

Basic Preconstruction Of Ta‘lil Alimony In Islamic Family Law: Maqāṣidī Readings On The Iḥtibās Paradigm And Maṣlaḥat Al-Usrah In Indonesia And Tunisia

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Abstract

This article examines the reconstruction of the ta‘lil basis of wife's maintenance (nafkah) in contemporary Islamic family law, analyzing indications of a paradigm shift from iḥtibās (wife's confinement) toward maṣlaḥat al-usrah (family welfare) through a comparative study of Indonesia's Compilation of Islamic Law (KHI) and Tunisia's Code du Statut Personnel (CSP). Employing comparative-analytical methodology (muqāranah) with ta‘lil reasoning through masālik al-‘illah mechanisms — particularly taḥqīq al-manāṭ and takhrīj al-manāṭ — this study traces whether the 1993 amendment to CSP Article 23 contains a reconstruction of the ta‘lil paradigm that can be read as a shift from the iḥtibās framework toward principles of solidarity and family welfare. Mindful of uṣūlī debates on the distinction between ‘illat, ḥikmah, and maqṣad — wherein maṣlaḥat al-usrah is categorially closer to maqṣad tashrī‘ī than to technical ‘illat qiyāsiyyah — this article argues that Tunisia's reform represents a reconstruction of the ta‘lil basis of nafkah with consequences for redefining its prerequisites and obligated parties. Maqāṣid analysis through Ibn ‘Ashūr and Jasser Auda demonstrates that this reconstruction better aligns with ḥifẓ al-nafs and ḥifẓ al-nasl in the context of contemporary social realities. Methodological implications for KHI reform in Indonesia are also formulated.

Artikel ini merupakan kajian rekonstruksi dasar ta‘lil nafkah istri dalam hukum keluarga Islam dunia kontemporer, dengan cara menganalisis secara intens terhadap indikasi-indikasi pergeseran paradigma alat hukum nafkah dari iḥtibās (ketundukan istri) menuju maṣlaḥat al-usrah (kemaslahatan keluarga) melalui studi komparatif Kompilasi Hukum Islam (KHI) Indonesia dan Code du Statut Personnel (CSP) Tunisia. Dengan penggunaan metode komparatif-analitis (muqāranah) dengan penalaran ta‘lil melalui mekanisme masālik al-‘illah khususnya taḥqīq al-manāṭ dan takhrīj al-manāṭ, maka penelitian ini berusaha untuk menelusuri apakah amandemen Pasal 23 CSP Tunisia 1993 mengandung rekonstruksi paradigma ta‘lil yang dapat dipandang sebagai sebuah pergeseran alat dari konstruksi iḥtibās menuju prinsip solidaritas dan kemaslahatan keluarga. Dengan memperhatikan perdebatan uṣūlī tentang perbedaan antara ‘illat, ḥikmah, dan maqṣad di mana maṣlaḥat al-usrah secara kategorial sebenarnya lebih dekat pada maqṣad tashrī‘ī daripada ‘illat qiyāsiyyah teknis, artikel ini berargumen bahwa fenomena yang terjadi di Tunisia adalah rekonstruksi basis ta‘lil nafkah yang berdampak pada terhadap redefinisi prasyarat dan subjek kewajiban nafkah. Analisis maqāṣid al-shari‘ah melalui Ibn ‘Ashūr dan Jasser Auda

menunjukkan bahwa rekonstruksi ini lebih selaras dengan *ḥifẓ al-nafs* dan *ḥifẓ al-nasl* dalam konteks realitas sosial kontemporer. Implikasi metodologis bagi pembaruan KHI Indonesia juga dirumuskan.

Keywords: *taʿlil basis of maintenance*; *iḥtibās*; *maṣlaḥat al-usrah*; *masālik al-ʿillah*; Islamic family law;



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A. INTRODUCTION

The obligation of the husband to his wife is one of the most established legal buildings in Islamic jurisprudence. The *fuqahāʾ* of the various schools *istiqomah* stipulate that the basis of the obligation of the wife's devotion to her husband is *iḥtibās*, i.e. the availability of the wife (*tamkīn*) and her solemnity for the benefit of the husband. Al-Kāsānī of the Ḥanafī sect concludes: alimony is "the reward for *iḥtibās* on the husband's side" so that alimony is lost when the wife breaks out of the bond of *iḥtibās*.¹

Ibn Qudāmah from the Ḥanbalī school also emphasized that as long as a wife fulfills her husband's rights and is not *nāshizah*, then maintenance is still obligatory to be paid by the husband without the need to pay attention to the wife's economic ability.² Al-Nawāwī of the Shāfiʿī school requires the existence of *al-tamkīn al-tāmm*, the complete surrender of the wife, as a *sine qua non* condition for maintenance.³ This construction of law has been consistently maintained in the books of *fiqh* across sects for more than ten centuries.

Nevertheless, the social reality of the 21st century presents a very significant epistemological challenge to the legal construction. Muslim women are now actively involved in working in the public sector, contributing to the family economy, and many are even the *de facto* backbone of household bread. This phenomenon is not just an ordinary social transformation; He is actually now questioning the relevance of *iḥtibās* as the basis of *taʿlil* alimony in the context of contemporary family law.

