

ENSURING JUSTICE IN CHILD SUPPORT AFTER DIVORCE: A JURIMETRIC REVIEW OF AT RELIGIOUS COURT OF DEMAK DECISION

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Abstract

Child support is a fundamental right ensuring a child's welfare even after the parents' divorce. In Indonesia, the father is legally obligated to provide both retroactive child support (*madhiyah*) and prospective child support. However, in practice, the enforcement of these obligations remains inconsistent, and the absence of objective instruments in determining the amount of support creates disparities and weakens the protection of children's rights. This study aims to analyze how judges at the Court of Demak interpret and apply the law regarding retroactive and prospective child support). Using a normative juridical method supported by jurimetric analysis, this research finds that the Religious Court of Demak's decision concretely guarantees both types of child support through measurable instruments. Retroactive maintenance is determined using a historical audit model based on proven expenses, while prospective maintenance applies a dynamic projection model adjusted to inflation. The decision demonstrates a progressive judicial effort to ensure objective justice,

accountability, and long-term legal protection for children within Indonesia's family law system.

Keywords: Child Support Rights, Jurimetrics, Madhiyah, Future Support, Religious Court of Demak

Introduction

The obligation to provide child support is a fundamental aspect of family law designed to protect children's welfare regardless of the parents' marital status. Indonesian legal instruments, including Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), explicitly require fathers to continue providing financial support for their children after divorce. This obligation covers both retroactive maintenance (*madhiyah*) and prospective living expenses, affirming that a father's financial responsibility does not end with the dissolution of marriage.

The implementation of this legal mandate remains problematic in practice. Many fathers fail to fulfill their obligations voluntarily, either by delaying payments or completely neglecting them. Such behavior has led to numerous disputes in religious courts, where mothers acting as child custodians (*badhanah*) must seek judicial intervention to secure the financial rights of their children. The weak enforcement of child support obligations reflects a gap between legal norms and their practical realization.

This situation also exposes structural and procedural weaknesses in judicial practice. Judges are often faced with the difficulty of determining a fair and objective amount of child support due to the absence of standardized instruments or quantifiable assessment models. As a result, judicial decisions tend to rely on discretion and approximation rather than measurable data, which potentially leads to inconsistencies and perceived injustice among similar cases.

To address this issue, the concept of jurimetrics (the application of quantitative and empirical analysis in judicial decision-

making) offers a promising solution. *Jurimetric* instruments allow judges to base their rulings on validated financial data, cost-of-living benchmarks, and the father's proven economic capacity. This approach aligns with the principle of *justice with accountability*, ensuring that judicial decisions are both normatively correct and economically fair.

The Religious Court of Demak's decision provides an important case study illustrating the practical application of such methods. By incorporating measurable instruments to determine both retroactive and prospective child support, the court demonstrated a progressive shift toward objective and enforceable justice. Analyzing this decision is therefore essential to understanding how judicial innovation can strengthen the protection of children's rights within Indonesia's family law system.

The Application of Jurimetric Instruments In The Analysis Of Child Support to Achieve Objective Justice

I. The Problem of Subjectivity in Determining Child Support

The determination of the amount of child support, both for the past (*madliyah*) and the future, is one of the most crucial discretionary powers of judges in divorce cases. The obligation to fulfill child support is a clear legal mandate, as mandated in Law No. 1 of 1974 concerning Marriage¹ and the Compilation of Islamic Law (KHI).²

However, a classic problem in judicial practice is the absence of standard or fixed instruments. This causes the determination of alimony to often be trapped in the subjectivity of the judge. Decisions based solely on "estimates," "appropriateness," or "discretion," without being supported by measurable data, have the potential to

¹Undang-Undang No. 1 Tahun 1974 tentang Perkawinan, Pasal 41 huruf (a) dan (b).

² Instruksi Presiden No. 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI), Pasal 156 huruf (d), yang mengatur kewajiban Ayah memberi nafkah anak (biaya *hadbanah*).

undermine a sense of justice, especially for children as rights recipients.

Subjective decisions not only fail to meet the real needs of children, but also create high disparities in decisions between similar cases. This creates legal uncertainty and delegitimizes the authority of the court. Restorative justice for children requires a decision that is not only normatively fair, but also financially accurate.³

To address this challenge, a paradigm shift from an estimative-qualitative approach to a calculative-quantitative approach is needed. This is the essence of the application of jurimetrics, as initiated in "Introduction to Jurimetrics and Its Application in Civil Case Resolution," namely the use of measurable analysis methods and empirical data in the process of making legal decisions.

