis was conducted in two phases: first, by examining the legal principles applied in each case, and second, by comparing the outcomes to identify inconsistencies or progressive elements in judicial reasoning. The research employed qualitative content analysis to interpret the legal texts and rulings. This involved a detailed examination of the language used in the court decisions, the legal arguments presented, and the application of legal principles. Comparative analysis was also used to highlight the differences in judicial reasoning between the two cases. The findings were then discussed in the context of progressive legal theory, evaluating the extent to which the decisions aligned with or deviated from these principles. Ethical considerations in this research were addressed by ensuring that the study respected the confidentiality and integrity of legal documents and the privacy of individuals involved in the cases. The study also adhered to academic standards of citation and referencing to maintain the credibility and reliability of the research findings.

## RESULTS AND DISCUSSION

The analysis of the two court decisions—Decision No. 1172/Pdt.G/2018/PA.Smd. and Decision No. 41/Pdt.G/2014/PA Tkl.—reveals significant differences in judicial reasoning and the application of legal principles concerning *nafkah māḍiyah* for children. These decisions not only reflect the varying interpretations of Islamic law within the context of Indonesia's legal framework but also highlight the broader tensions between formalistic and progressive legal approaches. Understanding these differences is crucial to appreciating the role of judicial discretion and the impact of legal interpretation on the outcomes of cases involving vulnerable parties such as children.

In the context of Decision No. 1172/Pdt.G/2018/PA.Smd., the court's rejection of the claim for *nafkah māḍiyah* was heavily influenced by a formalistic interpretation of Islamic law. The court leaned on the established jurisprudence, particularly the Supreme Court's Decision No. 608 K/G/2003, which posits that a father's obligation to provide support is characterized as *lil intifa'* (for benefit) rather than *lil tamlik* (for ownership). This legal framework suggests that the support provided by a father is intended solely for immediate benefit and does not constitute a financial obligation that could be retroactively claimed as a debt if it was not provided at the appropriate time. This interpretation aligns with a broader judicial tendency to prioritize the consistency and predictability of legal rulings over the specific circumstances of individual cases.

The formalistic approach taken by the court in this decision is reflective of a judicial philosophy that values the maintenance of legal precedent and the uniform application of law. By adhering strictly to the precedent set by the Supreme Court, the court aimed to ensure that its ruling was consistent with previous decisions, thereby reinforcing the stability of the legal system. However, this approach can also be seen as rigid, potentially overlooking the nuanced realities of each case and the specific needs of the individuals involved. In this case, the strict application of legal doctrine resulted in the rejection of a child's claim for support that had not been provided, which raises questions about the adequacy of such an approach in delivering justice, especially in cases involving children's rights and welfare.

Moreover, the court's reliance on the distinction between *lil intifa'* and *lil tamlik* underscores the challenges inherent in applying Islamic legal concepts within the context of modern legal systems. While the distinction serves to clarify the nature of the financial

obligations between a father and his children, it may also complicate the ability of courts to address situations where those obligations have not been met. The rigid interpretation that *nafkah māḍiyah* cannot be retroactively claimed as a debt may lead to outcomes that do not fully account for the child's right to receive support, thereby potentially compromising the child's welfare. This outcome highlights a key tension within the formalistic approach: the desire to maintain legal consistency may at times conflict with the broader objectives of justice and equity.

In addition to the theoretical implications, the decision also raises practical concerns about the impact of such rulings on the lives of those affected. By denying the claim for *nafkah māḍiyah*, the court effectively placed the burden of the father's failure to provide support on the child, who may already be in a vulnerable position. This decision reflects a broader issue within formalistic legal reasoning: the risk of focusing too narrowly on the letter of the law while neglecting the broader social and ethical consequences of judicial rulings. In cases involving vulnerable parties, such as children, this approach may result in decisions that are legally sound but ethically questionable, as they fail to protect the rights and welfare of those who are most in need of support.

Furthermore, the court's decision in this case can be viewed as a reflection of the broader legal culture in Indonesia, where there is often a strong emphasis on maintaining legal formalism. While this emphasis helps to ensure that judicial decisions are consistent and predictable, it may also limit the ability of courts to adapt to the unique circumstances of each case. In the context of family law, where the needs of children and other vulnerable individuals must be carefully considered, a more flexible and context-sensitive approach may be necessary to achieve justice. This case illustrates the potential limitations of a purely formalistic approach, highlighting the need for a judicial philosophy that balances the demands of legal consistency with the imperative to protect the rights and welfare of vulnerable parties.

