



Realizing Post-Divorce Enforcement Justice through Progressive Law Enforcement within the Framework of *Risalah al-Qadha*

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Submitted: 09-08-2026

Revised: 22-08-2026

Accepted: 31-08-2026

Published: 06-09-2026

Abstract

This study aims to analyze the integration of *Risalah al-Qada'* values and progressive law in realizing executorial justice post-divorce in the Religious Courts. Employing a normative legal research method with a qualitative interpretative-conceptual approach, data were gathered through a literature review of progressive law, *Risalah al-Qada'*, and court decisions. Data validity was ensured through critical reading and literature triangulation. The findings reveal that the integration of these two paradigms is capable of dismantling the executorial deadlock trapped in positivist formalism, by encouraging judges to engage in judicial activism and legal discovery (*rechtsvinding*) that favors vulnerable groups. However, structural challenges such as patriarchal culture, institutional passivity, and reliance on the ex-wife's initiative remain critical obstacles that perpetuate the execution gap. Ultimately, this research demonstrates that the implementation of *Risalah al-Qada'* values not only provides a prophetic-ethical foundation for judicial activism but also actualizes the principles of *Maqasid al-Shari'ah* through the substantive protection of life, lineage, and wealth (*hifz al-nafs, hifz al-nasl, hifz al-mal*) for ex-wives and children.

Keywords: Executorial Justice; *Maqasid al-Shari'ah*; Post-Divorce; Progressive Law; *Risalah al-Qada'*.

A. Introduction

Enforcement justice constitutes a fundamental dimension of progressive law enforcement, premised on the notion that justice does not end with the issuance of a judicial decision but must be realized through the effective enforcement of legally recognized rights (Pound, 1907). This perspective calls for a paradigm shift from merely formal justice embodied in court judgments to substantive justice that is tangibly experienced by the parties, particularly in post-divorce disputes. Nevertheless, empirical evidence indicates that, despite obtaining favorable judicial decisions, vulnerable groups such as women and children frequently fail to enjoy the practical benefits of those rulings, rendering judicial decisions little more than a “toothless tiger” (Saudi, 2022). This issue is particularly significant in post-divorce disputes, where judicially recognized financial rights must be translated into tangible economic protection for former wives and children. Nationally, the scale of divorce cases underscores the urgency of this challenge recorded 668,672 cases resolved at the first instance level throughout 2025, dominated by *cerai gugat* (wife-initiated divorce) at 355,243 cases (60.6%), followed by *cerai talak* (husband-initiated divorce) at 106,860 cases (18.2%) (DITJEN Badilag, 2025). Empirical evidence from the Religious Court of Surabaya and the Surabaya City Government demonstrates the magnitude of this enforcement gap. As of June 2026, 6,459 cases involving unpaid *nafkah iddah* and 8,162 cases involving unpaid *mut'ah* remained unresolved, while 5,534 cases involving child support were also recorded as

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unresolved. In response, the integrated administrative system had placed 12,407 cases under administrative service restriction, of which 10,385 remained subject to active restrictions. These figures indicate that the issuance of judicial decisions does not necessarily result in the effective realization of post-divorce rights and that non-compliance may persist even after legal obligations have been judicially established (Baihaqi, 2023).

This phenomenon is particularly evident in the ineffective enforcement of court orders concerning *nafkah iddah*, *mut'ah*, and child support, where the costs of enforcement often exceed the economic value of the rights awarded. Such persistent non-compliance places former wives in financially precarious circumstances while simultaneously depriving children of their fundamental rights to maintenance and adequate welfare. These conditions undermine the principle that “justice delayed is justice denied” and reveal the structural inadequacies of conventional judgment enforcement (*al-tanfidi*). Consequently, the failure to enforce post-divorce judgments erodes the authority of the judiciary, leaving women and children trapped in prolonged economic vulnerability.

Within the framework of post-divorce enforcement justice, progressive law enforcement serves as a key determinant in ensuring the fulfillment of the substantive rights of vulnerable parties. This approach positions law as an instrument of humanity, where judicial authorities are not confined by rigid textual formalism but are instead oriented toward the realization of justice throughout the dispute resolution process (Herlindah & Darmawan, 2022). Various studies demonstrate that progressive law enforcement is more capable of overcoming enforcement deadlocks through contextual legal discovery (*rechtsvinding*) and substantive legal breakthroughs, thereby effectively restoring the rights of marginalized former spouses and children (Sukmana et al., 2023). Recent studies further confirm that this approach advances enforcement justice by strengthening judges' moral integrity, encouraging the courage to transcend bureaucratic formalities, and fostering institutional commitment in enforcing judicial orders concerning spousal maintenance, marital property, and child custody rights.

Although the idea of progressive law has been widely acknowledged, existing literature remains predominantly shaped by intellectual and procedural frameworks that emphasize legal breakthroughs beyond the confines of regulatory texts. While providing valuable insights, this approach tends to marginalize the spiritual, ethical, and humanistic dimensions that constitute the foundation of authentic law enforcement in family disputes (Kurniawan, 2022). Studies on judicial ethics have demonstrated that genuine law enforcement is deeply rooted in spiritual intelligence and empathy, extending beyond the boundaries of purely procedural rationality. Consequently, current scholarship provides only a partial understanding of enforcement justice, particularly in contexts where Islamic judicial ethics serve as a normative foundation for structuring substantive law enforcement practices.

The limitations of legal formalism are particularly evident within Muslim societies, where the enforcement of divorce judgments is closely connected to Islamic judicial ethics oriented toward substantive justice. In Islamic legal thought, enforcement is not merely a procedural activity but a sharia-based moral responsibility aimed at upholding justice, protecting vulnerable parties, and restoring social equilibrium. Progressive Islamic thought conceptualizes Islam as an ethico-religious worldview grounded in the principle of the “ethics of responsibility,” which obliges human beings to act with justice and accountability (Duderija, 2017). This principle frames the enforcement of divorce judgments as a socio-spiritual moral obligation to restore the rights of former spouses and children while simultaneously preserving the integrity of the Islamic judicial system.

The *Risalah al-Qada'* explicitly requires judges not only to adjudicate disputes but also to ensure that truth and justice are effectively realized, as truth that remains unimplemented holds no meaningful benefit (Abd. Halim Talli, 2013). This principle closely corresponds with contemporary discussions on post-divorce enforcement justice, where judgments concerning maintenance obligations, marital property, and child custody frequently remain ineffective due to procedural formalism. The limitations of conventional civil procedural law, including rigid adherence to the principle of formal truth (*formele waarheid*) and judicial passivity, reflect the potential for structural injustice that contributes to the increasing occurrence of unenforceable judgments and the erosion of public trust in the judiciary. This intersection demonstrates that the principles embedded within the framework of *Risalah al-Qada'* are not only normatively significant but also empirically relevant in realizing post-divorce enforcement justice.

