



Revitalization of the *Nafkah* Concept in Islamic Family Law: A Living Law Perspective on Indonesia's Islamic Economic Reality

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Abstract

The concept of *nafkah* in Islamic family law is often understood normatively based on classical *fiqh* texts, which do not necessarily align with the social and economic dynamics of contemporary Indonesian Muslim society. This article aims to revitalize the concept of *nafkah* through a living law approach—that is, a law that evolves and develops within society. By analyzing *nafkah* practices in various Muslim communities in Indonesia, and considering household economic conditions influenced by women's dual roles, urbanization, and the digitalization of the economy, this study finds a shift toward a more contextual understanding and practice of *nafkah*. The study's results indicate that Islamic family law needs to transform from a normative-textual approach to one that is responsive to the social and economic realities of Muslims in Indonesia. This revitalization is expected to promote gender justice, strengthen family resilience, and make Islamic law more relevant and applicable in a modern context.

Keywords: *nafkah*, Islamic family law, living law, Islamic economics, Indonesia, revitalization

1. INTRODUCTION

The revitalization of the concept of *nafkah* has become crucial within the social and economic context of modern society due to significant transformations in family structures, gender roles, and labor dynamics. The traditional paradigm, which assigns the full responsibility of *nafkah* exclusively to men as heads of households, is now confronted with a new reality in which women actively participate in the workforce and contribute economically. However, despite these evolving roles, the understanding and practices related to the obligation of *nafkah* frequently remain confined to outdated interpretations that are no longer fully applicable [1].

The concept of *nafkah* in many societies, particularly those grounded in religious or

traditional cultural norms, generally emphasizes the material provision by the husband to the wife and children. In practice, this often leads to disparities when working women continue to bear a dual burden as both earners and household managers without recognition or equitable sharing of roles. Therefore, revitalization is necessary to promote a more contextual reexamination of the concept of *nafkah*, making it more inclusive, just, and aligned with contemporary societal conditions [2].

Furthermore, changes in family law and public policy also necessitate a reinterpretation of the concept of *nafkah*. For instance, in cases of divorce or non-traditional households, such as single-parent families or dual-income couples, the role of *nafkah* becomes more complex. Without revitalization, this concept may become a source of injustice, both for men who feel disproportionately burdened and for women who do not receive fair economic rights despite their contributions to the family [3].

Through revitalization, the concept of *nafkah* can be oriented toward a more balanced understanding: that providing *nafkah* is not merely an individual obligation based on gender, but a collective responsibility in fostering family well-being. This encompasses not only material aspects but also emotional, social, and spiritual dimensions, all of which are interrelated and complementary. Such an approach will promote healthier, more

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equitable, and sustainable family relationships within modern society [4].

The concept of *nafkah* in Islamic family law is a fundamental aspect that reflects justice, responsibility, and balance within the marital relationship and family structure. Within the normative framework, the obligation to provide *nafkah* is positioned as the primary responsibility of the husband toward his wife and children. This is based on various texts (*nash*) from the Qur'an and Hadith, which have been codified in numerous classical and contemporary Islamic legal instruments, including the Compilation of Islamic Law (KHI) in Indonesia [5].

Nafkah is one of the primary obligations in Islamic family law, playing a central role in maintaining household harmony. Beyond being merely an economic responsibility, the provision of *nafkah* reflects the fulfillment of rights and justice within the marital relationship. As emphasized in the Qur'an, Surah Al-Baqarah (2: 233), the mother has the duty to breastfeed her child for two full years for those who wish to complete the nursing period, as a form of protecting the child's rights and ensuring optimal physical growth and psychological development. This verse also affirms the father's responsibility to provide *nafkah* and clothing to the nursing mother according to his ability without imposing a burden beyond his capacity, and it prohibits both parents from harming or causing distress to each other concerning their child [6].

Furthermore, this verse regulates that if both parents agree to wean the child before the completion of two years, it is permissible without sin, provided that it is based on mutual consultation and agreement for the child's welfare. If the child is breastfed by another woman (wet nurse), the father is obligated to provide appropriate compensation to the wet nurse, and this is also not sinful as long as it is done in a proper manner and according to the agreed terms. The entirety of this verse reflects Allah's concern for the well-being of the child and the family, while reminding all parties to be conscious of Allah, who is fully aware of all their actions [7].

Fiqh scholars consistently explain that this obligation serves as a fundamental foundation in establishing a strong Islamic household [8]. A profound understanding of the concept of *nafkah* is

essential for maintaining the balance of rights and responsibilities within the family. Household harmony, supported by the fulfillment of *nafkah* obligations, contributes to the formation of a prosperous society. But, the traditional concept of *nafkah* faces various challenges within the modern social, economic, and cultural context [9].