#### **Decision No. 1172/Pdt.G/2018/PA.Smd.**

In Decision No. 1172/Pdt.G/2018/PA.Smd., the court's rejection of the claim for *nafkah māḍiyah* was grounded in a formalistic interpretation of Islamic law, which strictly adheres to the precedent set by the Supreme Court's Decision No. 608 K/G/2003. This precedent classifies a father's obligation to provide support as *lil intifa'* (for benefit) rather than *lil tamlik* (for ownership). The court interpreted this classification to mean that the obligation to provide support is intended solely for the immediate use and benefit of the child and does not constitute a financial debt that can be claimed retroactively. This interpretation reflects a commitment to maintaining legal consistency and predictability by upholding established jurisprudence, even if it potentially overlooks the substantive needs of the child involved in the case.

The court's reasoning in this decision also highlights the broader implications of adhering to a formalistic legal approach. By prioritizing the consistency of legal rulings, the court aimed to ensure that its decision was in line with previous judgments, thereby reinforcing the stability of the legal system. However, this approach can also be seen as somewhat inflexible, as it may not fully account for the unique circumstances of individual cases. In this instance, the court's strict adherence to legal precedent resulted in the rejection of the child's claim for support that was not provided at the appropriate time. This raises important questions about the adequacy of such a rigid approach in delivering justice, especially in cases that involve the welfare and rights of children, who are particularly vulnerable.

Furthermore, the court's reliance on the distinction between *lil intifa'* and *lil tamlik* as the basis for its decision underscores the complexities involved in applying traditional Islamic legal concepts within the context of a modern legal system. While this distinction provides

clarity regarding the nature of financial obligations within the family, it may also limit the ability of courts to address situations where these obligations have not been fulfilled. The court's interpretation that *nafkah māḍiyah* cannot be retroactively claimed as a debt may result in outcomes that do not fully protect the child's right to receive necessary support, potentially compromising the child's well-being. This outcome illustrates a key tension within formalistic legal reasoning: the effort to maintain legal consistency may sometimes conflict with the broader goals of justice and equity, particularly when the needs of vulnerable individuals are at stake.

The practical implications of this decision are significant, particularly for the child who was denied support. By rejecting the claim for *nafkah māḍiyah*, the court effectively shifted the burden of the father's failure to provide support onto the child, who may already be in a disadvantaged position. This decision reflects a broader issue within formalistic legal reasoning: the potential for judicial decisions to be legally sound but ethically questionable, particularly when they fail to address the broader social and moral responsibilities of the parties involved. In cases involving children, who rely on adults to meet their basic needs, this approach can lead to outcomes that are technically correct according to the letter of the law but fall short of delivering true justice. This case highlights the need for a more balanced approach that considers both the legal requirements and the ethical implications of judicial decisions, particularly in the context of family law.

The implications of the court's decision in Decision No. 1172/Pdt.G/2018/PA.Smd. extend beyond the immediate case, potentially setting a precedent that could affect future claims for *nafkah māḍiyah* in Indonesian courts. By adhering strictly to the precedent set by Supreme Court Decision No. 608 K/G/2003, the court reinforced a legal framework that may not fully accommodate the evolving needs of children in contemporary society. This adherence to formalistic principles, while maintaining consistency, may inadvertently limit the ability of the legal system to respond to the changing dynamics of family life, particularly in cases where children are left without adequate financial support. The decision thus raises important considerations about the role of the judiciary in balancing the need for legal consistency with the imperative to adapt legal interpretations to meet the needs of vulnerable populations.

Moreover, this case highlights a broader tension within the Indonesian legal system between the application of traditional Islamic legal principles and the demands of a modern, evolving society. As Indonesia continues to develop both economically and socially, the needs of children and families are becoming more complex, requiring a legal system that can adapt to these changes while still respecting the underlying principles of Islamic law. The court's decision in this case, while rooted in established jurisprudence, suggests that there may be a need for a more progressive approach to interpreting *nafkah māḍiyah* obligations, one that prioritizes the welfare of children and recognizes the importance of ensuring that they receive the support they need, regardless of the technicalities of legal classifications. This case serves as a reminder of the ongoing challenges faced by the Indonesian legal system in balancing tradition with modernity, and the critical role that judicial interpretation plays in shaping the outcomes of family law cases.

