RATIO DECIDENDI OF CONSTITUTIONAL COURT DECISION NUMBER 159/PUU-XXIV/2026 ON ARTICLE 34 OF LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE FROM THE PERSPECTIVE OF *MUBĀDALAH* THEORY

THESIS

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MOTTO

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

"*And cooperate in righteousness and piety, and do not cooperate in sin and transgression*."

QS. Al-Mā'idah [5]: 2

TRANSLITERATION GUIDELINES

A. General

Transliteration is the conversion of Arabic script into Indonesian (Latin) script, not a translation from Arabic into Indonesian. This category includes Arabic names of Arab individuals, while Arabic names belonging to non-Arab peoples are written according to the spelling conventions of their national language, or as written in the source referred to. Book titles cited in footnotes and in the bibliography continue to follow this transliteration convention.

Many transliteration options and conventions may be used in academic writing, whether based on international standards, national standards, or conventions specific to a particular publisher. The transliteration system used by the Faculty of Sharia, Universitas Islam Negeri Maulana Malik Ibrahim Malang, is the EYD Plus system, based on the Joint Decree (SKB) of the Minister of Religious Affairs and the Minister of Education and Culture of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543.B/U/1987, as set out in the transliteration guideline book A Guide to Arabic Transliteration, INIS Fellow 1992.

B. Consonants

The list of Arabic letters and their transliteration into Latin script can be seen on the following page:

Arabic Letter	Name	Latin	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be

ت	Ta	T	Te
ث	Ṡa	Ṡ	S (dot above)
ج	Jim	J	J
ح	Ḥa	Ḥ	H (dot above)
خ	Kha	Kh	K and H
د	Dal	D	D
ذ	Ż	Ż	Z (dot above)
ر	Ra	R	R
ز	Zai	Z	Z
س	Sin	S	S
ش	Syin	Sy	S and Y
ص	Ṣad	Ṣ	S (dot below)
ض	Ḍad	Ḍ	D (dot below)
ط	Ṭa	Ṭ	T (dot below)
ظ	Ẓa	Ẓ	Z (dot below)
ع	‘Ain	‘.....	Inverted apostrophe
غ	Gain	G	G
ف	Fa	F	F
ق	Qof	Q	Q
ك	Kaf	K	K
ل	Lam	L	L
م	Mim	M	M
ن	Nun	N	N

و	Wau	W	W
ه	Ha	H	H
ء/أ	Hamzah	……’	Apostrophe
ي	Ya	Y	Y

The hamzah (Á) located at the beginning of a word follows its vowel without being given any mark. If it is located in the middle or at the end of a word, it is written with the mark (’).

C. Long Vowels and Diphthongs

In writing Arabic in Latin script, the fatḥah vowel is written as “a.” Kasrah is written as “i,” and ḍammah as “u,” while the corresponding long vowel sounds are each written as follows:

Short Vowel		**Long Vowel**		**Diphthong**	
◌َ	A		Ā		Ay
◌ِ	I		Ī		Aw
◌ُ	U		Ū		Ba’
Long vowel (a) =	Ā	For example	قال	becomes	Qāla
Long vowel (i) =	Ī	For example	قيل	becomes	Qīla
Long vowel (u) =	Ū	For example	دون	becomes	Dūna

Specifically for the yā’ nisbat sound, it may not be replaced with “i,” but must still be written as “iy” so that the nisbat at the end of the word is represented. Likewise, the diphthong sounds of wāw and yā’ following a fatḥah are written as “aw” and “ay.” See the following examples:

Diphthong (aw) =		For example	قول	becomes	Qawlun
phthong (ay) =		For example	خير	becomes	Khayrun

D. Tā' Marbūṫah

Tā' marbūṫah is transliterated with "t" when it occurs in the middle of a phrase, but when it occurs at the end of a phrase, it is transliterated using "h," for example الرسالة للمدرسة becomes *al risālat li al-mudarrisah*; or when it occurs in the middle of a phrase formed by an iḍāfah (possessive) construction, it is transliterated using a "t" joined to the following word, for example في رحمة الله becomes *fī raḥmatillāh*.

E. The Article "Al" in *Lafẓ Al-Jalālah*

The article "al" (ال) is written in lowercase when located at the beginning of a sentence, whereas the "al" in *lafz al-jalālah* occurring in the middle of an *iḍāfah* (possessive) construction is omitted. See the following examples:

1. Al-Imām al-Bukhāriy states…
2. Al-Bukhāriy explains in the muqaddimah of his book
3. Billāh 'azza wa jalla

F. Arabic Names and Words That Have Become Indonesianized

In principle, every word originating from Arabic must be written using the transliteration system. However, if the word is an Arabic name belonging to an Indonesian person, or an Arabic term that has already become Indonesianized, it need not be written using the transliteration system. Consider the following example: "…..Abdurrahman Wahid, the fourth President of the Republic of Indonesia, and Amin Rais, the Chairman of the People's Consultative Assembly (MPR) during the same period, reached an agreement

to eliminate nepotism, collusion, and corruption from Indonesian soil, one method being the intensification of prayer (salat) in various government offices, however….” Note how the names “Abdurrahman Wahid” and “Amin Rais,” and the word “salat,” are written using Indonesian spelling conventions adapted to the writing of their names. Although these words originate from Arabic, they are names of Indonesian individuals, or terms that have become Indonesianized, and are therefore not written as “Abd al-Rahman Wahid,” “Amīn Rais,” nor is the word written as “Shalāt.”

PREFACE

Alhamdulillahirabbil'alamin, all praise is due to Allah, who has granted His mercy and assistance in the writing of this thesis entitled: "*Ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage, from the Perspective of *Mubādalah* Theory," which the writer has been able to complete well. May blessings and peace be upon our leader the Messenger of Allah, Muhammad SAW, who has become an example for mankind; may we one day be counted among his followers on the Day of Resurrection.

With all the teaching, guidance, direction, support, and facilities that the writer has enjoyed and received throughout the course of study up to the stage of writing this thesis, the writer wishes to extend, with the utmost humility, boundless gratitude to:

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7. The writer's beloved family, Abi Ardi, Umi Ernisahusna, my siblings Nabiila Tudzakiyah, Fathiyah Bilqisth, and Raihan Abdul Azis, whose affection and support have never ceased to flow, enabling their brother to complete his studies.
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Upon the completion of this research, the writer is aware that many shortcomings remain; the writer therefore welcomes criticism and suggestions for future improvement.

Malang, 5 October 2026

Writer



Hanif Abdullah Azzam

ABSTRAK

Hanif Abdullah Azzam, 2026. "*Ratio decidendi* Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026 Terhadap Pasal 34 Undang-Undang Nomor 1 Tahun1974 Tentang Perkawinan Perspektif Teori *Mubādalah"* Skripsi, Program Studi Hukum Keluarga Islam. Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing : Faridatus Suhadak, M.HI.

Kata Kunci :*Ratio decidendi*, Mahkamah Konstitusi, Perkawinan, *Mubādalah*

Penelitian ini dilatarbelakangi oleh pertimbangan hakim dalam mempertahankan konstitusionalitas Pasal 34 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan oleh Mahkamah Konstitusi melalui Putusan Nomor 159/PUU-XXIV/2026, meskipun norma tersebut dinilai berpotensi menimbulkan diskriminasi berbasis gender dalam pembagian peran suami dan istri. Penelitian ini bertujuan untuk menganalisis *ratio decidendi* Mahkamah Konstitusi dalam mempertahankan konstitusionalitas Pasal 34 tersebut, serta mengkaji *ratio decidendi* tersebut dari perspektif teori *mubādalah*.

Penelitian ini merupakan penelitian hukum normatif yang menggunakan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Bahan hukum yang digunakan terdiri atas bahan hukum primer, yaitu Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, dan Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026, bahan hukum sekunder berupa buku, jurnal, dan karya ilmiah, serta bahan hukum tersier. Data dikumpulkan melalui studi kepustakaan, kemudian diolah melalui tahap edit, klasifikasi, verifikasi, analisis, dan penarikan kesimpulan.

Hasil penelitian menunjukkan bahwa *ratio decidendi* Mahkamah dalam mempertahankan konstitusionalitas Pasal 34 mengandung inkoherensi, karena di satu sisi menafsirkan pasal tersebut tidak membatasi peran berdasarkan gender, namun di sisi lain tetap mempertahankan norma eksplisit yang melekatkan kewajiban pada subjek suami dan istri. Pengajuan norma dengan frasa baru yang dilakukan oleh pemohon dalam perakara ini lebih sesuai dengan isi putusan dan mengakomodir peran rumah tangga yang bebas gender. Ditinjau dari teori *mubādalah*, sebagian besar *ratio decidendi* Mahkamah secara substantif selaras dengan prinsip kesalingan, keseimbangan, dan tanggung jawab bersama, karena Mahkamah menolak relasi superior-subordinat antara suami dan istri. Meskipun demikian, penerapan prinsip *mubādalah* oleh Mahkamah belum konsisten dan menyeluruh, khususnya dalam pembagian tanggung jawab domestik yang belum sepenuhnya diresiprokalkan. Penelitian ini diharapkan memberi kontribusi akademik bagi kajian *ratio decidendi* Mahkamah Konstitusi dan penerapan teori *mubādalah* dalam pembaruan hukum keluarga Islam di Indonesia.

ABSTRACT

Hanif Abdullah Azzam, 2026. "*Ratio decidendi* of the Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage from the Perspective of the *Mubādalah* Theory." Undergraduate Thesis, Islamic Family Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.Supervisor: Faridatus Suhadak, M.HI.

Keywords: *Ratio decidendi*, Constitutional Court, Marriage, *Mubādalah*

This research is motivated by the Constitutional Court's upholding of the constitutionality of Article 34 of Law Number 1 of 1974 concerning Marriage through Decision Number 159/PUU-XXIV/2026, despite the applicant's argument that the provision has the potential to cause gender-based discrimination in the division of roles between husbands and wives. This research aims to analyze the Constitutional Court's *ratio decidendi* in upholding the constitutionality of Article 34 and to examine such *ratio decidendi* from the perspective of *mubādalah* theory.

This research constitutes normative legal research employing statutory, case, and conceptual approaches. The legal materials consist of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage, and Constitutional Court Decision Number 159/PUU-XXIV/2026; secondary legal materials in the form of books, journals, and scholarly works; and tertiary legal materials. The data were collected through library research and subsequently processed through the stages of editing, classification, verification, analysis, and conclusion drawing.

The results of the research indicate that the Constitutional Court's *ratio decidendi* in upholding the constitutionality of Article 34 contains an incoherence. On the one hand, the Court interprets the provision as not restricting roles based on gender; on the other hand, it maintains the explicit norms that attach obligations to the respective subjects of husbands and wives. The proposed amendment to the legal provision through the introduction of new wording by the petitioner in this case is more consistent with the substance of the Court's decision and accommodates gender-neutral roles within the household From the perspective of *mubādalah* theory, most of the Court's *ratio decidendi* is substantively consistent with the principles of reciprocity, balance, and shared responsibility, as the Court rejects a superior-subordinate relationship between husband and wife. Nevertheless, the application of the *mubādalah* principle by the Court is not yet consistent and comprehensive, particularly regarding the division of domestic responsibilities, which has not been fully reciprocal. This research is expected to make an academic contribution to the study of the *ratio decidendi* of the Constitutional Court and the application of *mubādalah* theory in the development of Islamic family law in Indonesia.

الملخص البحث

حنيف عبد الله عزام، ٢٠٢٦. «التعليل القضائي لقرار المحكمة الدستورية رقم ٢٠٢٦/PUU-XXIV/١٥٩ بشأن المادة ٣٤ من القانون رقم ١ لسنة ١٩٧٤ بشأن الزواج من منظور نظرية المبادلة». بحث جامعي، قسم الأحوال الشخصية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرفة: فريدة سهادك، ماجستير.

الكلمات المفتاحية: التعليل القضائي، المحكمة الدستورية، الزواج، المبادلة.

ينطلق هذا البحث من موقف المحكمة الدستورية المتمثل في الإبقاء على دستورية المادة ٣٤ من القانون رقم ١ لسنة ١٩٧٤ بشأن الزواج من خلال القرار رقم ٢٠٢٦/PUU-XXIV/١٥٩، على الرغم من أن طالب الطعن رأى أن هذه المادة قد تؤدي إلى التمييز القائم على النوع الاجتماعي في توزيع الأدوار بين الزوج والزوجة. ويهدف هذا البحث إلى تحليل التعليل القضائي للمحكمة الدستورية في الإبقاء على دستورية المادة ٣٤، ودراسة هذا التعليل القضائي من منظور نظرية المبادلة.

يُعد هذا البحث من البحوث القانونية المعيارية، ويستخدم المنهج التشريعي، ومنهج دراسة الحالة، والمنهج المفاهيمي. وتتكون المواد القانونية المستخدمة من المواد القانونية الأولية، وهي دستور جمهورية إندونيسيا لسنة ١٩٤٥، والقانون رقم ١ لسنة ١٩٧٤ بشأن الزواج، وقرار المحكمة الدستورية رقم ٢٠٢٦/PUU-XXIV/١٥٩؛ والمواد القانونية الثانوية المتمثلة في الكتب والمجلات العلمية والأعمال الأكاديمية، بالإضافة إلى المواد القانونية الثالثة. وقد جُمعت البيانات من خلال الدراسة المكتبية، ثم عولجت عبر مراحل التحرير والتصنيف والتحقق والتحليل واستخلاص النتائج.

أظهرت نتائج البحث أن التعليل القضائي للمحكمة الدستورية في الإبقاء على دستورية المادة ٣٤ يتضمن عدم اتساق؛ فمن جهة، تفسر المحكمة هذه المادة على أنها لا تقيد الأدوار على أساس النوع الاجتماعي، ومن جهة أخرى، تُبقي على النصوص الصريحة التي تُسند الالتزامات إلى الزوج والزوجة كلٌّ بحسب ﷺفته. إنَّ اقتراحَ تعديلِ النصِّ القانونيِّ بصياغةٍ جديدةٍ من قِبَلِ مقدِّمِ الطلبِ في هذه القضيةِ أكثرُ اتساقًا مع مضمونِ الحكمِ، ويستوعبُ الأدوارَ الأسريةَ الخاليةَ من التمييزِ القائمِ على النوعِ الاجتماعيِّ ومن منظور نظرية المبادلة، يتوافق معظم التعليل القضائي للمحكمة من الناحية الموضوعية مع مبادئ التبادلية والتوازن والمسؤولية المشتركة، إذ ترفض المحكمة العلاقة القائمة على التفوق والتبعية بين الزوج والزوجة. ومع ذلك، فإن تطبيق مبدأ المبادلة من جانب المحكمة لم يكن متسقًا وشاملًا، ولا سيما فيما يتعلق بتوزيع المسؤوليات المنزلية التي لم تُجعل متبادلة بصورة كاملة. ومن المتوقع أن يسهم هذا البحث إسهامًا أكاديميًا في دراسة التعليل القضائي للمحكمة الدستورية وتطبيق نظرية المبادلة في تطوير قانون الأسرة الإسلامي في إندونيسيا.

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CHAPTER I

INTRODUCTION

A. Background

Marriage is a legal institution whose purpose is not only to establish a civil relationship between husband and wife, but also to serve as the foundation for building a harmonious, prosperous, and sustainable family. In its development, the institution of marriage in Indonesia faces increasingly complex social dynamics. One of the most significant changes is the rising participation of women in the workforce. Data from the Central Statistics Agency (BPS) show that in August 2025 the female labor force participation rate reached 56.63%, while the male rate reached 84.40%. This figure shows that more and more women are contributing economically to the household, so that the dual-earner family pattern is increasingly developing in Indonesia.[1]

This change in the economic structure of the family carries consequences for the division of rights and obligations between husband and wife. On the one hand, Law Number 1 of 1974 concerning Marriage, through Article 34 paragraph (1), still places the husband as the party obliged to protect the wife and to meet all the needs of household life according to his ability, while Article 34 paragraph (2) regulates the wife's obligation to manage household affairs as well as possible. This norm was drafted in a social context in which the single-breadwinner family model was still dominant. However, social change marked by the rising economic participation of women raises questions about the continued relevance of applying this norm under contemporary social conditions.

