

Gendered power and women's agency in nafaqah discourse: Divine legitimation, juristic conditionality, and legal ambiguity in Islamic family law

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Abstract:

The ambiguity of Article 80(6) of Indonesia's Compilation of Islamic Law (KHI) allows a wife to release her husband from certain obligations, potentially legitimizing the transfer of economic responsibility to her, although the Qur'an establishes the husband's duty to provide *nafaqah* and Islamic jurisprudence permits its waiver only conditionally. This study examines the normative construction of the husband's maintenance obligation, its juristic requirements, and the ambiguity of its waiver under the KHI. Using qualitative library research, it applies Braun and Clarke's reflexive thematic analysis to identify legal themes and Lazar's Feminist Critical Discourse Analysis to examine constructions of gender, the distribution of responsibility, and power relations within maintenance discourse. The findings show that *nafaqah* is constructed as the husband's obligation and the wife's economic right, legitimized by Islamic legal sources. Nevertheless, positioning the husband as provider may naturalize dependency and unequal marital authority. Muslim jurists also differ regarding the legal grounds triggering maintenance, the circumstances in which unpaid maintenance becomes a debt, and the criteria for determining its amount. Article 80(6) creates a paradox between formal agency and substantive vulnerability because it does not specify the scope, timing, procedure, or validity of consent; distinguish between accrued and future maintenance; or adequately protect children's interests. This study reframes the maintenance waiver not merely as a matter of contractual autonomy but also as a matter of power relations and gender justice in marriage. Accordingly, the KHI should require free, verifiable consent and clearly delimit any waiver of the husband's maintenance obligations.

Keywords:

Nafaqah; Gendered Power; Women's Agency; Islamic Family Law.



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INTRODUCTION

In contemporary Muslim families, women's increasing participation in the economy has contributed to the emergence of female-breadwinner households, in which wives earn more than their husbands or serve as the primary income earners, while their husbands occupy a relatively weaker economic position (Khamis & Ayuso, 2022; Kowalewska & Vitali, 2021). This transformation does not automatically eliminate the husband's normative obligation to provide maintenance (*nafaqah*) (Wan Nor Anas et al., 2017). Under Islamic law, *nafaqah* is constructed as the husband's responsibility based on the Qur'an, hadith, and juristic opinions and is further affirmed in Indonesia's Compilation of Islamic Law (KHI) (Mutamakin & Ansari, 2020; Rufaida & Nuryati, 2022). A problem arises when the wife's economic independence is interpreted as justification for the husband to reduce or transfer his maintenance responsibilities. When the wife simultaneously bears domestic responsibilities, such a transfer may intensify her double burden (Jurczyk et al., 2019; Kowalewska & Vitali, 2021). This situation reveals a tension among women's changing economic roles, husbands' continuing maintenance obligations, and the protection of wives' economic rights.

Previous studies can be classified into three main strands. First, Islamic legal studies conceptualize *nafaqah* as a continuing obligation of the husband, even when economic circumstances and the division of familial roles change (Handayani, 2022; Hertawan, 2020; Muin, 2017). Second, studies of unpaid maintenance demonstrate that a husband's failure to provide *nafaqah* does not necessarily extinguish the obligation but may convert it into a debt owed to his wife (Nofiyanti et al., 2022; Subaidi, 2014; Sya'idun, 2019). Third, studies of Article 80(6) of the KHI examine the wife's authority to release her husband from certain obligations and its implications for the redistribution of economic responsibilities within the family (Norholis, 2022; Nuroniyah et al., 2019; Syafitri et al., 2022). Nevertheless, these studies have not integrated the normative legitimation of *nafaqah*, the conditionality of *tamkīn* and *nusyūz*, the legal status of accrued and future maintenance, and the ambiguity surrounding maintenance waivers into a unified critical gender analysis. They also fail to explain how a wife's formal authority to relinquish her rights may generate substantive vulnerability when consent is given within unequal economic and power relations.

Addressing this gap, the present study examines the normative construction of the husband's maintenance obligation, the juristic conditions governing its fulfillment, and the ambiguity surrounding its waiver under Article 80(6) of the KHI. It addresses three questions: (1) how do the Qur'an, hadith, and Islamic jurisprudence construct the husband's maintenance obligation toward his wife?; (2) how do *tamkīn*, *nusyūz*, financial capacity, adequacy, and maintenance arrears distribute rights and authority between spouses?; and (3) how does the waiver of maintenance under Article 80(6) of the KHI simultaneously shape the wife's legal agency and economic vulnerability? Braun and Clarke's reflexive thematic analysis is employed to identify patterns of meaning within the normative corpus, while Lazar's Feminist Critical Discourse Analysis (FCDA) is used to examine how legal and juristic discourses construct gendered positions, distribute obligations, and legitimize or challenge unequal power relations. The analysis, therefore, not only establishes the substantive content of the relevant norms but also reveals the gendered consequences of their construction.

