

Economic and Nafkah in the Case of Divorce in Indonesia: The Perspective of Fiqh

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ABSTRACT

The number of divorce cases filed by wives is increasing. One of the factors considered to be the cause is the Nafkah issue. Accordingly, the discourse on the problem of sustenance as a reason for divorce among classical fiqh scholars and reinterpreting the text to find a solution to the high rate of divorce due to economic and living reasons, without having to leave the classical Islamic scholar's legal tradition, needs to be studied more deeply. This research aims to provide a solution to prevent divorce caused by family conflicts due to economic factors by reviewing the concept of alimony from the perspective of fiqh. This research is qualitative, using a normative approach to fiqh and interpretation. The results of this study indicated that there was a need for reinterpretation of the views of the majority of scholars regarding the wife's right to ask for a divorce from the judge if the husband does not provide a living. If the opinion of the fiqh scholars continues to be applied, it will increase the number of divorce cases for economic and livelihood reasons. Moreover, this action received legitimacy from stakeholders through marriage laws and regulations. The interpretation of KH. Husayn Muhammad's of Q.S. al-Nisa' (4): 34 needs to be used as a reference in updating the law regarding the obligation of a living so that it is hoped that there will be no more divorces carried out for economic and livelihood reasons.

Keywords: Divorce by Women; Economics; Fiqh.

INTRODUCTION

The phenomenon of high divorce trends in several religious courts in Indonesia is an indicator of symptoms of family dysfunctionality and indicates many unresolved marital conflicts (Mudd, 1967). Marital conflict is natural in human life (Malik, 2017) and often cannot be avoided (Emery et al., 1999). This happens because marriage is a union of two persons with different characters, beliefs, and cultural backgrounds (Farthing, 2001). Therefore, husband and wife need to adjust to these differences to form a *sakinah mawaddah wa rahmah* family. This adjustment process sometimes causes clashes, disputes, and tensions, which, if not resolved, will lead to divorce (Dewi & Basti, 2008).

Empirical facts: Indonesia's divorce rate increased yearly except in 2020, which decreased slightly due to restrictions on trial hours during the COVID-19 pandemic. The rise of divorce in every region is dominated by divorce cases either at the initiative of the wife or at the request of the husband so that the wife alone takes care of the divorce. There is a public view that divorce is faster than *talaq* divorce, so one of the strategies carried out by husbands is to ask the wife to file for divorce and the husband to finance (Nurlaelawati, 2013). The increase in divorce in Indonesia every year is evidenced by data released by the Religious Justice Board of the Supreme Court from 2018 to 2020. In 2018 Religious Courts throughout Indonesia received 444,358 cases (118,853 *talaq* divorce cases and 325,505 lawsuit divorces); in 2019 received 480,618 cases (124,776 *talaq* divorces and 355,842 lawsuit divorces); and in 2020 received 465,528 cases (119,442 *talaq* divorces and 346,086 lawsuit divorces) (Badilag, 2018-2020).

One of the causes of divorce is economic and livelihood reasons, especially those that occur in divorce. Words such as "The Defendant did not provide birth support," "The Defendant is not responsible for birth support," and "The Defendant did not provide a living because he did not work so that to meet the household needs were imposed on the Plaintiff," "The Defendant did not provide birth support from the beginning of marriage," or "The Defendant has many debts, so the Plaintiff bears it," and "the income provided by the Defendant is less," often appear in divorce judgments (Bekasi Religious Court Decision, 2019-2020). So easy to write down the reasons for divorce as above, it will make more divorces occur if the family's economic conditions begin to "sluggish" because the husband does not work, or the husband's income is small, or indeed the husband's condition does not allow him to work. Hakim's research stated that family maintenance (economy) is an essential thing to be considered by husband and wife, and it impacted divorce in Indramayu Regency in 2011 (Hakim, 2012). Kabalmay, in his research, also mentioned that economic problems dominate the occurrence of divorce in Maluku. In general, wives from non-indigenous households prefer to ask for a divorce, primarily because they have worked to earn a living since they were young so that they have economic independence (Kabalmay, 2015). This research aims to provide a solution to prevent divorce caused by family conflicts due to economic

factors by reviewing the concept of alimony from the perspective of fiqh. This qualitative research uses a normative approach to fiqh and interpretation.