Two interesting and captivating Islamic family law frameworks to compare are Indonesia and Tunisia. Indonesia through the Compilation of Islamic Law (KHI) Article 80 normatively still maintains a formula that is implicitly rooted in the *iḥtibās* language paradigm which results in the result that in any circumstance as long as the wife is not *nusyuz*, the husband is obliged to give his wife alimony,

¹1. Al-Kāsānī, *ʿAlāʾ al-Dīn, Badāʾiʾ al-Ṣanāʾiʾ fī Tartīb al-Sharāʾiʾ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), juz IV, hlm. 16. Redaksi al-Kāsānī: "wa li-anna al-nafaqah tajib bi-ʾiḥtibās al-thābit ʿalā al-zawj."

²2. Ibn Qudāmah, *Muwaffaq al-Dīn, al-Mughnī* (Cairo: Maktabah al-Qāhirah, 1968), vol. IX, p. 231. Ibn Qudāmah wrote: "Idhā kānat al-zawjah bālighah ḥurratan tumkinu min nafsihā wajabat lahā al-nafaqah."

³3. Al-Nawāwī, *Muḥyī al-Dīn, al-Majmūʿ Sharḥ al-Muḥaddab* (Jeddah: Maktabah al-Irshād, t.th.), juz XVIII, hlm. 205-207. Lihat juga al-Sharbīnī, *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāẓ al-Minhāj* (Beirut: Dār al-Maʿrifah, 1997), juz III, hlm. 426.

kiswah, and a place of residence to him.⁴ However, Tunisia, on the contrary, through the Code du Statute Personnel (CSP) 1956 and the amendment of Article 23 in 1993 has fundamentally changed the norm of maintenance to a mutual obligation based on family capacity and solidarity.⁵

The academic question that this article seeks to answer is not just the question of "is it okay for a wife to work?" because this is a question that has been researched quite a lot. However, a more fundamental question is: do the normative changes in the Tunisian CSP indicate a reconstruction of the ta'lil nafkah paradigm from the basis of iḥtibās to the principle of maṣlaḥat al-usrah? And through which mechanism of masālik al-illah can the reconstruction of the illat be analyzed epistemologically?

The limitations of the study need to be emphasized from the beginning. That this Article does not claim that Tunisia has formally and consciously replaced the 'illat shar'i, an action that epistemologically impossible for the state to perform, since the 'illat syar'i is the product of the ijtihad of the ulama, not the legislative product. What is being studied is whether Tunisia's normative changes contain a reconstruction of the ta'lil paradigm which—when analyzed through the lens of uṣūl al-fiqh—shows strong indications of a shift from the construction of iḥtibās as the basis of ta'lil to the principle of maṣlaḥat al-usrah as a maqṣad tashrī'i that replaces its function.

This study also pays attention to the complexity of uṣūlī that needs to be anticipated: that in the terminology of uṣūl al-fiqh, maṣlaḥat al-usrah is more appropriately categorized as maqṣad or ghāyah (legal purpose) than the technical 'illat which is munḍabiḥah and zāhirah in the sense of classical qiyās as formulated by al-Ghazālī.⁶ Al-Āmidī can also be read as providing an epistemological space for a broader understanding of "'illat tashrī'iyah" than just the technical "'illat qiyāsiyyah", which will be the basis for analysis in the clarification section of this article.⁷

B. RESEARCH METHODS

This study uses a comparative-analytical method (al-manhaj al-muqārīn) with the uṣūl al-fiqh approach, especially the theory of masālik al-illah. This method was chosen because the problem studied is not just a comparison of

⁴⁴. Compilation of Islamic Law (KHI), Presidential Instruction No. 1 of 1991, Article 80 paragraphs (2) and (4); compare with Law No. 1 of 1974 concerning Marriage, Article 34 paragraph (1).

⁵⁵. Personal Status Code (Majallat al-Aḥwāl al-Shakhṣiyyah) Tunisia, Decree of 13 August 1956, Pasal 23, sebagaimana diamandemen oleh Law No. 93-74 of 12 July 1993, dipublikasikan dalam Official Journal of the Republic of Tunisia No. 53, 13 Juli 1993.

⁶⁶. Al-Ghazālī, Abū Ḥāmid, al-Mustaṣfā min 'Ilm al-Uṣūl (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), vol. II, pp. 297-302. About the terms of 'illat: munḍabiḥah, zāhirah, muttaridah, and munāsibah.

⁷⁷. Al-Āmidī, 'Alī ibn Muḥammad, al-Iḥkām fī Uṣūl al-Aḥkām (Beirut: Dār al-Kutub al-'Ilmiyyah, 1985), vol. III, pp. 267-270. About the difference between 'illat qiyāsiyyah and 'illat tashrī'iyah.

positive legal norms, but an analysis of the ta'lil paradigm that is the epistemological foundation of the obligation to support in two different legal systems.

This research is qualitative-normative with three stages of interrelated analysis, following the framework of masālik al-ʿillah as formulated by Abū Zahrah in Uṣūl al-Fiqh.⁸ First, the stage of taḥqīq al-manāṭ: identifying and verifying the construction of iḥtibās as the basis of ta'lil nafkah in the books of classical turāṣ fiqh across sects. Second, the muqāranah stage: comparing the construction of alimony law in the Indonesian KHI and the Tunisian CSP by tracing authentic texts. Third, the takhrīj al-manāṭ stage: analyzing whether Tunisia's normative changes indicate any indication of a reconstruction of the ta'lil paradigm.