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[1] Direktorat Statistik Kependudukan dan Ketenagakerjaan, "Keadaan Angkatan Kerja Di Indonesia" (Jakarta, 2025), accesed 9 July 2026. https://www.bps.go.id/id/publication/2025/12/19/42a75ee61332755586fdfcdd/keadaan-angkatan-kerja-di-indonesia-agustus-2025.html.

On the other hand, the dynamics of the husband-wife relationship are also reflected in Indonesia's high divorce rate. Based on BPS data sourced from the Religious Courts Directorate General of the Supreme Court, there were 438,168 divorce cases throughout 2025. Continuous disputes and quarrels were the largest cause, accounting for 282,326 cases an increase of 12.42% from 2024, which recorded 251,125 cases.[2]

The dynamics reflected in this data show that the factor of continuous disputes and quarrels, which is closely related to the division of responsibilities within the family, is no longer merely a private matter but has developed into a legal issue with constitutional implications. Changes in the structure of the modern family have also given rise to the view that the imposition of economic obligations solely upon the husband, as formulated in Article 34 of the Marriage Law, needs to be reconsidered so as to remain consistent with social developments. On this basis, a petition for constitutional review of Article 34 paragraphs (1) and (2) of Law Number 1 of 1974 was submitted to the Constitutional Court, resulting in Decision Number 159/PUU-XXIV/2026. In the petition, the Petitioner argued that the provision no longer reflects the principles of equality, proportionality, and the development of the modern family structure. The Petitioner also perceived a potential for abuse within Article 34, whereby a wife with financial capability is justified in not assisting a husband who is economically struggling, while a wife who is unable to manage household affairs cannot request assistance from her husband, on the grounds of sheltering behind Article 34 and therefore requested a new constitutional interpretation of the norm.

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[2] Badan Pusat Statistik, "Nikah Dan Cerai Menurut Provinsi (Kejadian), 2025," accesed 8 July 2026, https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi.html.

The Constitutional Court ultimately rejected the petitioner's request in its entirety. This rejection shows that the Court upheld the continued applicability of Article 34 of the Marriage Law on the basis of particular legal reasoning. In normative legal research, the verdict itself is not the sole focus of study. Rather, it is the *ratio decidendi* the legal argumentation underlying the judges' formation of the decision that carries scholarly value. The *ratio decidendi* reflects the method of interpretation, the legal principles, and the values used by the judges to uphold the constitutionality of a norm. It is therefore of particular interest to examine the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026, given its close relation to how the Court views the concept of the obligation of maintenance, family protection, and the division of rights and obligations between husband and wife within the Indonesian legal system.[3]

Research on Constitutional Court decisions has so far generally focused on aspects of the constitutionality of norms, human rights theory, or the doctrine of open legal policy. Research specifically analyzing the judges' *ratio decidendi* in upholding Article 34 of the Marriage Law through an Islamic perspective remains very limited. In fact, as a norm governing the husband-wife relationship, Article 34 is closely related to the relationship of mutuality between husband and wife in carrying out their roles within the family. *Mubādālah* theory a development of Islamic scholarship concerned with the relationship of equality and mutuality between men and women in creating a better life is an interesting perspective to apply in examining this Constitutional Court decision, in which the judges firmly upheld Article 34 of Law No. 1 of 1974 concerning Marriage, a provision that constitutes an interpretation of the division of roles between husband and wife in domestic life.

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[3] "Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026". 1-74

B. Problem Statement

Based on the background above, the core issues may be formulated as follows:

1. How is the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage?
2. How is the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage, viewed from the perspective of *mubādalah* theory?

C. Research Objectives

Based on the problem statement set out in the preceding point, the objectives of this research may be formulated as follows:

1. To analyze the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage.
2. To examine the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage, viewed from the perspective of *mubādalah* theory.

D. Research Benefits

A piece of research is intended to bring benefit to every person who reads it. The benefits of this research that the writer can set out are, at the very least, twofold: theoretical and practical benefits. They are set out below:

1. Theoretical Benefits

The academic benefit of this research is to serve as supplementary library and scholarly reference material for the development of Islamic family law studies, particularly those concerned with the analysis of Constitutional Court decisions regarding the rights

and obligations of husband and wife. This research is expected to contribute to the development of legal scholarship, particularly by enriching the study of the constitutional judges' *ratio decidendi* as the basis for legal reasoning in upholding the constitutionality of Article 34 of Law Number 1 of 1974 concerning Marriage. In addition, this research is expected to offer a new scholarly perspective on the relevance of applying *mubādalah* theory in analyzing the legal reasoning of constitutional judges, thereby serving as an alternative approach in the development of Islamic family law in Indonesia.

2. Practical Benefits

The practical benefit obtained from this research is as a requirement for the writer in completing the final assignment in order to obtain a Bachelor of Law degree; in addition, this research is expected to provide the public with an understanding of the basis of the Constitutional Court's reasoning in upholding the provisions of Article 34 of Law Number 1 of 1974 concerning Marriage, which governs the rights and obligations of husband and wife. This research is also expected to provide insight into the importance of dividing rights and obligations within the household in a manner oriented toward justice and benefit, for the sake of achieving the intended purpose of forming a family by reading it through *mubādalah* theory, which is oriented toward mutuality between men and women in domestic life. In addition, the results of this research are expected to serve as a reference for understanding the relationship between Indonesian positive law and the development of Islamic scholarship in the formation and application of family law norms.

This research is also expected to serve as a scholarly reference for students, academics, and future researchers who will examine Constitutional Court decisions, Islamic family law, or *mubādalah* theory. The results of this research are also expected to

form a basis for further research into the analysis of judges' *ratio decidendi* in Constitutional Court decisions related to family law, so as to enrich the academic literature in the fields of Islamic law and constitutional law.

E. Operational Definitions

1. *Ratio decidendi*

Ratio decidendi is the legal basis or principal reasoning used by a court in deciding a case. Taken from the Latin term, this concept focuses on the legal proposition applied on the basis of the material facts of the case in context. Accordingly, the quality of a court decision can be measured, among other things, by the weight of the judges' reasoning contained within it.[4]

2. *Mubādalah* Theory

Mubādalah theory is a theory carried out using a method that places men and women as equal subjects across various texts, such as those concerning faith, righteous deeds, the ritual prayer (shalāt), fasting, pilgrimage (hajj), migration (hijrah), struggle (jihad), social and economic work, as well as enjoining what is right and forbidding what is wrong (*amar ma'rūf and nahi munkar*).[5]

F. Previous Research

Previous research in line with the thematic issues raised by contemporary scholars has been carried out by earlier researchers operating within various contexts, subjects, and methodological frameworks; among the significant studies are the following:

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[4] Shidarta, "*Ratio decidendi* Dan Kaidah Yurisprudensi," 2019, accesed 9 July 2026 https://business-law.binus.ac.id/2019/03/04/ratio-decidendi-dan-kaidahyurisprudensi/.
[5] Faqihuddin Abdul Kodir, *Qirā'ah Mubādalah*, ed. Rusdianto, 1st ed. (Yogyakarta: IRCiSoD, 2019). 49

The first study, entitled "Legal Recognition of a Child Born out of Wedlock According to a Constitutional Court Decision from the Perspective of *Maqāṣid Sharī'ah*," was conducted by Hamdah Faridah, Muhamad Mustahal, and Fathudin of Institut Agama Islam An-Nawawi Purworejo. This scholarly article's results show that the extension of the civil relationship between a child born out of wedlock and the biological father, as established in Constitutional Court Decision Number 46/PUU-VIII/2010, constitutes a form of the biological father's legal responsibility and is not identical to the determination of lineage (*nasab*) in Islamic law, and that, through a maqāṣid sharī'ah approach, the decision can be understood as the state's legal ijtihād to protect the child's rights (*ḥifẓ al-nafs and ḥifẓ al-nasl*) without violating the basic principle of lineage in Islam. This research differs from the research the writer will conduct in terms of the decision and the article under review: Faridah, Mustahal, and Fathudin analyzed a Constitutional Court decision that was granted, concerning the civil status of a child born out of wedlock, whereas the writer will analyze the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026, which rejected a petition for material review of Article 34 of the Marriage Law concerning the obligation of spousal maintenance.[6]

The second study, entitled "*Ratio decidendi* of Constitutional Court Decision Number 143/PUU-XXI/2023 on the Shortening of Regional Head Terms of Office from the Perspective of *Siyāsah Dustūriyah*," was conducted by Muhamad Zidane Al Farizi of UIN Sunan Kalijaga Yogyakarta. This research's results show that the *ratio decidendi* of the decision is in line with the principles of *siyāsah dustūriyah*, particularly in upholding justice,

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[6] Hamdah Faridah and Muhamad Mustahal, "Pengesahan Anak Zina Menurut Putusan Mahkamah Konstitusi Dalam Perspektif *Maqāshid Syarī'ah*," *Usrah: Jurnal Hukum Keluarga Islam* 7, no. April (2026): 805–20.

the public good, and the welfare of the people, even though it entailed a sacrifice on the part of the individual regional head. This research differs from the research the writer will conduct in terms of the decision under review and the Islamic legal analytical lens used: Al Farizi analyzed a Constitutional Court decision on the shortening of regional heads' terms of office from the perspective of *siyāsah dustūriyah*, whereas the writer will analyze a Constitutional Court decision on the norm of spousal maintenance using *mubādalah* theory as the analytical lens.[7]

The third scholarly study, entitled "*Ratio decidendi* of the Rejection of a Petition for Statutory Norm Review in Decision Number 47/PUU-XXI/2023," was conducted by Tiara Ika Saputri and Agung Barok Pratama of UIN K.H. Abdurrahman Wahid Pekalongan. In this article, the authors show that the Constitutional Court rejected the petition for material review of Article 509 letter a of the new Criminal Code because the petitioned norm had not yet come into force, rendering the petition premature; and although the Court emphasized the importance of the principle of legal certainty and the protection of advocates' rights, the petition was nonetheless declared inadmissible due to the absence of any concrete loss suffered by the Petitioner. This research differs from the research the writer will conduct in terms of the subject matter of the decision and the absence of an Islamic legal perspective: Saputri and Pratama analyzed the *ratio decidendi* of the Constitutional Court's rejection concerning a Criminal Code norm purely from a constitutional-law standpoint, whereas the writer will analyze the *ratio decidendi* of the rejection in Constitutional Court Decision

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[7] Muhammad Zidane Al Farizi, "*Ratio decidendi* Putusan Mahkamah Konstitusi Nomor 143/PUU-XXI/2023 Tentang Pemotongan Masa Jabatan Kepala Daerah Perspektif *Siyāsah Dustūriyah*" (UIN Sunan Kalijaga Yogyakarta, 2024), https://digilib.uin-suka.ac.id/id/eprint/67751/.

Number 159/PUU-XXIV/2026 concerning the norm of spousal maintenance using *mubādalah* theory as the analytical lens.[8]

The fourth scholarly study, entitled "The Hadith Perspective on the Husband's Obligation of Maintenance and the Wife's Management of the Household under Article 34 of the Marriage Law," was conducted by Rabiatil and Nurul Budi Murtini of Sekolah Tinggi *Dirāsat Islāmiyah* Imam Syāfi'i Jember. This study shows that the hadith affirms the husband's obligation of maintenance on the basis of the principles of *ma'rūf* and *kifāyah*, and places the wife as the trustee of household management through the concept of *rā'iyyah*, concluding that Article 34 of the Marriage Law remains relevant when read together with the principles found in the hadith, Article 31 of the Marriage Law, family justice, and the common good (kemaslahatan). This research differs from the research the writer will conduct in terms of the object of study and the source of Islamic law used: Rabiatil and Murtini examined the text of Article 34 of the Marriage Law directly from a thematic hadith perspective without relating it to a Constitutional Court decision, whereas the writer will analyze the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026, which rejected a material review petition on the same article, using *mubādalah* theory as the analytical lens.[9]

The fifth scholarly study is an article entitled "An Analysis of Progressive Law and *Maqāṣid al-Sharī'ah* on Judicial Reasoning in Case Number 78 K/AG/2021 Concerning the Division of Joint Marital Property." This research was conducted by Malik Ibrahim, Hilda Hidayah, Ma'rufatun Nihayah Agustin, and Asra Nur Hasana of the Faculty of Political and

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[8] Tiara Ika Saputri and Agung Barok Pratama, "*Ratio decidendi* Penolakan Permohonan Pengujian Norma Undang-Undang Pada Putusan Nomor 47 / PUU-XXI / 2023," *Manabia: Journal of Constitutional Law* 4, no. Juni (2023), https://doi.org/https://doi.org/10.28918/manabia.v4i01.9545.

[9] Rabiatul Hidayah and Nurul Budi Martini, "Perspektif Hadis Terhadap Kewajiban Nafkah Suami Dan Pengelolaan Rumah Tangga Oleh Istri Dalam Pasal 34 UU Perkawinan," *Prosiding Hukum Keluarga Islam*, 2026, 111–28, https://prosiding.stdiis.ac.id/index.php/hki/article/view/116.

Social Sciences, Universitas Islam 45 Bekasi. In their research, the authors argue that the judges' reasoning reflects an act of constructive rule-breaking in order to uphold substantive justice, and that, based on contemporary maqāṣid sharī'ah, the 70:30 proportion decision succeeded in protecting women's rights of property ownership (*ḥifẓ al-māl*), dignity (*ḥifẓ al'irḍ*), and person (*ḥifẓ al-nafs*) from the risk of structural impoverishment. This research differs from the research the writer will conduct in terms of the decision under review and the judicial institution studied: that research analyzed a Supreme Court decision on the division of joint marital property following divorce, whereas the writer will analyze the *ratio decidendi* of a Constitutional Court decision on the constitutionality of the norm of spousal maintenance within an ongoing marriage.[10]

Table 1.1 Previous Research

No.	Author	Title	Similarities	Differences
1	Hamdah Faridah, Muhamad Mustahal, dan Fathudin	Pengesahan Anak Zina Menurut Putusan Mahkamah Konstitusi dalam Perspektif *Maqāshid Syarī'ah*	This research shares a similarity with the present study in analyzing a Constitutional Court decision using a normative legal research method.	The decision examined is Constitutional Court Decision Number 46/PUU-VIII/2010, which was granted, concerning the civil status of a child born out of wedlock, whereas the writer's research examines Constitutional Court Decision Number 159/PUU-XXIV/2026, which was rejected, concerning the norm of maintenance in Article 34 of the Marriage Law.
2	Muhamad Zidane Al Farizi	*Ratio decidendi* Putusan	The similarity with this research lies in both analyzing the *ratio*	The decision examined relates to constitutional law (the shortening of a

[10] Malik Ibrahim et al., "Analisis Hukum Progresif Dan *Maqāsid Al- Syarī'ah* Terhadap Pertimbangan Hakim Pada Perkara Nomor 78 K / AG / 2021 Tentang Pembagian Harta Bersama," *Jurnal Restorasi Hukum* 9, no. 1 (2026), https://doi.org/DOI: https://doi.org/10.14421/hmbxt515.

		Mahkamah Konstitusi Nomor 143/PUU-XXI/2023 tentang Pemotongan Masa Jabatan Kepala Daerah Perspektif *Siyāsah Dustūriyah*	*decidendi* of a Constitutional Court decision using a normative juridical research method, together with statutory, case, and conceptual approaches.	regional head's term of office) from the perspective of s*iyāsah dustūriyah*, whereas the writer's research examines a decision on family law (spousal maintenance) from the perspective of *mubādalah* theory.
3	Tiara Ika Saputri dan Agung Barok Pratama	*Ratio decidendi* Penolakan Permohonan Pengujian Norma Undang-Undang pada Putusan Nomor 47/PUU-XXI/2023	Its consistency with the writer's research lies in the shared analysis of the *ratio decidendi* of a Constitutional Court decision that rejects a petition for material review, using a normative research method.	The decision examined relates to a criminal-law norm in the Criminal Code and is analyzed purely from a constitutional-law standpoint, without an Islamic legal perspective, whereas the writer's research examines the norm of spousal maintenance using *mubādalah* theory as the analytical lens.
4	Rabiatil dan Nurul Budi Murtini	Perspektif Hadis terhadap Kewajiban Nafkah Suami dan Pengelolaan Rumah Tangga oleh Istri dalam Pasal 34 UU Perkawinan	Its consistency with the research conducted by the writer lies in the study of the norm of Article 34 of the Marriage Law concerning the husband's obligation of maintenance and the wife's management of the household, using an Islamic legal approach.	That research examines the text of Article 34 of the Marriage Law directly from a thematic hadith perspective without relating it to a Constitutional Court decision, whereas the writer's research analyzes the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026, which rejected a material review petition on the same article, using *mubādalah* theory as the analytical lens.
5	Malik Ibrahim,	Analisis Hukum	The consistency of this research lies in its study of	The decision examined is a Supreme Court decision

	Hilda Hidayah, Ma'rufatun Nihayah Agustin, dan Asra Nur Hasana	Progresif dan *Maqāsid al-Syarī'ah* terhadap Pertimbangan Hakim pada Perkara Nomor 78 K/AG/2021 tentang Pembagian Harta Bersama	legal reasoning/*ratio decidendi* in a family-law case using a normative juridical research method.	on the division of joint marital property following divorce, whereas the writer's research examines a Constitutional Court decision on the constitutionality of the norm of the obligation of maintenance within an ongoing marriage.