This study advances the argument that Article 80(6) of the KHI embodies a paradox of formal agency. A wife's authority to release her husband from his maintenance obligations may reflect recognition of her legal capacity, yet it may also legitimize the transfer of the husband's economic responsibilities when the waiver is not accompanied by temporal

limitations and safeguards ensuring valid consent. This argument is examined through an intertextual reading of the Qur'an, hadith, juristic opinions, and the KHI, with a clear distinction between accrued maintenance and future obligations. Theoretically, the study extends the analysis of *nafaqah* by connecting formal legal agency, power relations, and women's substantive economic vulnerability. In practical terms, it proposes an interpretive framework for Article 80(6) that limits waivers to accrued rights, requires consent to be free, informed, explicit, and specific, and preserves future maintenance obligations and the protection of children's interests. This framework also distinguishes the husband's normative obligation from the wife's voluntary economic contributions.

METHOD

Research Approach

This study employs a qualitative approach and a library research design to examine the construction of maintenance (*nafaqah*) obligations under Islamic law and the ambiguity surrounding their waiver pursuant to Article 80(6) of Indonesia's Compilation of Islamic Law (KHI) (Bowen, 2009). Library research was selected because the objects of analysis comprise normative texts, legal documents, juristic formulations, and academic literature requiring contextual and interpretative analysis. The literature was systematically explored, selected, evaluated, analyzed, and synthesized (Snyder, 2019). This study combines Braun and Clarke's reflexive thematic analysis to develop thematic patterns from the corpus with Lazar's Feminist Critical Discourse Analysis (FCDA) to explain how legal and religious language constructs gendered positions, distributes rights and obligations, and legitimizes power relations within marriage.

Data Sources

The research corpus comprises normative sources, interpretative works of Islamic jurisprudence, legal documents, and academic literature. The normative sources include Q. Al-Baqarah [2]:233, Q. Al-Talaq [65]:6–7, and the hadith narrated by Jabir ibn Abdullah concerning women's right to adequate food and clothing according to what is reasonable (*ma'ruf*). The legal documents comprise Articles 80(4), 80(6), 80(7), and 84(2) of the KHI. *Al-Mawsū'ah al-Fiqhiyyah al-Kuwaytiyyah* (2006) serves as the principal reference for mapping juristic disagreements concerning the grounds of maintenance obligations, *tamkīn*, *nusyūz*, maintenance arrears, and the determination of maintenance amounts. Other interpretative sources include Azzam and Hawwas (2011), At-Tawayjirī (2009), Sa'īd et al. (2012), Az-Zuhaylī (n.d.), Mujamma' Al-Malik Fahd Liṭibā'ah Al-Muṣḥaf Ash-Sharīf (2003), Murdiono et al. (2021), Wijayanti et al. (2022), Aisyah (2020), Hidayat and Fathoni (2022), and Lazar (2007).

Data Collection

Data were collected through documentary research by identifying and selecting texts according to their relevance to the research questions (Moilanen et al., 2022). Sources were included in the corpus if they directly addressed the legal foundations of *nafaqah*; the conditions giving rise to maintenance entitlements; *tamkīn*; *nusyūz*; maintenance arrears; the determination of maintenance amounts; or the waiver of obligations under the KHI. Sources were excluded as primary data when they lacked direct relevance, merely repeated information without advancing an argument, or lacked verifiable bibliographic information. Each text was documented according to its source type, discursive context, legal proposition, duty-bearing actor, rights holder, and the gendered consequences it constructed. Qur'anic verses and hadith were treated as normative data, juristic formulations as interpretative

data, and the KHI as a national legal document. The data were then organized into a matrix linking textual excerpts, initial codes, subthemes, themes, and FCDA interpretations.

Data Analysis

The data were analyzed using Braun and Clarke's (2021) six phases of reflexive thematic analysis: familiarization with the data, initial coding, theme development, theme review, theme definition and naming, and report production. Coding was conducted both deductively, based on the research questions, and inductively, in response to patterns emerging from the data. The codes included divine command, economic capacity, women's rights, marriage contract, *tamkīn*, *nusyūz*, debt, adequacy, waiver, consent, and children's interests. Themes were developed iteratively, resulting in three principal themes: the divine legitimation of maintenance obligations; the conditions, arrears, and determination of maintenance amounts; and the ambiguity surrounding the waiver of maintenance under Article 80(6) of the KHI. Lazar's (2007) FCDA was subsequently applied to Qur'anic and hadith clauses, juristic propositions, and KHI provisions to examine modality, actor positioning, constructions of rights, lexical choices, intertextuality, agency, and the distribution of authority. This intertextual analysis revealed the construction of the husband as provider and the wife as rights holder, as well as the ambivalence of maintenance as a form of economic protection that may simultaneously reproduce gender inequality.

Research Trustworthiness

The trustworthiness of the study was maintained through source comparison, textual and bibliographic verification, an audit trail, and interpretative reflexivity (Leung, 2015). Source comparison involved identifying similarities and differences among the Qur'an, hadith, juristic formulations from different schools of Islamic law, the KHI, and relevant academic literature. Juristic disagreements were preserved as interpretative diversity rather than homogenized into a single position. Quotations, translations, hadith numbers, statutory provisions, and bibliographic details were cross-checked against the sources used. Analytical traceability was maintained through a matrix linking data, codes, subthemes, themes, and interpretative notes, thereby distinguishing textual data, legal formulations, the researchers' interpretations, and normative reconstruction (Carcary, 2021). Reflexive thematic analysis was used to develop patterns across the corpus, whereas FCDA was employed during the critical interpretative stage. This analytical separation was maintained to enhance the study's consistency, transparency, credibility, and interpretative accuracy.