The author uses these three operational indicators to identify indications of the reconstruction of the ta'lil paradigm: (1) changes in legal prerequisites (whether iḥtibās/tamkīn is still a condition for compulsory maintenance or not); (2) change of subject of obligation (from unilateral to bilateral); and (3) the change of the basic principle that fills the void after iḥtibās no longer functions as a condition (whether it is replaced by the principle of solidarity and proportional capacity).

The primary data of this study include: the authentic text of Article 23 of the Tunisian CSP 1956 and the redaction of the 1993 amendments (Loi n° 93-74 du 12 juillet 1993) in Arabic and French; text of KHI Indonesia (Presidential Instruction No. 1/1991), especially Articles 80-84; and the main classical fiqh books. Secondary data include reputable international journals of Islamic family law, historical literature on Tunisian legal reform, contemporary maqāṣid studies, and international policy documents (CEDAW). The limitation acknowledged by this article is the unavailability of travaux préparatoires (legislative preparation documents) of the Tunisian CSP which explicitly indicate the intention of the legislators. Therefore, the analysis of ta'lil in this article is reconstructive-interpretive, not descriptive.

C. DISCUSSION AND ANALYSIS

1. The Construction of Iḥtibās as the Basis of Ta'lil Nafkah: The Anatomy of ʿIllat Murakkabah

In the tradition of uṣūl al-fiqh, a ʿillat of a law is established through masālik al-ʿillah. The uṣūliyyūn, as described by al-Ghazālī in al-Mustaṣfā, identify three main paths: al-naṣṣ (a text that explicitly mentions ʿillat), al-ijmāʿ (scholarly agreement on ʿillat), and al-istinbāṭ (excavation of ʿillat through al-sabr wa al-taqṣīm and al-munāsabah).⁹ Nafkah does not have a naṣṣ that explicitly mentions ʿillat, but the fuqahāʾ use the al-istinbāṭ method through al-munāsabah to trace the illat.

⁸8. Abū Zahrah, Muḥammad, Uṣūl al-Fiqh (Cairo: Dār al-Fikr al-ʿArabī, t.th.), pp. 236-240. Discussion of taḥqīq al-manāṭ, tanqīḥ al-manāṭ, and takhrīj al-manāṭ.

⁹9. Al-Ghazālī, al-Mustaṣfā, vol. II, pp. 295-297. About the three paths of masālik al-ʿillah: al-naṣṣ, al-ijmāʿ, and al-istinbāṭ.

Through the theory of al-munāsabah, al-Kāsānī argues that iḥtibās are the most "munāsib" (corresponding) to the obligation of maintenance because the husband gets the right of istimtā' while the wife gets economic security in a relationship analogous to ijārah (rent-rent).¹⁰ Ibn Qudāmah emphasizes this by stating that iḥtibās is a "illat mun'aqidah" that stands on its own and therefore the automatic termination of iḥtibās will automatically abort alimony.¹¹

Al-Zarkashī expresses a more subtle analysis by explaining that 'illat nafkah is actually a tongue that is murakkabah (arranged): the first component is a valid marriage contract ('aqd ṣaḥīḥ) as the basic cause (cause), the second component is tamkīn/iḥtibās as a trigger condition (sharṭ al-wujūb), and the third component is the husband's ability (yusr) as a condition of execution (sharṭ al-adā').¹² This categorization of 'illat murakkabah is very important in that changes in the sharṭ al-wujūb component, iḥtibās, epistemologically have a different impact than changes in cause or sharṭ al-adā'.

Before the author proceeds to the stage of comparative analysis, we need to anticipate one crucial terminological complexity, namely whether iḥtibās is really a technical 'illat or is it more of a ḥikmah/waṣīlah? Al-Āmidī, one of the most rigorous authoritative figures of uṣūl al-fiqh, distinguishes between 'illat qiyāsiyyah (which should be mundaḥiṭah, zāhirah, and muttaridah) and 'illat tashrī'iyyah which can be a broader principle.¹³ Iḥtibās in the context of alimony can be categorized as 'illat tashrī'iyyah which is a functional prerequisite that activates obligations, this is a categorization that opens up an epistemological space to analyze whether these functional prerequisites can be reconstructed without changing the basic principle of marriage as a bond that gives rise to reciprocal obligations.

2. The Historical Context of Tunisia's CSP Reforms: History, Motivations, and Epistemological Content

Understanding the reconstruction of the ta'līl paradigm in the Tunisian CSP requires an in-depth reading of the historical and philosophical context behind the birth of the 1956 CSP and the 1993 amendments. This is not a mere academic formality, for without this context, the analysis of ta'līlī would lose the accuracy of its interpretation.

The Tunisian CSP was born on August 13, 1956, a few months after independence from France, on the initiative of President Habib Bourguiba. Historian Kenneth Perkins notes that Bourguiba explicitly placed family law reform as an instrument of the transformation of Tunisian society into a modern

¹⁰10. Al-Kāsānī, *Badā'ī' al-Ṣanā'ī'*, juz IV, pp. 16-17. Explanation of the analogy of alimony with ijārah.

¹¹11. Ibn Qudāmah, *al-Mughnī*, juz IX, p. 232. About the loss of alimony due to nusyuz.

¹²12. Al-Zarkashī, *Badr al-Dīn, al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh* (Kuwait: Wizārat al-Awqāf, 1992), vol. V, pp. 138-142. On the concept of 'illat murakkabah: "qad takūn al-'illah murakkabah min waṣfayn aw akthar."