METHODS

This qualitative research uses normative fiqh and tafsir approaches. The data source used is a secondary data source. The data used in this study came from several books by scholars, books, and journals related to the research conducted and the divorce decree from the Religious Court. The data used includes the fiqh books of the scholars to compare their opinions related to the concept of alimony and divorce caused by alimony, and also refer to the book of tafsir in circling QS. An-Nisa (4): 34. The data collection technique used is documentation. The data analysis follows an interactive model from Miles, Haberman, and Saljana consisting of data collection, data reduction, data presentation, and conclusion/verification activities (Miles et al., 2014).

RESULTS AND DISCUSSION

Nafkah in the Perspective of Fiqh Scholars

Livelihood is a material gift due to marriage, kinship, or possession. Livelihood must be given for suitable needs, not arbitrarily, and must also be adjusted to local customs or traditions that apply (Syafuri, 2013). Al-Zuhayli divided the income into two: the income that must be given to oneself and the income that must be given to others (al-Zuhayli, 1989). This obligation to provide for the needs of others is done after providing for oneself (al-Nasa'i, 1995). This obligation to meet the needs of others occurs because of marriage, kinship, and ownership. Fulfilling the needs of relatives does not apply as well as meeting the needs of wives and children, which under any conditions must still be given regardless of the husband's thoughts, but still adjust the husband's ability, namely by fulfilling needs (not excessive) or by the meaning of sufficiency in each region (al-Zuhayli, 1989). The husband's obligation to provide for the wife continues even though her economic condition is good because the wife has her income. This distinguishes the responsibility to provide for relatives, which is only given if the husband's financial condition is spacious and the economic condition of relatives is only narrow (al-Jauziyah, 1994; Na'mah, 2015).

Scholars agree that providing for the wife is the husband's obligation, but they differ on the timing of the entry into force of this obligation. Jumhur ulama (al-Shafi'i in *qawl jadid*, Malikiyyah, and Hanabilah), including the Imamiyah Shi'a scholars, argue that the responsibility to provide for is valid from the beginning of domestic life, that is, from the moment the husband has had intercourse with the wife. The occurrence of a marriage contract does not oblige the husband to provide for him before the wife gives him the possibility to be associated (*tamkin*) (Syarifuddin, 2005). Meanwhile, according to Zahiriyah scholars, the obligation to provide for the livelihood begins since the marriage contract takes place, not from tamkin. This opinion is based on the verses of the Qur'an and Hadith, which oblige

the husband to provide for his wife without mentioning the stipulation of time. Thus, when a person has become a husband with a marriage contract, he must provide for his wife (Syarifuddin, 2005).

Similarly, with restrictions on providing a living, scholars differ in opinion. This is because Islamic teachings do not provide provisions regarding the limits of income that must be given by husbands to wives. This means that the income that must be shown is only limited to sufficiency, whose standards vary for each person according to their respective habits, circumstances, and time, which can change according to the conditions experienced by husband and wife. According to Hanafiyyah scholars, it is straightforward to determine the income level if the economic conditions of the husband and wife are rich or poor. The husband is obliged to provide a lot if the economic condition of the husband and wife is rich, and vice versa; the husband offers a little if the economic condition of the husband and wife is poor. However, it will be challenging to determine the income level if the economic conditions of the husband and wife are different. Hanafi scholars have two opinions on this matter. First, the income level must be determined based on the economic conditions of the husband and wife. In this condition, the income that the husband must give is moderate-income (*nafaqah al-wast*), provided that when the economic condition of the husband cannot provide for because he is poor (either because he does not work or earns little), then what is given at that time is a little income and the husband still bears the deficiency as a living owed. In this regard, Malikiyya and Hanablah scholars hold the same opinion. Second, the level of income that the husband must provide is determined based only on the husband's economic condition. If the husband is wealthy, he is obliged to give a lot, whereas if the husband is poor, he only bears a little (al-Jaziri, 1969; Na'mah. 2015). At the same time, Shafi'iyah scholars hold the view that the level of income in the form of food and clothing is determined by looking at the economic condition of the husband alone and ignoring the economic condition of the wife because the purpose of giving it is for the wife to have (*al-tamlík*). Conversely, the level of income in the form of shelter is determined by looking at the economic condition of the wife and ignoring the economic condition of the husband because the purpose of giving is to please the wife (*al-mut'ah*) (al-Jaziri, 1969; Na'mah. 2015).