In the context of child support, the "instruments" of jurimetrics are not merely legal articles, but a set of data collection tools, benchmarking data, and calculation models. These instruments will be discussed in depth to *analysemadliyah* support and future support.

II. Data Collection and Validation Instruments (Yurimetri Input)

The first and most fundamental instrument in yurimetri analysis is the Child's Bill of Needs. The judge must require the Petitioner (usually the mother) to not simply demand a global figure, but to submit a detailed tabulation. This tabulation is the raw data forming the basis for all calculations.

The Bill of Needs tabulation must be systematically categorized to facilitate auditing. Ideally, this instrument should contain three main items: (a) Primary Needs (food, nutrition, clothing, shelter/utilities); (b) Secondary Needs (formal education, courses, transportation, self-

³ Mukthie Fadjar, "Orientasi Keadilan dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi*, Vol. 7, No. 4 (Agustus 2010), hlm. 12

development); and (c) Tertiary/Other Needs (health, insurance, recreation, childcare costs if relevant).⁴

The second jurimetric instrument is the Empirical Validation Instrument. Jurimetrics requires quantitative proof. The judge must require the Petitioner to attach supporting evidence, such as purchase receipts (milk, vitamins, clothing), proof of transfer (tuition fees, tutoring), and regular bills (electricity, internet). Without this validation, the data is prone to inflated claims.

The third instrument is Objective Benchmarking Data. To test the reasonableness of the Bill of Needs submitted, the judge needs an external benchmark. The instruments that can be used are the Cost of Living Survey (SBH) data or the Decent Living Needs (KHL) data in the city/district where the child lives, which are officially released by the Central Statistics Agency (BPS).⁵

After the child's needs have been measured, the jurimetric instrument shifts to the Father's Ability Analysis. Information asymmetry often occurs, where the father (respondent) hides or minimizes his income. Judges applying jurimetrics must actively seek out this data, rather than relying solely on admissions.

For formal workers (civil servants, employees), the instruments are clear: valid pay slips and annual tax returns. This data shows gross income, deductions, and take-home pay with certainty. This is the easiest forensic accounting instrument to verify.

The biggest challenge is informal workers or entrepreneurs. This is where a more sophisticated forensic accounting instrument is needed, namely Bank Statement Cash Flow Analysis. Judges, ideally with the help of experts (accountants), should not only look at the

⁴Konsep *Bill of Needs* ini diadopsi dari praktik di banyak negara *common law* yang menggunakan *Child Support Guidelines Worksheet* untuk mengobjektifikasi kebutuhan anak.

⁵ Badan Pusat Statistik (BPS), "Survei Biaya Hidup (SBH) 2018" atau data "Kebutuhan Hidup Layak (KHL)" yang diperbarui secara periodik untuk setiap wilayah

final balance, but also analyze the average monthly cash inflow as a proxy for income.⁶

If income remains difficult to prove, judges can use Lifestyle Analysis Instruments. This is quantified qualitative data. Evidence of asset ownership (houses, vehicles), consumption patterns on social media, or credit cards can be proxy instruments to estimate financial capacity that is not reported honestly.⁷

Table 1. *Child Support Jurimetrics Instrument Matrix*

Instrument Category	Specific Instruments (Evidence)	Function in Jurimetric Analysis
A. Child Needs Analysis	1. Bill of Needs Establish	a baseline cost per month.
	2. Receipts & Proof of Payment (tuition, milk, courses)	Data Validation: Ensuring that the Bill of Needs is objective and not fictitious.
	3. Historical Evidence (Bills from the last 1 year)	Basis for Calculating Past Madliyah Alimony.
B. Analysis of the Father's Ability	1. Pay Slips (Formal Workers)	Measuring definite ability (fixed income).
	2. Bank Statements (3-6 months)	Measures cash flow and spending patterns (for informal workers/ businesses).
	3. Annual Tax Returns	Verification instrument for total income recognized by the state.
	4. List of Assets	Proxy instrument (approach)

⁶ C.F. M. A. van de Wiel, "Judicial decision-making and the use of accountancy information," *International Journal of Law and Management*, Vol. 54, No. 1 (2012), hlm. 23

⁷Kompilasi Hukum Islam (KHI), Pasal 80 ayat (4) huruf (c), secara implicit mendukung ini dengan menyatakan biaya menja ditanggungn Ayah "menurut kemampuannya.