RESULTS AND DISCUSSION

Results

The obligation to provide maintenance as a divine mandate

The analysis demonstrates that the wife's entitlement to maintenance derives its intertextual legitimacy from the Qur'an, hadith, *ijma'* (juristic consensus), and the interpretations of Muslim jurists, which position the husband as primarily responsible for fulfilling the material needs of the marital household. The Qur'an and hadith were treated as primary normative data, whereas juristic opinions were examined as interpretative formulations. The analyzed verses address breastfeeding, divorce, pregnancy, housing, and maintenance provision, which Muslim jurists subsequently developed into a general legal basis for the husband's maintenance obligation. The thematic analysis generated five subthemes: divine legitimation, the husband as provider, women's economic rights, standards based on financial capacity and *ma'ruf* (reasonableness), and religious accountability. Lazar's FCDA was subsequently applied to explain how these discourses

construct gendered positions and generate both protective effects and potential inequalities in the distribution of economic responsibilities.

Table 1

Thematic and FCDA Analysis of the Divine Legitimation of the Husband's Nafaqah Obligation

Subtheme	Textual and interpretive data	Codes	Thematic findings	Interpretation based on Lazar's FCDA
Divine legitimation and financial capacity	Excerpt from Q.S. At-Talaq [65]: 7: لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ "Let a person of means spend according to his means, and let one whose provision is limited spend from what Allah has granted him."	Divine command; financial capacity	<i>Nafaqah</i> is constructed as a religious obligation whose amount is adjusted to the provider's financial capacity.	Divine authority strengthens the legitimacy of the husband's financial obligation, while the principle of capacity permits adjustment to the family's material circumstances.
Construction of the father or husband as the economic provider	Excerpt from Q.S. Al-Baqarah [2]: 233: وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ "The father is responsible for providing their food and clothing in a reasonable manner."	Father as provider; food; clothing; <i>ma'rūf</i>	Within the context of breastfeeding, the father is positioned as the party responsible for meeting the mother's material needs.	The discourse constructs a normative male identity centred on the provider role. This responsibility protects women's material welfare but may legitimise male superiority if economic provision is converted into unilateral authority.
Women's material rights and protection from harm	Excerpt from Q.S. At-Talaq [65]: 6: أَشْكُونَهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تَضَارُّوهُنَّ لِيُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلًا فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ "Lodge them where you live, according to your means, and do not harm them in order to make their lives difficult. If they are pregnant, provide for them until they give birth."	Housing; maintenance during pregnancy; prohibition of harm	In the context of divorce, <i>nafaqah</i> encompasses housing, financial support during pregnancy, and protection from economic pressure.	Women are constructed as rights-bearing subjects entitled to material protection. The prohibition against harming them restricts the use of economic resources as an instrument of pressure or control.
Recognition of women's economic rights	Hadith narrated by Jabir ibn Abdullah: وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ "They are entitled to receive maintenance and clothing from you in a reasonable manner" (Muslim, n.d., Hadith No. 1218).	Women as rights holders; maintenance; clothing; <i>ma'rūf</i>	<i>Nafaqah</i> is constructed as a normatively recognised economic right rather than a voluntary gift or an expression of the husband's benevolence.	The discourse of rights positions women as subjects entitled to claim the fulfilment of their material needs. Nevertheless, their position as recipients may still be associated with economic dependence.
Juristic legitimation and religious accountability	The Qur'an as <i>kalām Allāh</i> (Murdiono et al., 2021; Wijayanti et al., 2022) and the	Religious obligation; moral responsibility;	The provision of <i>nafaqah</i> is constructed as both a social	The intertextual relationship among the Qur'an, hadith, <i>ijmā'</i> , and Islamic jurisprudence strengthens

<i>fuqahā</i> 's formulation of the husband's <i>nafaqah</i> obligation based on the Qur'an, hadith, and <i>ijmā'</i> (Azzam & Hawwas, 2011; At-Tawayjiri, 2009; Sa'id et al., 2012).	wife's rights; <i>ijmā'</i>	responsibility and a religious obligation.	the binding force of the <i>nafaqah</i> obligation. Nevertheless, financial responsibility does not automatically confer absolute authority upon the husband.
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Source: Processed by the researcher (2023).

Table 1 demonstrates that the husband's maintenance obligation is constructed through Qur'anic normative commands, the recognition of women's rights in the hadith, and the legal formulations of Muslim jurists. In the context of divorce, Q. Al-Talaq [65]:7 establishes the principle that maintenance should be provided according to financial capacity. Limited financial means affect the amount of maintenance rather than extinguishing the obligation. Q. Al-Baqarah [2]:233 assigns the father responsibility for providing food and clothing to a breastfeeding mother. Muslim jurists subsequently developed this principle, originally articulated in the context of breastfeeding, into one of the general foundations of the husband's economic responsibility. Meanwhile, Q. Al-Talaq [65]:6 regulates housing, prohibits causing hardship to women, and requires maintenance for pregnant women until delivery in the context of divorce. This verse indicates that economic responsibilities continue to apply even when the marital relationship changes.