If the economic condition of the husband is narrow and cannot provide for him, there are several opinions of scholars regarding legal remedies that wives can do. In this case, the Hanafiyyah scholars did not allow the wife to ask for a divorce. The wife is only allowed to apply to the judge that the husband immediately provides unpaid income as a living owed through the judge's decision and not die or be erased even though the husband has died (al-Jaziri, 1969). Hanafi scholars base it on Q.S. al-Talaq (65:7) and say that the husband's economic condition is sometimes airy (rich) and sometimes narrow (poor). When the husband's financial condition is narrow, his inability to provide for his wife is not a tyranny, so he should not also tyrannize her by divorcing the husband and wife (al-Zuhayli, 1989; Na'mah. 2015).

According to Malikiyya scholars, a wife may file for divorce with a judge if the husband's condition cannot provide at that time or in the future. In contrast, the husband's inability to deliver at a time that has passed cannot be submitted as a reason to ask for divorce because it has become an outstanding income. The wife can also ask for a divorce if the wife is not aware of the husband's economic incapacity at the time of the marriage contract unless the wife accepts it because she has to. The wife can also ask for a divorce if the husband turns out to be able to provide a living. In this case, the judge did not immediately grant the wife's divorce application but gave the husband time to fulfill this income obligation by the judge's *ijtihad*. If the time given has run out and the husband has not been able to provide a living, then the judge can grant the divorce application filed by the wife. The above conditions apply if the husband does not have enough property to support his wife. Still, if the husband has enough property but claims to be poor, the judge does not divorce both but takes a living for the wife from the husband's property by force (al-Jaziri, 1969; Na'mah. 2015).

The opinion of Shafi'iyya scholars is almost the same as that of Malikiyya scholars. According to Shafi'iyyah scholars, when the husband's economic condition cannot provide for him, and the wife can be patient, he has been willing. The income not paid by the husband (food and clothing only) becomes the outstanding income that can be requested when the husband's economic condition has been spacious, provided that the wife continues to carry out her obligations while not being given a living. However, suppose the wife cannot be patient. In that case, the wife can claim divorce from the judge, provided that if the husband cannot provide for anything to survive every day, this condition occurs at that time or in the future, and the husband's inability to provide for this includes food, clothing, and shelter. (al-Jaziri, 1969). As for the Hanabilah scholars, the husband's failure to pay the slightest income has been going on for a long time. The wife can choose to stay with the husband as husband and wife or decide to separate by filing a divorce application with the judge. If the wife chooses to survive with her husband, then the unpaid income of the husband becomes the income owed, and the husband must not restrain the wife from leaving the house or working (al-Jaziri, 1969; Na'mah. 2015).

Malikiyyah, Shafi'iyyah, and Hanablah scholars allow wives to ask for a divorce when the husband's economic conditions are narrow, as explained above, based on the postulates of Q.S. al-Baqarah (2): 229 and 231. In addition, al-Shafi'i, in the book *al-um*, explains that a husband who is unable to provide for his wife can cause his wife to suffer and can even endanger or threaten her life. In this case, al-Shafi'i uses *qiyas awwali* that the wife may demand the husband's divorce because the husband cannot provide mental support that does not cause the wife's soul to be threatened either in a short time or a very long time, let alone demand the husband's divorce because the husband cannot provide for birth, which causes the wife's soul to be threatened by starvation in a short time and for a long time (al-Shafi'i, 1993). Meanwhile, Imam Malik explained that at present, the husband must be able to provide a decent living for his wife; some even include it as a marriage agreement.