	(Houses, Vehicles)	to measure lifestyle & hidden capabilities.
C. Comparative Instruments	1. KHL Data/BPS Cost of Living	Survey Fairness Benchmark: Tests whether the demands of the bill are reasonable.
	2. BPS Sectoral Inflation Data (Education & Health)	Indexation policy for future living costs.
D. Calculation Instruments	1. Historical Audit Model	Calculating Madliyah Maintenance (Total debt sum).
	2. Dynamic Projection Model	Calculating Future Maintenance (Baseline + Increase Index).

Jurimetric Analysis Clowchart

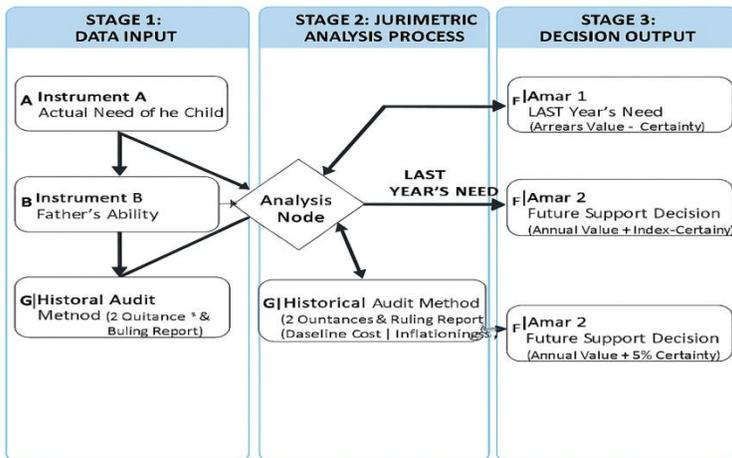


Figure 1. *Flowchart of Jurimetric Analysis Process*

III. Past Alimony Calculation Instrument (Madliyah)

After the data on needs (Instruments 7, 8, 9) and ability (Instruments 11, 12, 13) has been collected, the judge distinguishes the calculation model. For past alimony (madliyah), the instrument used is retrospective (looking back).

Madliyah alimony is essentially a debt (dain) owed by the father to the child, which has been paid in advance by the mother.⁸ Therefore, the calculation must be precise and based on evidence of expenses that have already been incurred.

The calculation instrument used is the Historical Audit Model. The judge calculates the total actual expenses of the mother for the child during the period of the father's negligence, supported by an Empirical Validation Instrument (historical receipts). This is a pure summation:

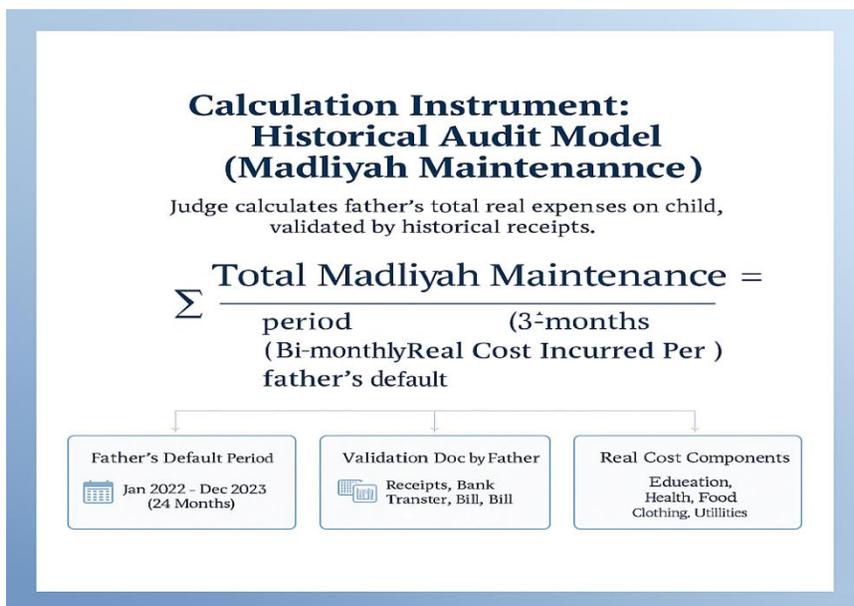


Figure 2. *Historical Audit Model*

⁸Kompilasi Hukum Islam (KHI), Pasal 156 huruf (c), secara spesifik menyebutkan *nafkah madliyah* (nafkah lampau) yang dilalaikannya, yang dikategorikan oleh yuris prudensi sebagai utang. Lihat Putusan Mahkamah Agung No. 547 K/Ag/2003

With this audit model, the judge's decision on madliyah alimony is no longer an "approximate" estimate, but rather a concrete, detailed, and financially accountable debt determination, in accordance with the principle of accountability in jurisprudence.