The hadith narrated by Jabir ibn Abdullah affirms women's right to adequate food and clothing according to *ma'ruf* (Muslim, n.d., Hadith No. 1218). Maintenance is therefore neither an act of generosity nor a voluntary contribution but the wife's economic right, which corresponds to the husband's religious responsibility. The data reveal three relational patterns: the husband as the provider of material needs, the wife as the holder of economic rights, and Allah as the ultimate source of legitimacy. The understanding of the Qur'an as *kalām Allāh*, or the word of Allah (Murdiono et al., 2021; Wijayanti et al., 2022), reinforces the binding force of this obligation. However, the analyzed Qur'anic verses and hadith do not directly establish whether unpaid maintenance constitutes a debt. This issue, therefore, requires separate examination based on juristic disagreements and the applicable legal provisions.

From the perspective of Lazar's FCDA, maintenance discourse not only regulates the distribution of material resources but also constructs gendered positions. The imperative form *liyunfiq* in Q. Al-Talaq [65]:7 expresses the modality of obligation, while the construction *wa 'alā al-mawlūdī lahu* in Q. Al-Baqarah [2]:233 positions the father as responsible for material provision. Conversely, the phrase *lahunna 'alaykum* in the hadith constructs women as holders of normative rights. Divine legitimation thus represents the husband as the economic provider and the wife as a rights-bearing subject, making maintenance a religious responsibility rather than an act of the husband's generosity.

This construction is ambivalent. On the one hand, it protects the wife's economic rights; on the other, it may naturalize women's dependency when the husband's role as provider is converted into male superiority and unilateral authority. Nevertheless, the maintenance obligation does not confer absolute power upon the husband. Q. Al-Talaq [65]:6 expressly prohibits the use of money, housing, and basic necessities as instruments of pressure against women. The concept of *ma'ruf* and the principle of provision "according to one's means" allow maintenance to be adjusted to the wife's needs, an appropriate standard of living, and the family's economic circumstances. However, unilateral

determination may diminish the wife's rights. Deliberation based on financial capacity, actual needs, and justice is therefore necessary. The wife's economic contribution likewise does not extinguish the husband's obligation. These findings distinguish economic responsibility from claims of male superiority and reject domination and restrictions on women's autonomy, participation, property rights, mobility, and decision-making authority within the family.

Conditions, arrears, and the determination of maintenance in Islamic juristic discourse

This theme demonstrates that Muslim jurists discuss *nafaqah* not only as a religious obligation but also in terms of the legal grounds giving rise to the wife's entitlement, the status of unpaid maintenance, and the standards for determining its amount. Braun and Clarke's thematic analysis generated four subthemes: (1) the conditions giving rise to the maintenance obligation; (2) maintenance arrears as debt; (3) the determination of maintenance based on financial capacity and adequacy; and (4) the protection of the wife's socioeconomic status. Lazar's FCDA was subsequently employed to examine how the marriage contract, the wife's submission, *tamkīn*, *nusyūz*, financial capacity, and social status construct gendered positions and distribute rights, obligations, and authority within marriage.

Table 2

Thematic and FCDA Analysis of the Conditions, Arrears, and Determination of Nafaqah

Subtheme	Textual and interpretive data	Codes	Thematic findings	Lazar's FCDA interpretation
Conditions establishing the <i>nafaqah</i> obligation	Q.S. At-Talaq [65]: 7 and Muslim No. 1218. The corpus identifies three views: a valid marriage contract; a valid contract accompanied by the wife's submission and <i>tamkīn</i> ; and a contract with <i>tamkīn</i> without further specification of its validity. In the corpus, <i>tamkīn</i> refers to the wife's physical readiness and availability for marital relations (Hidayat & Fathoni, 2022).	Marriage contract; validity; submission; <i>tamkīn</i> ; physical maturity; <i>nusyūz</i>	The wife's entitlement to <i>nafaqah</i> is variously constructed as arising from a valid marriage contract alone or from a contract accompanied by submission and <i>tamkīn</i> .	The <i>tamkīn</i> requirement links the husband's financial obligation to the wife's physical or sexual availability and compliance with gendered marital duties.
<i>Nafaqah</i> arrears as debt	The Hanafi school requires a judicial ruling, the husband's consent, or an agreed deferment for unpaid <i>nafaqah</i> to become debt. The Maliki, Shafi'i, and Hanbali schools regard withheld <i>nafaqah</i> as a debt until it is paid or waived by the wife.	Arrears; judicial ruling; consent; debt; waiver	The schools recognise the possibility of unpaid <i>nafaqah</i> becoming debt but differ regarding when and under what conditions the debt arises.	Treating arrears as debt strengthens the wife's economic entitlement. However, requiring judicial authorisation or the husband's consent may make access to that right dependent upon institutional or male authority.
Determination based on	The Hanafi and Maliki schools, some Shafi'i	Sufficiency; husband's	The amount of <i>nafaqah</i> is	Flexible standards permit contextual