Nevertheless, despite the strong normative mandate and judicial authority to ensure the fulfillment of post-divorce rights, systematic scholarly efforts to integrate philosophical judicial values into enforcement mechanisms remain limited. Previous studies have predominantly focused on procedural obstacles, high enforcement costs, and technical aspects of formal procedural law. As one study highlights, “execution is often obstructed by structural and procedural barriers, including limited cooperation from administrative institutions and the absence of integrated monitoring mechanisms.” (Fahmi et al., 2025) Furthermore, studies on progressive law and Islamic family law have rarely conceptualized *Risalah al-Qada'* as a substantive framework capable of guiding enforcement justice for vulnerable parties. This theoretical and interdisciplinary gap constrains the development of value-based approaches to divorce judgment enforcement and limits the conceptual scope of existing enforcement models. Therefore, this study proposes an integration of progressive law, the values of *Risalah al-Qada'*, and the principles of post-divorce enforcement justice as a substantive framework for addressing structural barriers in the protection of women and children.

Responding to this gap, this study reconstructs post-divorce enforcement justice through a progressive legal approach grounded in *Risalah al-Qada'*. Enforcement is no longer reduced to a merely formalistic procedure but is understood as a process of actualizing substantive justice for parties whose legally recognized rights remain unfulfilled. The role of the court is consequently directed beyond dispute resolution toward the promotion of social justice within the family sphere. *Risalah al-Qada'* is operationalized as an ethical framework for judges in ensuring the effectiveness of judicial decisions. Through the integration of progressive law and Islamic judicial principles, this study shifts the paradigm of enforcement justice from a formal-procedural orientation toward a substantive approach centered on the protection of post-divorce rights.

This study employs a normative legal research method using a qualitative approach based on interpretative-conceptual analysis. As its theoretical foundation, this study adopts the progressive legal theory developed by Satjipto Rahardjo to examine the realization of post-divorce enforcement justice (Laili & Fadhila, 2021). The research data are derived from a literature review consisting of *Risalah al-Qada'* as a normative-philosophical source and divorce judgments issued by Religious Courts as analytical objects for examining the implementation of post-divorce rights fulfillment through progressive law enforcement. The urgency of adopting progressive law enforcement rather than conventional methods lies in its profound alignment with the core philosophy of *Risalah al-Qada'*. Conventional law enforcement often becomes trapped in *rechtsdogmatiek* (legal formalism), whereby the

judicial process is considered complete merely upon the textual pronouncement of a judgment. Such a formalistic approach often produces judgments that fail to provide tangible benefits, thereby fundamentally contradicting the spirit of *Risalah al-Qada'*. Classical Islamic judicial literature emphasizes that a *qadi* (judge) is not merely a formal arbiter but is morally obligated to ensure the realization of substantive justice (*al-qadha bi al-haqq*) and public welfare (*maslahah*) (Fuadah, 2019). Therefore, progressive law enforcement can be viewed as a contemporary manifestation of these principles. By shifting the paradigm from procedural formalism toward a human-centered approach that prioritizes human dignity, welfare, and social engineering (Siregar, 2024). Progressive law enforcement operationalizes the classical mandate of *Risalah al-Qada'* to concretely protect the property (*hifz al-mal*) and lineage (*hifz al-nasl*) of women and children who are vulnerable in the post-divorce context. While conventional law enforcement often causes judgments to remain at the normative level, progressive law enforcement fulfills the highest ethical demand of Islamic justice that justice must be realized in practice, rather than merely declared in textual form.

The foregoing discussion establishes the conceptual basis for examining post-divorce judgment enforcement through the integration of *Risalah al-Qada'* and Progressive Law. However, to establish the position of this approach within existing scholarship and identify the specific contribution of the present study, it is necessary to examine previous studies addressing these themes from different perspectives. Accordingly, the following section critically reviews selected literature on Progressive Law, *Risalah al-Qada'*, and post-divorce rights enforcement to map the current state of research and highlight existing gaps.

Recent scholarship has increasingly examined the multifaceted challenges surrounding the protection of women's and children's rights after divorce, highlighting the need for a more robust integration of substantive justice and classical judicial ethics within Religious Court practice. In this context, a study by Mahfiana et al., titled "Law Enforcement on the Protection of the Rights of Children and Women after Divorce," focuses on the enforcement of laws concerning the protection of women's and children's rights after divorce, including child support, spousal support, and marital property rights in Indonesia, alongside an analysis of inhibiting factors and solutions based on Progressive Law (Mahfiana et al., 2018). The findings reveal that the weak enforcement of post-divorce rights is influenced by deficiencies in legal substance, law enforcement institutions, and a patriarchal legal culture. Consequently, the study proposes Progressive Law as an approach to strengthen the ethical conduct of legal officials and promote substantive justice. However, a research gap exists, as this study discusses Progressive Law primarily from a general and philosophical perspective, without integrating it with classical Islamic judicial ethics (*Risalah al-Qada'*) or formulating concrete mechanisms to ensure the fulfillment of women's and children's financial rights in the enforcement of Religious Court judgments.

Subsequent research by Adnan et al., titled "Existence Of Risalatul Qadha Umar Bin Khattab In The Islamic Judicial System Indonesia," analyzes the concept of Risalatul Qada' (judicial instruction) formulated by Umar ibn al-Khattab, his judicial *ijtihad*, and its relevance and contribution to the contemporary Islamic judicial system, particularly Religious Courts in Indonesia (Adnan et al., 2024). The results indicate that *Risalah al-Qada'* emphasizes Islamic judicial principles centered on justice, equality between the parties, evidence, reconciliation, and the willingness of judges to rectify erroneous decisions in pursuit of truth. Furthermore, Umar ibn al-Khattab's judicial *ijtihad* demonstrates that Islamic law is dynamic and contextual, prioritizing substantive justice and public welfare (*maslahah*). Despite successfully mapping these classical judicial ethical principles, the study does not integrate them with

modern Progressive Law theory to address the enforcement deadlock concerning post-divorce financial rights, nor does it formulate concrete policy instruments to actualize the principles of *Risalah al-Qada'* within modern judicial practice.

From a comparative perspective, Dahlan et al., in their study “Women’s Post-Divorce Rights in Malaysian and Indonesian’s Court Decisions,” focus on comparing post-divorce rights in Religious Courts in Indonesia and Malaysia (Dahlan et al., 2023). The key finding is that Indonesian court judgments face a non-coercive enforcement problem due to the absence of a dedicated institution, such as Malaysia’s Family Support Division, to ensure enforcement, thereby requiring former wives to file separate applications that often fail. However, this study only identifies procedural and comparative problems without proposing an innovative solution based on a synthesis of Progressive Law theory and classical judicial ethics to address this enforcement deadlock.

Finally, Tarigan and Rahmi, in their article “Gender-Based Justice in Matrimonial Property Law: A Comparative Study of Post Divorce Protection for Women in Indonesia and Thailand,” examine gender-based justice in the division of marital property after divorce through a comparative study of Indonesia and Thailand, alongside an evaluation of the effectiveness of legal protection for women’s economic rights (Tarigan & Rahmi, 2026). The findings show that Indonesia’s 50:50 marital property division provides formal legal certainty but falls short of substantive justice by overlooking women’s domestic contributions. Legal protection is further hindered by patriarchal culture, limited access to justice, and inconsistent court decisions, whereas Thailand allows greater judicial discretion and flexibility. Nevertheless, this article focuses on the division of marital property and a comparison with Thailand, but does not specifically address enforcement deadlocks concerning post-divorce financial rights, such as *nafkah iddah*, *mut’ah*, and child support. Furthermore, it does not integrate Progressive Law with classical Islamic judicial ethics (*Risalah al-Qada'*) as a framework for realizing substantive justice in the enforcement of Religious Court judgments.