IV. Future Income Calculation Instrument (Hadhanah)

The analysis of future alimony is the most crucial and most frequently miscalculated part of judicial practice. Setting a static amount of alimony (e.g., "Rp 2,000,000 per month until the child reaches adulthood") is a decision that is unfair in terms of jurisprudence, because it ignores the time value of money and inflation.

A static decision guarantees that the real value of the alimony will continue to be eroded by inflation, so that in 5 or 10 years, the amount will no longer be sufficient. This contradicts the principle of the best interests of the child.⁹

The legal instrument to overcome this is the Dynamic Cost Projection Model. Judges not only set the current value of alimony (baseline cost), but also establish an automatic adjustment mechanism for the future.

The key to this model is the Escalation Index Instrument. Judges must set an automatic annual increase percentage. To be objective, this index should not be "guessed" but must refer to comparative data (Instrument 9), ideally BPS sectoral inflation data, particularly inflation in the education and health sectors, which is always higher than general inflation.¹⁰

⁹Prinsip *The Best Interest of the Child* diamanatkan oleh Konvensi PBB tentang Hak-Hak Anak (UNCRC), yang telah diratifikasi Indonesia melalui Keppres No. 36 Tahun 1990.

¹⁰ Badan Pusat Statistik (BPS), "Berita Resmi Statistik (BRS) Inflasi Bulanan." Data inflasi sektoral (seperti "Pendidikan" dan "Kesehatan") dapat diakses dan sering kali melampaui inflasi umum (CPI)

This calculation instrument is then formulated mathematically in the court ruling. The jurimetric formula that can be adopted is:

$$\mathbf{Nafkah_Year\ } n = (\mathbf{Nafkah_Tahun}) \\ (+ + \mathbf{Increase\ Index} \quad \overset{n-1}{\sim} (n-1))$$

- **Nafkah_Year** n = The expense amount in the upcoming n -th year.
- **Nafkah_Year** 1 = Baseline Cost that was taken immediately.
- **Nafkah_Year** 1 = Baseline Cost that was set by the Judge at the time of decision.
- **Increase Index** = Annual percentage increase (e.g. 10% or 0.10) based on inflation data.
- $n = n$ -th year since the setting declaration ($n=1, 2, 3, \dots$).

Figure 3. *Mathematical Projection of Future Child Support (Hadbanah)*

The application of this formula makes the verdict “dynamic.” An example of a jurimetric verdict: “The Defendant is ordered to pay child support in the amount of Rp 3,000,000 per month, with an automatic increase of 10% (ten percent) each year, adjusted in January.” This provides long-term legal certainty.

The application of jurimetrics in child support analysis requires a shift in the role of judges. Judges are no longer merely the mouthpiece of the law (*bouche de la loi*) in a qualitative sense, but also act as data analysts or jurimetrists. Judges must be able to read financial data, validate quantitative evidence, and apply simple calculation models.

In conclusion, the instruments used by judges in the framework of jurimetrics are: (1) Bill of Needs as a data collection tool; (2) Receipts and proof of payment as validation tools; (3) BPS data (KHL and Inflation) as benchmark tools; (4) Bank account analysis as a forensic tool; (5) Historical Audit Model for *madliyah alimony*; and (6) Dynamic Projection Model (with Inflation Index) for future *alimony*.

The use of these instruments will result in decisions that are objective, accountable, predictive, and substantially fair to the child.

Discussion of the Second Aspect

Analysis of Judicial Considerations on Sanctions for Negligence of Madliyah Alimony (Comparative Study of Indonesian Positive Law and Islamic Law)

The fulfillment of children's rights after divorce is one of the most crucial aspects of family law enforcement. Among these rights, the right to maintenance (costs of care and education) plays a central role in ensuring the survival and optimal growth and development of children. Failure to fulfill this right is not merely a civil dispute, but a humanitarian issue having a direct impact on the future of the next generation.