#### **Decision No. 41/Pdt.G/2014/PA Tkl.**

In stark contrast to the formalistic approach taken in Decision No. 1172/Pdt.G/2018/PA.Smd., the court in Decision No. 41/Pdt.G/2014/PA Tkl. adopted a more progressive stance, granting the claim for *nafkah māḍiyah* for children. The judge in this case moved beyond the rigid confines of established legal doctrine and considered the broader principles of justice and the child's welfare. This approach reflects a commitment to ensuring that the child's rights to financial support are upheld, regardless of the technical legal arguments that might otherwise limit such claims.

The court's reasoning was grounded in the understanding that the welfare of the child should be the paramount consideration in cases involving *nafkah māḍiyah*. The judge recognized that the father's obligation to provide support should not be negated by the mere passage of time or by the failure to meet these obligations at the appropriate moment. Instead, the court viewed *nafkah māḍiyah* as a legitimate debt that the father owed, one that must be fulfilled to ensure the child's well-being. This decision aligns with progressive legal theory, which argues that the law should adapt to the realities of life and prioritize substantive justice over strict adherence to formal rules.

In delivering this judgment, the court also drew on the broader objectives of Islamic law, particularly the principles of *maqasid al-shariah*, which emphasize the protection of life, intellect, property, lineage, and religion. By granting the *nafkah māḍiyah* claim, the court ensured that the child's basic needs would be met, thereby fulfilling the Islamic legal principle of preserving the child's welfare. This decision reflects a more holistic interpretation of Islamic law, one that considers not only the letter of the law but also its spirit and broader purposes.

Furthermore, the court's decision in this case highlights the importance of judicial discretion in interpreting the law. By choosing to prioritize the child's welfare over strict legal formalism, the judge demonstrated the critical role that judicial interpretation plays in shaping outcomes in family law cases. This approach acknowledges that the application of law cannot be divorced from the social and moral contexts in which it operates. The decision to grant the *nafkah māḍiyah* claim was not just a legal judgment, but also a moral one, reflecting the belief that the law should serve the needs of the people it is intended to protect.

The implications of this decision are far-reaching, particularly for future cases involving claims for *nafkah māḍiyah*. By setting a precedent that prioritizes the child's right to support, the court has paved the way for a more compassionate and responsive legal system, one that is capable of adapting to the needs of vulnerable individuals. This decision serves as a powerful example of how progressive legal theory can be applied within the framework of Islamic law to achieve outcomes that are both just and equitable. It underscores the importance of judicial flexibility and the need for courts to interpret the law in a way that advances the broader goals of justice and social welfare, particularly in cases that involve the rights and welfare of children.

The court's decision in Decision No. 41/Pdt.G/2014/PA Tkl. also underscores the evolving nature of legal interpretation within the Indonesian judicial system, particularly in the context of family law. By adopting a progressive approach, the court demonstrated a willingness to reinterpret existing legal frameworks in light of contemporary social realities and the need to protect vulnerable populations, such as children. This decision reflects a broader trend within the judiciary towards more adaptive and socially conscious interpretations of the law, where the rigid application of legal principles is balanced against the need to achieve equitable outcomes that reflect the lived experiences of those involved.

Moreover, this case highlights the potential for progressive legal thought to influence not only the outcomes of individual cases but also the development of legal doctrine more broadly. By setting a precedent that recognizes *nafkah māḍiyah* as a debt that must be fulfilled, the court has established a legal foundation upon which future claims can be built. This shift towards recognizing the rights of children to receive support, even when it has been neglected in the past, signals a move towards a more rights-based approach within Indonesian family law. It opens the door for further developments in how the law interprets and enforces parental obligations, particularly in cases where the welfare of the child is at stake.

Finally, the decision in this case serves as a reminder of the critical role that the judiciary plays in shaping the legal landscape and advancing social justice. By choosing to prioritize the child's welfare and uphold their right to support, the court not only delivered a just outcome for the child in this case but also contributed to the broader project of ensuring

that the legal system is responsive to the needs of all members of society, particularly those who are most vulnerable. This case underscores the importance of judicial courage and creativity in interpreting the law in ways that promote fairness, protect rights, and serve the greater good, particularly in a rapidly changing social and legal environment.

