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## REFORMULATION OF MAFQUD HUSBAND REGULATIONS IN THE INDONESIAN MARRIAGE LAW SYSTEM IN THE PERSPECTIVE OF MASLAHAH AL BUTHI

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**Abstract:** *One of the issues that often arises in the context of marriage is the case of "missing husband." This term refers to a situation where the husband is absent or not present in the household for a long time, causing the marriage to be halted or threatened. In the Indonesian marriage law system, this issue refers to UUP No. 01 of 1974 Article 39 and KHI Article 116 point b. This type of research is normative with a legal, comparative, and conceptual approach. This research examines the urgency of reformulating the provisions for a missing husband in the Indonesian marriage law system through the perspective of maslahah al-Buthi. The analysis shows that the two-year waiting period as regulated in KHI Article 116 b and UUP No. 01 of 1974 Article 39 creates serious legal uncertainty for the wife and children, negatively impacting inheritance rights, economic and psychological well-being, and violating the principle of distributive justice. Based on the principle of maslahah al-Buthi, it is recommended to reduce the waiting period to one year to expedite dispute resolution and minimize harm. This reformulation aligns with the goals of national law human rights protection, gender justice, and legal certainty while creating synergy between progressive Islamic legal values and modern norms. The implementation of this proposal is expected to achieve a faster determination of marital status, improve economic access for wives, and prevent family poverty, thereby supporting the attainment of family welfare and harmony.*

**Keywords:** *Mafqud Husband; Indonesian Marriage Law; Maslahah Al-Buthi; Legal Reform*

## INTRODUCTION

Marriage is one of the most important social institutions in Islamic society. This is a social contract that has the primary purpose of protecting the rights of husbands and wives and creating well-being within the family. However, despite the values underlying marriage in Islam being highly respected, the reality is that marriage often faces various challenges and problems, including divorce. (Jahwa et al., 2024)

One of the issues that often arises in the context of marriage is the case of a "missing husband/wife." This term refers to a situation where the husband or wife is absent or not present in the household for a long time, causing the marriage to be halted or threatened. (Alfarez, 2023) Several phenomena are often encountered in society, such as in the village of Suci Manyar Gresik, where there are several women (wives) whose husbands have been gone for years without leaving any news. Not only the wives are left behind, but also their children. The husband's departure was initially meant to seek a livelihood in a distant place, and some even left due to other issues like being entangled in debt.

The impact of the missing husband is so detrimental to the wife and child. The phenomenon of a relatively difficult economic situation forces the wife to work tirelessly to support herself and her child. This situation must be very difficult for a wife who is used to depending on her husband. Therefore, women's independence is very important to avoid excessive dependence on others. The husband left not in months, but in years. Some have been gone for almost four years without any news. A bit heart-wrenching to hear the expressions from the wives and children (Suminah, Wawancara, 2024).

The issue of a missing husband in the Indonesian marriage law system can at least be addressed by two legal provisions, namely Law No. 1 of 1974 and the Compilation of Islamic Law. In Law No. 1 of 1974, it is not specifically detailed in any particular article. However, it is usually included in the grounds for divorce in Article 39, paragraph 2 of the Marriage Law, which states: to carry out a divorce, there must be sufficient reason that the husband and wife cannot live in harmony as husband and wife. (Tarigan, 2015) In the explanation of its article, among the sufficient reasons is the fact that one party leaves the other for 2 (two) consecutive years without the consent of the other party and without a valid reason or due to circumstances beyond their control.

Meanwhile, in the Compilation of Islamic Law (KHI), there are provisions regarding the dissolution of marriage, including those related to a missing husband/wife as stated in Article 116 (b), which reads: one party leaves the other for 2 (two) consecutive years without the other party's consent and without a valid reason or due to circumstances beyond their control. (Kompilasi Hukum Islam, 2022) This article has sparked controversy among the public, first, the ambiguity in the definition regarding one party leaving the other, whether it falls under the category of *ghoib* or *mafqud*, as both have different legal effects. Second, the lack of clarity regarding the reasons for the dissolution of marriage through *fasakh*. Third, the two consecutive years of waiting for the wife are considered to provide a sense of injustice.