From the table above it can be understood that research on Constitutional Court decisions has been carried out by several researchers over the past few years. The significant differences between this research and previous studies lie in the following: First, in the legal material used as the basis for data analysis, namely Constitutional Court Decision No. 159/PUU-XXIV/2026; second, in this research, the perspective used is *mubādalah* theory, which has not yet been widely discussed as a lens for analyzing a court decision.

G. Research Method

The research method used is a qualitative method with a normative juridical approach, or legal research. Legal research is research that examines or studies law as norms, rules, legal principles, legal doctrine, legal theory, and library sources in answering the legal issues under study.[11]

1. Type of Research

Viewed by type, this research employs normative research, namely research that examines norms, rules, principles, and theories based on library data in order to answer

[11] Zainudin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021). 1

legal issues relevant to the matter under study. Normative legal research is a documentary study that makes use of statutory regulations, court decisions/rulings, legal doctrine, and other sources.

2. Research Approach

In preparing this research, the writer employs a statutory approach by studying and examining statutory regulations related to the research. The statutory approach (statute approach) is an approach carried out by examining various statutory regulations that are related to the legal issue that is the object of the research. Through this approach, the researcher examines Article 34 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, as well as Constitutional Court Decision Number 159/PUU-XXIV/2026. Through this approach, the researcher analyzes the legal norm that is the object of review, together with its consistency with the applicable legal system, as a basis for examining the *ratio decidendi* of the constitutional judges in upholding the continued applicability of Article 34 of the Marriage Law. In addition, the researcher employs a case approach, which forms the basis for the Petitioner's arguments (posita) in submitting the petition to the Constitutional Court concerning Article 34 of the Marriage Law. This is supplemented by a conceptual approach, incorporating the various concepts and views that have developed within legal scholarship, particularly the perspective of *mubādalah* theory, which is the central subject of this research. The conceptual approach is important to include so that the researcher may formulate legal arguments and draw conclusions regarding the legal issue under study.

3. Legal Materials

This research involves three types of legal material primary, secondary, and tertiary with the following details:

a. Primary Legal Materials

Primary legal materials are the principal sources of information and carry the highest authority in normative research. This data may include statutory regulations, court decisions, official records, or original state documents. In this research, the primary legal materials used are:

1) The 1945 Constitution of the Republic of Indonesia
2) Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 concerning Marriage
3) Constitutional Court Decision Number 159/PUU-XXIV/2026, as the primary object of analysis in this research, particularly the section containing the legal reasoning

b. Secondary Legal Materials

Secondary legal materials are legal materials derived from books, scholarly works (kitab), journals, legal doctrine, and the results of legal research relevant to the legal issue under study, functioning to support the research. They serve as one of the sources of data that can support the research results, as follows:

1) The book “The Constitutional Court within the Indonesian Constitutional System” by Soimin, S.H., M.Hum, and Mashuriyanto, S.IP
2) The scholarly article entitled “The Role of the Constitutional Court as an Actor within Indonesia’s Judicial Power System” by Suci Wulandari et al.

3) The book "*Qirā'ah Mubādalah*" by Faqihuddin Abdul Kodir

As well as other sources such as scholarly works and Islamic legal regulations related to the issue or topic under study.

c. Tertiary Legal Materials

Tertiary legal materials are supplementary legal materials that provide explanation and guidance with respect to primary and secondary legal materials. Tertiary legal materials may take the form of:

1) The Great Dictionary of the Indonesian Language (KBBI),
2) Arabic dictionaries such as al-Mawrid,
3) The Cornell Law Dictionary,
4) Indexes related to the object of discussion, with the keywords *Qirā'ah Mubādalah*, Decision, Constitutional Court, and *ratio decidendi*.

As well as other tertiary legal materials relevant to the primary and secondary legal materials and that assist the research in relation to the legal issue under discussion.

4. Data Collection Method

This research is normative research whose data collection method is library research or (qualitative) document study, consisting of primary, secondary, and tertiary legal materials. In this research, the primary legal materials were obtained from Indonesian statutory regulations. Secondary and tertiary legal materials were obtained from library literature, books, and scholarly works that were read, examined, and cited with reference to the statutory regulations related to Constitutional Court Decision No. 159/PUU-XXIV/2026.

5. Data Processing Method

Once all the data had been collected, it was processed in order to answer the problem statement set out in the Background, through the following stages:

a. Editing

The editing process is the stage of reviewing the legal material that has been obtained in order to ensure its completeness, the clarity of its meaning, and its consistency with other legal materials. At this stage, the researcher reviews the entirety of the legal material and then matches it against the perspective of *mubādalah* theory.[12]

b. Classification

Classification is the process of grouping legal material, which must be carried out logically and systematically, based on meaning, essence, type, and source.

c. Verification

This is the method used to check the authenticity of the legal material that has been classified, and to use it as a point of comparison against something else outside that legal material.

a) Analysis

Analysis is the stage of presenting and elaborating on the legal material obtained. This legal material is then developed and analyzed using the perspective of *mubādalah* theory as a reference for understanding the meaning and context of the legal material that has been collected.

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[12] Abu Achmadi and Cholid Narkubo, *Metode Penelitian* (Jakarta: PT Bumi Aksara, 2005).

e) Conclusion

The conclusion is the final stage following the process of editing, systematization, description, and analysis. This conclusion functions as the answer to the questions set out in the problem statement. At this stage, the researcher seeks to present the research results concisely, based on the legal material that has been carefully obtained and studied.

H. Research Structure

To make the composition of this thesis is more systematic, with each chapter interrelated with the others, the researcher will generally outline its structure as follows:

CHAPTER I Introduction

This chapter presents the introduction and background of the research, with the aim of providing a comprehensive picture of the conditions and issues that form the focus of the study. In this section, the researcher explains why research into this legal issue was undertaken.

CHAPTER II Literature Review

In this research, the researcher sets out the theoretical and conceptual framework that serves as the theoretical foundation for examining and analyzing the issue under study. This chapter explains the substantive use of theory and the methods relevant to the research problem. The foundations and theory used will be analyzed in accordance with the relevant context of the legal issue raised in the research.

CHAPTER III Research Results and Discussion

This chapter presents the results of the analysis of the legal issue raised, in order to answer the problem statement that has been set out.

CHAPTER IV Closing

This is the final chapter, containing the conclusion and recommendations. The conclusion in this chapter provides a concise answer to the problem statement formulated in the first chapter, and this chapter also provides recommendations that may be useful for further improvement in line with the conclusions that have been draw

CHAPTER II

LITERATURE REVIEW

A. *Ratio decidendi* of Constitutional Court Decisions

1. Definition of *Ratio decidendi*

The meaning of *ratio decidendi* derives from the Latin term meaning "reason for the decision." This term serves as the factual key, or the reasoning underlying a case, leading up to the decision made by the judge. In formulating the *ratio decidendi*, the court examines the material facts of prior cases and of the legal case currently before it in order to reach a decision based on the available facts. *Ratio decidendi* is the basis on which a court reaches its decision and establishes precedent for a legal case. *Ratio decidendi* differs from *obiter dictum*, which merely sets out the judge's observations on a legal case without creating any binding precedent for that case.[13]

According to Peter Mahmud Marzuki in his book on legal research, *ratio decidendi* is the logical and systematic legal reasoning constructed by a judge in a particular case to serve as the consideration set out in a verdict. The *ratio decidendi* is always found within the considerans (consideration) section of a decision document.[14]. Meanwhile, according to Sir Rupert Cross in his book Precedent in English Law, *ratio decidendi* is any rule, whether explicit or implicit, applied by a judge in a case as a necessary step for the judge in reaching a conclusion on that case[15]

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[13] Legal Information Institute, "*Ratio decidendi*," in *WEX Law Cornell School* (Law Cornell School, 2023), accesed 23 August 2026. https://www.law.cornell.edu/wex/ratio_decidendi.

[14] Warmin, "*Ratio decidendi* Hakim Dalam Memutus Perkara Tanah Ditelantarkan Ditinjau Dari Perspektif Keadilan Hukum (Analisis Putusan Mahkamah Agung Republik Indonesia Nomor 2899 K/Pdt/2018)," *Mizanuna: Jurnal Hukum Ekonomi Syariah* 01, no. 01 (2023): 37, https://jurnal.stainidaeladabi.ac.id/index.php/mizanuna.

[15] Sir Rupert Cross and J.W. Harris, *Precedent in English Law*, online (Oxford: Oxford Academic, 1961), https://doi.org/10.1093/oso/9780198761624.001.0001.

Based on the explanation of the definitions above, it can be concluded that *ratio decidendi* is the legal reasoning underlying a decision. This reasoning originates from the judge's line of thinking, containing philosophical values and legal norms that lead the judge to reach a conclusion and establish the verdict in a particular case.[16]

Within the legal system adopted by Indonesia, the *ratio decidendi* can be found in the "Menimbang" ("Considering") section under "Pokok Perkara" ("Subject Matter of the Case"). The search for the *ratio decidendi* is carried out by closely examining the material facts and the decision produced from those facts. As a result, the very same material fact has the potential to give rise to two mutually contradictory possible decisions.[17]

Ratio decidendi theory requires judges to formulate decisions on the basis of clear philosophical foundations, positive law, and reasoning, in order to guarantee justice. Such a decision must also contain an educational dimension, a dimension of humanity, and legal benefit. As a legal instrument, the *ratio decidendi* projects solutions to complex public and private disputes. The *ratio decidendi* is the core of a decision, making it a model piece of jurisprudence for assessing the quality of the judicial system and the performance of law enforcement officials.[18]

2. Requirements of *Ratio decidendi*

Article 50 paragraph (1) of Law No. 48 of 2009 is the legal basis stipulating the *ratio decidendi* as the foundation of a judge's decision in deciding a case. Under that

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[16] "*Ratio decidendi*," TLD Team, accessed 1 September, 2026, https://thelawdictionary.org/?s=Ratio+Decidendi.
[17] Peter Mahmud Marzuki, *Penemuan Hukum Oleh Hakim* (Jakarta: Graha Ekspress, 2014).
[18] H.F. Abraham Amos, *Legal Opinion Teoritis & Empirisme* (Jakarta: PT. Grafindo Persada, 2007).

article, the *ratio decidendi* must satisfy the requirements set out in the phrase that "a court decision, in addition to containing the reasons and basis for the decision, must also contain the specific article of the relevant statutory regulation or the unwritten source of law used as the basis for adjudication."[19]

The elucidation of that article makes abundantly clear that the *ratio decidendi* within a judge's reasoning must possess a juridical character, containing various articles, regulations, norms, and various written and unwritten sources of law that can serve as the basis for a judge's reasoning in reaching a conclusion in a particular case.[20]

3. *Ratio decidendi* in Constitutional Court Decisions

A decision is an official statement issued by a judge, in his or her capacity as a state official, in an open hearing. This decision aims to resolve a legal dispute between interested parties. Within a decision lies the *ratio decidendi*, which constitutes the judge's reasoning in handing down the decision. The *ratio decidendi* in a Constitutional Court decision possesses unique characteristics distinct from judicial reasoning in various other courts. The *ratio decidendi* in a Constitutional Court decision has four distinctive features:[21]

a. The *ratio decidendi* in a Constitutional Court decision contains considerations that must be followed and used as a reference in legislative drafting; the Constitutional Court's ratio decidendi constitutes an official, binding interpretation of a regulation that must serve as a guideline for all parties.

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[19] "Pasal 50 Ayat 1 Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman" .
[20] Erni Ebi Rohmatin, "*Ratio decidendi* Hakim Pengadilan Agama Malang Dalam Putusan No.2303/Pdt.G/2015/PA Mlg Tentang Lelang Eksekusi Hak Tanggungan" (Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2018), http://etheses.uin-malang.ac.id/11598/1/14220127.pdf.
[21] H. Mahjudi, Putusan Hakim adalah Mahkota Hakim, Direktorat Jenderal Badan Peradilan Agama, Mahkamah Agung Republik Indonesia, accesed 1 September 2026 https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/putusan-hakim-adalah-mahkota-hakim-olehdrshmahjudi-mhi

b. The *ratio decidendi* in a Constitutional Court decision serves as a guideline that keeps regulations within a corridor that prioritizes the constitutional rights of citizens; the legal reasoning therein contains various foundations that must be held onto by legislators in forming laws that safeguard constitutional rights.
c. The *ratio decidendi* in a Constitutional Court decision functions as a guardian and interpreter of the constitution. Although the legal reasoning within a Constitutional Court decision has not been enacted into legislation, it must nonetheless be followed by those implementing government policy and remains constitutional in character.
d. The *ratio decidendi* in a Constitutional Court decision contains the values embodied in the 1945 Constitution, and cannot be appealed, cassated, or judicially reviewed, owing to its final and binding nature.[22]

The Constitutional Court is the final institution safeguarding the constitutional rights of citizens from the legalization of injustice within official regulations; it serves as a guideline in the formation of laws, and as the final gateway in the interpretation of a law. The *ratio decidendi* of the constitutional judges is of great importance, since the Constitutional Court holds fundamental considerations that determine the direction of interpretation of state statutory regulations.

[22] Yuniar Riza Hakiki and Taufiqurrahman, "Gagasan Penataan Legislasi Nasional Berbasis *Ratio decidendi* Dan *Obiter dictum* Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 20, no. 1 Maret 2023 (2023): 84, https://jurnalkonstitusi.mkri.id.