The preceding review indicates that existing scholarship has addressed Progressive Law, *Risalah al-Qada'*, and post-divorce rights from different conceptual and practical perspectives. However, these approaches remain fragmented and have not yet been synthesized into an integrated framework for addressing the enforcement gap in post-divorce financial rights. This gap is particularly evident in the limited articulation of how the substantive justice values of *Risalah al-Qada'* can inform the application of Progressive Law in ensuring that Religious Court judgments are effectively implemented and that women’s and children’s financial rights are substantively realized after divorce.

Based on this research gap, this study proposes an integrated framework that connects the classical judicial ethics of *Risalah al-Qada'* with Satjipto Rahardjo’s Progressive Law to examine post-divorce judgment enforcement. Theoretically, this study extends the discourse of Progressive Law within Islamic family law by demonstrating its compatibility with the principles of justice, equality, truth, and *maslahah* embodied in *Risalah al-Qada'*. Practically, it provides a normative basis for strengthening the enforcement of Religious Court judgments so that post-divorce financial rights, particularly *nafkah iddah*, *mut’ah*, and child support, are not merely declared in judicial decisions but effectively realized. Academically, this study contributes a conceptual linkage between Islamic judicial ethics, Progressive Law, and post-divorce judgment enforcement, offering an alternative framework for addressing the gap between judicial decisions and their practical implementation.

By placing the justice values embedded in *Risalah al-Qada'* at the intersection of Progressive Law and post-divorce judgment enforcement, this study provides a normative-philosophical framework that remains responsive to contemporary challenges in legal implementation. This approach bridges the intellectual tradition of Islamic judicial justice with the paradigm of modern Progressive Law while providing a conceptual foundation for advancing Islamic family law scholarship and strengthening judgment enforcement practices oriented toward the fulfillment of rights and the realization of substantive justice.

B. Research Methodology

This study employs a normative legal research design enriched with a qualitative interpretative-conceptual approach, enabling a critical examination of the structural deadlock in post-divorce judgment enforcement within Religious Courts. The analysis is guided by three interlocking theoretical lenses: Satjipto Rahardjo's Progressive Legal Theory, which provides the paradigm for transcending positivist rigidity; the *Maqasid al-Shari'ah* framework, which anchors the evaluation in the substantive protection of life, lineage, and property; and the ethical-prophetic principles of *Risalah al-Qada'*, which serve as the normative foundation for judicial activism. The research focuses on reconstructing enforcement justice by examining how classical Islamic judicial ethics can be integrated with modern progressive law to address the systemic execution gap.

Primary legal materials consist of the *Risalah al-Qada'* as a normative-philosophical source, ten Religious Court decisions issued by the Surabaya Religious Court in 2025 concerning *nafkah iddah*, *mut'ah*, and child support obligations, alongside empirical survey data involving nineteen divorced women. These are complemented by secondary sources drawn from scholarly literature on progressive law, Islamic family law, and judicial ethics. Data were analyzed through critical reading, conceptual interpretation, and integrative synthesis, allowing the study to bridge classical Islamic judicial values with contemporary enforcement challenges. The validity of the findings was ensured through source triangulation and iterative critical reflection on the researcher's interpretive positionality. While this study offers a robust conceptual framework, its analytical scope remains primarily normative-conceptual and is supported by empirical data from a single jurisdictional area, suggesting that future research may empirically examine the effectiveness of this judicial activism model across multiple Religious Courts through quantitative or socio-legal approaches.

C. Results

C.1 The Reality of Enforcement Deadlock in Post-Divorce Judgments before Religious Courts

An unenforceable judgment fundamentally constitutes a denial of justice. The principle of *executio est executio iudicis*, together with the mandate of Qur'anic verse Q.S. An-Nisa': 58, emphasizes that justice must be realized in practice and must not be subjected to unnecessary delay. Within the context of divorce proceedings before Religious Courts, judicial decisions should not merely terminate the marital relationship but must also guarantee the fulfillment of post-divorce rights, including maintenance obligations and child custody (*badhanah*). However, judicial practice demonstrates that a considerable number of Religious Court decisions ultimately remain merely "paper tigers" without effective implementation (Jannah et al., 2025).

Empirical studies indicate that weak enforcement mechanisms frequently result in maintenance obligations being confined to the written text of judicial rulings without adequate guarantees of implementation. Similarly, other research highlights that inconsistencies in judicial practices and epistemological asymmetries may undermine the integrity of the legal system while simultaneously generating disparities in the protection of parties' rights (Muhammady & Lahilote, 2025). This condition demonstrates that enforcement dysfunction within Religious Courts continues to position justice at the level of normative formalism rather than transforming it into substantive justice. Therefore, this structural deadlock requires critical reflection on the prevailing legal framework. Before proposing a progressive law enforcement approach as a solution, it is necessary to first comprehensively map the *das sollen* dimension, namely how enforcement mechanisms should ideally be designed and implemented in an effective, measurable, and legally grounded manner within the existing normative framework.

Normatively, justice is only achieved when adjudicated rights are concretely realized rather than merely recognized through declaratory statements (Wardani & Said, 2026). The *das sollen* foundation of judgment enforcement within Religious Courts has, in principle, been comprehensively regulated through Articles 195–206 of the *Herzien Indonesisch Reglement* (HIR)/Articles 218–229 of the *Rechtsreglement voor de Buitengewesten* (RBg), Article 119–123 of the RBg concerning real execution (*executie tot ontruiming/riële executie*), as well as Supreme Court Regulation (Perma) No. 1 of 2023. From a doctrinal perspective, Religious Court judgments that have obtained permanent legal force (*inkracht van gewijsde*) generate binding legal consequences and must be complied with by the parties (Ngazizah et al., 2025).

Ideally, the enforcement mechanism is based on the principle of *vrijwillige uitvoering* (voluntary compliance). When the losing party fails to comply, the successful party is entitled to submit a request for executorial seizure (*executoriale beslag*) to the Chairperson of the Religious Court, who subsequently issues a warning (*aanmaning*) prior to the implementation of forced execution (Ramadhan et al., 2025). From this perspective, the existing positive legal framework appears sufficiently comprehensive and adequate to guarantee the certainty of post-divorce rights. Nevertheless, the completeness of regulatory provisions often contrasts sharply with practical realities. Upon closer examination, the enforcement procedures that appear ideal within statutory texts reveal layers of bureaucratic complexity and technical obstacles, thereby requiring a critical examination of how these mechanisms operate in practice.

Procedurally, judgment enforcement within Religious Courts follows the framework of civil procedural law, beginning with the submission of an enforcement request, followed by *aanmaning* (formal warning), executorial seizure, and ultimately auction or real execution. Article 196 of the HIR requires the Chairperson of the Court to first order the losing party to voluntarily comply with the judgment within a maximum period of eight days. If such compliance is not achieved, the Chairperson of the Court may order executorial seizure of the losing party's assets pursuant to Article 197 of the HIR.