However, the social and economic realities of Indonesian Muslim society have undergone dynamic developments that do not always align with the aforementioned normative constructs. Changes in gender roles, increased economic participation of women, urbanization, and global economic pressures have created situations in which the practice of providing *nafkah* often diverges from positive legal texts or classical *fiqh* [10]. In many cases, women bear a significant portion of the family's economic burden, even becoming the primary breadwinners, without significant normative revisions to the concept of *nafkah* within the prevailing Islamic family law [11].

This phenomenon raises critical questions regarding the relevance and justice of the concept of *nafkah* as formulated in classical Islamic law in addressing the complexities of contemporary economic realities [12]. This underscores the importance of a living law approach—law that exists and evolves within society—as the basis for analyzing and revitalizing the understanding and implementation of *nafkah* law. This approach positions social practices and local values as sources of legitimacy and renewal for Islamic law, without disregarding the principles of Sharia [13].

One of the main challenges is the changing economic patterns within families [14]. In the modern era, women's roles in the family often extend to becoming additional breadwinners, which raises questions regarding the dual roles of women and their impact on the obligation of *nafkah* traditionally assigned to the husband [15]. Also, shifting perspectives on gender create a need to redefine the division of roles and responsibilities within the family. This more flexible division of roles must remain consistent with the *maqasid sharia*, namely the principles of justice, welfare, and harmony within the family [16].

The living law approach, or law that is embedded within society, plays a crucial role in adapting Islamic family law to be more contextual

and solution-oriented. In an ever-evolving social context, positive law derived from normative texts often fails to fully address new issues emerging in societal life. Therefore, the living law approach is important because it is capable of capturing the social, cultural, and local value dynamics that exist and develop within Muslim communities [17].

Islamic family law regulates fundamental aspects of Muslim life, such as marriage, divorce, inheritance, and guardianship. However, in practice, these legal norms are not always applied rigidly but are often adapted to local customs and traditions. The living law approach allows Islamic family law to not only rely on formal texts but also to consider the social realities of the community, thereby enabling the law to be accepted, understood, and effectively implemented by the society itself [18].

This study aims to explore how the concept of *nafkah* in Islamic family law can be revitalized through a living law approach, taking into account the economic realities of Muslims in Indonesia. By analyzing actual practices within the community as well as normative responses to economic changes, it is expected to develop a conceptual model that is more adaptive, contextual, and just in regulating *nafkah*.

2. METHODS

This study employs a normative juridical research design with a descriptive-analytical method. This method was selected to delineate and analyze the concept of *nafkah* within Islamic family law through a living law perspective, specifically within the context of the economic realities of the Muslim community in Indonesia. Data were gathered through library research and observations of evolving social practices. The living law approach enables the researcher to understand how Islamic law regarding *nafkah* operates not only based on normative texts but also through practical implementation influenced by the social, cultural, and economic conditions of Indonesian Muslims.

Each data point was systematically described and subjected to a comparative analysis with prior studies, effectively demonstrating the evidentiary weight of this research.

3. RESULTS AND DISCUSSIONS

3.1. Revitalizing the Concept of *Nafkah* in Islamic Family Law in the Modern Era

The revitalization of the concept of *nafkah* within Islamic Family Law represents a strategic effort to reform and adapt the understanding of financial obligations within a modern context. Traditionally defined as a husband's duty to provide for the basic needs of his wife and children, the concept now requires a critical re-examination to align with contemporary social, economic, and cultural dynamics. This revitalization aims to expand the scope of *nafkah* beyond material support, integrating essential elements such as education, healthcare, and the psychological well-being of all family members [19].

The revitalization of the concept of *nafkah* within Islamic family law has become a vital necessity in response to the social and economic developments of modern society. *Nafkah* should no longer be restricted to basic subsistence—such as food, clothing, and shelter—but must be expanded to encompass the fulfillment of educational and healthcare needs. Syafi'i Antonio argues that the concept of *nafkah* needs to be revitalized in order to respond to modern challenges, especially given the growing complexity of family dynamics [20].

The reform of *nafkah* laws within Islamic family law posits that this revitalization must incorporate elements of justice and gender equality. It asserts that in the modern era, where women contribute economically, *nafkah* laws must provide room for the proportional adjustment of roles and obligations between husband and wife, without undermining the fundamental principle of the husband's duty to provide *nafkah* [21].