B. The Constitutional Court of the Republic of Indonesia

1. Definition, Functions, and Petition Procedure at the Constitutional Court

The Constitutional Court of the Republic of Indonesia is one of the highest state institutions within the Indonesian constitutional system. Article 1 paragraph (1) of Law Number 24 of 2003 explains that the Constitutional Court is one of the holders of judicial power as referred to in the 1945 Constitution of the Republic of Indonesia.[23], as set out in Article 24 paragraph (2) of the 1945 Constitution, standing alongside the Supreme Court together with the various judicial bodies beneath it[24]

The Constitutional Court has duties and functions distinct from those of other judicial bodies. This institution was established specifically to handle larger-scale cases, namely: the review of laws against the 1945 Constitution of the Republic of Indonesia; disputes over the authority of state institutions; the dissolution of political parties; disputes concerning the results of general elections; and considering the House of Representatives' (DPR) opinion that the President and/or Vice President is suspected of committing a legal violation or disgraceful conduct, such that he or she no longer meets the requirements to serve as President and/or Vice President.[25]

One of the most important powers held by the Constitutional Court is judicial review the review of a law already enacted by the House of Representatives (DPR) together with the President against the 1945 Constitution, where the law's content is alleged to be contradictory to, and detrimental to, the constitutional rights of citizens. Judicial review carries out an important process in realizing the principle of checks and

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[23] "Pasal 1 Ayat 1 Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi".
[24] "Pasal 24 Ayat 2 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945".
[25] "Pasal 1 Ayat 3 Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi".

balances between institutions, so that it can correct the various products of the government and the DPR, ensuring they do not harm the fundamental and constitutional rights of citizens.[26]

The procedure for petitioning the Constitutional Court to review a law may be pursued by an individual Indonesian citizen; by a customary law community unit, so long as it continues to exist and is consistent with the development of society and the principle of the unitary state of the Republic of Indonesia; and by a public or private legal entity, as well as a state institution that considers itself harmed by a particular regulation these parties constitute valid subjects with legal standing to submit a petition for judicial review to the Constitutional Court.[27] A judicial review petition may take the form of a formal review, concerning the procedure by which the law was made, or a material review, examining whether the content of a law or statutory regulation is consistent with, or contrary to, the norms and provisions contained in the 1945 Constitution.[28]

2. Requirements for Establishing Loss in a Petition to the Constitutional Court

In a petition for judicial review concerning articles considered detrimental, the petitioners must, in their petitum, satisfy five requirements concerning the loss arising from the applicability of the article in question, namely:

a. The existence of a constitutional right and/or authority of the petitioner granted by the 1945 Constitution of the Republic of Indonesia;

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[26] Sunarto et al., "*Judicial Review* Sebagai Kewenangan Legislasi Mahkamah Konstitusi," *Bookchapter Hukum Dan Politik Dalam Berbagai Perspektif* 4 (2025): 1–18, https://doi.org/10.15294/hp.v4i.
[27] "Pasal 51 Ayat 1 Undang Undang No. 24 Tahun 2003 Tentang Mahkamah Konstitusi".
[28] "Pasal 24C Ayat 1 Undang-Undang Dasar 1945".

b. The petitioner considers that constitutional right and/or authority to have been harmed by the applicability of the law for which review is sought;
c. That constitutional loss must be specific in nature and actual, or at the very least potential, such that, according to reasonable logic, it can be certain to occur;
d. The existence of a causal relationship between the loss in question and the applicability of the law for which review is sought;
e. The possibility that, were the petition to be granted, the constitutional loss as alleged would not occur, or would no longer occur.[29]

3. The Nature of Constitutional Court Decisions and Their Legal Effects

The nature of a Constitutional Court decision is final and binding. "Final" means that the decision immediately acquires permanent legal force from the moment it is read out in a plenary session, with no further mechanism such as appeal, cassation, or any other legal remedy standing above it; and "binding" means that the decision applies to the litigating parties and is broadly binding upon the entire public and state institutions (*erga omnes*) [30]. The implementation of a Constitutional Court decision follows two models. The first is self-implementing, meaning the Court's decision immediately acquires permanent legal force and becomes effective from the moment it is first read out in a plenary session, without requiring any change to legislation. The second is non-self-implementing, in which the legal instrument for the Constitutional Court's decision must first be drawn up through a formal legislative process.[31]

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[29] "Putusan Mahkamah Kosntitusi Nomor 006/PUU-III/2005. 16".
[30] Antoni Putra, "Sifat Final Dan Mengikat Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang: Kajian Putusan Mahkamah Konstitusi Nomor 34/PUU-XI/2013," *Yudisial* 14, no. 3 (2022): 296–97, https://doi.org/10.29123/jy.v14i3.425.
[31] Widati Wulandari et al., "Putusan Mahkamah Konstitusi: Dampaknya Terhadap Perubahan Undang-Undang Dan Penegakan Hukum Pidana," *Konstitusi* 18, no. September (2021): 491, https://doi.org/10.31078/jk1831.

Constitutional Court decisions also come in the following types:

a. Decision Granting the Petition

This is a decision that grants the petition in its entirety, accompanied by a verdict stating that the reviewed article is contrary to the 1945 Constitution of the Republic of Indonesia.

b. Decision Rejecting the Petition

This is a decision that rejects the petition in its entirety; the decision declares that the reviewed law is consistent with the 1945 Constitution of the Republic of Indonesia and that the norm contained therein is consistent with it and remains in force.

c. Decision of Inadmissibility (*Niet Ontvankelijk Verklaard*)

This is a decision containing a formal defect, such as an unclear object of the petition, a matter falling outside the Constitutional Court's jurisdiction, or the petitioner lacking legal standing in accordance with the Constitutional Court Law.

d. Conditional Decision (Conditionally Constitutional or Conditionally Unconstitutional)

A conditionally constitutional decision is one in which a particular article is declared constitutional only if interpreted or implemented subject to certain conditions, whereas a conditionally unconstitutional decision is one in which an article is deemed unconstitutional unless it is reinterpreted and certain changes are made.

e. Decision Declaring the Petition Void

This is a decision declaring that the petitioner failed to appear at the hearing without reasonable cause, or that the petitioner has withdrawn the petition.[32]

C. *Mubādalah* Theory

1. Definition, Philosophy, and Background of *Mubādalah* Theory

Mubādalah theory is a theory introduced by Kiai Faqihuddin Abdul Kodir, a writer and lecturer at IAIN Syekh Nurjati Cirebon with scholarly expertise relating to the themes of gender and Islam. This theory was introduced by Kiai Faqihuddin Abdul Kodir in his work "*Qirā'ah Mubādalah*: Tafsir Progresif untuk Keadilan Gender dalam Islam" ("*Mubādalah* Reading: A Progressive Interpretation for Gender Justice in Islam").[33]

Linguistically, *mubādalah* is a form (*wazan*) derived from *mufa'alah*, meaning mutuality and cooperation between two parties (*mushārakah*), originating from the root ba-da-la (ب-د-ل), meaning to replace, change, or exchange. *Mubādalah* can also mean to mutually replace, mutually change, or mutually exchange with one another. The word *mubādalah* is generally used in the context of exchange, trade, and business activities. In the Great Dictionary of the Indonesian Language, the word (mutuality) denotes reciprocal or mutual meaning; in English, the word *mubādalah* is interpreted

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[32] "Pasal 56 Dan 57 Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi".

[33] Febriyanto, "Faqihuddin Abdul Kodir, Tokoh Muda NU Penggerak Majlis *Mubādalah* Yang Mendunia," bangkitmedia.com, 2019, accesed 5 September 2026 https://bangkitmedia.com/faqihuddin-abdul-kodir-tokoh-muda-nu-penggerak-majlis-mubadalah-yang-mendunia/.

as setting every matter against its counterpart, which may be rendered as reciprocity, requital, paying back, or returning in kind or degree.[34]

The *mubādalah* theory used as the perspective in this research is an understanding and perspective for reading legal texts that contain the values of mutuality, cooperation, and partnership occurring between husband and wife. The relationship referred to in *mubādalah* theory may be very broad in scope, encompassing many parties. However, *mubādalah* theory as discussed here is concerned mainly with the relationship between men and women, which generally falls within domestic matters such as the family, maintenance, and children, or within the public domain, such as standards of propriety, decency, and other general norms.[35]

Mubādalah theory is grounded in the widespread tendency among commentators interpreting verses concerning the relationship involving women, most of whose interpretations of such gender relations have degraded women. There are a great many interpretations derived from authoritative verses that have been interpreted carelessly, causing those verses to yield patriarchal interpretations that tend to be detrimental to women. The interpretations put forward by commentators who promote readings that tend to negate gender are, in the view of Kiai Faqihuddin Abdul Kodir, in fact contrary to the spirit of Islamic values, which upholds the spirit of ta'āwun (mutual cooperation) and *rahmatan lil 'ālamīn* (mercy for all the worlds).[36]

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[34] Faqihuddin Abdul Kodir, *Manual Mubādalah: Ringkasan Konsep Untuk Pelatihan Perspektif Kesalingan Dalam Isu Gender Dan Islam*, ed. Nur Rofiah, 1st ed. (Yogyakarta: Umah Sinau *Mubādalah*, 2019).
[35] Agus Hermanto, Habib Ismail, and Iwanuddin, "Menjaga Nilai-Nilai Kesalingan Dalam Menjalankan Hak Dan Kewajiban Suami Istri Perspektif Fikih *Mubādalah*," *Al-Mawarid* 4 (2022): 43–56, https://doi.org/10.20885/mawarid.vol4.iss1.art3.
[36] Kodir, *Qirā'ah Mubādalah*. 50

An example of an issue frequently raised in this context is how women are viewed as a source of fitnah (temptation/strife) because of their allure. One example is as follows: there are preachers who state that when a woman posts a photo on social media, it becomes fitnah and is branded as sin for as long as the photo remains displayed on social media, citing the following Qur'anic and hadith evidence:[37]

زُيِّنَ لِلنَّاسِ حُبُّ الشَّهَوَاتِ مِنَ النِّسَاءِ وَالْبَنِينَ وَالْقَنَاطِيرِ الْمُقَنطَرَةِ مِنَ الذَّهَبِ وَالْفِضَّةِ وَالْخَيْلِ الْمُسَوَّمَةِ وَالْأَنْعَامِ وَالْحَرْثِ ۗ ذَٰلِكَ مَتَاعُ الْحَيَاةِ الدُّنْيَا ۖ وَاللَّهُ عِندَهُ حُسْنُ الْمَآبِ

Meaning: *"Beautified for people is the love of that which they desire — of women, children, hoarded heaps of gold and silver, fine branded horses, livestock, and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return."* (QS. Ali-Imran [3]:14)[38]

عَنْ أُسَامَةَ بْنِ زَيْدٍ رَضِيَ اللَّهُ عَنْهُمَا عَنِ النَّبِيِّ ﷺ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَا تَرَكْتُ بَعْدِي فِتْنَةً أَضَرَّ عَلَى الرِّجَالِ مِنَ النِّسَاءِ

Meaning: *"From Usamah bin Zaid, may Allah be pleased with both of them, from the Prophet SAW, who said: 'I have not left behind me a fitnah more harmful to men than women.'"* (HR. Bukhari No. 5096)[39]

According to several works of exegesis (*tafsīr*), the women referred to as an adornment of the world in this verse are treated as an object because they represent worldly beauty. Asy-Syaukāni explains that men's inclination toward women is indeed greater than toward other things[40]; this is also confirmed by Hasbi Ash-Shiddieqy[41], who likewise notes only men's inclination toward women without providing a

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[37] Kodir, *Qirā'ah Mubādalah*. 47.
[38] Tim Penerjemah dan Pentashih Mushaf Qur'an, *Al-Qur'anul Karim* (Bandung: Halim Qur'an, 2019).353
[39] Muḥammad ibn Ismāʿīl Bukhārī, *Shahīh Al-Bukhāri*, ed. Dār Tawq Al-Najah (Beirut, n.d.).
[40] Asy Shaukanī, *Tafsīr Fath Al-Qādir*, 3rd ed. (Pustaka Azzam, 2009).290
[41] Hasbi Ash-Shiddieqy, *Tafsīr Al-Qur'an Al Mādjied An-Nur*, 3rd ed. (Bulan Bintang, 1967).

comprehensive explanation of women's attraction toward men[42]. Likewise with the hadith stating that women are fitnah this hadith is affirmed by Nābīl Hishām al-Ghimāri, who states that Satan uses women as one means of trapping men into sin and distancing them from Allah SWT.[43]

The Qur'anic verse and hadith above, which textually and explicitly identify the female gender as fitnah because they are seen as potentially harmful to men, undeniably reflect something that has occurred in many cases across generations; however, using these texts to discriminate against the female gender as entirely *fitnah*, and to fatalistically strip women of their rights, is not something sanctioned in Islam. In the case of the preacher who states that a woman posting a photo becomes sinful because it captivates men, is that preacher aware that his own photo while preaching or delivering a sermon could likewise captivate women whether because of his handsome face, his engaging style of preaching, or a sermon that stirs the heart? Such things could equally arouse a sense of attraction that could, in turn, result in fitnah. Why is it only women who are restricted, while men are not? If allure becomes fitnah, then both men and women alike ought to restrict their postings, since both can give rise to allure that ultimately becomes fitnah.[44]

There remain a great many other verses and hadiths whose texts do indeed clearly place women as fitnah; however, what preachers often fail to convey is the

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[42] Anisah Dwi Lestari P, "*Qirā'ah Mubādalah* Dan Arah Kemajuan Tafsir Adil Gender: Aplikasi Prinsip Resiprositas Terhadap Al-Qur'an Surah 'Alī-'Imrān: 14," *Muàṣarah: Jurnal Kajian Islam Kontemporer* 2, no. 1 (2020): 53–57, https://doi.org/10.18592/ muàṣarah.v17i1.3002.
[43] Abū Āṣim Nabīl bin Hisyām Ghamri, *Fathul Manān Syarh Al-Dārimī Bi Musnad Al-Jāmi'*, 2nd ed. (Makkah: Dār al-Basyāri al-Islāmiyah, 1999).
[44] Kodir, *Qirā'ah Mubādalah*.47

proper interpretation of such verses and hadiths, which unfortunately tend to be explained only in a purely textual manner. In fact, the reading of such texts ought to be examined more deeply by elaborating on the context in which the verse or hadith was conveyed.[45]

On the basis of this philosophy of tauhid (the oneness of God), *mubādalah* theory rests on three principles:

a. Men and women must respect one another. Negation, harassment, and belittlement in the name of gender constitute a violation of the principle of tauhid.
b. Every individual in this world is created differently, with a wide variety of backgrounds; however, this is not a reason to instill the hegemony of one gender over another such differences must instead be empowered through a reciprocal relationship of mutual assistance and cooperation.
c. This reciprocal relationship constitutes an act of *maslahat* (benefit) for mutually developing one's potential and contributing actively to the development of social life and to goodness in this world and the hereafter.[46]

The basic philosophy of *Mubādalah* theory is rooted in the declaration of tauhid, *"lā ilāha illa Allāh"* (there is no god but Allah). This philosophy of tauhid implies that all human beings are equal, being servants of Allah SWT. Accordingly,

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[45] Kodir. *Qirā'ah Mubādalah*.48
[46] Yuli Imawan, "Interprestasi Hadis Fitnah Perempuan: Penerapan *Qirā'ah Mubādalah* Faqihuddin Abdul Kodir," *Jurnal Holistic Al-Hadis* V, no. 1 (2022): 116, https://doi.org/10.32678/holistic.v8i1.5539.114

any human desire or thought that seeks to negate rights or to degrade another human being is an act contrary to Islamic tauhid.[47]

Although grounded in the injustice experienced by women as a result of careless interpretation, this background does not thereby make *mubādalah* theory a justification for negating the male gender. On the contrary, *mubādalah* theory exists as a counterbalance. *Mubādalah* theory puts forward the idea that the emphasis in gender relations ought to be reciprocal mutual, cooperative, and based on helping one another. *Mubādalah* theory exists so that men and women do not negate one another on the basis of gender, and instead respect each other's roles.[48]

Based on the philosophical background explained above, *mubādalah* theory may be defined as a perspective and understanding for reading texts that embody the principles of partnership, cooperation, mutuality, reciprocity, and exchange between men and women.[49]

In *Mubādalah* Theory, Kiai Faqihuddin Abdul Qadir proposes a method for reading a text using the following procedure:

a. First step: identifying and affirming the principles of Islamic teaching drawn from texts that are universal in nature, as a foundation.

   The principles within *mubādalah* theory are divided into two:

   1) Principles that are general in nature and can be implemented across many contexts and themes; these principles are called *mabādi'*.

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[47] Kodir, *Manual Mubādalah*.11
[48] Kodir, *Qirā'ah Mubādalah*..51
[49] Kodir. *Qira'ah Mubadalah*.59

2) Principles that are specific in nature and can only be implemented within certain themes; these principles are called *qawā'id.*.

b. Second step: searching for the main idea based on principles, whether *mabādi'* or *qawā'id.*, to be interpreted into partial texts (*al-juz'iyyat*). In simple terms, this second step can be carried out by removing the subject and object within a text and retaining only the predicate, to be used as the idea that will be "*mubādalah*-ed" (made reciprocal) between both genders.

c. Third step: actualizing the ideas contained within a text that clearly refers to one particular gender, extending them to the gender not mentioned in that text.[50]

In essence, the *Mubādalah* Method proposes the idea that a text which, in its form, addresses men and contains ideas of a general principle (*mabādi'* and *qawā'id.*), is an idea that also encompasses women within it.[51]

The classification of texts within *mubādalah* theory is of two kinds: explicit texts (manṫūq) and implicit texts (mafhūm). A text that is already manṫūq does not need to be made *mubādalah*, whereas a text that remains mafhūm is the one requiring the work of *mubādalah*. Texts that remain implicit are further divided into two: those that have already been interpreted by scholars as applying to both genders, such that no further *mubādalah* work is required upon them; and those that have not, namely texts that remain exclusive in nature and directed toward a particular gender, such that *mubādalah* work is required upon them.