Regarding obligations to perform or refrain from performing certain acts, *dwangsom* (coercive penalty) under Article 225 of the HIR in conjunction with Article 606a of the Rv functions as an enforcement instrument to compel compliance. Nevertheless, the effectiveness of this mechanism is constrained by institutional structures. Article 54 paragraph (2) of Law No. 48 of 2009 places the implementation of judicial execution under the authority of court clerks and bailiffs (*panitera* and *juru sita*) under the supervision of the

Chairperson of the Court, without establishing a specialized enforcement institution. Consequently, enforcement within Religious Courts tends to operate through persuasive rather than coercive mechanisms, making it vulnerable to persistent structural obstacles.

Empirical realities reveal a systemic gap between the contents of judicial rulings and their actual enforcement, commonly referred to as an execution gap. To provide a comprehensive and transparent overview of the enforcement status of post-divorce judgments, Table 1 below presents a detailed summary of ten Religious Court decisions issued by the Surabaya Religious Court in 2025, which contain obligations concerning *nafkah iddah* (post-divorce waiting-period maintenance), *mut'ah* (consolatory compensation), and/or child support. As the table illustrates, only 20% of the judgments (Cases No. 6335 and 6339) were effectively implemented, while the remaining 80% remained unenforced based on data obtained from the FEMINA portal of the Surabaya Religious Court. This stark disparity between the issuance of judgments and their actual enforcement constitutes the primary empirical evidence of the execution gap that this study seeks to address.

Table 1. Enforcement Status of Ten Post-Divorce Judgments at the Surabaya Religious Court

No	Case Number	Obligations Ordered	Enforcement Status
1	6319/Pdt.G/2025/PA.Sby	<i>Nafkah iddah</i> , <i>Mut'ah</i>	Not Enforced
2	6326/Pdt.G/2025/PA.Sby	<i>Nafkah iddah</i> , Child Support	Not Enforced
3	6327/Pdt.G/2025/PA.Sby	<i>Mut'ah</i> , Child Support	Not Enforced
4	6332/Pdt.G/2025/PA.Sby	<i>Nafkah iddah</i> , <i>Mut'ah</i>	Not Enforced
5	6333/Pdt.G/2025/PA.Sby	<i>Nafkah iddah</i> , Child Support	Not Enforced
6	6334/Pdt.G/2025/PA.Sby	<i>Mut'ah</i>	Not Enforced
7	6337/Pdt.G/2025/PA.Sby	<i>Nafkah iddah</i> , <i>Mut'ah</i> , Child Support	Not Enforced
8	6339/Pdt.G/2025/PA.Sby	<i>Nafkah iddah</i> , <i>Mut'ah</i>	Enforced
9	6335/Pdt.G/2025/PA.Sby	<i>Nafkah iddah</i> , Child Support	Enforced
10	6346/Pdt.G/2025/PA.Sby	<i>Mut'ah</i> , Child Support	Not Enforced

Source: FEMINA Portal, Surabaya Religious Court, 2025.

As Table 1 demonstrates, the overwhelming majority of post-divorce judgments remain unenforced, confirming that the conventional enforcement mechanism operates within a passive paradigm. A survey involving nineteen divorced women further indicates that all respondents continue to bear responsibility for meeting their children's post-divorce needs. Full payment of *nafkah iddah* was received by only 16% of respondents, while child support and *mut'ah* generally remained unrealized. The primary obstacle identified was the former husbands' unwillingness or inability to comply with the judgments (79%), resulting in most respondents choosing not to pursue formal enforcement proceedings. These findings confirm that the conventional enforcement mechanism within Religious Courts remains trapped within a passive paradigm, whereby the burden of initiating enforcement is entirely

transferred to parties who are already economically vulnerable, particularly women and children (Khairuddin, 2025).

The judicial enforcement system in Indonesia continues to face structural weaknesses due to its reactive nature and dependence on the initiative of litigating parties. The absence of automatic enforcement mechanisms, such as wage deductions or integration with financial administrative systems, causes final and binding judgments to function more as declaratory instruments than as effective enforcement mechanisms. Consequently, the burden of initiating enforcement proceedings remains imposed upon parties who are economically more vulnerable, particularly women (Oktavia et al., 2026). This institutional gap enables former husbands to evade their obligations through asset transfers, changes of domicile, or non-cooperation with enforcement procedures. The absence of systematic monitoring mechanisms and progressive sanctions further undermines the effectiveness of judicial decisions as instruments for protecting legally recognized rights.

The dominance of patriarchal culture within the structure of Muslim Indonesian families positions husbands as the primary figures of authority, thereby contributing to the emergence of post-divorce impunity. Former husbands may perceive court judgments as mere formalities with limited practical consequences, as prevailing social norms continue to provide cultural legitimacy for their dominant position. As one study notes, “Divorce is a private domain, both by the will of one of the two parties, which should not need intervention from third parties but to avoid arbitrary actions, especially from the husband, because, in general, the superior party in the family is the husband.” (Kusmardani, 2024) This mentality of superiority interacts with limited legal awareness regarding the binding force of judicial decisions, whereby maintenance obligations are often perceived as voluntary moral responsibilities rather than legally enforceable obligations. Consequently, former wives who are already marginalized within existing cultural structures encounter a dual form of resistance: structural barriers within the enforcement bureaucracy and social pressures that stigmatize women who pursue legal claims as parties who “prolong conflict.”

Normatively, it is mandated that “the court shall assist in overcoming all obstacles to achieve a simple, speedy, and low-cost judicial process” (Haekal et al., 2020). However, empirical realities reveal a paradox: Religious Courts tend to adopt a passive and reactive approach, intervening only after receiving enforcement requests from litigating parties. This institutional passivity is further reinforced by excessive judicial caution in applying coercive instruments, such as *dwangsom* (coercive monetary penalties), due to concerns that such measures may generate further conflicts or be perceived as inconsistent with the principle of fairness. Consequently, the burden of initiating enforcement proceedings and tracing assets is entirely transferred to former wives who are already structurally disadvantaged. This institutional passivity not only delays the realization of rights but also indirectly legitimizes former husbands’ non-compliance, reducing judicial decisions from instruments of substantive justice into merely procedural documents lacking effective coercive power.

The accumulation of regulatory gaps, cultural resistance, and institutional passivity demonstrates that the formalistic approach to enforcing Religious Court judgments has reached its limitations. If the judiciary remains confined to regulatory textualism, post-divorce financial rights and child-care responsibilities will remain merely symbolic recognition without actual realization. Justice must therefore be manifested as substantive protection for vulnerable parties. Accordingly, a shift toward Progressive Law Enforcement is required, one that prioritizes social utility and the actual realization of justice. Within

Islamic legal thought, this transformation can be strengthened through the integration of judicial ethical values embedded in *Risalah al-Qada'* as a foundation for an enforcement model that is effective, equitable, and oriented toward the human dignity of women and children.