The compilation of Islamic law in determining this article is certainly not arbitrary, especially if we recall that the compilation of Islamic law is sourced from several classical

texts of the Shafi'i, Maliki, Hanafi, and Hambali schools of thought. On average, their waiting period is much longer, ranging from four years to ninety years. (Nasution, 2024) On one hand, we must appreciate KHI for providing a 2-year waiting period, which is lighter than the opinions of the madzhab scholars; in our opinion, this decision has moved away from classical fiqh provisions. This decision may have been appropriate for the conditions of Indonesian society in the 1990s or early 2000s, but with the ongoing shifts in social and cultural changes, it seems that the 2-year waiting period needs to be reformulated to reduce the waiting time. This is different from the regulations in Malaysia and Brunei Darussalam, as both countries choose not to deviate from classical fiqh provisions that follow the opinion of Imam Shafi'i in his old view, which states that a wife can dissolve her marriage with her missing husband after waiting for four years. (*Islamic Family Law (State of Kedah) Enactment Number 11 Tahun 2008, seksyen 54 ayat (1), (2), (3), (4), n.d.*)

The theory used by the author in this research is the *maslahah* theory. The *maslahah* that the author uses here is focused on the perspective of Muhammad Said Ramadlan al-Buthi. In the view of Muhammad Said Ramadlân al-Bûthî, *Mashlahah* is "something beneficial intended by al-Syari' (Allah and His Messenger) for the interests of His servants, whether in preserving their religion, life, intellect, lineage, and wealth, according to a specific order found within the categories of preservation." (Muhammad Said Romadlon Al Buthi, 2000, hal. 27) Al-Buthi says that *Mashlahah* can be used as a source of law if it meets five criteria that he terms *Dlawâbith al-Mashlahah*. The five criteria are as follows; the *maslahah* must: (a) fall within the scope of the five *al-Maqâshid al-Syar'iyyah*, (b) not contradict the al-Qur'an, (c) not contradict the al-Sunnah, (d) not contradict *al-Qiyas*, and (e) not contradict a higher/stronger/more important *maslahah*.

Based on the explanation above, the author will examine three things: first, the urgency of reformulating the provisions for a missing husband in the marriage law system in Indonesia. Second, how the reformulation of the provisions for a missing husband in the marriage law system in Indonesia is reviewed based on the principles of the *maslahah* al Bhuti theory. And third, how is the relevance of the reformulation of the provisions for a missing husband in the marriage law system in Indonesia based on the principles of the *Maslahah* al Bhuti theory.

## RESEARCH METHOD

The type of research that the author uses in this study is normative legal research. The use of this type of research is based on the consideration of examining the rules or norms in positive law. (I, 2011) The statute approach is relevant to be conducted considering this research examines a norm in Law No. 1 of 1974 Article 39 and the Compilation of Islamic Law (KHI) Article 116 (b) regarding the dissolution of marriage due to being missing. (Peter Mahmud Marzuki, 2014) As well as using the Comparative Approach by conducting a comparative legal study involving in-depth analysis and understanding of the differences and similarities between family law systems in Islamic countries such as Malaysia, Brunei, Egypt, Jordan, and Morocco, and the Conceptual Approach. This is done because the

issues faced have not been regulated or are indeed not covered by the applicable law. (Peter Mahmud Marzuki, 2014)

This research falls into the category of descriptive analysis, which aims to solve problems by describing existing issues through the collection, organization, and analysis of data, and then systematically presenting it. The data collected comes from the application of qualitative data collection methods. This qualitative method is a research approach that emphasizes a deep understanding of a problem through detailed analysis, with the aim of providing comprehensive insights into the issue being studied. (Noer Muhadjir, 2016)

Data analysis techniques are a systematic process in collecting data designed to facilitate researchers in formulating conclusions. The data analysis used by the author follows the perspective of Miles & Huberman, which consists of three concurrent activities: data reduction, data presentation, and conclusion drawing/verification. (Huberman, 1992).