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[50] Siti Alfi Aliyah and Raihan Safira Aulia, "Metode *Qirā'ah Mubādalah* Pada Kasus Kepemimpinan Perempuan," *An-NIda'* 46, no. 2 (2022): 166–82, https://doi.org/10.24014/an-nida.v46i2.20860.
[51] Kodir, *Manual Mubādalah*.67

As for texts that still carry explicit meaning, within *mubādalah* theory these are divided into three:

a. Texts that mention both men and women and already carry meanings of mutuality and cooperation. Such texts therefore require no *mubādalah* work, since the matter is already perfectly clear.

   The clearest example of this type is found in the following text (naṣṣ):

   وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ ۚ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ ۚ أُولَٰئِكَ سَيَرْحَمُهُمُ اللَّهُ ۗ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

   Meaning: *"The believing men and believing women are allies (helpers) of one another. They enjoin what is right (ma'rūf) and forbid what is wrong (munkar); they establish prayer, give zakat, and obey Allah and His Messenger. It is those on whom Allah will have mercy. Indeed, Allah is Exalted in Might and Wise."* (QS. At-Taubah [9]: 71)*34*[52]

   In this verse, men and women have a relationship that requires them to help one another and to cooperate.

b. Texts that mention both men and women but have not yet included an aspect of mutuality and cooperation; such texts need only be read as establishing that the two subjects men and women are equal in the act or treatment referred to in the text. Within this second category, texts are further divided into two. First, texts that already mention men and women directly, such as in the following verse:

   وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى ٱللَّهُ وَرَسُولُهُۥٓ أَمْرًا أَن يَكُونَ لَهُمُ ٱلْخِيَرَةُ مِنْ أَمْرِهِمْ ۗ وَمَن يَعْصِ ٱللَّهَ وَرَسُولَهُۥ فَقَدْ ضَلَّ ضَلَٰلًا مُّبِينًا

[52] Qur'an, *Al-Qur'anul Karim*.197

Meaning: *"It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, to have any choice in that matter. And whoever disobeys Allah and His Messenger has certainly strayed into clear error."* (QS. Al-Ahzab [33]:36)[53]

In this verse, men and women are mentioned as equal subjects in matters concerning the trial of faith.

As for texts that mention only the word "human being," such as al-ins, insān, and the like, consider the following text:

لَقَدْ خَلَقْنَا الْإِنسَانَ فِي أَحْسَنِ تَقْوِيمٍ

Meaning: *"Indeed, We created man in the best of forms."* (QS. At-Tin [95]:4)[54]

In this verse, humankind is created in the best of forms; "humankind" here includes both men and women.

c. Texts that contain the principle of mutuality and cooperation but contain no element of gender within them; an example of such a text is as follows:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۚ وَاتَّقُوا اللَّهَ ۖ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Meaning: *"And cooperate in righteousness and piety, but do not cooperate in sin and transgression. And fear Allah; indeed, Allah is severe in punishment."* (QS. Al-Mā'idah [5]: 2)[55]

There is no subject of woman or man in this verse; however, the principle of mutual help, which is also among the values of the *mubādalah* concept, is a value that must be present in the relationship between men and women.[56]

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[53] Qur'an. 423
[54] Qur'an.597
[55] Qur'an.107
[56] Kodir, *Qirā'ah Mubādalah*.210-219

However, naturally, it would not be a theory if it contained no exceptions. *Mubādalah* theory cannot be applied to matters that are biological, matters of creed (*'aqīdah*), or matters of report (*khabar*) in nature, except in order to uncover a deeper wisdom. Take, for example, the Sharī'ah of circumcision (*khitān*). This practice is beneficial for men circumcision can make a man's vital organ healthier and increase sexual pleasure but the opposite holds true for women, for whom the practice of circumcision is merely a matter of tradition and carries the potential to reduce such sexual pleasure.[57]

If the Sharī'ah of circumcision were indeed to be made *mubādalah*, then the value contained within the obligation of circumcision must touch upon a deeper philosophical meaning and wisdom. The Sharī'ah of circumcision directed at men, intended to make the vital organ healthier and more conducive to sexual pleasure, could be made reciprocal (*mubādalah*) for women through the maintenance of the health of the vital organ for the sake of greater sexual pleasure. It is this value of maintaining health that can be made *mubādalah* in the application of the Sharī'ah of circumcision for men.[58]

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[57] Gusnanda and Roma Wijaya, "Khitan Pada Wanita Dalam Tinjauan Hadis Dan Medis," *Al-Qudwah:Jurnal Studi Al-Qur'an Dan Hadis* 1 (2023): 75–89, https://doi.org/10.24014/alqudwah.v1i1.22855.
[58] Kodir, *Qirā'ah Mubādalah*. 532-533

CHAPTER III

RESULTS AND DISCUSSION

A. How is the *Ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage

1. The Construction of the Petition for Review of Article 34 Paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage

The material review petition in Constitutional Court Case Number 159/PUU-XXIV/2026, filed by an advocate named Moratua Silaban, S.H., M.H., is a petition for the material review of Article 34 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage. In this material review, the petitioner highlights the phrase set out in paragraphs (1) and (2) of the article, which reads: "(1) *The husband shall be obliged to protect his wife and to provide all the necessities of household life in accordance with his ability. (2) The wife shall be obliged to manage household affairs as well as possible.*" The petitioner's petition for material review of these two paragraphs of Article 34 is based on four reasons set out in the petitum, namely:[59]

a. The division of roles based on sex in paragraphs (1) and (2) of Article 34 of Law No. 1 of 1974 has the potential to become an instrument of oppression and to strip away fundamental human rights.

Article 34 paragraphs (1) and (2) carry the potential to strip away fundamental rights if retained as a constitutional article. Within this article, the division of roles and the formulation of obligations as husband and wife are divided on the basis of sex. The

[59] Mahkamah Konstitusi, "Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026" (2026), https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_14412_1781690481.pdf.13-19

husband is viewed solely as a provider for the family, while the wife, on the other hand, is confined solely to the domestic sector. This can give rise to injustice, gender-based discrimination, and a form of unfairness that is legally sanctioned and legitimate before the state thereby violating Article 27 paragraph (1) of the 1945 Constitution concerning the equal standing of citizens before the law, and Article 28I paragraph (2) of the 1945 Constitution concerning human rights, which is a ratification of the Universal Declaration of Human Rights adopted and proclaimed by the United Nations General Assembly in 1948.[60]

In the case experienced by the petitioner himself: a husband who is experiencing difficulty in providing maintenance and meeting the needs of family members may continue to be squeezed to satisfy a wife's demands that exceed her actual needs. Meanwhile, a wife may feel no obligation to contribute toward meeting economic needs, even though she is able to help meet the family's needs the wife being able to shelter from that obligation on the ground that her role under the valid law is solely to manage household affairs, as set out in paragraph (2) of Article 34 of the Marriage Law. The petitioner also highlights the potential for the opposite to occur with respect to husbands. In one example given by the petitioner, if Article 34 remains valid and constitutional, then a wife who is prevented from managing the household as well as possible as mandated under paragraph (2) of Article 34 for reasons such as illness or a disability that prevents her from doing so would allow the husband to

[60] United Nations, "*Article 2 Universal Declaration of Human Rights About Freedom from Discriminations*" (1948), accesed 10 september 2026, https://www.unonline.org/sites/un2.un.org/files/2021/03/udhr.pdf.2

shelter from his own obligation, on the ground that his duty is merely that of household provider.[61]

b. The norm contained in paragraphs (1) and (2) of Article 34 of Law No. 1 of 1974 concerning Marriage constitutes gender-based discrimination and is no longer consistent with contemporary sociological developments.

Article 34 paragraphs (1) and (2) plainly discriminate against an individual purely on the basis of sex. By imposing a real burden upon one sex without any proportional limitation, Article 34 paragraphs (1) and (2) have already proven to be unconstitutional. In fact, this division of roles ought to be viewed in light of the actual conditions that occur and linked to the capacities possessed by the individuals concerned. Such an appropriate division of roles is consistent with realizing substantive equality, free from gender imbalance, and views the individual based on capacity and role rather than sex.[62]

Article 34 paragraphs (1) and (2) still divide the roles of husband and wife purely along the lines of sex. This division of roles is an outdated norm no longer consistent with modern life, which is more flexible and more adaptable in resolving household matters. As a legal instrument, sociological background is an important factor in observing changes in social dynamics[63]. Article 34, drafted in the period 1973-1974, reflected the social practice and outlook of its time, in which the husband

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[61] Konstitusi, Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.25

[62] Indah Ratnanun et al., "*Feminist Legal Theory*: Perjuangan Kesetaraan Dalam Struktur Hukum," *Judge: Jurnal Hukum* 06, no. 05 (2025): 1433–43, https://doi.org/10.54209/judge.v6i05.1882.

[63] James A. Gardner, "The Sociological Jurisprudence of Roscoe Pound (Part I)," *Villanova Law Review* 7, no. 1 (1961): 3, https://digitalcommons.law.villanova.edu/vlr/vol7/iss1/1?utm_source=digitalcommons.law.villanova.edu%2Fvlr%2Fvol7%2Fiss1%2F1&utm_medium=PDF&utm_campaign=PDFCoverPages.

was still viewed as the single breadwinner owing to the extremely limited opportunities then available to women to access education or employment, such that the wife ultimately depended entirely on her husband. This outlook now feels very far removed from the reality of life today. In the present era, where opportunities are wide open to both sexes for working, building a career, and meeting one's own needs, social conditions have shifted from the single-breadwinner model toward the dual-earner family. The wife in modern life today is no longer confined to the routine of "well, kitchen, and bed," but can instead become a supporter of the family's economic needs.[64]

c. Article 34 paragraphs (1) and (2) pose a threat to the protection of dignity and property.

Article 34 paragraphs (1) and (2), within a law intended to protect citizens, instead become a pretext for the exploitation of property and the degradation of human dignity. Through the phrase imposing an "economic obligation" attached to the husband, without being bounded by any parameter of reasonableness, reciprocity, or proportionality, the legal effect produced by this article, rather than protecting the public, is instead the legalization of injustice occurring within the household. The institution of the household, which ought to bring peace, instead becomes a veiled institution of servitude, in which, if either party fails to fulfill their obligation under Article 34 paragraphs (1) and (2), the courts may punish them, whether criminally or civilly.[65]

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[64] Rini Sulastri, "*Dual-Earner Family* Dalam Pandangan Masyarakat Dan Pemahaman Keagamaan Islam," *Khazanah Multidisiplin* 3, no. 1 (2022): 21–39, https://doi.org/10.15575/kl.v3i1.15808.
[65] Konstitusi, Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.18

d. Article 34 paragraphs (1) and (2) contain a paradox in family protection that creates an incentive for rifts within the household.

The purpose of establishing family law is, without question, to strengthen the institution of the family; yet the norm contained in Article 34 paragraphs (1) and (2) achieves the opposite. This article becomes a destructive catalyst, with the potential to undermine the very institution of the household it is meant to protect. Cases of household breakdown stemming from the fulfillment of financial and domestic roles are made worse by the rigid division of household roles set out in Article 34 paragraphs (1) and (2).[66]

On the basis of these four reasons, the petitioner filed the petition, hoping that it would be granted with the following verdict:

1. To accept, grant, and ratify the petition for material review filed by the Petitioner, in its entirety and without exception.
2. To declare that the norm of Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019), as amended and enacted by Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage, has been proven, lawfully and convincingly, to be contrary to the spirit, values, and text of the 1945 Constitution of the Republic of Indonesia, and is therefore declared to have no binding legal force, conditionally (Conditionally Unconstitutional), unless the phrase and formulation of the norm in that paragraph is interpreted, integratively and comprehensively, to read: "The husband shall be obliged to respect and protect his wife, and to provide all the necessities of household life proportionally, based on the principle of equal partnership, mutual cooperation, as an equal helpmate, and grounded in sincere love."
3. To declare that the norm of Article 34 paragraph (2) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019), as amended and enacted by Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage, has been proven, lawfully and convincingly, to be contrary to the spirit, values, and text of the 1945 Constitution

[66] Konstitusi.Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.18-19

of the Republic of Indonesia, and is therefore declared to have no binding legal force, conditionally (Conditionally Unconstitutional), unless the phrase and formulation of the norm in that paragraph is interpreted, integratively and comprehensively, to read: "The wife shall be obliged to respect and protect her husband, to manage household affairs, and jointly to contribute to and bear the burden of the necessities of household life, for the realization of an equal partnership as an equal helpmate, grounded in sincere love."

4. To order and require the publication of this Constitutional Court of the Republic of Indonesia decision in the relevant case within the State Gazette of the Republic of Indonesia, as appropriate.[67]

Looking at Article 34 paragraphs (1) and (2), the petition set out in the petitum does not ask the constitutional judges to strike down Article 34 paragraphs (1) and (2) in their entirety; a petition for outright annulment would in fact be disastrous, since it would create a legal vacuum. A legal vacuum would have implications for the failure of state institutions to provide legal certainty, and would threaten the civil processes arising from that legal vacuum were the petition to be granted. On the other hand, the legislative process for establishing a law containing new norms also requires a considerable amount of time, while the urgent need for law enforcement and the realization of justice cannot be avoided either. For this reason, the Court, as guardian of the constitution, considered it necessary to insert new norms such as: "respect, proportionality, equal partnership, and as an equal helpmate" into the paragraph concerning the husband's role. Then, in paragraph (2), the phrases added were "respect, protect her husband, contribute, and bear the burden, as well as equal partnership as an equal helpmate." Finally, in both paragraphs, the petitioner requested the addition of the norm: grounded in sincere love

[67] Konstitusi.Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.55

The changes formulated by the petitioner to Article 34 can be seen in the following table:

Table 1.2.

Comparison of the applicable norm of Article 34 paragraphs (1) and (2) and the norm of Article 34 paragraphs (1) and (2) proposed by the petitioner

Provision	The Applicable Norm of Article 34	The Norm Requested by the Petitioner	Proposed Change/Substance
Article 34 paragraph (1)	"The husband shall be obliged to protect his wife and to provide all the necessities of household life in accordance with his ability."	"The husband shall be obliged to respect and protect his wife, and to provide all the necessities of household life proportionally, based on the principle of equal partnership, mutual cooperation, as an equal helpmate, and grounded in sincere love."	The petitioner adds the concepts of respect, proportionality, equal partnership, mutual cooperation, and an equal helpmate to the husband's obligation.
Article 34 paragraph (2)	"The wife shall be obliged to manage household affairs as well as possible."	"The wife shall be obliged to respect and protect her husband, to manage household affairs, and jointly to contribute to and bear the burden of the necessities of household life, for the realization of an equal partnership as an equal helpmate, grounded in sincere love."	The petitioner broadens the wife's obligation, not merely within the domestic sphere, but also to include protecting her husband, joint contribution, and jointly bearing the burden of household needs.