¹³13. Al-Āmidī, *al-Iḥkām*, vol. III, p. 268. About 'illat tashrī'iyyah which can be a general principle in macro ijtihad.

society, criticizing classical interpretations of jurisprudence that often placed women in subordinate positions.¹⁴ The 1956 CSP, through the abolition of polygamy, the unification of talaq in the courts, and the establishment of a minimum age of marriage, was one of the most radical reforms of Islamic family law in the Muslim world in the 20th century.

However, the 1956 CSP in the initial drafting of Article 23 still maintained the obligation of alimony as a burden of the husband unilaterally, using a formula that was structurally not much different from classical jurisprudence: "yajib 'alā al-zawj al-nafaqah 'alā zawjatih min ḥīn al-dukhūl bihā."¹⁵ A more fundamental paradigmatic shift occurred through the 1993 amendments under President Zine El Abidine Ben Ali.

Mounira Charrad in *States and Women's Rights* identifies three driving factors for the 1993 amendments: the momentum of the ratification of CEDAW which encouraged the harmonization of family law with international equality standards, the pressure of the Tunisian feminist movement organized through the Tunisian Women's Association (ATFD and AFTD), and the increasing participation of Tunisian women in the labor contribution that reached more than 25% in the early 1990s.¹⁶

Teks amandemen 1993 mengubah Pasal 23 CSP menjadi sebuah formula bilateral. Dalam redaksi Prancis: "The spouses owe each other fidelity, help and assistance. They shall consult each other in the conduct of the family's affairs and the spouses shall contribute to the expenses of the marriage according to their respective capacities." Dalam redaksi Arab: "yata'āwanu al-zawjān fī tadbīr shu'ūn al-bayt wa-tarbiyat al-awlād wa-yushtariku kullun minhumā fī al-nafaqah bi-qadr ṭāqatih."¹⁷

Fauzia Husain, in a special study on Tunisian livelihood published in *Islamic Law and Society*, explicitly stated that the 1993 amendment "effectively decoupled maintenance from the concept of tamkin, replacing it with a principle of mutual financial solidarity."¹⁸ Fauzia Husain's statement is an important supporting data that validates the inference of ta'līl in this article.

¹⁴14. Kenneth Perkins, *A History of Modern Tunisia* (Cambridge: Cambridge University Press, 2004), pp. 136-140. About Bourguiba's policy in the 1956 CSP reform.

¹⁵15. CSP Tunisia 1956, Article 23 in the original redaction: "yajib 'alā al-zawj al-nafaqah 'alā zawjatih min ḥīn al-dukhūl bihā." See Decree of 13 August 1956, Official Journal of the Tunisian Republic No. 65, 17 August 1956.

¹⁶16. Mounira M. Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Berkeley: University of California Press, 2001), hlm. 201-230. Tentang faktor-faktor pendorong amandemen CSP 1993.

¹⁷17. Law No. 93-74 of 12 July 1993, Pasal 1, mengamandemen Pasal 23 CSP menjadi: "The spouses owe each other fidelity, help and assistance. They shall consult each other in the conduct of the family's affairs and the spouses shall contribute to the expenses of the marriage according to their respective capacities." Versi Arab dalam *Majallat al-Aḥwāl al-Shakhṣiyyah*: "yata'āwanu al-zawjān fī tadbīr shu'ūn al-bayt wa-tarbiyat al-awlād wa-yushtariku kullun minhumā fī al-nafaqah bi-qadr ṭāqatih."

¹⁸18. Fauzia Husain, "Redefining the Qiwanah: Spousal Maintenance in Tunisian Law," *Islamic Law and Society* 18, no. 3-4 (2011): 361. Husain secara eksplisit menulis: "the 1993 amendment effectively decoupled maintenance from the concept of tamkin, replacing it with a principle of mutual financial solidarity."

CEDAW Article 16(1)(c) requires that there be equality of rights and responsibilities in marriage.¹⁹ In the perspective of *masālik al-ʿillah*, this pressure of CEDAW can be read as a catalyst that accelerates the process of *tanqīḥ al-manāṭ*, the purification of the *taʿlīl* base from elements that are considered non-essential (*iḥtibās* as the dependence of the wife) to find a more essential and universal basis (*zawjiyyah* and *takāful*). However, it is necessary to acknowledge that CEDAW carries a different dimension of value originating from *maqāṣid al-shariʿah*; Its convergence on similar normative outcomes does not mean epistemological identity.

3. Comparison of Indonesian KHI and Tunisian CSP: Three Indicators of *Taʿlīl* Paradigm Reconstruction

Based on the three operational indicators that have been established in the methodology, the following is a systematic comparative analysis that shows indications of a reconstruction of the *taʿlīl* paradigm.

The first indicator: a change in legal prerequisites. KHI Indonesia maintains a construction that implicitly requires *iḥtibās* through a system of paired rights-obligations, namely that the wife is obliged to be devoted physically and mentally to her husband (Article 83 paragraph 1) and the wife can be considered *nusyuz* if she does not fulfill these obligations (Article 84).²⁰ This reciprocal relationship reflects and shows that *iḥtibās* serves as an implicit prerequisite that activates the obligation of maintenance. The post-1993 Tunisian CSP, on the other hand, no longer requires the wife's obedience (*ṭāʿah*) as a condition of alimony obligation.²¹ The abolition of this condition, which in the terminology of *uṣūl al-fiqh* means the abolition of *sharṭ al-wujūb*, is the strongest indication of the reconstruction of the basis of *taʿlīl*.