capacity and sufficiency	jurists, and most Hanbali jurists emphasise the sufficiency of the wife's maintenance. A prominent Shafi'i view prescribes two, one and a half, or one <i>mud</i> according to the husband's means. The spouses' social circumstances may also be considered (Al-Mawsū'ah al-Fiqhiyyah al-Kuwaytiyyah, 2006).	capacity; wife's needs; <i>mud</i> ; social status	contextually determined through different emphases on the husband's means, the wife's needs, or both spouses' circumstances.	adaptation but raise the question of who defines "sufficiency." Unilateral determination may weaken the wife's rights, whereas joint deliberation can support substantive justice.
Protection of the wife's socioeconomic status	Social parity is regarded as an ideal condition, although not a requirement for marital validity (Az-Zuhaylī, n.d.). The author normatively argues that marriage should not diminish the wife's living standards or educational opportunities, consistent with the principle of elevating women's status (At-Tawayjiri, 2009).	Social parity; living standards; education; women's dignity	The author extends <i>nafaqah</i> beyond basic subsistence to the protection of the wife's socioeconomic status and opportunities for self-development.	This interpretation directs <i>nafaqah</i> towards substantive well-being. Nevertheless, using consumption patterns or social class as benchmarks may reproduce class hierarchies unless balanced by need, capacity, and mutual agreement.

Source: Processed by the researcher (2023).

Table 2 identifies three juristic constructions concerning the legal grounds giving rise to the maintenance obligation: a valid marriage contract; a valid marriage contract accompanied by the wife's submission and *tamkīn*; and a marriage contract combined with *tamkīn* without specifying the contract's validity or the form of submission required. Some Muslim jurists, therefore, ground the wife's entitlement to maintenance in the marital bond itself, whereas others associate it with her readiness to fulfill marital relations, including sexual relations. Juristic differences also arise regarding the legal status of maintenance arrears. The Hanafis link the creation of maintenance debt to a judicial decision, the husband's agreement, or a specified deferment. By contrast, the Malikis, Shafi'is, and Hanbalis maintain that unpaid maintenance remains a debt until it is settled or voluntarily waived by the wife. The amount of maintenance is determined according to the adequacy of the wife's needs, the husband's financial capacity, or the socioeconomic circumstances of both spouses. Measurements based on the *mudd* represent a context-specific form of standardization that requires adjustment according to staple foods, living costs, and prevailing social conditions. The analysis further extends the function of maintenance to preserving the wife's standard of living and educational opportunities. However, the obligation to finance education up to a particular level remains an argumentative development requiring additional juristic or legal support.

From the perspective of Lazar's FCDA, the marriage contract, the wife's submission, and *tamkīn* function not merely as legal categories but also as mechanisms that construct gendered positions. The corpus represents *tamkīn* through physical readiness, willingness to engage in sexual relations, and the wife's relocation to her husband's residence. These

formulations position the husband as the economic provider, while, according to certain juristic opinions, the wife's entitlement to maintenance depends on physical availability, residence, and compliance with marital obligations. This construction risks transforming women's economic rights into compensation for sexual compliance. Similarly, interpreting *nusyūz* as the wife's unwillingness to submit herself or obey her husband may disregard violence, threats to her safety, and the husband's failure to fulfill her rights. Determinations of *nusyūz* should therefore consider power relations, personal safety, consent, and reciprocal marital obligations.

Recognizing maintenance arrears as debt strengthens the wife's position as the holder of an economic right. However, making the creation of such debt dependent on the husband's agreement or a judicial decision may restrict women's access to their rights through male and institutional authority. The plurality of standards for determining maintenance also creates opportunities for contextualization while simultaneously opening space for power-based negotiation, because the meanings of "adequacy," "financial capacity," and "social status" may be defined by those who control economic resources. Unilateral assessment may minimize the wife's needs, whereas deliberation based on actual needs, financial capacity, and an appropriate standard of living may promote substantive justice. Extending maintenance to protect the wife's education and standard of living may also strengthen women's capabilities, but consumption patterns or social class should not serve as the sole criterion.

Juristic discourse on maintenance is therefore ambivalent. It recognizes the wife's economic rights, protects her entitlement to maintenance arrears, and permits maintenance amounts to be determined according to need. At the same time, it may reproduce inequality through the concepts of *tamkīn* and *nusyūz* and through the authority to determine maintenance. The conceptual contribution of these findings lies in identifying two discursive mechanisms operating simultaneously: the conditionality of the wife's economic rights through *tamkīn* and the contextualization of maintenance amounts through financial capacity and adequacy. The first mechanism may constrain women's agency, whereas the second creates space for negotiation toward substantive justice.

Ambiguity surrounding the waiver of maintenance obligations under the KHI

The findings reveal a tension between the husband's maintenance obligation and the wife's authority to release him from that obligation. Article 80(4) of the KHI specifies the maintenance components for which the husband is responsible, whereas Article 80(6) allows the wife to release him from certain obligations owed to her. The corpus identifies this provision as ambiguous because it does not clarify its temporal scope, procedural requirements, conditions for voluntary consent, or legal consequences. Braun and Clarke's thematic analysis generated four subthemes: the scope of the maintenance waiver, asymmetries between rights and obligations, the distinction between accrued and future maintenance, and the wife's voluntary consent. Lazar's FCDA was employed to examine women's agency, power relations, and the risk of transferring the husband's economic responsibilities to the wife.