This analysis focuses on a specific and complex legal scenario, namely a father's failure to pay madliyah alimony, which is the accumulation of past alimony payments that he has neglected. The focus of the problem becomes even sharper when the failure occurs "without clear reason," a phrase that legally indicates that the father is actually economically capable but unwilling to fulfill his obligations.

In jurisprudence, this situation clearly distinguishes between a father who is mu'sir (financially incapable) and a father who is mumathil (delaying payment even though he is capable). The legal question that must be answered by the judge (both in the District Court and the Religious Court) is: what legal, philosophical, and sociological considerations should be used as the basis for imposing a fair and effective "punishment" or sanction?

To answer this question, judges in Indonesia operate within two complementary legal systems: (1) National Positive consisting, which consists of civil instruments in Civil Procedure Law (HIR/RBg) and criminal instruments in special laws; and (2) Islamic Family Law, which is codified in the Compilation of Islamic Law (KHI) and enriched by classical fiqh treasures.

The first fundamental consideration that must be determined by judges is the legal status of madliyah alimony itself. In both legal systems, alimony that has been missed and not fulfilled automatically transforms into debt (dain). This status as debt is confirmed, for example, in Article 156 letter (c) of the KHI, forming the basis that this obligation does not lapse after divorce and must be paid.¹¹

V. Indonesian Positive Law Perspective

Within the framework of positive law, the first consideration of the judge after determining the amount of alimony (ideally through an objective jurimetric method) is to maximize civil instruments. “Punishment” in the civil context is not imprisonment, but rather enforcement of performance. The main priority is to ensure that the child's rights are fulfilled, not to imprison the father.

The main instrument for this is the actual execution of a final and binding decision (*in kracht van gewijsde*). The judge must consider that the decision should not be a paper tiger. At the request of the mother (as the child's guardian), the judge may order enforcement as provided for in Article 196 HIR or Article 208 RBg.¹²

The judge's next consideration is the most effective form of enforcement. The most relevant instrument is executory seizure (executorialebeslag). The judge must consider ordering the seizure of the assets belonging to the negligent father, both movable assets (salary, bank account savings, vehicles) and immovable assets (property).

This is where proving “without clear reason” becomes vital. The judge must consider juridical data (pay slips, bank statements, proof of asset ownership) as a basis for proving that the father is indeed capable but unwilling. This proof becomes a strong justification for rejecting all of the father's objections and immediately executing the seizure for auction to pay off the alimony debt.

¹¹Instruksi Presiden Indonesia. No. 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI)

¹²Peraturan-peraturan Indonesia yang Direvisi (HIR) (S. 1941-44) kemudian Peraturan-peraturan Hukum untuk Daerah-daerah Luar (RBg) (S. 1927-227)

When civil instruments prove ineffective (for example, the father hides assets), the judge must shift to considering criminal sanctions. Failure to pay alimony by a person who is deliberately capable is a form of psychological and economic violence, which constitutes neglect.¹³

The Judge's first consideration in the criminal realm is Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT Law). Article 9 paragraph (1) explicitly prohibits “neglecting a person within the scope of the household.” Failure to provide alimony is a form of economic neglect as regulated in the law.

The penalty for violating Article 9 is regulated in Article 49 of the PKDRT Law, threatening the perpetrator (the father) with a maximum imprisonment of 3 (three) years or a fine.¹⁴ The civil/religious judge did not impose this criminal penalty, but the findings in the trial can be strong evidence for the mother to pursue criminal charges.

The second criminal consideration, which is often more relevant, is Law No. 35 of 2014 on Child Protection. Article 76B prohibits anyone from “placing, allowing, ... a child in a situation of mistreatment and neglect.”¹⁵ Failure to provide financial support by a father who is capable is a form of neglect that hinders the growth and development of the child.

The penalties for child neglect are stipulated in Article 77B, namely a maximum imprisonment of 5 (five) years and/or a fine. The judge's consideration of the fact of “neglect” in family court provides moral and legal legitimacy for criminal law enforcement to take action.

VI. The Perspective of Islamic Family Law (KHI & Fiqh)

¹³Undang-Undang No. 35 Tahun 2014 tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 tentang Perlindungan Anak. (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 297, Tambahan Lembaran Negara Nomor 5606).