The changes made by the petitioner for the review of Article 34 paragraphs (1) and (2) are based on a request that the Court hand down a conditionally unconstitutional decision. This concept means that, in a Constitutional Court decision, a norm within a law is declared contrary to the 1945 Constitution, but only under, or insofar as, that norm

is given a particular meaning. Under this concept of petition, the law would be contrary to the Constitution unless given the meaning and subject to the conditions requested by the petitioner. In other words, through a petition for a conditionally unconstitutional verdict, the Court would avoid leaving a legal vacuum and would avoid neglecting the need for a new, more just norm in safeguarding fundamental human rights within household relations.[68]

2. *Ratio decidendi of the Constitutional Court in Rejecting the Petition for Review of Article 34 of Law Number 1 of 1974 concerning Marriage*

In the verdict read out by the Court, the nine constitutional judges ultimately rejected the petitioner's petition in its entirety, meaning that Article 34 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage is a constitutional provision and is not contrary to the norms contained within the 1945 Constitution. The Court's reasoning for its rejection is set out in the following considerations:[69]

a. According to the Court, Article 34 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage cannot be read in isolation, but must be read comprehensively within the construction of Chapter VI of Law Number 1 of 1974 concerning Marriage, which specifically governs the rights and obligations of husband and wife. In that Chapter VI, the legislators had already set out, in advance, how the husband and wife are to cooperate within the bond of marriage. This is evidenced by the phrase "Husband and wife shall bear the obligation" in Article 30, which reads: "Husband and wife shall bear the noble obligation to uphold the household, which forms the basic foundation

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[68] Faiz Rahman, "Anomali Penerapan Klausul Bersyarat Dalam Putusan Pengujian Undang- Undang Terhadap Undang-Undang Dasar," *Konstitusi* 17, no. 1 (2020): 38, https://doi.org/10.31078/jk1712.38

[69] "Pasal 56 Ayat 5 Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi".

of the structure of society," or in Article 31 paragraph (1), which contains the words "equal" and "together" in the phrase "The rights and standing of the wife are equal to the rights and standing of the husband in household life and in social relations within the community," and still more clearly set out in Article 33, which explicitly contains the word "mutual" in the phrase "Husband and wife shall be obliged to love one another, respect one another, be faithful, and give material and spiritual assistance to one another." The Court held that this initial construction, built prior to Article 34, is clear evidence of the realization of the justice intended to be established within Article 34 namely, that the relationship between husband and wife is formed on the basis of balance, shared responsibility, mutuality, reciprocal relations, and mutual love.[70]

b. In responding to the review of Article 34 paragraph (1), the Court held that the obligation referred to in that phrase does not mean an absolute obligation, unlimited and applicable in all circumstances. The following phrase in fact answers this directly: "The husband shall be obliged to protect his wife and to provide all the necessities of household life in accordance with his ability." The phrase "in accordance with his ability" addresses substantive justice, guaranteeing citizens' rights, in that the husband's obligation to support household life must be viewed within the frame of the circumstances, situation, conditions, and capacity of that husband.[71]. The phrase "in accordance with his ability" also frees the husband from any obligation to meet unreasonable demands, while at the same time opening a role for the wife in supporting

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[70] Konstitusi, Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.69

[71] Rahmat Al Farizi, Siti Maisarah, and M Ali Fada, "Memahami Keadilan Gender Secara Substantif: Kritik Terhadap Paradigma Kesetaraan Absolut Dalam Keluarga," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 4, no. 2 (2026): 2594–2610, https://doi.org/10.62976/ijijel.v4i2.1924.

the family's economic life. It would therefore be a grave error to treat Article 34 paragraph (1) of Law No. 1 concerning Marriage as a prop sustaining injustice, allowing a wife to exploit property and strip her husband of his dignity[72]

c. In reviewing Article 34 paragraph (2), the Court held that the phrase "The wife shall be obliged to manage household affairs as well as possible" does not mean the elimination of the wife's role in participating in, or contributing to, the family. The phrase in this article cannot be separated from the constitutional construction of the preceding articles set out in Chapter VI concerning rights and obligations. According to the Court, this article constitutes a recognition of the existence of shared responsibility in conducting household life. Accordingly, the wife's obligatory contribution to the household which may take the form of domestic needs, material and spiritual needs, and economic needs is a fundamental matter that must be upheld in accordance with her ability. It would therefore be wrong for a wife to use this article as a shield for not contributing to the family's economy, and equally wrong for a husband to use this article as a whip against the wife, demanding that she continuously manage household affairs as well as possible under conditions and circumstances beyond her ability.[73]

d. The Court also held that the petitioner's argument that Article 34, as reviewed, injures the value of reciprocity within the marital relationship was unproven, since the norm in the preceding article already sets out a formulation demonstrating that very reciprocal value, such as the formulation "to love, to respect, to be faithful, as well as

[72] Konstitusi, Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.69-70
[73] Konstitusi. Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.70

to give material and spiritual assistance." Article 34 also provides, in paragraph (3), a formulation granting both husband and wife the standing to file a lawsuit if either party neglects the obligations agreed upon in managing the household.[74]

e. Regarding the difference in formulation in Article 34 distinguishing the husband's role in paragraph (1) from the wife's role in paragraph (2), which the petitioner regarded as a form of discrimination, the Court held that this formulation does not constitute discrimination. The Court held that an act can only be categorized as discrimination if it contains an element of differentiation that unlawfully eliminates, restricts, or impedes the fulfillment of a constitutional right[75]. The elements of discrimination referred to by the Court are consistent with the human rights law, which also ratifies Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) [76], and Article 26 of the International Covenant on Civil and Political Rights (ICCPR), as interpreted in General Comment No. 18 of the UN Human Rights Committee[77]. The Court further held that the differentiation contained in the formulation, in the Court's view, reflects the function and responsibility within the household, consistent with each party's own role, guided by the principle of balance as mandated in Article 31. Regarding the petitioner's concern over the collapse of legal certainty, the Court held that the phrase "in accordance with his ability" set out in Article 34 paragraph (1) already provides sufficient legal certainty, which can free the

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[74] Konstitusi.Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.70
[75] "Pasal l 1 Ayat 3 Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia".
[76] UN General Assembly Resolution 2106 (XX), "*International Convention on the Elimination of All Forms of Racial Discrimination*" (1965),accesed 12 September 2026. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial.
[77] UN General Assembly Resolution 2200A (XXI), "*International Covenant on Civil and Political Rights*" (1966), 12 September 2026 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

husband as household provider while simultaneously opening a role for the wife to take on the cost of household responsibility in accordance with her own ability. This has indeed already been evidenced and formalized in Article 41 of Law No. 1 of 1974 concerning Marriage, under which, where the husband is unable to fulfill his obligation to bear the costs of maintaining the household, the wife may bear that burden in accordance with the court's determination.[78]

f. Regarding the petitioner's concern that Article 34 could become a threat to the property and dignity of both parties, this concern was rebutted by the Court on the basis of Articles 35 and 36 of Law No. 1 of 1974 concerning Marriage, within the chapter on marital property. The norm in Article 35 has already set limits on the property of husband and wife, whether joint marital property or each spouse's own separate property brought into the marriage. The norm in Article 36, in the Court's view, is also considered to have already regulated how such property is managed: with respect to joint property, husband and wife may act only with the consent of both parties, while each spouse's separate property remains fully within that spouse's own right to take legal action over. Further regulation of property matters may also be made through legal mechanisms such as a prenuptial agreement, so long as it does not violate the law, religion, or public morality.[79]

Regarding the argument that Article 34 triggers household conflict, the Court held that this argument arose from the psychological impact experienced by the petitioner as a result of the civil dispute he was then undergoing with his wife. This is

[78] Konstitusi, Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.70-71
[79] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.71-72

because the entire argumentative structure of Law No. 1 of 1974 is grounded in the spirit of building the integrity of the household, as set out in Article 1 of Law Number 1 of 1974, in the phrase "with the purpose of forming a happy and everlasting family (household) based upon belief in the One and Only God." The Court's opinion is further reinforced in the general elucidation of that law, set out in point 4 letter a, which affirms that "husband and wife need to help and complement one another so that each may develop his or her own personality, help each other, and attain spiritual and material well-being."[80]

3. Analysis of the Constitutional Court's *Ratio decidendi* on the Material Review of Article 34 of Law No. 1 of 1974 concerning Marriage

a. The ambiguity of the *ratio decidendi* within the Constitutional Court's decision on the material review of Article 34 of Law No. 1 of 1974 concerning Marriage

Having set out the judges' *ratio decidendi* in this Constitutional Court decision, the writer finds an ambiguity within the judges' *ratio decidendi* that continues to uphold the constitutionality of Article 34 paragraphs (1) and (2). In its legal reasoning, the Court states that Article 34 paragraph (2), which explicitly provides that household affairs are the wife's responsibility, does not constitute a restriction of role, but rather a recognition of the existence of shared responsibility. The Court further states that the wife's contribution to maintaining the family may take the form of household management, material and spiritual assistance, caregiving, economic support, or other forms of contribution as agreed, adjusted to each party's ability.[81]

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[80] Konstitusi, Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.71-72
[81] Konstitusi. Putusan Mahkamah Konsitusi Nomor 159/PUU-XXIV/2026.69-70

Within this *ratio decidendi* of the Court lies an ambiguity that warrants questioning. The Court's legal reasoning, in essence, does not restrict the husband and wife from contributing to the family in any form whatsoever; yet the interpretation set out by the Court also feels like a circular interpretation, since Article 34 paragraphs (1) and (2) are consistently linked to Articles 30, 31, and 33, which embody values of mutuality and reciprocity, whereas the norm of Article 34 itself still divides roles by referring to "husband" and "wife," terms that of course refer to a particular gender. If, in the end, this norm is still upheld through the Court's interpretation linking it to Articles 30, 31, and 33 which embody the principle of mutuality and reciprocity in the division of roles, without any restriction fixed to an unchangeable gender then what purpose is served by retaining the norm of Article 34, whose formulation still divides roles along gender lines?

The *ratio decidendi* constructed to answer the posita set out by the petitioner, and which also interprets Article 34 paragraphs (1) and (2) through the Court's decision to uphold the norm of that article, becomes highly incoherent and reveals a deficiency in the Court's argumentation in setting out the facts, the legal basis, the legal reasoning, and the conclusion. The result of legal reasoning that is contradictory can diminish the legitimacy of a decision and give rise to confusion within society. A good decision, according to Neil MacCormick in his book Legal Reasoning and Legal Theory, is one that is internally coherent among the major premise, the minor premise, and the conclusion[82]. In this case, the Court's conclusion upholding Article 34

[82] Neil MacCornick, *Legal Reasoning and Legal Theory* (Oxford: Clarendon Press, 1978).155,171

paragraphs (1) and (2), which explicitly still retain the exclusivity of gender roles stands in stark contradiction to both the major and minor premises within the Court's ratio decidendi, which state that Article 34 paragraphs (1) and (2) do not restrict the roles of husband and wife on the basis of gender. This is a highly contradictory and ambiguous outcome, and it fails to provide the principle of legal certainty[83] that ought to be present within the substance of statutory regulations.[84]

In the writer's view, the norm proposed in the petitum hoping that Article 34 would be decided through a conditionally unconstitutional verdict, adding various new, gender-neutral norms would have been more reasonable and more coherent when linked to Articles 30, 31, and 33, as well as to the Court's own exposition of its *ratio decidendi*, which does not negate, and no longer divides, roles on the basis of gender. The petitioner's request for such a verdict to be rendered through a conditionally unconstitutional decision also becomes more reasonable, since such a decision carries greater advantages. This is because a conditionally unconstitutional Constitutional Court decision is self-implementing in nature, with the decision directly replacing the article within the law. As a result, its reasoning and verdict receive greater acceptance, as well as greater attention, from the legislature and from those administering government[85]. This differs from a conditionally constitutional decision, or one that is rejected: even though the Court's legal reasoning provides a new interpretation of the

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[83] "Pasal 6 Ayat 1 Huruf i Undang-Undang Nomor 12 Tahun 2011 Tentang Peraturan Perundang-Undangan".
[84] Nana Supriana and Nehemia Indrajaya, "Penalaran Logika Dalam Penyusunan Konstruksi Putusan Hakim," *Journal of Innovative and Creativity* 6, no. 1 (2026): 355–62, https://ejournal.lumbungpare.org/index.php/maras/article/view/1635.
[85] Wulandari et al., "Putusan Mahkamah Konstitusi: Dampaknya Terhadap Perubahan Undang-Undang Dan Penegakan Hukum Pidana."493

substance of an article, the judges' *ratio decidendi* within a rejected decision, or a conditionally constitutional one, receives far less attention than that given to a decision that is granted.[86]

B. How is the *Ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974 concerning Marriage, Viewed from the Perspective of *Mubādalah* Theory

1. The principle of mutuality in the husband-wife relationship from the perspective of *mubādalah* theory

Mubādalah theory holds the principle of mutuality within the relationship realized between men and women. This principle is grounded in the theological values contained in the declaration *lā ilāha illallāh*, a declaration affirming that God is Allah SWT alone, and that only Allah SWT is to be obeyed and honored above anyone else in this world. The declaration lā ilāha illallāh also carries the value that places all human beings as equal. A consequence of the fact that all human beings on the face of this earth are equal creatures is that to honor or exalt anyone above Allah SWT is forbidden (*harām*). Accordingly, any sense that one must be honored, any superiority, or any megalomania embedded within a person on the basis of gender constitutes a grave affront to tauhid. Nothing may be honored more, obeyed more, or submitted to more than Allah SWT.[87]

This principle, grounded in the values of tauhid, creates an equal space for men and women. This equality realizes a relationship between men and women in which neither is positioned as a mere object to be ordered about at will. Both are equal subjects possessing

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[86] Hakiki and Taufiqurrahman, "Gagasan Penataan Legislasi Nasional Berbasis *Ratio decidendi* Dan *Obiter dictum* Putusan Mahkamah Konstitusi."79-80
[87] Kodir, *Qirā'ah Mubādalah*. Hal 95

the will to act, which must of course be grounded in the principle of creating a better relationship in the lives of men and women by applying the principle of mutuality. This principle is realized through the acts of *ta'āwūn* (helping one another), *tahābub* (loving one another), *tasyāwur* (consulting one another), *tarāḍin* (being mutually content), and ta'āshur bil ma'rūf (treating one another well) across every sphere of life. The application of this principle of mutuality creates a social relationship of reciprocity and greater wisdom in the way one views and honors another person. A husband is honored and respected by his wife not because he is of the male sex, but because that husband likewise honors and respects his wife and vice versa.[88]

The principles of *mubādalah* theory, which prioritize mutuality and cooperation and reject hegemony and power over any one gender, constitute a mandate of the *Sharī'ah*, whose primary purpose is to eliminate harm and to create benefit (*dar'u al-mafāsid muqoddamun 'ala jalbi al-maṣāliḥ*). Unfortunately, however, a great many interpretations of legal texts have become gender-biased. It is from this very point that *mubādalah* theory emerges, to liberate the meaning of interpretation that is often linked to gender bias in legal texts; interpretation through *mubādalah* theory renders the outcome of interpreting legal texts more participatory for both men and women, and produces benefit (kemaslahatan) as the true purpose of Islamic *Sharī'ah*, which is indeed directed at both men and women alike.[89]

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[88] Kodir,*Qirā'ah Mubādalah*.102-103

[89] Muhammad bin Abū Bakar Ibnu al-Qayyim Jauziyah, *I'lām Al-Muwāqi'īn 'an Rabb Al-Ālamīn*, ed. Muhyiddin Abdul Hamid (Lebanon: Dār al-Fikr, n.d.). Juz 13. 14

2. An analysis of the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 based on the principles and procedure of *mubādalah* theory