Table 3

Thematic and FCDA Analysis of the Waiver of the Husband's Nafaqah Obligation under the KHI

Subtheme	Textual and interpretive data	Codes	Thematic findings	Lazar's FCDA interpretation
Scope of the <i>nafaqah</i>	Article 80(6) permits a wife to	Waiver; husband's	The KHI recognises the wife's authority	The phrase "may release" constructs the wife as a

waiver	release her husband from the obligations specified in Article 80(4)(a)–(b), including <i>nafaqah</i> , <i>kiswah</i> , housing, household expenses, care, and medical treatment (KHI, 1991; Aisyah, 2020).	obligations; wife's rights; normative ambiguity	to grant a waiver but does not specify whether it covers arrears, future maintenance, or both.	legal subject with formal agency. However, the provision's ambiguity may allow her consent to be used to transfer the husband's financial responsibility to her.
Asymmetry of marital rights and obligations	Article 80(7) terminates the husband's obligations towards his wife, as referred to in Article 80(5), when she is considered to have committed <i>nusyūz</i> . Obligations relating to the child's interests remain protected (KHI, 1991, Articles 80[7] and 84[2]; Aisyah, 2020).	<i>Nusyūz</i> ; forfeiture; wife's duties; husband's responsibility; child's interests	The corpus reveals unequal consequences for the wife's non-compliance and the husband's failure to provide maintenance.	The discourse may reproduce gender asymmetry when <i>nusyūz</i> removes the wife's economic entitlement without establishing an equivalent consequence for the husband's neglect.
Distinction between arrears and future maintenance	Juristic interpretation allows a wife to waive accrued <i>nafaqah</i> that has become the husband's debt. Future <i>nafaqah</i> remains payable when it falls due (Mujamma' Al-Malik Fahd Liṭibā'ah Al-Muṣṣhaf Ash-Sharīf, 2003).	Arrears; debt; due date; waiver	The corpus distinguishes an accrued financial right from a future maintenance obligation.	This temporal distinction prevents a waiver from permanently removing the wife's economic protection. However, it represents a juristic interpretation rather than an explicit provision of Article 80(6).
The wife's consent and agency	The corpus describes the wife as having the option to claim arrears through the court, seek divorce, or expressly waive the debt (Mujamma' Al-Malik Fahd Liṭibā'ah Al-Muṣṣhaf Ash-Sharīf, 2003).	Consent; claim; court; debt waiver; choice	Waiving accrued <i>nafaqah</i> is treated as a legal act exercised by the wife, the holder of the financial right.	Consent reflects women's agency only when it is informed, explicit, specific, and voluntary. Without procedural safeguards, it may be shaped by economic, emotional, or relational pressure.

Source: Processed by the researcher (2023).

Table 3 shows that Article 80(4) of the KHI identifies maintenance, clothing (*kiswah*), housing, household expenses, healthcare, and medical treatment as the husband's obligations according to his financial means. Article 80(6), however, permits the wife to release her husband from obligations owed to her. This provision is considered ambiguous because it does not specify the object of the waiver, the requirements for voluntary consent, its temporal scope, the applicable procedure, or its legal consequences (Aisyah, 2020). The phrase "owed to her" also requires clarification because its reference to Article 80(4)(b) encompasses expenses for both the wife and children, although children's interests remain protected under Article 84(2) of the KHI.

Under the juristic interpretations examined, a waiver is limited to accrued maintenance that has become the wife's established financial right and may therefore either be claimed or waived. By contrast, future maintenance remains the husband's obligation once it becomes due. This distinction is not explicitly stated in Article 80(6) but constitutes a juristic interpretation adopted in this study. The findings also reveal a potential asymmetry: the wife's entitlement to maintenance may be extinguished when she is declared *nusyūz*, whereas the husband's failure to fulfill his maintenance obligations is not assigned an equivalent consequence. The wife's ability to work or meet her own needs likewise cannot be treated as consent to release her husband from his maintenance obligations.

From the perspective of Lazar's FCDA, the language used in Articles 80(6) and 80(7) of the KHI casts the wife's position in an ambivalent light. The modality "may release" represents the wife as a legal subject capable of retaining or relinquishing her economic rights, whereas the formulation "shall cease if the wife is *nusyūz*" establishes a causal relationship between the wife's conduct and the loss of maintenance. The KHI does not establish a parallel consequence in the same article for the husband's neglect of his economic obligations. This structure reveals an asymmetry in the regulation of spousal discipline and accountability. Accordingly, *nusyūz*, maintenance waivers, and the husband's neglect should be interpreted within a framework of reciprocal obligations while continuing to safeguard children's interests.