¹⁴*Ibid.*,

From the perspective of Islamic law, the judge's (Qadi) consideration has a deeper theological and moral basis. Failure to pay debts (including alimony) by a person who is capable is an injustice. This is based on the Hadith of the Prophet Muhammad SAW: "Delaying (debt payment) by a person who is capable is an injustice." A father who deliberately does not pay alimony even though he is capable is, in fiqh terminology, called *al-mumathil* (an unjust procrastinator). This status as *mumathil* gives the judge broader discretionary authority to impose sanctions to end the injustice.¹⁵

Similar to positive law, the judge's first consideration in fiqh is to enforce fulfillment of obligations. This is known as *al-hadlr* (compulsory payment). If the father continues to refuse, the judge has full authority to carry out *al-hajr* (seizure) of his assets and *al-bay'* (forced sale) to pay off the alimony debt. This is where the real "punishment" in Islamic law lies, when the execution of assets fails (for example, if the father hides his assets). The majority of fiqh schools (Hanafi, Maliki, and Hanbali) agree that the judge can impose the *Ta'zir bi al-Habs* sanction (imprisonment at the judge's discretion).

The judge's consideration in applying *al-habs* (imprisonment) must be understood philosophically. This is not a pure criminal punishment (*jinayah*) such as theft or murder. It is imprisonment as a means of civil coercion.¹⁶ The aim is not to retaliate, but to put psychological pressure on the father so that he is willing to pay his debt.¹⁷

Therefore, the duration of imprisonment in the context of *ta'zir* is flexible. The judge will consider detaining the father until he pays off his alimony debt. This is a form of punishment that is both educational (*ta'dib*) and coercive in nature to end injustice.

¹⁵Undang-Undang No. 35 Tahun 2014 tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 tentang Perlindungan Anak, Pasal 76B

¹⁶*Ibid.*,

¹⁷ Wahbah az-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, (Damaskus: Dar al-Fikr, 1985), Jilid 5, hlm. 789

The Compilation of Islamic Law (KHI) itself, although it does not explicitly regulate ta'zir bi al-hab, provides a basis for judges to act decisively. Article 80 paragraph (4) letter (c) of the KHI, for example, imposes hadhanah costs on the father, and the judge is given the authority to enforce this.

From these two legal perspectives, the judge's considerations must be based on the principle of *ultimum remedium* (last resort) for corporal punishment and *primum remedium* (first resort) for the restoration of the child's rights.

The main consideration of the judge in both systems is the best interest of the child, which in *fiqh* is known as the principle of *Maslahah Mursalah* (public interest). The main objective is not to imprison the father—which could actually eliminate his ability to pay—but to ensure that the child's rights are fulfilled.

Therefore, the judge's considerations must be hierarchical: (1) Prove the legal status of “able but unwilling” (*status mumathil*). (2) Prioritize civil enforcement (asset seizure/*al-hajr*) as the primary solution. (3) If enforcement fails due to the father's bad faith, only then should the judge consider coercive sanctions (initiating criminal proceedings for neglect or applying ta'zir imprisonment) as a means of enforcement.

In conclusion, the “punishment” for this negligent father is not revenge, but an instrument of law enforcement. The judge must consider that his actions constitute injustice (in Islamic Law) and neglect (in Positive Law) that must be stopped. The sanctions imposed are a manifestation of the judge's role not only to establish justice but also to enforce justice in order to protect the vital rights of the child.

Conclusion/Concluding Remarks

The Religious Court of Demak's decision successfully upheld child support justice (both *madliyah* and future) by bridging the gap between legal idealism and the reality of neglect. To replicate this success objectively and avoid subjectivity, judges must strictly apply

jurimetric instruments, including the collection of measurable data (Bill of Needs, receipts, BPS data, analysis of the father's ability) and the use of appropriate calculation models: The Historical Audit Model to accurately calculate past debts, and the Dynamic Projection Model with an inflation index (e.g., 10% per year) for future support. If the father, who has been proven capable, refuses to pay past debts, the judge must consider tiered sanctions, prioritizing civil enforcement (asset seizure) as the *primum remedium*, and if this fails due to bad faith, apply coercive sanctions (*ultimum remedium*) in the form of criminal neglect (Positive Law) or *Ta'zir bi al-Habs* (imprisonment until payment) in Islamic Law.

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