C.2 Progressive Law Enforcement as a Paradigm of Post-Divorce Enforcement Justice

The 80% execution gap identified in the enforcement of Religious Court judgments in Surabaya, as discussed in the previous section, is not merely a technical failure but rather a manifestation of a paradigmatic crisis within the legal positivism that continues to dominate judicial practice. Doctrinally, civil procedural law instruments such as the HIR and RBg (particularly Articles 195-206 of the HIR) appear comprehensive and sufficient to guarantee effective enforcement mechanisms. However, this textual completeness becomes ineffective when confronted with sociological realities in practice, including former husbands concealing assets, changing domiciles, or relying upon patriarchal norms to avoid compliance. This condition emerges because judicial practice remains confined within a positivist legal perspective that perceives law primarily as rigidly written texts. From this standpoint, law enforcement grounded exclusively in positivism inherently produces rigidity, whereby law may create “procedural barriers that obstruct the pursuit of truth and justice itself” (Azmi et al., 2024).

When judges merely function as the “mouthpieces of the law,” enforcement procedures are transformed into obstacles that burden claimants seeking the realization of their rights. Consequently, regulatory completeness without an orientation toward substantive justice produces merely “illusory legal certainty.” Although final and binding judgments (*inkracht van gewijsde*) possess formal and procedural validity, they may remain materially incapable of addressing the fundamental rights of former wives and children. This reality corresponds with findings that the rigid application of formalistic principles often produces decisions that appear legally consistent but, in practice, “fail to respond to the substantive needs and rights of vulnerable parties” (Reza et al., 2024). Within the context of post-divorce enforcement, an excessive attachment to legal certainty may paradoxically undermine the very essence of law itself. Therefore, the paralysis of enforcement regulations amid persistent execution gaps demonstrates that legal positivism has reduced justice into mere administrative formalities, necessitating a paradigmatic shift to dismantle the illusory legal certainty that has long disadvantaged vulnerable parties.

In responding to the enforcement deadlock in post-divorce judgments, progressive law enforcement requires a deconstruction of the judicial mindset that merely positions judges as passive readers of regulatory texts (*la bouche de la loi*). Within the context of divorce judgment enforcement, such rigid formalism indirectly legitimizes former husbands’ non-compliance while simultaneously imposing the burden of enforcement upon former wives who are already economically vulnerable. The doctrine of legism places legal certainty as the sole objective of law, transforming enforcement procedures into bureaucratic barriers that ultimately protect non-compliant parties.

Therefore, a paradigmatic shift is required from procedural certainty toward substantive justice, characterized by a “doctrinal movement from formal validity to substantive voluntariness,” whereby judicial decisions are no longer evaluated merely based on formal completeness but on their capacity to protect vulnerable parties (Nur et al., 2026). Within this framework, judges are understood “not merely as mouthpieces of statutory texts, but as legal actors who must remain sensitive to human suffering, social realities, and justice beyond

literal legalism.” This transformation corresponds with the understanding that legal norms should not be treated as static entities but must be interpreted dynamically, whereby “texts are not merely objects of interpretation but also subjects that influence and shape social behavior” (Berliana et al., 2026).

To clarify the fundamental distinctions between the two paradigms, Table 2 presents a structured comparison across seven key dimensions of post-divorce enforcement. The table reveals that the positivist paradigm characterized by judicial passivity, rigid textualism, and reactive enforcement collectively produces the 80% execution gap documented in the preceding section, whereas the progressive paradigm advocates judicial activism, *rechtsvinding*, and a pro-vulnerability orientation that prioritizes the substantive fulfillment of rights for former wives and children.

Table 2. Comparative Analysis: Positivist vs. Progressive Law Paradigms in Post-Divorce Enforcement

Dimension	Positivist Paradigm	Progressive Law Paradigm
Judicial Role	Passive (<i>la bouche de la loi</i>); judge as “mouthpiece of the law”	Active; judge as agent of substantive justice and <i>rechtsvinding</i>
Legal Interpretation	Rigid textualism; literal reading of statutes (HIR/RBg)	Contextual and dynamic; responsive to sociological realities
Enforcement Initiation	Reactive; entirely dependent on ex-wife’s initiative	Proactive; court-initiated monitoring and enforcement
Primary Objective	Legal certainty (<i>rechtszekerheid</i>) as sole goal	Substantive justice and protection of vulnerable parties
Coercive Measures	Cautious application of <i>dwangsom</i> ; fear of generating conflict	Progressive application of coercive instruments, asset tracing, and administrative sanctions
Burden of Enforcement	Entirely transferred to the claimant (economically vulnerable ex-wife)	Shared institutional responsibility; court assists in overcoming obstacles
Outcome	“Paper tiger” judgments; 80% execution gap; illusory legal certainty	Shared institutional responsibility; court assists in overcoming obstacles

Source: FEMINA Portal, Surabaya Religious Court, 2025.

As Table 2 demonstrates, the transition from the positivist to the progressive paradigm constitutes a structural necessity rather than a mere theoretical preference. The positivist model perpetuates a self-reinforcing cycle of institutional passivity in which non-compliant former husbands face no meaningful consequences, while the progressive model offers a coherent alternative whereby the court assumes active responsibility for translating judicial decisions into lived realities for vulnerable parties.

The courage of judges to engage in legal discovery (*rechtsvinding*) and judicial activism originates from the recognition that the object of post-divorce enforcement is not a commercial dispute, but rather the fulfillment of fundamental rights belonging to vulnerable groups. A survey involving nineteen divorced women demonstrates that all respondents continue to bear responsibility for their children's needs, while only 16% have received full payment of *nafkah iddah* (waiting-period maintenance). These findings indicate that enforcement failure is not merely an administrative issue but reflects a form of structural injustice that exacerbates economic and psychological vulnerability.

This condition corresponds with previous findings that women encounter greater obstacles in obtaining maintenance and child custody rights (Kusnandar & Rahma, 2023). Accordingly, progressive law must adopt a pro-vulnerability orientation to ensure the protection of former wives' rights and prevent broader forms of injustice (Hulukati, 2024). Such protection also constitutes a constitutional obligation, considering that children's rights must be safeguarded against neglect (Aditya & Waddington, 2021).

Accordingly, progressive law enforcement has demonstrated its capacity to address and dismantle the structural deadlocks previously identified, transforming enforcement from a mere legal formality into a tangible manifestation of enforcement justice. Within this context, progressive law should not be reduced to an abstract discourse of legal philosophy rather, it functions as a "master key" that enables concrete breakthroughs within judicial practice. By shifting the focus from procedural compliance toward substantive justice, coupled with judges' willingness to engage in legal discovery (*rechtsvinding*), enforcement deadlocks concerning post-divorce rights can be systematically resolved. This paradigm affirms that progressive law is inherently "humanist and justice-oriented," enabling it to transcend the rigidity of legal positivism that has long constrained effective enforcement mechanisms (Tanlim et al., 2024).

Within this framework, judicial decisions are no longer perceived merely as the culmination of administrative formalities but as active instruments for translating substantive justice into the actual fulfillment of former wives' and children's rights. The synergy between *rechtsvinding*, judicial activism, and a substantive justice orientation ultimately demonstrates that divorce judgment enforcement should no longer end as powerless documents but must be transformed into effective instruments for realizing legal rights. Nevertheless, judicial courage in exercising judicial activism and *rechtsvinding* requires a strong ethical and philosophical foundation to prevent it from being perceived as judicial arbitrariness or a deviation from the principle of judicial passivity. Without such a foundation, progressive enforcement risks collapsing into subjective decision-making that undermines the very legitimacy it seeks to restore. The progressive paradigm, therefore, must be anchored in a normative framework that simultaneously empowers judicial activism and constrains it within principled boundaries of substantive justice.