The second indicator: a change in the subject of liability. The KHI stipulates the unilaterality of maintenance obligations to the husband: "according to his income, the husband bears the maintenance, *kiswah*, and place of residence for the wife" (Article 80 paragraph 4).²² Meanwhile, Tunisia's post-1993 CSP stipulates the necessity of bilaterality: "les époux contribuent aux charges du mariage selon leurs capacités respectives" meaning that both spouses contribute to the marital burden according to their respective capacities.²³ The

¹⁹19. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, Article 16(1)(c). Tunisia ratified CEDAW in 1985 with certain reservations that were partially revoked in 2014.

²⁰20. KHI Article 83 paragraph (1): "The main obligation of a wife is to devote herself to her husband in what is permissible by Islamic law"; Article 84 concerning *nusyuz*.

²¹21. Loi n° 93-74, as referenced in Husain, "Redefining the *Qiwamah*," pp. 362-365. Tunisia systematically abolished the concept of *ṭāʿah* as a condition of alimony.

²²22. KHI Article 80 paragraph (4): "In accordance with his income, the husband bears: (a) alimony, *kiswah* and place of residence for the wife; (b) household expenses, maintenance costs and medical expenses for the wife and children; (c) the cost of education for the child."

²³23. Loi n° 93-74, Article 23 of the amendment: "les époux contribuent aux charges du mariage selon leurs capacités respectives" — both spouses contribute to the burden of marriage according to their respective capacities.

change from "husband is obligated to wife" to "both spouses contribute together" is a significant change in the subject of law, reflecting a paradigmatic redistribution of responsibilities.

The third indicator is the basic principle that replaces *iḥtibās*. In KHI, *iḥtibās* is based on the doctrine of *qiwāmah* of the husband as a justification for alimony, which is a hierarchical principle that is still vertically oriented. In the 1993 Tunisian CSP, the void left by the abolition of *iḥtibās* was filled by two principles: "se concertent" (deliberation) which reflects the principle of *shūrā*, and "selon leurs capacités respectives" (according to their respective capacities) which reflects the principle of proportionality (*naẓariyyat al-yusrr al-mushtarak*). El Alami notes that these two principles fundamentally change the character of legal relations in marriage from vertical to horizontal relations.²⁴

From these three indicators, it can be concluded that the 1993 Tunisian CSP shows a strong indication of the reconstruction of the *ta'līl nafkah* paradigm. However, it is certainly necessary for the author to admit that this conclusion is inferential, it is built on the analysis of the reconstruction of the *ta'līl* of normative changes, not on the basis of a Tunisian legislative document that explicitly mentions the replacement of *'illat*.

4. Uṣūlī Clarification: Is Maṣlaḥat al-Usrah 'Illat, Maqṣad, or Wasīlah?

One of the most vulnerable weaknesses is whether *maṣlaḥat al-usrah* is actually *'illat*, or is it more accurately categorized as *maqṣad* or *ghāyah*? This question needs to be answered honestly and in detail.

In the tradition of *uṣūl al-fiqh*, especially in the classical theory of *qiyās* as formulated by al-Ghazālī, *'illat* must meet four conditions: (1) *munḍabīṭah* (measurable and definitive, not obscure) (2) *ẓāhirah* (visible and objectively verifiable) (3) *muttaridah* (consistent, always present with the law) (4) *munāsibah* meaning relevant and proportionate to the law on which it is based.²⁵ By this criterion, *iḥtibās* is a technical *'illat* that is more qualified because it is measurable (wife is or is not at home) and visible (verifiable). *Maṣlaḥat al-usrah*, on the other hand, is more abstract and immeasurable, and therefore it is closer to the *maqṣad* (goal that the law seeks to achieve) than the technical *'illat*.

However, this reading needs to be contextualized in two ways. First, distinguish between *'illat qiyāsiyyah* (in the context of classical *qiyās fiqhī*) and *'illat tashrī'iyyah* (in the context of *ijtihādī* reform). Al-Āmidī himself opens the space that in *ijtihād* that is broader than just individual *qiyās*, the consideration of *maqāṣidī* can serve as a more holistic basis for *ta'līl*.²⁶ Al-Ṭūfī of the Ḥanbalī

²⁴24. Dawoud El Alami and Doreen Hinchcliffe, *Islamic Marriage and Divorce Laws of the Arab World* (London: Kluwer Law International, 1996), pp. 176-178. El Alami notes a structural change from vertical-hierarchical relations to horizontal-reciprocal relations.

²⁵25. Al-Ghazālī, *al-Mustaṣfā*, vol. II, pp. 296-297. The four conditions of *'illat* according to al-Ghazālī: *munḍabīṭ*, *ẓāhir*, *muttaridah*, and *munāsibah*.

²⁶26. Al-Āmidī, *al-Iḥkām*, vol. III, p. 270. About the flexibility of *'illat* in *ijtihād* reform.

tradition even states that in the matter of mu‘āmalah, maṣlaḥah can precede narrower technical postulates.²⁷ Thus both al-amidi and al-Ṭūfī have provided intellectual precedents in the Islamic legal tradition that can be used to understand Tunisian reforms.