## RESULT AND DISCUSSION

### The Provisions for Missing Persons in the Marriage Law System in Indonesia

The marriage law system in Indonesia is a collection of rules and procedures that govern the implementation of marriage, both from the civil law and religious law perspectives. These rules cover various aspects such as the requirements for a valid marriage, the procedures for conducting the wedding, the rights and responsibilities of husband and wife, the management of joint property, the divorce process, and other aspects related to marital relationships. This system applies comprehensively to all Indonesian citizens, regardless of their religious, ethnic, or cultural backgrounds. However, this system still accommodates the cultural and religious diversity present in Indonesia, so the regulations applied may differ depending on the religion adhered to by the couple intending to marry. (Achmad & Arifin, 2006, hal. 147)

The main objective of the marriage law system in Indonesia is to provide legal protection for the parties involved in the marriage bond, ensure justice and balance between the rights and obligations of the husband and wife, and guarantee the continuity of household relationships based on the prevailing legal principles in Indonesia. In this study, the marriage law system in Indonesia refers to two main sources, namely Law Number 1 of 1974 Article 39 and the Compilation of Islamic Law Article 116 point b.

In the Compilation of Islamic Law (KHI), the term "missing husband" refers to a husband who is not present or absent in a legal process involving a woman, especially in the context of rights and obligations towards the wife. This concept becomes important in determining the husband's responsibilities towards alimony, protection, and the wife's rights in various legal situations, such as divorce, inheritance, and other issues involving the husband-wife relationship. (Hazairin, 2010, hal. 23)

A husband classified as "*mafqud*" usually has the obligation to provide maintenance to his wife even if he is not physically present in the legal process. This underscores the importance of the husband's responsibility towards the wife even in situations of absence or non-presence, so that the wife's rights remain protected according to the principles of

Islamic law.(Harahap, 2015, hal. 15) In the context of the Compilation of Islamic Law, a clear understanding of the concept of a missing husband is key to ensuring protection and justice for women in marital relationships according to Islamic teachings.

From this, it can be concluded that the term "*mafqud*" in fiqh has the same meaning as "*mafqud*" in the Compilation of Islamic Law. This term refers to a husband who is absent or not present in the marriage or household for a certain period of time. In both contexts, *mafqud* refers to the status of a husband who is physically absent or not fulfilling his obligations in marriage, which affects various legal aspects and responsibilities in the household and marriage according to Islamic law.

Both terms are aligned in the context of Islamic law, where both refer to the same concept of a husband being absent or not fulfilling his responsibilities in the household. Therefore, in the Compilation of Islamic Law, the provisions governing a missing husband will be in line with the concepts found in traditional Islamic jurisprudence. This allows for the consistent and relevant application of Islamic law within the context of Indonesian national law, in accordance with the principles found in Islamic jurisprudence.

### **The Urgency of Reformulating the Provisions for Missing Husbands in the Marriage Law System in Indonesia**

In the context of Islamic family law in Indonesia, the term *mafqud* refers to a condition where the husband is missing, resulting in legal uncertainty regarding the marital status and the rights and obligations of both parties. The phenomenon of the missing husband is increasingly relevant in the contemporary era due to the increase in mobility, advancements in information technology, and changes in communication patterns. However, the existing regulations, particularly the rule regarding the two consecutive years waiting period before a divorce can be granted, are starting to be questioned in terms of their relevance to current times. Additionally, there are fundamental issues related to the mechanism of proving the husband's existence and protecting the wife's rights, as well as the overly broad interpretive space for judges in applying Article 116 letter b of the Compilation of Islamic Law (KHI) and the explanation of Article 39 (2) of the Marriage Law No. 1 of 1974.

The regulation that establishes a two-year waiting period as a requirement for filing a divorce petition in cases of a missing husband was initially developed based on historical context and social conditions of the past. At that time, the limitations of information, transportation, and communication systems made the two-year period considered a reasonable limit to ensure that the husband was truly missing or unreachable. However, in the context of the modern era, where information technology and communication systems are rapidly advancing, the waiting period is no longer considered proportional.

Significant changes in technology and human mobility allow for the search and verification of a person's whereabouts to be conducted more quickly and accurately. Thus, the two-year provision is considered too long and potentially causes psychological and economic harm to the wife who has to wait in uncertainty. Several studies suggest that contemporary needs demand flexibility in setting waiting periods to align with the realities of modern life and to consider more complex social dynamics.(Khotim, 2022)

The relevance of Imam Syafi'i's opinion and that of several earlier scholars, who suggested a waiting period of four years or more in cases of *mafqud*, also needs to be re-evaluated, considering the difference in context between the past and the current era of globalization. Therefore, reformulation is necessary so that the waiting period provisions can reflect the needs of modern society, without sacrificing the principle of caution in establishing legal certainty.