This is very different from the condition of the wives of the Prophet's companions, who did not demand a divorce from their husbands, even though their husbands often experienced economic difficulties. The condition of the companions and their wives cannot be equated with the current conditions because the wives of the companions are among those who have firm hopes to get the good of the hereafter, so they tend to ignore the desires of the worldly, including the complex economic condition of her husband so that they cannot provide for them (al-Jauziyyah, 1994; Na'mah. 2015).

On this issue, Ibn Hazm (Dahiriyyah scholar) is more likely to agree with the Hanafiyyah opinion that the wife should not ask for divorce because the husband cannot provide a decent living. For Ibn Hazm, in such conditions, the wife is being tested, and the best way is to be patient in the face of the husband's complex economic condition so that he cannot provide for him, as found in Q.S. al-Talaq (65): 7 (al-Shafi'i, 1993). While Wahbah al-Zuhayli is more in agreement with the opinion of jumhur ulama (Malikiyyah, Shafi'iyyah, Hanabilah), who allow wives to demand divorce from their husbands because the husband cannot provide for them because there will be danger to the wife, and this is considered more appropriate as contained in the hadith *la darara wa la dirar* (al-Zuhayli, 1989; Na'mah. 2015).

The current conditions in Indonesia, which are most divorce cases, are caused by the economy or income. This is natural because it derives legitimacy from the Act as is known to the majority of Indonesian people belonging to the Shafi'i school, including policymakers, so that in making laws related to marriage and everything related to it, many follow al-Shafi'i's opinion, including in the issue of livelihood.

Divorce Lawsuit on Economic and Livelihood Grounds

Women have the right to realize their desires, both individual, family, and community (Anwar, 2006). One of the rights in the family owned by women is the right to file for divorce with the Religious Court (Article 77 paragraph [5] KHI) if, indeed, the condition of the household can no longer be maintained. Wives who sued for divorce began to occur a lot when the Marriage Law No. 1 of 1974 was promulgated, one of which was to raise the status of women (Nasution, 2002). This is different from what happened before the 1930s. Wives who file for divorce to the court find it difficult to be granted by the court, so some apostatize so that they can be divorced by the judge (Na'mah, 2015).

The marriage law gives the wife the broadest possible access to divorce if there are reasons for her to file for divorce. So far, what has been used as a reason for divorce perpetrators is continuous quarrels and disputes (Article 9 letter (f) PP no.9/1975 jo. Article 116 letter (f) KHI). Economic reasons and livelihood are only one part of what causes quarrels between husband and wife. However, this reason is widely used as a reason for divorce, even though not a few wives have income that can economically support family needs. Disputes in the household can start from the husband's inability to provide for his family or the wife's attitude, who

feels lacking in the husband's gifts. Suppose you pay attention to several divorce decrees. In that case, the wife's condition also works so that if it is true that the husband is unable to provide for or the husband has insufficient income, the wife can replace her husband's position to meet the family's needs. However, along with the times, husbands and wives who live well by working may be negligent. Whether we realize it or not, this pattern change can be a problem in the family due to the negligence of one party to his obligations, leading to disputes between the two (Saadah, 2018).

One of the problems often faced in a husband and wife relationship is the need for balance on the financial side. Moreover, almost all circles consider this financial problem a big one. It is undeniable that the sustainability and happiness of a marriage are greatly influenced by its economic life. The needs of life will be adequately fulfilled if the married couple has adequate financial resources. Income or income is an essential thing in the family. Sufficient income can provide physical and inner satisfaction as the fulfillment of all family needs. The income given to the wife with a broad chest, without the slightest element of miserliness, is the main contribution that can bring balance and happiness to the household (Hamid, 2006).