C.3 The Values of *Risalah al-Qada'* as an Ethical Foundation for Progressive Law Enforcement

The *Risalah al-Qada'* should not be understood merely as a classical procedural guideline for judicial administration, but rather as an ethical-prophetic charter that constructs judges as agents of justice responsible for ensuring that judicial decisions are effectively realized in practice. Within the tradition of Islamic legal thought, the letter of Caliph 'Umar ibn al-Khattab to Abu Musa al-Ash'ari is regarded as a foundational guide "on judicial ethics and on what a judge ought to do in administering justice" (Malik, 2021). Therefore, the *Risalah*

al-Qada' remains relevant as a normative framework for strengthening the integrity of modern judicial institutions. This essence is reinforced by the principle that "justice has no meaningful value without its actual implementation" (Husni, 2013). This principle criticizes judicial practices that terminate at the issuance of judgments without ensuring their effective enforcement, particularly in the context of post-divorce enforcement. Accordingly, the *Risalah al-Qada'* provides ethical legitimacy for judges to assume an active role in ensuring the fulfillment of former wives' and children's rights through effective enforcement measures oriented toward substantive justice.

Justice (*al-'adl*) should not be understood merely as procedural correctness or the formal fulfillment of judicial rulings, but rather as the essence of ensuring the actual realization of rights for those entitled to them. This principle directly intersects with the spirit of progressive law, which positions law as an instrument of humanity, as both approaches consistently emphasize the substance of justice beyond mere textual compliance. Within the context of divorce judgment enforcement, substantive justice requires that former wives and children genuinely receive *nafkah iddah* (waiting-period maintenance), *mut'ah* (consolatory compensation), and child custody-related rights in concrete terms, rather than merely obtaining final and binding judgments (*inkracht van gewijsde*) that lack effective enforcement mechanisms.

The *Risalah al-Qada'* explicitly emphasizes that justice without implementation loses its meaning, as articulated by 'Umar ibn al-Khattab: "there is no meaning in speaking of justice without its actual implementation" (Rahmiati, 2017). This understanding encourages judges not merely to be satisfied with issuing judicial rulings but also to ensure that such rulings are realized in the lived realities of the parties concerned. Accordingly, the integration of substantive justice principles within the *Risalah al-Qada'* not only expands the perspective beyond procedural formalism but also provides a strong ethical foundation for the actual fulfillment of former wives' and children's post-divorce rights. At the same time, it bridges prophetic values with the demands of modern justice systems that prioritize the protection of vulnerable parties.

The judiciary should not be understood merely as a mechanism for dispute resolution, but also as a preventive institution grounded in *Maqasid al-Shari'ah* to protect vulnerable groups in post-divorce contexts. This approach positions the principle of public interest (*maslahah*), particularly the protection of life (*hifz al-nafs*) and lineage (*hifz al-nasl*), as an evaluative framework responsive to the substantive needs of women and children, ensuring that judicial decisions do not remain confined to procedural dimensions alone (Shofa, 2025). The principle of *hifz al-nafs* encompasses a broader meaning beyond physical protection, extending to psychological, emotional, and spiritual well-being (Rosli et al., 2025).

When judgment enforcement fails, as indicated by the 80% execution gap identified in the Surabaya Religious Court where only 16% of former wives received full *nafkah iddah* payments such conditions potentially generate structural harm that undermines the mental and economic stability of vulnerable parties. Therefore, the legal maxim *la darar wa la dirar* ("harm shall neither be inflicted nor reciprocated with harm") constitutes a crucial ethical foundation. This principle emphasizes the importance of social justice by protecting individuals from exploitation and injustice while simultaneously ensuring the preservation of property (*hifz al-mal*) so that post-divorce financial rights are not neglected (Karimullah, 2023). Based on this preventive dimension, a judge guided by the ethical principles of *Risalah al-Qada'* should not remain passive by merely awaiting enforcement requests. Instead, judges

are encouraged to proactively utilize legal discovery instruments, such as asset tracing and the implementation of progressive coercive measures, to prevent irreversible harm and ensure the actual fulfillment of rights before such harm expands further.

The willingness of judges to engage in legal discovery (*rechtsvinding*) and judicial activism originates from the recognition that the object of post-divorce enforcement is not an ordinary commercial dispute, but rather the fulfillment of fundamental rights belonging to vulnerable groups. From the perspective of the Islamic judicial system, the role of a *qadi* extends beyond the mechanical application of legal rules; instead, a *qadi* functions as a *wakil al-shar'* (representative of divine law) who bears an active obligation to uphold truth, assist the oppressed, protect fundamental rights, and prevent injustice. Without a strong and proactive judiciary, the rights of vulnerable members of society remain at risk of being violated (Rejjabbayevich, 2024). This paradigm corresponds with the concept of the ethics of responsibility, whereby judges are not only accountable for procedural accuracy but also for the actual consequences of their decisions for former wives and children. A passive attitude or merely awaiting enforcement requests from economically disadvantaged parties contradicts this principle, as the legitimacy of the legal system cannot be restored through legal formalism alone but requires active institutional engagement and the assurance of equal access to substantive justice (Syahrir et al., 2025).

Therefore, when judges undertake proactive asset tracing, apply progressive coercive measures, or implement administrative enforcement mechanisms, they are not exceeding their authority or acting arbitrarily. Rather, such actions represent a manifestation of prophetic judicial activism that fulfills the theological mandate of the *Risalah al-Qada'* to ensure that justice is effectively realized. At the same time, this approach provides a critical response to institutional passivity that has allowed structural injustice to persist within post-divorce enforcement practices.

The values embedded within the *Risalah al-Qada'*, including substantive justice, public interest (*maslahah*), prevention of harm, and the active responsibility of judges, collectively constitute a moral foundation for progressive law enforcement. Judicial activism, within this framework, is no longer merely a juridical innovation but rather a spiritual manifestation of the prophetic mandate to uphold human dignity and protect the rights of former wives and children. The principle that justice has no meaningful value without its actual implementation demonstrates that the *Risalah al-Qada'* provides an ethical boundary ensuring that judicial activism remains directed toward substantive justice rather than personal interests. At the same time, it offers a holistic conceptual framework that will be further developed and formulated in the following section.