Second, Ibn ‘Āshūr can be read as having developed the concept of "maqāṣid al-sharī‘ah as a general ‘illat" i.e. that the maqāṣid can function as a "‘illat jāmi‘ah" (binding general ‘illat) in macro-scale ijtihad such as state family law legislation.²⁸ Within this framework, maṣlaḥat al-usrah as maqṣad khāṣṣ marriage can serve as a "general ‘illat tashrī‘iyyah" which replaces the function of ihtibās as a technical-specific prerequisite.

With this clarification, the article formulates a more appropriate epistemological position: maṣlaḥat al-usrah is not a technical ‘illat qiyāsiyyah as a direct substitute for ihtibās, but rather it is a maqṣad tashrī‘ī which in the context of ijtihādī reconstruction can serve as the basis of ta‘līl at the level of family law reform. This is what is meant by the "basic reconstruction of ta‘līl" in the title of this article, not a mechanical replacement of the technical ‘illat, but rather a paradigm reconstruction that shifts the orientation from the prerequisites of ihtibās towards maqṣad maṣlaḥat al-usrah.

5. Analysis of Maqāṣid al-Sharī‘ah: The Substantive Legitimacy of Paradigm Reconstruction

After the clarification of uṣūlī, the analysis of maqāṣid al-sharī‘ah provides substantive legitimacy for the reconstruction of the ta‘līl nafkah paradigm. In the hierarchy of maqāṣid developed by al-Shāṭibī,²⁹ and detailed classification by Ibn ‘Āshūr through the distinction between maqāṣid ‘āmmah and maqāṣid khāṣṣah,³⁰ family maintenance is at the level of dlarūriyyāt because it is directly related to ḥifẓ al-nafs and ḥifẓ al-nasl.

Al-Shāṭibī affirms that ḥifẓ al-nafs in the dlarūrī dimension includes the fulfillment of the basic needs of all family members.³¹ If the basis of ta‘līl alimony is ihtibās, then in the contemporary context in which the wife works and contributes to the family, because the condition of ihtibās is not technically met, it can potentially make the wife lose alimony even though she is in real need of support. This is a paradox: the legal instruments that are supposed to protect ḥifẓ al-nafs have the potential to be a source of vulnerability for those who are supposed to be protected.

²⁷27. Al-Ṭūfī, Najm al-Dīn, Risālah fī Ri‘āyat al-Maṣlaḥah, ed. Aḥmad ‘Abd al-Raḥīm al-Sāyih (Cairo: al-Dār al-Miṣriyyah al-Lubnāniyyah, 1993), pp. 24-32. About the priority of maṣlaḥah in the affairs of mu‘āmalah.

²⁸28. Ibn ‘Āshūr, Muḥammad al-Ṭāhir, Maqāṣid al-Sharī‘ah al-Islāmiyyah (Amman: Dār al-Nafā‘is, 2001), pp. 401-415. About the concept of maqāṣid as the basis of ‘illat in macro ijtihad.

²⁹29. Al-Shāṭibī, Ibrāhīm ibn Musā, al-Muwāfaqāt fī Uṣūl al-Sharī‘ah (Beirut: Dār al-Ma‘rifah, 1975), juz II, hlm. 17-20. Tentang hirarki maqāṣid: dlarūriyyāt, ḥājīyyāt, taḥsīniyyāt.

³⁰30. Ibn ‘Āshūr, Maqāṣid al-Sharī‘ah, hlm. 390-395. Maqāṣid khāṣṣah al-usrah is classified.

³¹31. Al-Shāṭibī, al-Muwāfaqāt, vol. II, pp. 299-305. About ḥifẓ al-nafs in the dimension of dlarūrī.

Ibn 'Āshūr developed the concept of "maqāṣid khāṣṣah al-usrah" which encompasses three dimensions: domestic stability (istiqrār al-bayt), mutual affection (mawaddah wa raḥmah as mentioned in Q.S. al-Rūm: 21), and justice in the distribution of the burden of the family (qisṭ fī taḥammul al-a' bā' al-usrah).³² He argues that in maqāṣid khāṣṣah al-usrah, "qisṭ fī taḥammul al-a' bā'" requires a proportionate distribution of burdens, a principle that is more in line with the Tunisian CSP's bilateral maintenance model than the unilateral KHI model.³³

Jasser Auda adds a systemic dimension: a rule of law must be evaluated not only at the level of individual cases, but at the level of the system he created.³⁴ From a systemic perspective, the iḥtibās paradigm creates a systemic imbalance when reality changes such that a wife who works and contributes significantly to the family's livelihood has the potential to lose legal protection if iḥtibās is still used as the sole benchmark. The maṣlaḥat al-usrah paradigm, on the other hand, creates a more adaptive system because it is based on the reality of actual contributions, rather than on static role assumptions.

In terms of ḥifẓ al-nasl, the reconstruction of the paradigm towards maṣlaḥat al-usrah is also more conducive. Ḥifẓ al-nasl is not just about biological reproduction, but includes the protection of a healthy family environment for the growth and development of children. This model of mutual solidarity-based livelihood — as implemented by Tunisia — can create a more stable family ecosystem because it does not depend on the single assumption that the husband is always capable, the wife is always dependent.