The wife's authority to waive maintenance debt may reflect women's agency, but formal agency does not necessarily provide substantive protection. The unclear scope of the waiver may facilitate the transfer of the husband's responsibilities, particularly when the wife is employed or financially self-sufficient. Economic independence does not demonstrate consent; consent must be given freely, knowingly, explicitly, specifically, and without economic, emotional, or relational pressure. Accrued maintenance may be understood as an established financial right that can be either claimed or waived, whereas waiving future maintenance risks eliminates economic protection. This distinction, however, represents a juristic interpretation rather than an explicit provision of Article 80(6).

Based on these findings, this study proposes that maintenance waivers should be limited to rights that have already accrued, expressed clearly and voluntarily, and should not extinguish children's interests. This proposal constitutes a normative reconstruction intended to prevent the wife's consent from being used to legitimize the husband's neglect of his responsibilities. The conceptual contribution of these findings lies in identifying a paradox between women's formal agency and substantive vulnerability. Article 80(6) authorizes the wife to relinquish her economic rights, yet its procedural ambiguity may transform that authority into a mechanism for transferring the husband's economic responsibilities to her.

Discussion

The study produced three principal findings. First, *nafaqah* is constructed as both the husband's religious obligation and the wife's economic right, deriving legitimacy from the Qur'an, hadith, *ijma'*, and juristic formulations. From an FCDA perspective, this legitimation is ambivalent: it protects women's rights, yet positioning the husband as provider may naturalize dependency and unequal authority. Second, Muslim jurists differ regarding the legal grounds giving rise to maintenance obligations. These include a valid marriage contract; a valid contract accompanied by the wife's submission and *tamkīn*; and a contract combined with *tamkīn* without specifying the validity of the contract or the required form of submission. Juristic disagreements also concern the creation of maintenance debt and the determination of maintenance amounts based on the husband's financial capacity, the wife's needs, or the circumstances of both spouses. Third, Article 80(6) of the KHI creates a paradox between formal agency and substantive vulnerability because it does not clarify the object, timing, procedure, or validity of consent to a waiver. This ambiguity also encompasses the distinction between accrued and future maintenance, the protection of children's interests, and potential normative asymmetries within marriage.

In contemporary Muslim families, women's increasing economic participation has made the regulation of maintenance more relevant, as a wife's earning capacity may be misinterpreted as automatically releasing her husband from his obligations (Firdaus et al., 2020; Suryati et al., 2023). The KHI nevertheless continues to assign responsibility for maintenance, clothing (*kiswah*), housing, household expenses, healthcare, and medical treatment to the husband, subject to his financial means, although Article 80(6) permits a waiver with the wife's consent (Kompilasi Hukum Islam, 1991). The unclear scope of this waiver may pressure wives to shoulder household expenses while continuing to perform domestic responsibilities, thereby intensifying their double burden and relational inequality (Chen et al., 2020; Craig & Churchill, 2021). Criticism of this ambiguity underscores the need to protect the wife's consent and children's interests (Bekaert et al., 2021; Tjong et al., 2021). This issue is particularly important in families where the wife is employed, the husband is unemployed, or household income is unstable. The concept of *tamkīn* should also be interpreted in context to ensure that women's autonomy, safety, and consent are not reduced to mere physical compliance (Hidayat & Fathoni, 2022; Sharifpour et al., 2022).

Within Lazar's (2007) Feminist Critical Discourse Analysis framework, maintenance discourse constructs and negotiates gendered positions through actor representation, power relations, and the construction of rights and obligations. The commands in Q. Al-Talaq [65]:6–7 position men as responsible for material provision while simultaneously prohibiting the use of resources to cause hardship to women (Mohd & Hj Ibrahim, 2010; Nurdin et al., 2021). Meanwhile, the phrase *lahunna 'alaykum* in the hadith positions women as holders of normative claims to food and clothing according to *Ma'ruf*. From Foucault's (1982) perspective, power relations not only restrict individual actions but also constitute subject positions through mechanisms that regulate conduct, rights, and responsibilities. However, formulations of *tamkīn* and *nusyūz* may make wives' economic rights contingent on their physical availability and obedience to their husbands (Khoironi & Muhsin, 2022). A similar paradox appears in Article 80(6) of the KHI: the modality "may release" recognizes the wife's formal agency, yet the absence of procedural clarity may facilitate the transfer of economic responsibility to her. Normative protection and the reproduction of gender hierarchy may therefore operate simultaneously. A critical reading is consequently necessary to prevent the language of obligations, rights, and consent from naturalizing unequal power relations within Muslim families.

This study demonstrates that maintenance obligations should be understood as an ethical responsibility to safeguard the family's dignity, safety, and well-being rather than as a basis for the husband's superiority (Abdullah et al., 2015; Nurdin et al., 2021). The Qur'an as *kalām Allāh* provides religious legitimation for this obligation (Murdiono et al., 2021; Wijayanti et al., 2022), while juristic literature affirms its foundation in the Qur'an, hadith, and *ijma'* (Jaya, 2020; Nasution, 1994). A central implication is that the provision of maintenance and the enjoyment of corresponding rights should not create a relationship of domination but should instead constitute reciprocal responsibility exercised according to *ma'ruf* (Dasopang et al., 2022). Differences in spouses' capacities, needs, and circumstances require deliberation, empathy, and contextual assessment. The wife's consent is meaningful only when given knowingly and without coercion (Willis et al., 2021). This interpretation supports the development of Islamic family jurisprudence that preserves the religious foundations of maintenance while strengthening women's agency, substantive justice, and the protection of children's interests. Religious norms can thus be developed in a responsive manner without abandoning their fundamental moral and theological foundations.