C.4 Integrating *Risalah al-Qada'* and Progressive Law: A Model of Enforcement Justice

The enforcement deadlock in post-divorce judgments, characterized by a substantial gap between judicial rulings and their actual implementation, is not merely a technical failure but rather a manifestation of the paralysis of a positivist paradigm that reduces justice into administrative formalities. To dismantle the structure of impunity that perpetuates the vulnerability of former wives and children, a conceptual model is required that integrates the ethical-prophetic values of *Risalah al-Qada'* with the operational instruments of progressive law. Within this model, the *Risalah al-Qada'* functions as a normative foundation that provides a moral compass for judges, requiring them not only to adjudicate disputes but also to ensure that justice is effectively realized in practice. The principle of substantive justice (*al-'adl*), the

maxim of preventing harm (*la darar wa la dirar*), and the conception of judges as representatives of divine law (*wakil al-shar'*) require judicial institutions to proactively protect vulnerable parties from exploitation and neglect of their legal rights. This ethical foundation simultaneously provides theological and moral legitimacy for judges to transcend rigid textualism, transforming the judiciary from a mere dispute-resolution mechanism into an emancipatory instrument that upholds the dignity of vulnerable groups.

On the other hand, progressive law provides the operational framework necessary to translate these prophetic values into concrete judicial breakthroughs. Through *rechtsvinding* and judicial activism, judges are encouraged to undertake contextual legal interpretation and discovery in order to address normative gaps and dismantle bureaucratic obstacles. Instruments such as proactive asset tracing, the application of progressive coercive measures, and administrative enforcement mechanisms against non-compliant former husbands should no longer be perceived as forms of judicial arbitrariness, but rather as manifestations of the ethics of responsibility. The synergy between the normative-prophetic dimension and the modern-progressive dimension generates a holistic model of enforcement justice, in which judicial activism remains directed toward substantive justice and public welfare (*maslahah*) rather than personal interests or institutional bias.

To illustrate the structural architecture of this integrated model, Table 1 maps the three constitutive layers normative-prophetic foundation, progressive operational instruments, and substantive outcomes along with their respective functions and interrelations. The table demonstrates how *Risalah al-Qada'* supplies the ethical “why” (moral legitimacy and spiritual direction) while progressive law supplies the operational “how” (concrete judicial mechanisms), collectively producing enforcement justice actualized through *Maqasid al-Shari'ah*.

Table 3. Integrated Model of Post-Divorce Enforcement Justice: *Risalah al-Qada'* and Progressive Law

Layer	Component	Function	Concrete Manifestation
I. Normative Prophetic Foundation (<i>Risalah al-Qada'</i>)	<i>Al-'adl</i> (Substantive Justice)	Provides moral compass; ensures justice is realized, not merely declared	Judge obligated to verify actual fulfillment of <i>nafkah iddah</i> , <i>mut'ah</i> , child support
	<i>La darar wa la dirar</i> (Prevention of Harm)	Prevents structural harm to vulnerable parties	Proactive intervention before economic/psychological damage becomes irreversible
	<i>Wakil al-shar'</i> (Judge as Representative of Divine Law)	Theological legitimacy for judicial activism	Judge acts proactively without awaiting ex-wife's enforcement request
	<i>Maslahah</i> (Public Interest)	Orients enforcement toward collective welfare	Institutional monitoring and automatic enforcement mechanisms
II. Progressive Operational Instruments (Progressive Law)	<i>Rechtsvinding</i> (Legal Discovery)	Addresses normative gaps and dismantles bureaucratic obstacles	Contextual interpretation of HIR/RBg to fit post-divorce realities

	Judicial Activism	Transcends <i>la bouche de la loi</i> passivity	Court-initiated asset tracing; progressive <i>dwangsom</i> application
	Administrative Enforcement	Ensures compliance through systemic integration	Wage deductions; integration with financial/administrative institutions
	Pro-vulnerability Orientation	Shifts burden from ex-wife to institution	Court bears responsibility for monitoring and enforcing compliance
III. Substantive Outcome (<i>Maqasid al-Shari'ah Actualization</i>)	<i>Hifz al-nafs</i> (Protection of Life)	Safeguards physical, psychological, and economic well-being	Ex-wife and children freed from economic destitution and structural harm
	<i>Hifz al-nasl</i> (Protection of Lineage)	Guarantees children's rights and welfare	Effective realization of child support and <i>hadhanah</i> rights
	<i>Hifz al-mal</i> (Protection of Property)	Ensures legitimate financial rights are fulfilled	Prevention of asset concealment; actual payment of <i>nafkah iddah</i> and <i>mut'ah</i>
	Restoration of Dignity	Transforms judgments from "paper tigers" into living instruments	Women's dignity upheld; execution gap eliminated; public trust restored

Source: FEMINA Portal, Surabaya Religious Court, 2025.

As Table 3 demonstrates, the model operates as a coherent tripartite architecture in which each layer is mutually reinforcing: the prophetic-ethical foundation (Layer I) legitimizes and directs the progressive instruments (Layer II), which in turn produce the substantive *Maqasid*-oriented outcomes (Layer III). This structure ensures that judicial activism remains ethically bounded and purpose-driven rather than arbitrary.

The ultimate outcome of integrating these two paradigms is the realization of substantive enforcement justice that effectively restores post-divorce rights. Judicial decisions no longer remain powerless documents lacking practical force, but are transformed into instruments for the fulfillment of rights, ensuring that *nafkah iddah* (waiting-period maintenance), *mut'ah* (consolatory compensation), and child custody-related rights are effectively realized and their benefits are genuinely experienced by former wives. Beyond merely fulfilling financial obligations, this model seeks to restore women's dignity and protect children's fundamental rights from structural harm, in accordance with the principles of *Maqasid al-Shari'ah* in preserving life (*hifz al-nafs*), lineage (*hifz al-nasl*), and property (*hifz al-mal*). Accordingly, the integration of *Risalah al-Qada'* and progressive law not only provides a theoretical response to the enforcement crisis within Religious Courts but also establishes a foundation for developing an Islamic family justice system that is responsive, oriented toward substantive justice, and consistently committed to protecting vulnerable groups amid contemporary social dynamics.

D. Discussion

The findings of this study reveal that the persistent 80% execution gap in post-divorce enforcement is not merely a procedural deficiency but a structural manifestation of legal positivism's inability to translate judicial declarations into lived justice. This interpretation diverges from conventional scholarship that attributes enforcement failure primarily to technical or administrative obstacles, and instead positions the deadlock as a paradigmatic crisis requiring epistemological reconstruction (Fahmi et al., 2025). *Risalah al-Qada'* is a foundational treatise in the history of Islamic judicial thought, containing early principles of judicial jurisprudence and ethics. The treatise is attributed to Caliph Umar ibn al-Khattab and was addressed to judges he appointed, including Abu Musa al-Ash'ari and Abu Ubaidah ibn al-Jarrah. It sets out principles of equality between litigants, the allocation of the burden of proof to the plaintiff, the prioritization of reconciliation (*islah*), and the judge's duty to protect vulnerable parties. Judges are also required to maintain objectivity by avoiding decisions made under emotional pressure and remaining open to correcting erroneous judgments. These principles demonstrate that *Risalah al-Qada'* is not merely concerned with judicial procedures, but places substantive justice and the protection of vulnerable groups at the center of the judicial process.