### **Analysis from Theoretical Perspectives**

The divergent outcomes in the cases of Decision No. 1172/Pdt.G/2018/PA.Smd. and Decision No. 41/Pdt.G/2014/PA Tkl. highlight the underlying theoretical tensions between formalism and progressivism in legal interpretation. Formalism, as seen in the first decision, adheres strictly to established rules and precedents, prioritizing consistency and predictability in legal outcomes. This approach posits that the law should be applied uniformly, without allowing for deviations that might be influenced by the specific circumstances of individual cases. The primary advantage of formalism lies in its ability to maintain legal order and stability, ensuring that similar cases are treated similarly. However, this rigidity can also be a limitation, as it may prevent the law from adapting to the nuances and complexities of real-life situations, particularly in cases involving vulnerable individuals like children.

In contrast, the progressive approach, as exemplified by Decision No. 41/Pdt.G/2014/PA Tkl., embraces a more flexible and context-sensitive interpretation of the law. Progressive legal theory argues that the law should evolve alongside society, responding to new challenges and needs as they arise. This approach allows judges to consider the broader social, moral, and ethical implications of their decisions, rather than being constrained by the strict application of precedent. In the case of *nafkah māḍiyah* for children, the progressive approach prioritizes the welfare and rights of the child, viewing the law as a tool for achieving justice rather than merely a set of rules to be followed. This perspective aligns with the principles of *maqasid al-shariah* in Islamic jurisprudence, which emphasize the protection of essential human rights and the promotion of social welfare.

The progressive approach also aligns with the concept of judicial activism, where judges take an active role in shaping the law to address societal issues and promote justice. In the context of family law, where the well-being of children is paramount, judicial activism can play a crucial role in ensuring that the law protects the most vulnerable members of society. By interpreting *nafkah māḍiyah* as a debt that must be fulfilled, even if it was neglected in the past, the court in Decision No. 41/Pdt.G/2014/PA Tkl. demonstrated a willingness to adapt the law to meet the needs of the present, ensuring that children receive the support they are entitled to. This approach underscores the importance of judicial discretion in making decisions that are not only legally sound but also morally justifiable.

Moreover, the differences in these two decisions also reflect the broader debate within legal theory about the role of the judiciary in interpreting and applying the law. Formalists argue that judges should act as neutral arbiters, applying the law as it is written without imposing their own values or judgments. In contrast, progressives believe that judges have a responsibility to interpret the law in a way that advances social justice, recognizing that the law is not static but must evolve to address new realities. This debate is particularly relevant in the context of *nafkah māḍiyah*, where the failure to provide support can have profound implications for a child's development and well-being. The progressive approach suggests that the judiciary should not be passive in the face of such challenges but should actively work to ensure that the law serves its intended purpose of protecting and promoting human rights.

In conclusion, the analysis of these cases through the lens of legal theory reveals the critical importance of judicial philosophy in determining legal outcomes. While formalism provides a framework for consistency and predictability in the legal system, progressivism offers a path toward justice that is responsive to the needs of society. The decisions in these cases demonstrate that a balance between these approaches is essential for a legal system that



is both orderly and just. By embracing progressive principles, the judiciary can ensure that the law remains a living instrument, capable of adapting to the changing needs of society and delivering justice for all, especially for those who are most vulnerable.

### Further Interpretation of Results

The contrasting outcomes in Decision No. 1172/Pdt.G/2018/PA.Smd. and Decision No. 41/Pdt.G/2014/PA Tkl. underscore the profound impact that judicial interpretation can have on the lives of individuals, particularly children, within the legal system. These cases highlight the importance of how different judicial philosophies—formalism versus progressivism—can lead to vastly different outcomes, with significant implications for the welfare of those involved. The rigid application of formalistic principles, as seen in the former case, can result in outcomes that may adhere to the letter of the law but fail to address the substantive needs and rights of vulnerable parties. This approach, while ensuring consistency, often does not account for the complexities and nuances of real-life situations, particularly in family law cases where the stakes are high.