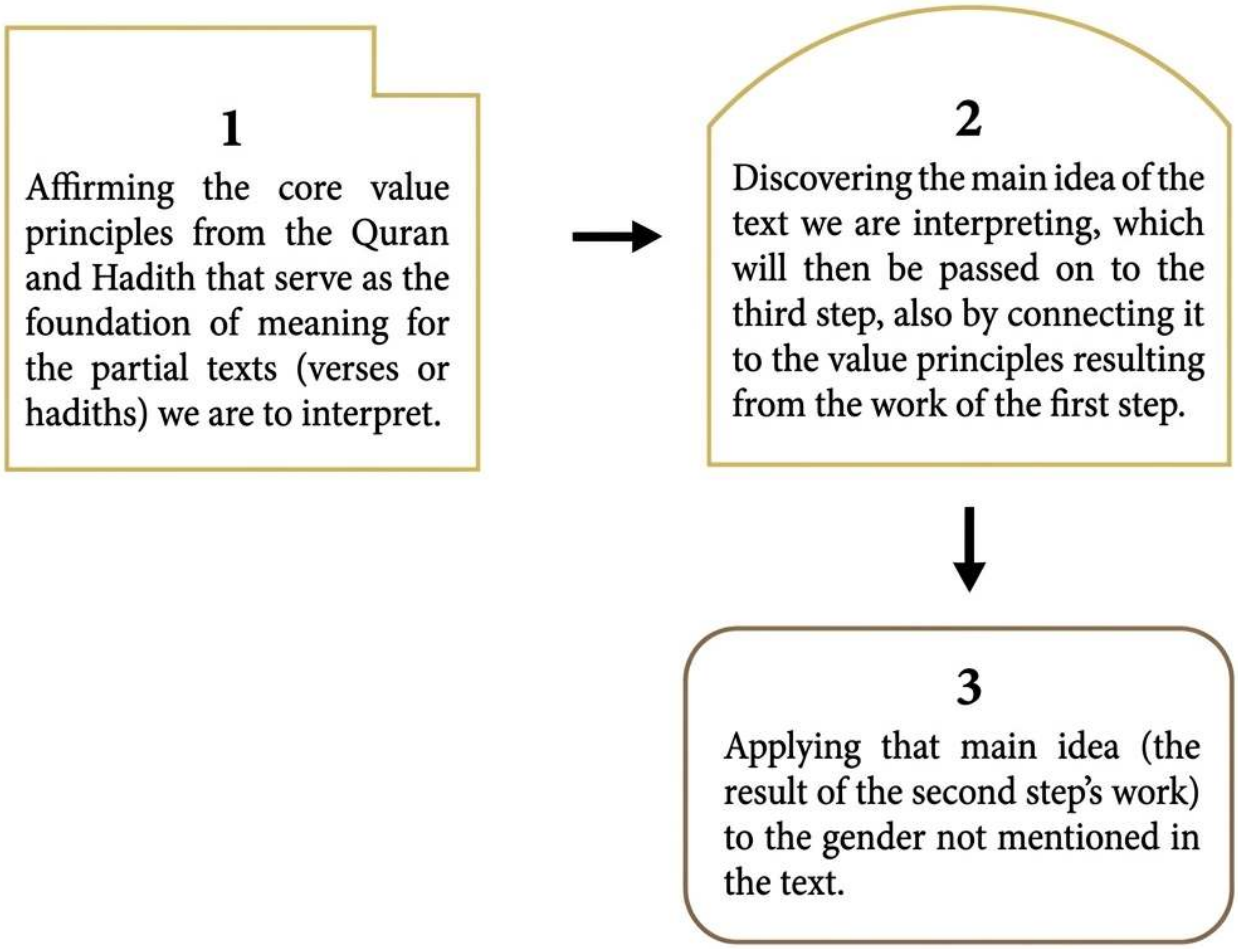
Interpreting a legal text based on *mubādalah* theory requires not only the principle of mutuality, but also a procedure and method of interpretation. In this regard, *mubādalah* theory carries out interpretation through three stages.

a. The first stage is to search for the principles of Islamic teaching within a text that is universal in nature, as the foundation for interpretation. These principles of Islamic teaching may be general in nature and applicable in many cases, or may be applicable only in certain specific cases.
b. The second stage is to identify the main idea on the basis of principles, whether *mabādi'* or *qawā'id.*, so as to free it from gender bias. This can be done by removing the subject within the text and retaining only its predicate.
c. The final stage is to actualize these ideas and apply them to the gender not included within that text.[90]

[90] Kodir, *Qirā'ah Mubādalah*. 202-203

Picture 1.1.

Flowchart of the *Mubādalah* Interpretation Procedure



Within the *ratio decidendi* set out in Constitutional Court Decision Number 159/PUU-XXIV/2026, it can be concluded that the Court put forward six elements of *ratio decidendi* in answering the petitioner's arguments set out in the posita of the decision. These will each be analyzed below using the *mubādalah* working method.

a. Analysis of the Constitutional Court's first *ratio decidendi*

In the first *ratio decidendi*, the Court held that the norm of Article 34 of Law Number 1 of 1974 cannot be separated from the construction of the norms

already established in the preceding articles, such as Article 30, in which husband and wife jointly bear the noble obligation to uphold the household; Article 31, which states that the wife's rights and standing in household life are equal to the husband's rights and standing in household life and in social relations within society; and Article 33, which obliges husband and wife to love, respect, be faithful to, and give material and spiritual assistance to one another. Accordingly, Law Number 1 of 1974 does not position either party as superior and the other as subordinate, but instead builds the marital relationship on the basis of balance, shared responsibility, and mutual complementarity.[91]

The Court's first ratio decidendi, in this respect, already embodies many of the values contained within the principles of *mubādalah*. Here, the Court affirms that the obligations, standing, mutuality, and responsibility borne between husband and wife are equal. Article 34, which sets out a division of roles, must be viewed within the frame of the construction of the preceding articles, which contain a great many principles of *mubādalah*.[92]

The egalitarian concept between husband and wife contained in the Court's *ratio decidendi*, in the sentence "Accordingly, the construction of Law 1/1974 has, from the outset, never positioned either party as a superior subject and the other party as subordinate (of lower standing)," constitutes a foundational *mubādalah* concept grounded in tauhid. The concept of tauhid that only Allah SWT is to be

[91] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.68-70
[92] Kodir, *Qirā'ah Mubādalah*.102

exalted implies that being a man or a woman is equal; neither is superior nor subordinate on account of their sex.[93]

The vertical relationship of a servant whether man or woman is directed solely toward Allah SWT, in the form of servitude and obedience. This vertical relationship carries profound consequences: Allah SWT commands His servants to order their relationships with fellow human beings so as to do good to one another, to show compassion to one another, and to cooperate with one another in social relations all the more so within the marital relationship, which carries a strong bond (*mīthāqan ghalīzan*).[94]

b. Analysis of the Constitutional Court's second and third *ratio decidendi*

In the Court's second *ratio decidendi*, the Court explains that the interpretation of Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage which provides that the husband is obliged to protect his wife and to provide all the necessities of household life "in accordance with his ability" is, according to the Court, a complete interpretation showing that the husband's obligation under this article is not an absolute obligation, is not unlimited, and is not a burden borne absolutely by the husband under all circumstances. Rather, it is a burden borne in accordance with actual capacity, propriety, and the concrete condition of the family. This phrase also creates space for the wife, where she has the capacity, to contribute to household life.[95]

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[93] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.68-69
[94] Kodir, *Qirā'ah Mubādalah*.95-96
[95] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.69-70

In the Court's third *ratio decidendi*, the Court also explains that the phrase in Article 34 paragraph (2) of Law Number 1 of 1974, stating that the wife is obliged to manage household affairs as well as possible, likewise does not eliminate the wife's obligation to contribute to household affairs, but rather constitutes a recognition of the existence of shared responsibility in conducting household life.[96]

The Court's second and third ratio decidendi in this decision reflect the Court's interpretation of the roles of husband and wife within the household as set out in Article 34 paragraphs (1) and (2) of Law Number 1 of 1974. The Court agrees that the phrase concerning the roles of husband and wife here is not a restriction of role, but rather a recognition of both parties' contribution to the existence of household life, in jointly bearing shared obligations.[97]

In classical fiqh, this division of roles was grounded in the view that men's need for sexual relations was considered greater than women's, while women were considered more in need of protection and maintenance. This was grounded in the physical context of women and the social outlook of that era, in which women, physically, had to pass through reproductive phases such as menstruation, pregnancy, breastfeeding, and child-rearing. This reproductive mandate meant that women required greater attention in terms of protection by men and the provision of maintenance[98]. In terms of social context, women's opportunities to engage in many forms of outside work were not as broad or as plentiful as they are today.

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[96] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.69-70
[97] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.68-71
[98] Kodir, *Qirā'ah Mubādalah*.370

Men, on the other hand, faced no such reproductive limitations and had far broader opportunities to work. For this reason, the classical fiqh explanation of this division of roles was, at the time, highly relevant.[99]

This view is drawn from the evidence of the Qur'an, the hadith, and classical scholars

وَالْوٰلِدٰتُ يُرْضِعْنَ اَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ اَرَادَ اَنْ يُّتِمَّ الرَّضَاعَةَ ۗوَعَلَى الْمَوْلُوْدِ لَهٗ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوْفِ ۗ

Meaning: "*Mothers shall nurse their children for two full years, for those who wish to complete the nursing period. It is upon the father to provide for their food and clothing in an acceptable manner".* (Al-Baqarah [2]:233)

Then there is the hadith from Sayyidah Aisyah RA, recounting Hindun Binti Utbah, who complained to the Prophet about her husband Abu Sufyan, who was miserly and unwilling to provide for her and her child, such that Hindun was forced to take her husband's wealth without his knowledge. The Messenger of Allah replied to Hindun that she could take it in a fair manner (*ma'rūf*), taking from her husband's wealth only what was sufficient.[100]

This division of roles was also amplified by classical scholars and set out in their works, such as in the book *Kifāyatul Akhyār*, which places the husband's obligation of maintenance toward his wife as an absolute matter, beyond dispute. If the husband is unable to provide maintenance to his wife, then that maintenance

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[99] Rendy Dwi Hermanto and Ahmad Subhan, "Dekonstruksi Konsep Nafkah: Analisis Systematic *Literature Review* Terhadap Keadilan Gender Dalam Rumah Tangga Muslim," *Jurnal Antologi Hukum* 5, no. 1 (2025): 145–60, https://doi.org/10.21154/antologihukum.v5i1.5281.

[100] Ibn Hajar Asqalāni, *Bulūghul Marām Min Adillatil Ahkām* (Lebanon: Dār al-Kutub al-Islāmiyah, n.d.).57

becomes a debt owed by the husband to the wife, until the husband is able to pay it.[101]

In *mubādalah* theory, the division of roles whereby the husband provides for household needs while the wife plays a greater role in domestic matters is not an absolute division of roles. *Mubādalah* theory attends to the variables indicating mutuality, cooperation, and responsibility within the division of household roles. In *mubādalah* theory, household roles are viewed in light of the condition and capacity of both husband and wife. In Sūrah Al-Baqarah verse 233, the division of household roles is explicitly divided according to gender namely, the husband as breadwinner and the wife as household manager. However, if examined through the *mubādalah* working procedure, by removing the subject and delving into the principle embodied within the verse, this verse in fact liberates the roles of husband and wife where the wife has an advantage financially and the husband faces an obstacle in providing maintenance for example, where the husband is already working but his earnings remain insufficient, or where he is prevented from working due to illness. This argument is further reinforced by verse 7 of QS. At-Talaq.[102]

لِيُنفِقْ ذُو سَعَةٍ مِّن سَعَتِهِۦ ۖ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُۥ فَلْيُنفِقْ مِمَّآ ءَاتَىٰهُ ٱللَّهُ ۚ لَا يُكَلِّفُ ٱللَّهُ نَفْسًا إِلَّا مَآ ءَاتَىٰهَا ۚ سَيَجْعَلُ ٱللَّهُ بَعْدَ عُسْرٍ يُسْرًا

Meaning: *"Let a man of ample means spend according to his means; and let a man whose resources are restricted spend according to what Allah has given him. Allah does not burden any soul beyond what He has given it. Allah will soon bring about ease after hardship."* (QS. At-Talaq [65]:7)

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[101] Taqiyuddīn Hishni, *Kifāyatul Akhyār* (Damaskus: Dārul Khair, 1994).444
[102] Kodir, *Qirā'ah Mubādalah*.374-375

In verse 7 of Sūrah At-Talaq, the grammatical form (*shighat*) of this verse indeed indicates the masculine (*mudzakkar*), that is, men. However, viewed through the perspective of the *mubādalah* working procedure removing the subject from a text and retaining the predicate in order to uncover the principles of Islamic value contained within it, then placing the gender subject not mentioned in the text of the verse this verse, in essence, conveys that both husband and wife, whenever either possesses surplus wealth, ought to give to whoever is more in need, in accordance with their respective capacity. This principle of mutual help and cooperation is clearly set out in the following verse of the Qur'an:[103]

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۚ وَاتَّقُوا اللَّهَ ۖ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Meaning: *"And cooperate in righteousness and piety, but do not cooperate in sin and transgression. And fear Allah; indeed, Allah is severe in punishment."* (QS. Al-Mā'idah [5]: 2)

This role of maintenance within *mubādalah* theory is amplified by a hadith concerning Zainab RA, the wife of Abdullah bin Mas'ud RA, who asked the Messenger of Allah whether she would receive a reward if she worked to provide for her children and her husband, to which the Messenger of Allah SAW replied, "Yes, she receives two rewards: the reward for maintaining the family and the reward for charity" (Sahih Bukhari, No. 1498, and Sahih Muslim No. 1667).[104]

This hadith stands as evidence of the flexibility of household roles within Islam. Looking at historical scholarship, one will certainly find many women in the

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[103] Kodir,*Qirā'ah Mubādalah*.374

[104] Maraulang and La Ode Ismail, "Perempuan Pencari Nafkah Dalam Perspektif Hadits," *AL-Mabsut; Jurnal Studi Islam Dan Sosial* 18, no. 2 (2024), https://doi.org/10.56997/almabsut.v18i2.1609.334-335

era of the Prophet SAW who worked, who were wealthier than their husbands, and who supported their own household's economy such as Sayyidah Khadijah RA, the first wife of the Prophet SAW, who was a great businesswoman; then there was Ummu Syuraik, mentioned in a hadith of the Prophet SAW as known for her wealth and generosity; Qilah al-Anmariyah RA; Asy-Syifa' binti Abdullah al-Quraisyiah RA; and many more women besides who worked to support their family's economy.[105]

Different needs, together with the strengths and weaknesses present in every individual, naturally demand flexibility of role. This is necessary in order to realize complete family resilience, to meet the needs of each individual, and to create substantive justice in the division of roles within the household. *Mubādalah* theory puts forward the idea that household roles should never be boxed into a particular fixed area. Husband and wife alike bear together the burden of responsibility for maintenance, kitchen, bed, and well.[106]

The second and third ratio decidendi of Constitutional Court Decision Number 159/PUU-XXIV/2026 concerning the interpretation of Article 34 of Law No. 1 of 1974 already provide a highly *mubādalah*-consistent explanation of the roles of husband and wife. Here, the constitutional judges clearly employ the *taghlib* method within *mubādalah*, explicitly naming both husband and wife in their decision holding that the relationship between husband and wife is built on the basis of balance, responsibility, and mutual complementarity. It may thus be concluded,

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[105] Abdul Halīm Muhammad Abū Syuqqah, *Tahrīr Al-Mar'ah Fi 'Ashr Al-Risālah; Dirāsah "an Al-Mar'ah Jami" Li Al-Nuṣuṣ Al-Qur'an Wa Shahihay Al-Bukhāri Wa Muslim* (Kuwait: Dār al-Qalām, 1990). Juz 2. 341-348
[106] Kodir, *Qirā'ah Mubādalah*.368-388

from the explanation above setting out the basis for determining household roles from the perspective of *mubādalah* theory, that the second and third ratio decidendi of Constitutional Court Decision Number 159/PUU-XXIV/2026 concerning the interpretation of Article 34 of Law No. 1 of 1974 bear a strong correlation with it, in that the relationship between husband and wife must be built on the basis of balance, shared responsibility, and mutual complementarity. This correlation carries implications for the flexibility of the obligations of husband and wife in their household roles, in accordance with their respective ability and capacity, consistent with the principle of *mubādalah*.[107]

c. Analysis of the Constitutional Court's fourth *ratio decidendi*

In the fourth *ratio decidendi*, the Court states that the norm of Article 34 is not intended to eliminate the value of reciprocity within the household relationship, since Article 33 already contains a formulation embodying the word "mutual" within the husband-wife relationship whether in loving, respecting, being faithful to, or giving material and spiritual assistance to one another.[108]

In this fourth ratio decidendi, in which, within *mubādalah* theory, the judges employ the *taghlib* method by naming both subjects husband and wife[109] there can be no doubt that this fourth ratio decidendi is coherent with the basic premise of *mubādalah*: that the relationship between men and women is a relationship of cooperation (*ta'āwun*) and mutuality (*mushārakah*).[110] This conception, positioning

[107] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.69
[108] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.70
[109] Kodir, *Qirā'ah Mubādalah*.81
[110] Kodir, *Qirā'ah Mubādalah* 102

men and women as equal partners, is not a new idea originating from contemporary thought, but has already existed, born from the revolutionary thought of the Messenger of Allah SAW, through his own noble words:

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا حَمَّادُ بْنُ خَالِدٍ الْخَيَّاطُ، حَدَّثَنَا عَبْدُ اللَّهِ الْعُمَرِيُّ، عَنْ عُبَيْدِ اللَّهِ، عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ، قَالَتْ سُئِلَ رَسُولُ اللَّهِ ﷺ عَنِ الرَّجُلِ يَجِدُ الْبَلَلَ وَلاَ يَذْكُرُ احْتِلاَمًا قَالَ " يَغْتَسِلُ ". وَعَنِ الرَّجُلِ يَرَى أَنَّهُ قَدِ احْتَلَمَ وَلاَ يَجِدُ الْبَلَلَ قَالَ " لاَ غُسْلَ عَلَيْهِ ". فَقَالَتْ أُمُّ سُلَيْمٍ الْمَرْأَةُ تَرَى ذَلِكَ أَعَلَيْهَا غُسْلٌ قَالَ " نَعَمْ إِنَّمَا النِّسَاءُ شَقَائِقُ الرِّجَالِ "

Meaning: *"The Messenger of Allah SAW was asked about a man who finds moisture [on waking] but does not recall having had a wet dream. He said, 'He must perform ghusl (a ritual bath).' He was also asked about a man who believes he had a wet dream but finds no moisture. He said, 'He is not obliged to perform ghusl.' Umm Sulaim then asked, 'Is a woman also obliged to perform ghusl if she experiences the same thing?' He replied, 'Yes indeed, women are the full equals (counterparts) of men.'"* (Sunan Abū Dāwūd no. 236)[111]

The hadith above is a hadith demonstrating the mutuality between men and women. The word *syaqāiq*, in its Arabic usage, carries a meaning not confined merely to "siblings," but can also mean equivalent, equal, and standing as an equal partner. The implication of the meaning contained within this text undoubtedly creates mutuality mutual respect, mutual love, and mutual help within the relationship between husband and wife[112]. Abu Syuqqah, in *Taḥrīrul Mar'ah*, likewise amplifies this hadith as evidence that the relationship between men and women is one of equal standing, reciprocity, and cooperation.[113]

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[111] Abū Dāwūd Sulaymān ibn al-Ash'ath Sijistānī, *Sunan Abī Dāwūd*, ed. Shu'ayb al-Arna'ūṭ and Muḥammad Kāmil Qarah Billī, 1st ed. (Damaskus: Dār al-Risālah al-'Ālamiyyah, 2009).