The importance of collective awareness in fulfilling *nafkah* obligations is paramount. It is argued that the revitalization of the concept of *nafkah* should position *nafkah* as a vehicle for strengthening family harmony, rather than a mere material obligation. This necessitates legal flexibility in determining *nafkah* levels, ensuring they align with the actual capacity and specific circumstances of each individual family [22].

Furthermore, this revitalization must encompass the reform of legal and social mechanisms, such as enhancing the responsiveness of Religious Court

institutions to contemporary changes. It is emphasized that a restorative approach is essential in resolving *nafkah* disputes to ensure that both justice and compassion are preserved within the family unit [23].

The revitalization of the concept of *nafkah* must incorporate the dimensions of gender equality and women's empowerment. It is argued that Islamic family law should take into account the socio-economic conditions of women who actively contribute to the household, thereby transforming *nafkah* into a shared responsibility based on equitable distribution [24]. Furthermore, it is emphasized that the scope of *nafkah* must be expanded from purely material aspects to non-material dimensions, such as educational support and spiritual/emotional *nafkah*, which encompasses attention and affection [25].

Furthermore, the revitalization of the concept of *nafkah* in Islamic family law emphasizes the importance of equilibrium and equity in the distribution of responsibilities between husband and wife. In a modern context, characterized by the increasing participation of women in the workforce, *nafkah* laws must be capable of accommodating these dynamics without disregarding Sharia principles. Consequently, this revitalization not only strengthens the legal standing of *nafkah* but also fosters a collective awareness regarding the significance of both parties' active roles in fulfilling family needs [26].

Revitalization also entails broadening the conceptualization of *nafkah* to be more inclusive of social shifts, such as the rising cost of living and evolving family structures. This necessitates a more flexible and adaptive approach to the enforcement of *nafkah* laws, including dispute resolution mechanisms that are both humane and effective. Overall, the revitalization of the concept of *nafkah* within Islamic family law seeks to reinvigorate the values of justice, compassion, and mutual responsibility within the family, thereby addressing contemporary challenges without compromising fundamental Sharia principles [27].

So, the revitalization of the concept of *nafkah* in Islamic family law not only adjusts material obligations according to economic conditions but also considers justice, gender equality, and the psychological well-being of the family. To ensure

that *nafkah* law remains relevant and effective in the context of modern life without neglecting the values of Sharia, legal reforms and resolution mechanisms are necessary.

3.2. *The Living Law Approach as a Framework for the Reform of Islamic Law*

The living law approach is an approach in legal studies that emphasizes that law is not only found in statutory regulations but also lives and develops within society. [28] This approach was popularized by Eugen Ehrlich, an Austrian legal sociologist. According to him, the center of gravity of law does not lie in legislation but in the practices of everyday social life [29]. The law that truly applies consists of social norms followed and practiced by the community, regardless of whether those norms are formally codified [30].

Living law emerged as a critique of the legal-positivist approach, which views law solely as a collection of written rules issued by authorized institutions. In reality, many legal practices that develop within society do not align with written law but are nonetheless accepted and consistently adhered to by the community. For example, customary law in various regions of Indonesia continues to be observed despite not always being codified within national law [31].

This approach is highly relevant in the context of legal pluralism, such as in Indonesia, where the formal legal system coexists alongside customary law and religious law [32]. By employing the living law approach, policymakers and legal practitioners can better understand and appreciate the dynamics of law as it actually operates within society. This is important so that the law can reflect substantive justice and be socially accepted by the community concerned [33].

In conclusion, the living law approach emphasizes the existence of social norms that are alive and followed in societal practice, not merely those that are written. This enriches legal studies, particularly in the context of legal pluralism as seen in Indonesia. It adds sociological, juridical, and normative dimensions, offers comparisons with the principle of legality, and has implications for national policy as well as geopolitical stability.

Islamic economics in Indonesia has shown significant development over the past few decades.

As the country with the largest Muslim population in the world, Indonesia possesses great potential to develop a Sharia-based economic system. This is reflected in the increasing number of Islamic financial institutions, such as Islamic banks, Islamic insurance, and *zakat* and *waqf* organizations that actively support community economic growth [34].

The government has also actively promoted Islamic economics by formulating supportive regulations, such as the Islamic Banking Law and the establishment of the National Committee for Islamic Economy and Finance (KNEKS). On the other hand, the *halal* economy sector has experienced rapid growth, encompassing industries such as food and beverages, Muslim fashion, and *halal* tourism. These efforts are reinforced by various educational programs and *halal* certification initiatives to ensure consumer confidence [35].