The second shortcoming that is highlighted is the lack of clarity in the mechanism for proving the existence of a husband declared missing and the minimal legal protection for the wife's rights. In practice, proving the status of a missing person often relies on witness testimony and indirect evidence, which can lead to differing interpretations at the court level. This makes the process of proof vulnerable to subjectivity and legal uncertainty.

Wives in this situation are very vulnerable because their rights, both in terms of asset division and the right to file for divorce, are often not optimally protected. For example, in some cases, the wife must face a heavy burden of proof to declare that her husband is truly missing. These ambiguous evidentiary requirements create potential injustice because the judge's decision heavily relies on the evidence presented and the judge's interpretation of those evidentiary standards.(Muthia Hartati et al., 2022)

Research on the protection of a wife's rights in cases of a missing husband shows that the existing proof mechanisms are not yet fully capable of providing legal certainty and socio-economic protection for the wife. In many cases, wives are forced to bear psychological and financial losses due to the uncertainty of their husband's status, which ultimately also affects the overall stability of the household. Therefore, there is a need to sharpen the proof mechanisms and add procedures that explicitly protect the rights of wives so that they are not systematically disadvantaged in the legal process.(Heniyatun et al., 2020).

### **Reformulation of the Provisions for a Missing Husband in the Marriage Law System in Indonesia Based on the Principles of Al Buthi's Maslahah Theory**

The concept of *mafqud* (missing husband) in Islamic law is an issue that has serious implications for the welfare of the family. *Mafqud* is defined as a person whose news has been cut off and it is unknown whether he is still alive or has passed away. In the context of marriage, the status of *mafqud* creates legal uncertainty that directly impacts the rights of the wife and the family left behind.

The Maslahah al-Buthi theory emphasizes the importance of preserving five fundamental aspects (*dharuriyyat*) in human life: religion, life, intellect, lineage, and property.(Muhammad Said Romadlon Al Buthi, 2000) The reformulation of the provisions for a missing husband in the Indonesian marriage law system needs to consider these five aspects to achieve family welfare. First, from the aspect of lineage protection (*hifz al-nasl*), the unclear status of the missing husband has the potential to cause harm to the wife and children.(Az-Zuhaili, 2004) Although in principle, the wife of a missing husband remains in the marriage bond and is entitled to maintenance, this uncertainty cannot last forever. The hadith states that "the wife of a missing person remains his wife until news (about her husband) reaches her."

However, this interpretation needs to be contextualized with contemporary social realities. Reformulating the provisions for a missing husband to achieve the welfare of the family can be done by:

1. Establishing a Proportional Time Limit: In the tradition of fiqh, there are various opinions about the waiting period (*iddah*) for a wife whose husband is missing. Some companions, such as Umar, Uthman, Ibn Umar, and Ibn Abbas, have views on the waiting period without specifying when it begins. Some scholars argue that the guardian of a missing husband must divorce his wife, while others state that no divorce from the guardian is necessary. The reformulation of this provision must consider the balance between the hope of the husband's return and the wife's need to continue her life..
2. Economic Protection:(Rohman, 2021) The *fuqaha* agree that the wife of a missing husband is entitled to receive maintenance from her husband's wealth. If the husband does not have any wealth, there is a difference of opinion among the scholars. Ibn Abbas opined that a wife is allowed to incur debt, and if her husband returns, the debt will be taken from his property, or if he dies, it will be taken from his inheritance.(Djamil, 2000) The reformulation of this provision must ensure the economic needs of the wife and children during the husband's absence.
3. Status Determination Mechanism: After the waiting period, the wife must undergo the *iddah* of death for four months and ten days. According to the Malikiyah and Hanabilah schools, a wife does not need a judge's decision to observe *iddah* and marry after the *iddah* period ends. However, according to the Syafi'iyah, a judge's decision is required. If the judge decides on the divorce between the missing husband and his wife, the decision is valid in appearance (formal) but not in essence.(Hallaq, 2010) The reformulation of this provision must provide legal certainty for the wife to determine her marital status.
4. Protection of Property: There are differing opinions among scholars regarding the management of the property of a missing husband. Hanafiyah argues that a judge should not sell the immovable property of a missing person, while Malikiyah permits the sale of the missing person's property if there is a debt claim. In the case of claiming the rights of the missing person, there is a difference of opinion regarding the judge's authority to seize property that is in the hands of another party.(Abdul Wahhab Khallaf, 1978) The reformulation of this provision must ensure the protection of family property and its management during the husband's.