Along with the times, it is not uncommon for the husband's income to be unable to meet household needs, so the wife looks for alternatives to work to help the husband meet the family's economic needs. Ironically, many divorce cases are filed by financially sufficient wives. Divorce in urban communities such as Bekasi occurs a lot due to economic factors carried out by working women (Abubakar et al., 2023). There are several divorce cases for economic and livelihood reasons, including decision no. 2758/Pdt.G/2020/PA.Bks. This was caused by the husband not being open in monetary terms. Decision no. 4224/Pdt.G/2019/PA.Bks. and 3096/Pdt.G/2020/PA.Bks. whose cause is caused by the husband arbitrarily providing for himself. There are also decisions, no. 2467/Pdt.G/2018/PA.Bks., 3072/Pdt.G/2019/PA.Bks., and 2104/Pdt.G/2020/PA.Bks are caused by the husband needing to be more responsible in meeting household needs. Of the six cases, judging from the wife's work, there are two cases where the wife works, and the rest are homemakers. This will be a problem in the future, which will increase the high number of divorces for economic and livelihood reasons, even though the wife's position has a job.

The position of working women is indeed very dilemmatic. On the one hand, women want to change their status only in the private domain by venturing into the public domain. On the other hand, working women still depend on men for their livelihoods. Moreover, a doctrine often circulates in society that the husband's money belongs to the wife while the wife's money belongs only to the wife. This will be a problem if the husband does not work, so he cannot provide for him, while the wife has enough income to support the family. Conditions like this, if there is no balance between husband and wife through good communication and the division of roles, will result in inequality in the family. The views that exist because of the patriarchal culture that is biased against women have been rooted in the social

life of the community (Qadir, 2017). At the same time, social reality proves that women are not what is thought; they are considered weak, gentle beings, less able to carry out significant responsibilities, and not intelligent and emotional (Qadir, 2017).

Some time ago, there were pros and cons to the Family Resilience Bill, one of which was due to the high issue of divorce for economic reasons. The Family Resilience Bill is controversial because women's positions are no longer a consideration by being returned to domestic positions. Women are not allowed to encroach into public domains. There is an opinion that many divorce cases are caused by many women who work in the public domain, which should be a man's territory, so many men become unemployed. Of course, this reason raises cons, especially for feminists who have been advocating the equal rights of men and women. The Marriage Law provides an excellent opportunity for divorce because the wife demands her rights, especially the right to a living that the husband does not fulfill. It is also legalized from the Qur'anic verse that the obligation to provide is the responsibility of the husband (Q.S. al-Nisa' [4]: 34). In addition, it also gets legitimacy from the opinion of *jumhur ulama* (Shafi'iyah, Malikiyyah, and Hanabilah) who allow wives to ask for divorce because the husband does not fulfill his obligation to provide for his wife materially (al-Jaziri, 1969). Is there another way to reduce the divorce rate for economic reasons while respecting the rights and obligations of husband and wife?

Reinterpretation of QS. Al-Nisa's (4): 34 on the Obligation of Subsistence

Along with the changing times and the increasingly echoed concept of equality of men and women, the context of the obligation to provide for it needs to be reinterpreted so that all circles can accept it. Suppose the concept of living in the classical *ulama* era is applied. In that case, problems or inequality will arise in the household, which results in many cases of wives filing divorce lawsuits in the Religious Court, which is then used as a reason for claims for income by the wife or as a reason for divorce because it is not provided for by the husband, which is permissible according to the number of scholars except Hanafiyyah. Hanafiyyah scholars do not allow wives to ask judges for divorce, but judges only force husbands to fulfill their obligations, and as long as they are not fulfilled, they are punished as debts.

In QS. An-Nisa verse 34 is a *qawwamun* phrase interpreted by the *mufassir* that the husband is the protector, leader, person in charge, and regulator of the family context. Sometimes, this verse is used as a prohibition for women to be in the public sphere (work environment), even though according to Amina Wadud, Azizah al-Hibri, and Riffat Hasan, *qawwamun* means breadwinner or people who provide supporting facilities or means of life. However, women are not prohibited from working (Ni'mah, 2009).