Nevertheless, the reality on the ground indicates that significant challenges remain. Access to Islamic financing is still uneven, particularly in remote areas. Furthermore, public literacy regarding Islamic finance remains relatively low, resulting in limited understanding of the differences between Islamic and conventional economic systems. Economic distribution disparities and the suboptimal management of *zakat* and *waqf* also pose obstacles to achieving the social justice that is the primary goal of Islamic economics [36].

Despite facing various challenges, the prospects for Islamic economics in Indonesia remain promising. With synergy among the government, business actors, financial institutions, and society, the Islamic economic system holds great potential as an alternative solution for creating inclusive and sustainable welfare. The key lies in enhancing literacy, product innovation, and commitment to the community's economy as a fundamental pillar of national development [37].

It can be concluded that Islamic Economics in Indonesia demonstrates positive and sustainable development, driven by demographic potential as the country with the largest Muslim population in the world. Studies by experts from various scientific journals confirm that the Islamic financial sector, particularly banking, *zakat*, *waqf*, and the *halal* industry, has experienced significant growth in terms of regulation, number of institutions, and product innovation.

3.3. *The Living Law Approach to the Reality of Islamic Economics in Indonesia*

Living law is a legal concept that views law not only as written rules within legislation but also as a living social practice that evolves within society [38]. In the context of Islamic economics in Indonesia, this approach is highly relevant because Islamic economics involves not only formal regulations but also the practices and values that develop within the community [39].

3.3.1. *Islamic Law as Living Law.* Islamic economics in Indonesia is greatly influenced by Islamic law (*sharia*), which is governed not only by formal regulations such as Islamic banking or financial legislation but also by the norms, customs, and practices of the Muslim community. For example, for business, many people apply *sharia* principles even though they are not always formally supported by legal regulations. [40]

3.3.2. *Social and Economic Reality.* The living law approach examines how communities practice Islamic economic principles in their daily lives, such as *zakat*, *waqf*, *mudharabah*, and *musyarakah*. This demonstrates the existence of a "living" Islamic economic law within society, even though it is sometimes not fully reflected in official regulations [41].

3.3.3. *Adjustment and Dynamics.* Because society and economic conditions are constantly changing, the living law approach allows Islamic economic law to develop dynamically in accordance with the needs of the community. For example, the development of increasingly complex and diverse Islamic financial products, such as *sukuk*, *takaful*, and Islamic fintech, which arise from the real needs of society [42].

3.3.4. *The Role of the State and Islamic Financial Institutions.* The state and Islamic financial institutions need to accommodate this living law by creating regulations that are not only formal but also responsive to community practices. This will strengthen the sustainability of Islamic economics in Indonesia and enhance financial inclusion for the Muslim population [43].

It can be affirmed that the living law approach to the reality of Islamic economics in Indonesia

emphasizes that Islamic economic law is not only comprised of formal rules written in legislation or *fatwas* but also encompasses the norms, values, and practices that are alive and evolving within the Muslim community. This approach acknowledges the continuously changing socio-economic dynamics and places community practices as an important source of law in Islamic economics. By understanding Islamic economic law as living law, regulations and policies formulated by the government and Islamic financial institutions can be more responsive and adaptive to the real needs of society. This will strengthen the sustainability of the Islamic economic system in Indonesia and promote inclusion and economic justice in accordance with *sharia* principles.

4. CONCLUSIONS

The revitalization of the concept of *nafkah* (financial support) in Islamic family law involves not only adjusting material obligations to economic conditions but also considering justice, gender equality, and the psychological well-being of the family. Legal reforms and dispute resolution mechanisms are key to ensuring that *nafkah* law remains relevant and effective in the context of modern life without abandoning *sharia* values.

The living law approach emphasizes the existence of social norms that are alive and followed in community practices, not just written rules. This enriches legal studies, especially in the context of legal pluralism as seen in Indonesia. It adds sociological, juridical, and normative aspects, comparative analysis with the principle of legality, as well as implications for national policy and geopolitical stability.

Islamic economics in Indonesia demonstrates positive and sustainable development, driven by demographic potential as the country with the largest Muslim population in the world. Studies by experts from various scientific journals confirm that the Islamic financial sector, particularly banking, *zakat*, *waqf*, and the *halal* industry, has experienced significant growth in terms of regulation, number of institutions, and product innovation.

The living law approach to the reality of Islamic

economics in Indonesia asserts that Islamic economic law is not only composed of formal rules written in legislation or *fatwas* but also encompasses the norms, values, and practices that are alive and evolving within the Muslim community. This approach acknowledges the continuously changing socio-economic dynamics and regards community practices as an important source of law in Islamic economics. By understanding Islamic economic law as living law, regulations and policies formulated by the government and Islamic financial institutions can be more responsive and adaptive to the real needs of society.

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