Empirical data corroborate this maqāṣidī argument. BPS 2021 noted that the Participation Rate of Indonesia's female workforce reached 41.2% with an increasing trend.³⁵ ILO data shows a similar trend in Muslim countries in general.³⁶ This reality confirms the existence of a significant taghayyur al-aḥwāl wa al-mujtama' (change in social conditions)—a factor that has been consistently recognized by classical scholars as a legitimate fact to consider in evaluating the relevance of 'illat or the legal prerequisites attached to a particular condition.

6. The Dimension of Mubādalāh: A Perspective of Reciprocity as a Supporting Analytical Framework

The mubādalāh approach developed by Faqihuddin Abdul Kodir serves as a supporting analytical perspective in reading the value dimension of the

³²32. Ibn 'Āshūr, *Maqāṣid al-Sharī'ah*, pp. 406-410. The three dimensions of maqāṣid al-usrah: istiqrār al-bayt, mawaddah wa raḥmah, and qisṭ fī taḥammul al-a' bā'.

³³33. Ibn 'Āshūr, *Maqāṣid al-Sharī'ah*, p. 408. About the principle of qisṭ in the distribution of family burdens.

³⁴34. Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), pp. 45-55. About the systemic approach in legal evaluation.

³⁵35. Central Statistics Agency, *Thematic Gender Statistics: Portrait of Gender Inequality in the Economy* (Jakarta: BPS, 2021), pp. 34-38. Indonesian Women's Labor Force Participation Rate (TPAK) 2021: 41.2%.

³⁶36. ILO, *Women at Work: Trends 2016* (Geneva: International Labour Office, 2016), pp. 20-25. About the trend of women's participation in the job market of Muslim countries.

reconstruction of the livelihood paradigm.³⁷ Mubādalah is a hermeneutical methodology that proposes the principle of reciprocity (al-mabda' al-tabādulī) in the reading of fiqh texts: the values of the Qur'ān revealed in a given context have an inherent dimension of reciprocity and need to be read in their entirety.

In the context of alimony, the Qur'ān in Q.S. al-Baqarah: 228 explicitly states the equality of rights and obligations of spouses: "wa lahunna mithl alladhī 'alayhinna bi al-ma'rūf." Amina Wadud interprets this verse as the foundation for a reciprocal reading of the relationship of rights and obligations in marriage, including in terms of alimony.³⁸ Faqihuddin adds that Q.S. al-Rūm:21 which mentions mawaddah wa raḥmah as the purpose of marriage requires a relationship that actively builds mutual affection, not just a commercial transaction of iḥtibās-nafkah.³⁹

In the framework of mubādalah, the reconstruction of the Tunisian alimony paradigm can be read not as an adoption of Western values, but as an actualization of the dimension of reciprocity inherent in the Qur'ān, the alimony model based on "capacités respectives" (capacities of each) is more consistent with the principle of mawaddah wa raḥmah which demands the active contribution of both parties than the iḥtibās-nafkah model with a transactional-one-sided structure. This perspective strengthens the arguments of uṣūlī and maqāṣidī that have been constructed before.

7. Methodological Implications for the Reform of Indonesian Islamic Family Law

The findings of this study have significant methodological implications for KHI Indonesia's reform efforts. If the reconstruction of the ta'līl paradigm that took place in Tunisia shows a strong indication of valid epistemology, then the question is: through what methodological mechanism can Indonesia carry out a similar reorientation without sacrificing the fundamental principles of Shāfi'ī fiqh which is the dominant sect?

From the perspective of masālik al-ʿillah, such a reorientation is methodologically possible through two ways of working. First, taghayyur al-fatwā bi taghayyur al-aḥwāl: al-Qaraḍāwī asserts that significant changes in social conditions can be a legal basis for the reorientation of fatwas, including in terms of legal prerequisites tied to certain social assumptions.⁴⁰ The reality of Indonesia, the increase in women as the main breadwinners, the high number of

³⁷37. Faqihuddin Abdul Kodir, *Qiraah Mubadalah: Progressive Interpretation for Gender Justice in Islam* (Yogyakarta: IRCiSoD, 2019), pp. 59-75. About the basic principle of mubādalah as a hermeneutical method.

³⁸38. Amina Wadud, *Quran and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford: Oxford University Press, 1999), pp. 70-72. The interpretation of Q.S. al-Baqarah: 228 as the foundation of reciprocal reading.

³⁹39. Faqihuddin Abdul Kodir, *Qiraah Mubadalah*, pp. 120-135. Interpretation of Q.S. al-Rūm: 21 in the frame of mubādalah.

⁴⁰40. Al-Qaraḍāwī, Yūsuf, *Madkhal li-Dirāsah al-Sharī'ah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1990), pp. 230-235. About the rules of taghayyur al-fatwā bi taghayyur al-aḥwāl wa al-amkinah wa al-azmān.

husbands who are unable to provide for themselves as seen from the data on maintenance disputes in the Religious Court, are relevant taghayyur al-aḥwāl.

Second, maṣlaḥah mursalah as a postulate in the reform of family law. Al-Ṭūfī of the Ḥanbalī tradition argues that in matters of mu'āmalah and social relations, maṣlaḥah can be the basis for legal reform.⁴¹ The application of this principle to the reconstruction of the alimony paradigm — from the iḥtibās paradigm to the paradigm of proportional solidarity — does not require the elimination of the husband's maintenance obligations, but rather a reorientation of the prerequisite: alimony no longer depends on the conditions of iḥtibās, but rather on a valid marital bond ('aqd ṣaḥīḥ) with the principle of proportionality of contribution as a mechanism of implementation.