### **Model Reformulation in the Form of Reducing the Waiting Period from 2 Years to 1 Year**

Analysis of the reduction of the waiting period from 2 years to 1 year for a wife whose husband is *mafqud* (missing) based on the theory of *Dlowabitul Maslahah Al-Bhuti*, we need to apply the five criteria or limitations set by Dr. Muhammad Sa'id Ramadhan Al-Bhuti. Here is a comprehensive analysis: Public interest must be within the scope of the objectives of sharia (مقاصد الشارِع).

The reduction of the waiting period from 2 years to 1 year needs to be evaluated to see if it aligns with the five main objectives of Sharia (*al-kulliyat al-khams*):(Fauzi, 2016) The reduction of the waiting period from 2 years to 1 year needs to be evaluated to see if it aligns with the five main objectives of Sharia (*al-kulliyat al-khams*):First, Protection of religion (حفظ الدين). Reducing the waiting period can help the wife avoid slander and actions prohibited by religion due to the prolonged uncertainty of marital status. However, if it is too short, there is concern that it may undermine the marriage bond, which is a part of religious teachings.

Second, Protection of life (حفظ النفس). Reducing the waiting period can alleviate the psychological pressure and suffering of the wife, thereby protecting her mental and physical health. A waiting period of one year still provides enough time to seek information about the husband's whereabouts, so as not to rush into making decisions. Third, Protection of the intellect (حفظ العقل). Prolonged uncertainty can affect the wife's mental health. Reducing the waiting period can help maintain the wife's mental health. A period of 1 year still provides enough time for thoughtful consideration and careful deliberation..

Fourth, Protection of offspring (حفظ النسل).Reducing the waiting period allows the wife to more quickly gain clarity on her status and the opportunity to have children through a new marriage if permitted. However, a waiting period that is too short can pose a risk of lineage mixing if the husband is still alive and returns after the wife remarries. It needs to be considered whether a period of 1 year is sufficient to ensure the clarity of the husband's status and protect the lineage. Fifth, Protection of property (حفظ المال). Reducing the waiting period can expedite the resolution of joint property issues, inheritance rights, and alimony. However, it needs to be considered whether a period of 1 year is sufficient to conduct the search and inventory of the husband's lost property.

Based on the analysis above, the reduction of the waiting period from 2 years to 1 year is generally still in line with the objectives of Sharia, especially in the protection of life and intellect. However, the implications for the protection of lineage and property need to be carefully considered.

#### 1. The public interest must not contradict the Qur'an (عدم مخالفة الكتاب)

In the Qur'an, there is no verse that specifically sets a waiting period for a wife whose husband is missing. However, there are relevant general principles:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ۚ

Meaning: Allah does not burden a soul beyond its capacity. (QS. Al-Baqarah: 286)

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

Meaning: Allah intends for you ease and does not intend for you hardship. (QS. Al-Baqarah: 185)

يُرِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ ۖ وَخُلِقَ الْإِنْسَانُ ضَعِيفًا

Meaning: Allah intends to give you ease, and mankind was created weak. (QS. An-Nisa: 28)



These principles support the existence of ease and leniency in Islamic law, including in the case of a missing husband. Reducing the waiting period from 2 years to 1 year does not contradict these principles of the Qur'an, as long as it maintains a balance between ease and caution.

2. The public interest must not contradict the Sunnah (عدم مخالفة السنة)

In the Sunnah and the practices of the companions, there are several narrations regarding the waiting period for a wife whose husband is missing: First, it is narrated that Umar bin Khattab set a waiting period of 4 years for a wife whose husband is missing, followed by a waiting period of 4 months and 10 days, after which she may remarry. Secondly, another opinion from Ali bin Abi Talib states that a wife must wait until there is certainty about her husband's death.