These findings are consistent with Handayani (2020) and Nelli (2017), who identify the husband as the party primarily responsible for providing maintenance, but extend their arguments by examining the gendered consequences of this construction. Nasution and Jazuli (2020) demonstrate the diversity of maintenance standards based on the husband's financial capacity, the wife's needs, or the circumstances of both spouses. The present study also advances Fashihuddin et al.'s (2023) critique of the ambiguity of Article 80(6) of the KHI by distinguishing between the wife's formal agency and substantive vulnerability. Unlike interpretations focusing exclusively on the waiver of accrued maintenance debt (Amri, 2022; Dahliana, 2018), this analysis highlights the risks associated with waiving future maintenance, the pressure affecting the wife's consent, the children's interests, and the asymmetrical accountability between the wife's *nusyūz* and the husband's neglect. This positions the study as a critical inquiry into the relationship among religious norms, legal procedures, and women's lived experiences within marriage.

Based on these findings, the study recommends that waivers of maintenance obligations be narrowly formulated, documented in writing, made voluntarily, and subject to verification. A waiver should apply only to maintenance that has already become due and constitutes the wife's established financial right, not to future maintenance or children's rights. Courts and family support institutions should ensure that the wife's consent is given without economic, emotional, sexual, or relational coercion. The determination of maintenance amounts should consider the husband's financial capacity, the actual needs of the wife and children, living costs, an appropriate standard of living, and each spouse's contribution through a deliberative process. Provisions concerning *nusyūz* should also be applied cautiously, with due consideration of violence, personal safety, consent, and the fulfillment of reciprocal obligations. The KHI therefore requires operational provisions specifying the object, timing, procedure, evidentiary requirements, and legal consequences of maintenance waivers. Such reformulation is essential to prevent the transfer of the husband's responsibilities while strengthening women's agency, legal certainty, child protection, and substantive justice within the family. The reform process should involve judges, academics, Muslim scholars, women, and wider society.

CONCLUSION

This study concludes that *nafaqah* constitutes an ambivalent religious obligation of the husband. On the one hand, it protects the wife's material rights; on the other, it may

naturalize dependency and unequal authority when the provider role is transformed into a form of unilateral male superiority. Juristic disagreements concerning the legal grounds of maintenance obligations, particularly the construction of *tamkīn*, may, in certain formulations of Islamic jurisprudence, make the fulfillment of the wife's economic rights conditional upon the performance of physical and relational marital obligations. Another significant finding concerns the paradox embedded in Article 80(6) of the KHI. Although this provision grants the wife formal agency to waive her maintenance rights, its procedural ambiguity may generate substantive vulnerability, particularly when consent is influenced by economic, emotional, or relational pressure and when it fails to distinguish between accrued and future maintenance. Normative asymmetry is also evident because *nusyūz* may affect the wife's entitlement to maintenance, whereas the husband's neglect is not assigned an equivalent legal consequence. The wife's economic independence should therefore not be interpreted as automatically extinguishing her maintenance rights, while *tamkīn* should be interpreted contextually to prevent unequal outcomes.

This study contributes to Islamic family law scholarship by applying FCDA to explain how normative texts construct gendered positions through modalities of obligation and the language of rights. The findings demonstrate that maintenance discourse is not merely a body of legal rules but also a discursive practice that distributes responsibilities and authority and may reproduce hierarchy within marital relations. At the practical level, the study proposes that maintenance waivers should be clearly limited, based on informed and verifiable consent, and differentiated between accrued maintenance and future obligations without compromising children's interests. The KHI also requires operational clarification regarding the object, timing, procedure, and legal consequences of a waiver. The application of *nusyūz* provisions should consider safety, consent, and reciprocal obligations to prevent the transfer of economic responsibility and strengthen substantive justice for women and children.

This study is limited by its reliance on discourse analysis of normative texts, including the Qur'an, hadith, juristic literature, and the KHI. It therefore does not capture the actual practices through which maintenance obligations are fulfilled or waived within society. The absence of empirical data from judicial decisions, judges' perspectives, and women's lived experiences restricts the study's ability to explain the implementation and consequences of Article 80(6) within marital life. Future research should empirically investigate how wives' consent to maintenance waivers is formed, the factors influencing such consent, the protection of children's interests, and the dynamics of *tamkīn* and *nusyūz* in contemporary marriages. Comparative studies involving other Muslim-majority countries are also needed to identify gender-responsive models of family law reform that remain consistent with the fundamental principles of Islamic law.

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Mohamad Zakky Ubaid Ermawan: Conceptualization; Data Curation; Formal Analysis; Writing Original Draft; Validation; Visualization; Writing Original Draft; Writing Review &

Editing. **Ahmad Izzudin**: Data Curation; Formal Analysis; Writing Original Draft; Validation.
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