[112] Rohi Baalbaki, *Kamus: Al Mawrid (A Modern Arabic - English Dictionary)* (Lebanon: Dār El-Ilm Lilmalāyīn, 1995).975,1179

[113] Faqihuddin Abdul Kodir, "Interpretation of Hadith for Equality Between Women and Men: Reading Tahrīr Al-Mar'ah Fī 'Ashr Al-Risālah by 'Abd Al-Halim Muhammad Abū Shuqqa (1924-1995)" (Universitas Gadjah Mada, 2015), https://etd.repository.ugm.ac.id/penelitian/detail/91181.165-175

d. Analysis of the Constitutional Court's fifth *ratio decidendi*

In the fifth *ratio decidendi*, the Court states that the norm of Article 34 [sic: Article 34 paragraphs (1) and (2)] of Law Number 1 of 1974 concerning Marriage does not constitute a form of discrimination, since a matter can only be termed discrimination where there exists a differentiation that unlawfully eliminates, restricts, or impedes the fulfillment of a constitutional right. The Court held that the norm in Article 34 forms part of the regulation of function and responsibility within the household, in accordance with each party's own role, guided by the principle of balance as affirmed in the norm of Article 31 paragraph (1) of Law Number 1 of 1974.[114]

The Court also rejected the claim that Article 34 undermines legal certainty, since the phrase "in accordance with his ability" already provides room for the husband to provide maintenance in accordance with his own capacity, and the opportunity for the wife to participate in supporting the family's economy is never foreclosed by that article. Article 41 of Law No. 1 of 1974 is an example of this opening of a role for the wife, under which the costs of maintaining and educating children may become the wife's responsibility if the husband is unable to bear them.[115]

In this *ratio decidendi*, where the Court considers that Article 34 does not undermine legal certainty because the phrase "in accordance with his ability" within Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage

[114] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.70
[115] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.70-71

opens a role for the wife to contribute to meeting the family's economic needs, this is already consistent with *mubādalah* theory, which is grounded in the principle of cooperation and responsibility between men and women. Unfortunately, however, the Court does not apply *mubādalah* to paragraph (2) of that article, under which the wife's role is to manage household affairs. This matter of domestic affairs was also raised as an issue by the petitioner in the posita. The Court ought also to have applied *mubādalah* to Article 34 paragraph (2), so that the husband too could attend to domestic responsibility in accordance with his own ability, since, examined through the *mubādalah* working procedure, the underlying principle within the Court's fifth *ratio decidendi* is responsibility and that responsibility ought to be reciprocal in nature, covering both domestic matters and maintenance, for both men and women alike.[116]

Within *mubādalah* theory, as already noted at the outset, the basis of the theory arises from the theological foundation of tauhid held by Muslims: that all human beings are equal, and that no one may discriminate against or hold hegemony over another on the basis of the destiny Allah SWT has willed in the form of male or female sex. Allah SWT never discriminates among human beings; Allah SWT honors His servants according to their piety (taqwā).[117]

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ۚ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

Meaning: *"O mankind! Indeed, We created you from a male and a female, and made you into nations and tribes so that you may know one another. Indeed, the*

[116] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.53
[117] Kodir, *Qirā'ah Mubādalah*.97

most noble of you in the sight of Allah is the most righteous among you. Indeed, Allah is All-Knowing, All-Aware." (QS. Al-Hujurat [49]: 13)[118]

The Messenger of Allah also reinforced this Qur'anic verse with his saying:

إِنَّ اللَّهَ لَا يَنْظُرُ إِلَى ﷺوَرِكُمْ وَأَمْوَالِكُمْ، وَلَكِنْ يَنْظُرُ إِلَى قُلُوبِكُمْ وَأَعْمَالِكُمْ

Meaning: *"Indeed, Allah does not look at your appearances or your wealth, but He looks at your hearts and your deeds."* (HR. Muslim, No. 2564)[119]

The concept of shared responsibility within *mubādalah* theory is also found within a verse that is often cited as a verse that instead appears to establish hegemony over women. Allah says:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَىٰ بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۖ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيًّا كَبِيرًا

Meaning: *"Men (husbands) are the maintainers and protectors (qawwāmūn) of women (wives), because Allah has favored some of them over others, and because they (men) spend out of their wealth. So righteous women are devoutly obedient (to Allah) and guard [the private matters] in the husband's absence what Allah would have them guard. As for those [wives] from whom you fear nushūz (ill conduct/disobedience), advise them, forsake them in bed, and (if necessary) strike them. But if they obey you, seek no means of annoyance against them. Indeed, Allah is Most High, Most Great."* (QS. An-Nisā' [4]: 34)[120]

The concept of *qiwāmah*, and the concept of how a husband should treat a wife who commits nushūz within this verse, is often interpreted as establishing hegemony between men and women. The punishment for *nushūz* imposed on the wife is often misunderstood by many laypeople as a sign that the husband-wife

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[118] Qur'an, *Al-Qur'anul Karim*.517
[119] Muslim ibn Hajjaj, *Shahīh Muslim*, ed. Muḥammad Fu'ād 'Abd Al-Bāqī (Beirut: Dār Ihyā' Turāts, 1955).Jilid 4, 1987
[120] Qur'an, *Al-Qur'anul Karīm*.87

relationship in Islam is a relationship that subordinates women's basic rights as human beings; in reality, however, the opposite is true. Scholars have shown that the concept of *qiwāmah* in this verse is not absolute; the husband's treatment of a wife who commits nushūz, according to many scholars, is never imperative in nature, even though expressed in the imperative grammatical form (*shighat fi'l amr*).[121]

The lens of *mubādalah* dissects this verse more carefully, showing that the concept of *qiwāmah* within the marital relationship, bound by the contract of mīthāqan ghalīzan, is not a contract of servitude, but rather a contract of responsibility for the continuity of the family within the household. The reason the male subject is attached to this concept of *qiwāmah* is a product of the social conditions of the era in which the verse was revealed. However, viewed through the lens of *mubādalah*, this verse in fact plainly reflects an interpretation of the concept of shared responsibility, carried out jointly, whether in terms of maintenance or domestic affairs whichever party has the greater means bears the burden and makes up for what the other lacks.[122]

e. Analysis of the Constitutional Court's sixth *ratio decidendi*

In the Court's final *ratio decidendi*, the Court rejects the petitioner's argument that the norm of Article 34 of Law Number 1 of 1974 could threaten the protection of property, a sense of security, and honor, holding that this argument is without basis, since Articles 35 and 36 of the same law already protect matters of

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[121] Faqihuddin Abdul Kodir, *Refrensi Bagi Hakim Pengadilan Agama Tentang Kekerasan Dalam Rumah Tangga* (Jakarta: Komnas Perempuan, 2013).79-98
[122] Kodir, *Qirā'ah Mubādalah*.397

property whether property brought into the marriage or property acquired during it. Other provisions, such as agreements concerning the scope of property, may also be made with the consent of both parties, so long as they do not transgress the bounds of law, religion, and public morality, as regulated under Article 29 of Law Number 1 of 1974 concerning Marriage.[123]

The Constitutional Court's sixth ratio decidendi, concerning the protection of property belonging to both husband and wife, has in general already been answered within the Court's second ratio decidendi: that the husband's maintenance of the wife must be adjusted to his own ability and capacity. The Court's reasoning, in protecting property from exploitation, sets a clear limit preventing a wife from demanding maintenance beyond her husband's ability, let alone exploiting him to obtain his wealth.[124]

In this *ratio decidendi*, the Court positions the husband as the object and as the victim. If analyzed using the *mubādalah* working procedure, the Court, in this respect, has not yet carried out tabdīl (reversal of subject) within its *ratio decidendi*. Were it made *mubādalah*, the principle revealed within this *ratio decidendi* would be the prohibition against exploiting another person, whether man or woman[125]. This is consistent with the tauhid-based theory within *mubādalah*, as explained above: that any and every form of hegemony within the relationship between men and women constitutes an act of defiance against Allah SWT.[126]

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[123] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.71-72
[124] Putusan Mahkamah Konstitusi Nomor 159/PUU-XXIV/2026.69
[125] Kodir, *Qirā'ah Mubādalah*.210-213
[126] Kodir, *Qirā'ah Mubādalah* 95

On the other hand, the Court states, within its *ratio decidendi*, that husband and wife may arrange their civil relationship whether in terms of property or responsibility through the mechanism of a prenuptial agreement, so long as it does not conflict with the bounds of law, religion, and public morality. Viewed through classical fiqh, there are differences in how the limits of religion within the clauses of a marriage agreement are addressed. Classical fiqh literature still positions the obligation of maintenance as absolute upon the husband, and domestication as the wife's role as in the book *Iḥyā 'Ulūmuddīn*[127], or *Syarh 'Uqūd al-Lujjayn*. [128] Accordingly, a marriage agreement positioning the wife as breadwinner and the husband as manager of household affairs would, under that literature, be prohibited.

Viewed from the perspective of *mubādalah* theory, however, the role of maintenance is a shared responsibility. This is set out in the word of Allah in the Qur'an:

فَإِذَا قُضِيَتِ ٱلصَّلَاةُ فَٱنتَشِرُواْ فِي ٱلۡأَرۡضِ وَٱبۡتَغُواْ مِن فَضۡلِ ٱللَّهِ وَٱذۡكُرُواْ ٱللَّهَ كَثِيرٗا لَّعَلَّكُمۡ تُفۡلِحُونَ

Meaning: *"And when the prayer has been concluded, disperse through the land and seek of the bounty of Allah, and remember Allah often, that you may succeed."* (QS. Al-Jumu'ah [62]: 10)[129]

This verse indeed uses the masculine grammatical form for man (*mudzakkar*). However, through *mubādalah* theory, this verse becomes applicable to women as well, in seeking sustenance and supporting the family's economic life.

Aside from *mubādalah* theory, the legitimacy of women working is also supported by changing social realities and by the fact that the proportion of women

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[127] Muhammad Abū Hamīd Ghazāli, *Ihyā' Ulūm Al-Dīn* (Kairo: Dār al-Hadīth, 1994).Juz 2.55
[128] Muhammad Nāwawī bin Umar Nawawi, *Syarh 'Uqūd Al-Lujjayn* (Semarang: Semarang Toha Putra, n.d.). 8
[129] Qur'an, *Al-Qur'anul Karīm*.

participating in earning a living to meet economic needs while simultaneously serving as head of household stands at a substantial 14.37%[130]. Accordingly, a marriage-agreement clause positioning the wife as breadwinner and the husband as manager of domestic affairs is entirely permissible, so long as that marriage agreement satisfies the principles of *mubādalah* namely, justice, mutuality, and a sense of responsibility in building family resilience.[131]

[130] Badan Pusat Statistik, *Cerita Data Statistik Untuk Indonesia; Female Breadwinners: Fenomena Perempuan Sebagai Pencari Nafkah Utama Keluarga*, ed. Indah Budiati (Jakarta: Badan Pusat Statistik, 2025), https://www.bps.go.id/id/publication/2025/03/27/1c11ddc250d82e97f1eafe29/cerita-data-statistik-untuk-indonesia---female-breadwinners--fenomena-perempuan-sebagai-pencari-nafkah-utama-keluarga.html.
[131] Kodir, *Qirā'ah Mubādalah*.196

CHAPTER IV

CLOSING

A. Conclusion

Based on the analysis of the *ratio decidendi* of Constitutional Court Decision Number 159/PUU-XXIV/2026 on Article 34 of Law Number 1 of 1974, reviewed from the perspective of *Mubādalah* Theory, it may be concluded that:

1. The Constitutional Court's *ratio decidendi* in upholding the constitutionality of Article 34 paragraphs (1) and (2) is constructed by linking that article to the construction of Articles 30, 31, and 33, which embody the principles of balance, equal standing, and shared responsibility, and by interpreting the phrases "in accordance with his ability" and "as well as possible" as a recognition of shared contribution, rather than a restriction of role on the basis of gender. However, this argumentation contains an ambiguity and an incoherence: on the one hand, the Court states that the article does not restrict roles on the basis of gender, while on the other hand, the norm of Article 34 still explicitly attaches obligations to the subjects "husband" and "wife," which refer to a particular gender. From this analysis, it may be concluded that the Court remains inconsistent in its legal reasoning and in the decision handed down.
2. Based on the analysis carried out through the three working stages of *mubādalah* theory, five of the Court's six elements of *ratio decidendi* are, in substance, fundamentally consistent with the principles of *mubādalah*, since the Court rejects a superior-subordinate relationship and interprets both the obligation of maintenance and the obligation of domestic responsibility flexibly, in accordance

with capacity. Nevertheless, the Court's application of the *mubādalah* principle has not been carried out consistently or comprehensively: for example, in the fifth *ratio decidendi*, the Court carries out *tabdil* (reversal of subject) only with respect to the obligation of maintenance under Article 34 paragraph (1), without applying that same reciprocal logic to the domestic obligation under Article 34 paragraph (2), such that the husband's domestic role is not correspondingly liberated. Likewise, in the sixth *ratio decidendi*, the Court does not apply *tabdil* to the prohibition against a husband exploiting his wife. It may thus be concluded that the Court's *ratio decidendi* has, in terms of its underlying values, been oriented toward the principle of *mubādalah*, but the application of that *mubādalah* methodology remains partial and has not been fully consistent, from the *ratio decidendi* through to the decision ultimately rendered.

B. Reccomendations

1. In light of the incoherence identified in the first conclusion, future research is recommended to extend this inquiry into coherence by examining other Constitutional Court decisions that review gender-based norms, in order to determine whether this pattern of incoherence between premise and conclusion is an isolated instance or a systemic tendency within the Court's jurisprudence. Future research may also deepen this analysis by applying legal coherence theories other than Neil MacCormick's, or by comparing it against decisions of constitutional courts in other jurisdictions that have reviewed gender-based role division norms within family law, so as to produce a richer methodological comparison.

2. In light of the partial application of the *mubādalah* principle identified in the second conclusion, future research is recommended to further examine the concrete formulation of a replacement norm for Article 34 paragraphs (1) and (2) of Law Number 1 of 1974 that is fully grounded in the principle of mutuality, including drafting alternative textual formulations that scould be tested academically. In addition, since this research is limited to a normative analysis of the decision text, future research could complement it with an empirical-sociological approach for instance, through interviews with constitutional judges, Islamic family law scholars, or married couples to explore perceptions of, and receptiveness toward, the full application of the *mubādalah* principle in the division of household roles, so that the benefit (*maslahat*) derived from this theoretical study can be more measurably applied in social reality.

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