The reduction of the waiting period from 2 years to 1 year seems shorter than the practice reported from the companions. However, it should be considered that: first, the differences of opinion among the companions indicate that this issue falls within the realm of *ijtihad*. Second, the context of the companions' era is different from the modern context, where communication technology and missing person searches are far more advanced. Third, the general principle in the Sunnah about removing difficulties and preventing harm must still be considered. Thus, the reduction of waiting periods needs to consider a balance between caution (reflected in the practices of the companions) and the modern context that allows for more effective searches.

3. The public interest must not contradict Qiyas (عدم مخالفة القياس)

In the case of reducing the waiting period, *qiyas* can be applied by drawing analogies to several cases: first, *Qiyas* on the *iddah* of death: The *iddah* of death is set at 4 months and 10 days to ensure the emptiness of the womb and provide a mourning period. The waiting period for a missing husband is longer due to the uncertainty of his status. Second, *Qiyas* on the principle of "removing harm": The *fiqh* rule states "الضرر يزال" (harm must be removed). A waiting period that is too long can cause harm to the wife, but a waiting period that is too short can cause harm to the husband if he is still alive. Third, *Qiyas* on the principle "certainty is not removed by doubt": The *fiqh* rule states "اليقين لا يزول بالشك" (certainty is not removed by doubt). The status of marriage is a certain status, so it cannot be removed except with certainty or strong evidence. Based on these analogies, reducing the waiting period from 2 years to 1 year needs to consider the balance between eliminating harm to the wife and ensuring there is sufficient evidence to change the marital status.

4. The greater good should not sacrifice a more important or equal good. (عدم تفويت مصلحة) (أهم منها أو مساوية لها)

In the case of reducing the waiting period, there are several benefits that need to be considered: First, the benefits for the wife: faster certainty of marital status, reduction of psychological and economic suffering, and a quicker opportunity to move on with life. Second, the benefit for the missing husband: Sufficient time to return if he is still alive, protection of his rights as a husband, and protection of his property. Third, the

welfare of society: Clarity of legal status, Prevention of lineage mixing, and Social stability. Reducing the waiting period from 2 years to 1 year needs to consider whether the benefits gained (especially for the wife) do not sacrifice more important benefits (such as protecting the husband's rights and preventing lineage mixing).

Conclusion Analysis based on the analysis using Al-Bhuti's five boundaries of *maslahah*, the reduction of the waiting period from 2 years to 1 year for a wife whose husband is missing can be considered under certain conditions: First, in line with the *maqasid* of Sharia: The reduction of the waiting period generally aligns with the protection of life and intellect, but caution is needed in the protection of lineage and property. Second, Not contrary to the Qur'an: Reducing the waiting period does not contradict the general principles of the Qur'an regarding ease and the removal of difficulties. Third, Consideration of the Sunnah: Although it differs from the practices narrated from the companions, the reduction of the waiting period can be considered in the context of contemporary *ijtihad* by taking into account the general principles in the Sunnah. Fourth, Balance in *qiyas*: The reduction of the waiting period needs to consider the balance between alleviating harm to the wife and ensuring sufficient evidence to change the marital status. Fifth, Not sacrificing more important benefits: Reducing the waiting period can be acceptable if accompanied by maximum efforts in searching for the husband and verifying his status, so as not to sacrifice the husband's benefits and prevent lineage mixing.

### **Relevance of Reformulation of the Provisions of Mafqud Husband in the Marriage Legal System in Indonesia**

In the context of Indonesia's national law, the protection of human rights (HAM) and gender justice is one of the main objectives of legal development. The reformulation of the provisions regarding a missing husband, which aims to resolve marital status disputes, has great potential to enhance the protection of the rights of wives and children. By reducing the waiting period for wives who experience uncertainty about their husband's status, this reformulation provides the much-needed legal clarity. Legal certainty is a main pillar in the modern legal system, guaranteed by various international and national human rights instruments. (Sari et al., 2024)

In addition, within the framework of progressive Islamic law development, the reformulation of these provisions also has an important contribution. Progressive Islamic law is an approach that seeks to integrate traditional values with the dynamics of modern society, so that the adapted principles of sharia can provide innovative solutions to contemporary issues. The reformulation of the provisions for a missing husband, referring to Aristotle's theory of justice and al-Buthi's *maslahah*, provides space for the progressive application of benefit principles. The *maslahah al-Buthi* approach emphasizes the achievement of collective welfare, preserving fundamental values such as religion, life, intellect, lineage, and property, which also serve as the foundation for the development of progressive Islamic law. (Arfan, 2013)

This reformulation not only updates normative legal norms but also actualizes justice values to address social issues and legal certainty in society. In the perspective of Indonesia's national law, the integration of these values can significantly contribute to the

formation of a more inclusive and responsive legal system to the changes of the times. One of the main challenges in the legal system in Indonesia is the effort to harmonize Islamic legal norms with positive law and universally recognized values of justice. The reformulation of the provisions for a missing husband is a concrete example of how two seemingly different sources of law can be synthesized to achieve a common goal, namely justice and welfare.