In contrast, the progressive approach adopted in Decision No. 41/Pdt.G/2014/PA Tkl. illustrates how a more flexible and context-sensitive interpretation of the law can better serve the goals of justice. By focusing on the broader implications of the legal decision for the child's welfare, the court was able to deliver an outcome that not only addressed the immediate needs of the child but also set a precedent for future cases. This decision demonstrates the potential for progressive legal theory to shape judicial outcomes in a way that is more aligned with the principles of fairness and equity, particularly in cases involving the rights of children. It highlights the judiciary's role in not just interpreting the law as it is written, but in ensuring that the law evolves in a way that serves the needs of society.

The broader implications of these decisions extend beyond the individual cases and suggest a potential shift in how *nafkah māḍiyah* claims might be handled in Indonesian courts moving forward. The progressive decision in the Tkl. case indicates a judicial willingness to reconsider traditional interpretations of Islamic law and to prioritize the rights and welfare of children in the legal process. This could pave the way for more equitable legal practices that ensure children receive the support they need, regardless of technical legal barriers that might otherwise prevent such outcomes. It also suggests that the judiciary may increasingly recognize the importance of adapting legal interpretations to reflect the evolving needs of society, particularly in areas of law that have significant social implications.

Moreover, the analysis of these cases sheds light on the potential for legal reform within Indonesia's family law system. The divergent outcomes suggest that there may be a need to revisit existing legal frameworks and precedents to ensure that they adequately protect the rights of children and other vulnerable individuals. Legal reform could involve clarifying the principles underlying *nafkah māḍiyah* obligations, ensuring that the law explicitly recognizes the right of children to receive support, even if it was neglected in the past. Such reforms could help to standardize judicial approaches across different courts, reducing the variability in outcomes and ensuring that all children have access to the support they need.

In conclusion, these cases demonstrate the critical role that judicial interpretation plays in shaping the legal landscape and advancing the cause of justice. The progressive decision in Decision No. 41/Pdt.G/2014/PA Tkl. serves as a powerful reminder of the judiciary's potential to act as an agent of social change, using the law as a tool to promote fairness, equity, and the protection of vulnerable individuals. This case, along with its formalistic counterpart, illustrates the ongoing tension within the legal system between maintaining consistency and adapting to the needs of a changing society. Ultimately, the outcomes of these cases underscore the importance of judicial flexibility and the need for a legal system

that is capable of evolving to meet the challenges of the modern world, particularly in the realm of family law.

## CONCLUSION

This study has explored the differing judicial approaches in Indonesian Religious Courts concerning *nafkah māḍiyah* for children, particularly in the context of two contrasting decisions: Decision No. 1172/Pdt.G/2018/PA.Smd. and Decision No. 41/Pdt.G/2014/PA Tkl. The research aimed to analyze how these approaches align with or diverge from the principles of progressive legal theory and the implications of these decisions for the welfare of children. The findings reveal that a formalistic approach, as exemplified in Decision No. 1172/Pdt.G/2018/PA.Smd., tends to emphasize strict adherence to established legal doctrines and precedents, often at the expense of substantive justice. This approach can result in outcomes that, while legally consistent, may fail to address the essential needs and rights of vulnerable parties such as children. In contrast, the progressive approach observed in Decision No. 41/Pdt.G/2014/PA Tkl. demonstrates how judicial flexibility and a focus on the broader principles of justice and welfare can lead to more equitable outcomes. This approach prioritizes the child's right to support and ensures that the law serves its fundamental purpose of protecting and promoting human welfare.

The study concludes that the application of progressive legal theory in cases involving *nafkah māḍiyah* is not only justified but necessary to ensure that the legal system fulfills its role in delivering justice. By embracing a more dynamic and context-sensitive interpretation of the law, judges can better respond to the complexities of family law cases and safeguard the rights of children. This shift towards a more progressive legal framework represents a significant improvement in legal practice, contributing to a more just and humane legal system.

The implications of this study extend beyond the specific context of *nafkah māḍiyah* and suggest broader reforms in legal interpretation and judicial decision-making. By aligning legal outcomes more closely with the principles of justice and social welfare, the legal system can more effectively serve the needs of society and uphold the rights of its most vulnerable members. The findings of this research support the ongoing evolution of legal practice towards a more equitable and responsive system, highlighting the importance of judicial discretion and the critical role of progressive legal theory in advancing the cause of justice.

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