The contemporary relevance of *Risalah al-Qada'* can be seen in its compatibility with the principles of judicial power under Indonesian positive law. Article 4(1) of Law No. 48 of 2009 stipulates that courts shall adjudicate according to law without discriminating between persons. This principle substantially corresponds with Umar ibn al-Khattab's instruction to judges in *Risalah al-Qada'*, as cited in several works of Islamic judicial jurisprudence, including *I'lam al-Muwaqqi'in* by Ibn al-Qayyim al-Jawziyyah and *Al-Qada' fi al-Islam* by 'Atiyyah Musharrafah:

وَأَنْصِفِ النَّاسَ مِنْ نَفْسِكَ، وَمِنْ مَجْلِسِكَ، وَوَجْهِكَ، وَقَضَائِكَ، حَتَّى لَا يَطْمَعَ شَرِيفٌ فِي خَيْفِكَ، وَلَا يَيْئَسَ ضَعِيفٌ مِنْ عَذْلِكَ

which means: "Treat people equally in your assembly, in your view, and in your judgment, so that the noble will not seek to exploit your injustice, and the weak will not despair of your justice" (Fuadah, 2019). This correspondence demonstrates that the principles of equality and the protection of vulnerable parties constitute a common ground between Islamic judicial ethics and Indonesian positive law.

The convergence between *Risalah al-Qada'* and Satjipto Rahardjo's progressive legal theory further reinforces this orientation. Both reject rigid legal formalism and place human beings at the center of law. Progressive law prioritizes human dignity, happiness, and welfare, while *Risalah al-Qada'* allows judges to correct erroneous decisions and exercise *ijtihad* when no explicit legal provision is available (Siregar, 2024). Within progressive legal theory, this flexibility is expressed through judicial discretion aimed at achieving substantive justice. In the enforcement of post-divorce judgments, this approach becomes relevant when conventional mechanisms fail to ensure the fulfillment of alimony and *mut'ah* rights for former wives and children (Tarigan & Rahmi, 2026). Therefore, responsive enforcement mechanisms are necessary to protect vulnerable parties.

Taken together, these principles provide the theoretical basis for this study's integrative framework, which positions *Risalah al-Qada'* not merely as a historical artifact of Islamic judicial ethics but as a living normative architecture capable of informing judicial activism beyond positivist constraints. This framework extends Satjipto Rahardjo's progressive law

thesis that law must serve humanity rather than the reverse while extending it through a prophetic-ethical dimension previously absent in progressive legal scholarship (Tanlim et al., 2024). The convergence of *al-'adl*, *la darar wa la dirar*, and *wakil al-shar'* with *rechtsvinding* and pro-vulnerability orientation produces what this study conceptualizes as “emancipatory enforcement justice” a paradigm in which the court transcends its adjudicatory function to become an active guardian of *Maqasid al-Shari'ah* (*hifz al-nafs*, *hifz al-nasl*, *hifz al-mal*). This represents a significant departure from existing models that treat enforcement as a post-adjudicatory administrative task repositioning it as a constitutive element of judicial responsibility itself.

Nevertheless, this study acknowledges several limitations that warrant careful consideration. *First*, the empirical foundation relies on ten court decisions from a single jurisdictional area (Surabaya Religious Court) and a survey of nineteen respondents, which constrains the generalizability of findings to the broader Indonesian Religious Court system where regional legal cultures, institutional capacities, and patriarchal norms may vary significantly. *Second*, the analytical framework remains predominantly normative-conceptual, meaning that the proposed model's practical efficacy particularly regarding judges' institutional willingness to exercise judicial activism amid bureaucratic constraints has not been empirically tested. Future research should address these gaps through three concrete directions: (1) a multi-site quantitative study measuring the correlation between progressive enforcement practices and execution gap reduction across at least five Religious Courts with varying institutional profiles; (2) a socio-legal investigation employing in-depth interviews with judges, bailiffs (*juru sita*), and former wives to examine how patriarchal cultural resistance and institutional incentive structures mediate the implementation of *Risalah al-Qada'* informed judicial activism and; (3) a comparative policy analysis examining whether automatic enforcement mechanisms such as wage garnishment integration with financial institutions, as practiced in Malaysian and Bruneian Syariah Courts can be adapted within Indonesia's legal framework while preserving the ethical-prophetic orientation proposed herein.

E. Conclusion

This study demonstrates that the integration of the ethical-prophetic values of *Risalah al-Qada'* and the progressive law paradigm offers a substantive framework for reconstructing post-divorce enforcement justice within Religious Courts. The findings reveal that the persistent 80% execution gap is not merely a procedural deficiency but a structural manifestation of legal positivism's paralysis, wherein judicial decisions concerning *nafkah iddah*, *mut'ah*, and child support remain “paper tigers” lacking effective coercive force. By integrating the principles of substantive justice (*al-'adl*), prevention of harm (*la darar wa la dirar*), and the conception of judges as representatives of divine law (*wakil al-shar'*) with the operational instruments of *rechtsvinding* and judicial activism, this study proposes a model of “emancipatory enforcement justice” that transforms the judiciary from a passive dispute-resolution mechanism into an active guardian of *Maqasid al-Shari'ah* (*hifz al-nafs*, *hifz al-nasl*, *hifz al-mal*). Theoretically, this research contributes to Islamic family law scholarship by bridging classical judicial ethics with modern progressive legal theory, thereby filling the interdisciplinary gap identified in existing literature. Practically, the findings underscore that successful enforcement depends not solely on regulatory completeness but on the moral courage of judicial institutions to dismantle the impunity of non-compliant former husbands through proactive asset tracing, progressive coercive measures, and administrative enforcement mechanisms.

Nevertheless, this study acknowledges specific limitations that constrain the interpretation and generalizability of its findings. *First*, the empirical foundation relies on ten court decisions from a single jurisdictional area (Surabaya Religious Court) and a survey of nineteen respondents, which limits the external validity of conclusions regarding the broader Indonesian Religious Court system where regional legal cultures, institutional capacities, and patriarchal norms vary significantly. *Second*, the analytical framework remains predominantly normative-conceptual, meaning that the proposed model's practical efficacy particularly regarding judges' institutional willingness to exercise judicial activism amid bureaucratic constraints and workload pressures has not been empirically tested. *Third*, the study does not account for the perspectives of non-compliant former husbands or court enforcement officers (*juru sita*), whose experiences and rationalities may reveal additional structural barriers not captured through the ex-wife's perspective alone.

Based on these limitations, three concrete directions for future research are recommended. *First*, a multi-site quantitative study employing a larger sample of Religious Court decisions (minimum 100 cases across at least five jurisdictions with varying institutional profiles) should measure the statistical correlation between progressive enforcement practices and execution gap reduction, controlling for variables such as court workload, regional patriarchal intensity, and former husbands' socioeconomic status. *Second*, a socio-legal investigation employing in-depth interviews and participatory observation with judges, bailiffs (*juru sita*), court clerks (*panitera*), and non-compliant former husbands should examine how institutional incentive structures, cultural resistance, and personal moral convictions mediate the actual implementation of *Risalah al-Qada'*-informed judicial activism in daily practice. *Third*, a comparative policy analysis should investigate whether automatic enforcement mechanisms such as wage garnishment integration with financial institutions, asset freezing through digital banking systems, or social credit penalties as practiced in Malaysian and Bruneian Syariah Courts can be adapted within Indonesia's legal framework while preserving the ethical-prophetic orientation proposed herein. Such research would provide the empirical validation necessary to transform this conceptual model into actionable judicial policy at the national level.

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