Indonesian positive law is a collection of regulations and legislation compiled based on constitutional and democratic principles. On the other hand, Islamic law is rooted in the Qur'an, Sunnah, and the *ijtihad* of the scholars. In the reformulation of the provisions for a missing husband, the integration of these two sources of law is realized through an approach that prioritizes the principle of universal justice. The reduction of the waiting period from two years to one year, as one of the components of the reformulation, not only meets the normative needs of Sharia but also aligns with the principle of legal certainty in the positive system. Thus, the new regulation will create a bridge between Islamic values and the needs of modern society that seeks certainty and justice. (Saputro, 2023)

The value of universal justice is a principle accepted by the international community, which includes the protection of individual rights and the recognition of the importance of social justice. This reformulation aligns with Aristotle's principle of justice, which emphasizes balance in the granting of rights and compensation for the aggrieved party. In the case of a missing husband, the wife often faces uncertainty that undermines the family's well-being. The proposed reduction in the waiting period can be seen as a manifestation of the application of universal justice, as this effort aims to provide clarity, reduce internal conflicts, and ensure equal protection of rights for all family members. (Sembiring, 2018)

The integration of universal justice values into new regulations also means that legal norms are not only particular but can also encompass justice recognized globally. This is highly relevant in the context of Indonesia, which adheres to legal pluralism, where the harmonization of local and universal values is a crucial requirement in the formulation of national legal policies.

This analysis emphasizes that the reformulation of the provisions for a missing husband, with a reduction of the waiting period from two years to one year and the integration of Aristotle's principle of justice and al-Buthi's *maslahah*, is highly relevant in the context of the Indonesian legal system. Overall, this reformulation: first, aligns with the National Legal Objectives, namely enhancing human rights protection by providing legal certainty for wives and children, prioritizing gender justice by ensuring that wives' rights are proportionally protected, and guaranteeing legal certainty, which is an important foundation in Indonesia's modern legal system.

Second, the Contribution to the Development of Progressive Islamic Law involves integrating the principle of *maslahah*, rooted in Sharia values, into contemporary regulations and adjusting Islamic legal norms to the needs and dynamics of modern society without disregarding fundamental Sharia principles. Third, the Harmonization between Islamic Law, Positive Law, and Universal Justice Values involves creating harmony between Islamic legal norms and the positive law applicable in Indonesia, resulting in an

inclusive and comprehensive legal system and applying universal justice values that recognize the need for justice and certainty in the distribution of rights and obligations.

With this reformulation, it is hoped that the marriage law system in Indonesia can be more responsive to social dynamics, capable of protecting the rights of vulnerable groups, and aligning traditional justice principles with modern welfare values. This reformulation model is a concrete effort to enhance family welfare through legal certainty and equitable protection, as well as bridging the gap between Islamic law and positive law within the framework of universal justice.

## **CONCLUSION**

Based on the analysis above, the author concludes as follows: first, the provision regarding a missing husband in KHI Article 116 b (2-year waiting period) creates legal uncertainty that harms the wife and children—including inheritance rights, economic protection, and psychological well-being—and violates distributive justice. Therefore, a faster and more responsive resolution mechanism is needed to reduce harm and provide legal certainty. Second, based on the *maslahah al-Buthi* (the objectives of Sharia: religion, life, intellect, lineage, property), it is recommended: Reducing the waiting period from 2 years to 1 year. Simplifying the mechanism of proof (witnesses, digital evidence) so that the process is faster and in line with procedural justice. Third, this reformulation aligns with national legal objectives (human rights protection, gender justice, legal certainty) and creates synergy between progressive Islamic legal values and modern norms. The impact: faster determination of marital status, economic access for wives, and prevention of poverty within families.

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