To prevent divorce for economic and livelihood reasons, there needs to be a reinterpretation of Q.S. al-Nisa' (4): 34. In this case, the author agrees with the

interpretation of KH. Hussein Muhammad (a kyai and female activist) on the obligation of subsistence. In this case, KH. Hussein Muhammad did not impose the income obligation on one of the parties, the husband. In married life, no one is burdened with remarkable commitments to provide for themselves. This means that whoever can give or earn a living, then he is the one who is burdened with the family's bread. According to KH. Hussein Muhammad, for centuries, the husband's position as the bearer of the obligation of providing for the family because the husband is considered a public being while the wife is considered a domestic being dependent on the husband. It is based on the view that men (husbands) are more capable than women (wives). When in the context of a wife being more brilliant, more able to carry out responsibilities, or more productive than the husband in earning a living, then according to him, there is no element of justice and no benefit if the burden of income obligations is still given to the husband, while the husband is unable as a party burdened with family support (Nuroniya et al., 2019). Therefore, the most fundamental principle is justice and mutual benefit, regardless of gender. Justice and benefit are conclusive reflections in the Qur'an since the beginning (Qadir, 2017). Thus QS. Al-Nisa (4): 34 must be understood contextually.

According to KH. Hussein Muhammad if QS. Al-Nisa (4): 34 is understood textually to mean a man who provides for himself. This understanding has indeed become common in patriarchal societies because, in that verse, women are positioned as helpless beings, considered incapable, and as domestic beings who are only at home. In other words, the man determines all life in the household, so the obligation rests on his shoulders. KH. Hussein Muhammad interprets leadership in Q.S. al-Nisa' (4:34) as "not all men can be leaders over women" because the verse continues to explain that *"Allah has favored some of them (men) over some others (women)."* This indicates that not all men are given superiority by Allah Almighty, and vice versa with women; not all women are superior to men. The verse is interpreted in social reality, and when the verse is revealed, men are generally leaders, protectors, and protectors because Allah Almighty has favored men in general over women (Nuroniya et al., 2019), according to KH. Hussein Muhammad had an intellectual, physical, and mental advantage that was not unchangeable. Anyone can obtain these advantages, whether men or women, with their efforts. Therefore, any work that men can do can also be done by women (Nuroniya et al., 2019). Thus, the superiority of men over women, which is based on men as providers, is not something natural but functional (Muhammad, 2016).

From the explanation above, when the husband cannot provide a living while the wife can meet the family's needs, then this obligation of providing becomes the wife's responsibility. The husband is released from the obligation to provide for him until he returns to being a man who can bear the bread. If this concept is applied in domestic life, it will reduce the number of divorces (lawsuit divorces) due to economic and income factors. What has been circulating in society is that the wife's property must begin to be replaced with the wife's property owned by the wife and become joint property when the condition of the husband is unable

to provide for him. Providing for here is the husband is incapable, has worked but is not enough, or has tried to find a decent job but does not exist, or the husband is in an economic downturn. In this case, the wife must be patient, especially if Allah gives the wife the advantage of Rizqi. If the wife works and her income exceeds that of the husband, then the husband does not need to worry, be jealous, or even feel oppressed. The wife does not need to change character but is still polite and respectful in family life and remains committed to building a *sakinah mawaddah wa rahmah* family.

CONCLUSION

From the discussion above, it can be concluded that many scholars believe that wives may ask the judge for divorce if the husband does not provide a living, which needs to be reinterpreted. Because if the opinion of fiqh scholars continues to be applied, it will further increase divorce cases (divorce lawsuits) for economic and livelihood reasons. Moreover, this action gained legitimacy from stakeholders through marriage legislation. Interpretation of KH. Hussein Muhammad to Q.S. al-Nisa' (4): 34 needs to be used as a reference in updating the law on the obligation of bread so that it is hoped that no more divorces are carried out for economic and subsistence reasons.

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