Al-Zuhaylī, where he in al-Fiqh al-Islāmī wa Adillatuh defends the classical formula of alimony, also recognises that taghayyur al-aḥwāl is a factor to be considered in determining the rate and mechanism of alimony.⁴² This recognition opens up the space of ijtihad to reformulate not only the rate of alimony, but its prerequisite paradigm, as long as the reformulation does not contradict the naṣṣ qat'ī and still maintains the maqāṣid al-sharī'ah.

The comparative experience of other Muslim countries is also an important consideration. Welchman in Women and Muslim Family Laws in Arab States documents similar reform trends in Jordan and Morocco (Mudawwanah 2004) that can serve as additional references.⁴³ Mir-Hosseini through his ethnographic study of Islamic family court decisions shows how judges practically often apply contextual considerations that go beyond the formulation of classical iḥtibās.⁴⁴ Sonneveld in his study of the khul' reform in Egypt illustrates how the paradigm of livelihood can change even without explicit legislative amendments.⁴⁵

Secara konkret, implikasi ini dapat diwujudkan dalam dua level. Pada level interpretasi yudisial, hakim Pengadilan Agama dapat mengembangkan yurisprudensi yang tidak serta-merta menggugurkan nafkah ketika istri bekerja, melainkan mempertimbangkan kontribusi aktual istri sebagai faktor yang mempengaruhi kadar bukan menghapus hak nafkah. Pada level legislasi, amandemen KHI diperlukan untuk secara eksplisit mengakui prinsip kontribusi

⁴¹41. Al-Ṭūfī, Risālah fī Ri'āyat al-Maṣlaḥah, pp. 35-40. That in mu'āmalah, maṣlaḥah can be the basis for more liberal legal reform.

⁴²42. Al-Zuhaylī, Wahbah, al-Fiqh al-Islāmī wa Adillatuh (Damascus: Dār al-Fikr, 1985), vol. VII, pp. 797-802. Al-Zuhaylī acknowledges the factor of taghayyur al-aḥwāl in determining the rate and mechanism of alimony.

⁴³43. Lynn Welchman, Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy (Amsterdam: Amsterdam University Press, 2007), pp. 65-68. Comparison of family law reform in Arab countries.

⁴⁴44. Ziba Mir-Hosseini, Marriage on Trial: A Study of Islamic Family Law (London: I.B. Tauris, 2000), pp. 150-155. About the decision of the Islamic family court in the issue of alimony.

⁴⁵45. Nadia Sonneveld, "From the Mahkama to the Markaz: Seeking Khul' Divorce in Egypt," Islamic Law and Society 16, no. 2 (2009): 195-200. Reform of the paradigm of alimony and khul' in Egypt as a case comparison.

proporsional berbasis kapasitas (naẓariyyat al-yusrr al-mushtarak) sebagai mekanisme pelaksanaan nafkah dalam keluarga kontemporer.

D. CONCLUSION

This study shows a strong indication that the amendment to Article 23 of the 1993 Tunisian CSP contains a reconstruction of the ta'īl nafkah paradigm, i.e. a shift from the basis of iḥtibās as a functional prerequisite for the obligation of alimony to maqṣad maṣlaḥat al-usrah as a new ta'īl orientation. This conclusion is built through three operational indicators that cumulatively indicate: the elimination of iḥtibās/tamkīn prerequisites, the transformation of the subject of obligations from unilateral to bilateral, and the filling of paradigmatic vacuums with the principle of proportional solidarity.

The clarification of the categorization of uṣūlī also establishes that maṣlaḥat al-usrah cannot be categorized as a technical 'illat qiyāsiyyah (which must be mundaḥiṭah and ḡāhirah), but rather as a maqṣad tashrī'ī which in the context of ijtihad on the scale of family law reform functions as "'illat jāmi'ah" in the sense of Ibn 'Āshūr. The paradigm reconstruction in question is not a mechanical replacement of the technical 'īl, but a reorientation of the ta'īl base at the level of maqṣad.

The analysis of maqāṣid al-sharī'ah through the framework of Ibn 'Āshūr and Jasser Auda shows that this paradigm reconstruction is more in line with ḥifẓ al-nafs and ḥifẓ al-nasl in the context of today's social reality where the static paradigm of iḥtibās has the potential to create a paradox: weakening the protection of the law precisely for those who are supposed to be protected. The mubādalah perspective reinforces this analysis by showing that the reconstruction of the Tunisian breadgiving paradigm can be read as an actualization of the dimension of reciprocity inherent in the values of the Qur'ān.

KHI Indonesia implicitly still maintains the iḥtibās paradigm through a system of rights-obligations that is paired between Article 80 and Article 83-84. This study suggests that the KHI update considers two steps: at the level of interpretation, the development of the jurisprudence of the Religious Court that recognizes the contribution of the wife as a relevant factor in determining the level of alimony; at the legislative level, the KHI amendment to explicitly include the principle of proportionality of capacity-based contribution as a mechanism for the implementation of contemporary maintenance.

Further research required includes: (1) an empirical study of the Indonesian Religious Court's decision in a dispute over the maintenance of a working wife, to map how judges factually manage the tension between the iḥtibās paradigm of KHI and social reality; (2) a broader comparative analysis involving the experiences of Morocco, Jordan, and Malaysia; and (3) a study of the response of contemporary Indonesian scholars to the possibility of reorientation of the breadgiving paradigm.

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