

Scholar Opinion on Providing for Wives Who Do Not Live in The Same House

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Abstract:

When a man and a woman are married, they officially have responsibilities towards each other. And one of the responsibilities of a husband after marriage is to provide his wife with a place to live and provide for him. The income in question is either a physical income or an inner bread. If a husband deliberately fails to provide for his wife, then the husband is considered negligent and sinful. Because it is one of his responsibilities. Livelihood is not only a gift given by a husband to his wife, but also an obligation between the father and his children and also has a responsibility between an owner and something he owns. This income also covers the needs of the wife during childbirth, such as the financing of midwives or doctors who help with childbirth, drug costs and hospitals. Also included is the fulfillment of the biological needs of the wife. This income also covers the needs of the wife during childbirth, such as the financing of midwives or doctors who help with childbirth, drug costs and hospitals. Also included is the fulfillment of the biological needs of the wife.

Keywords: *Scholar Opinion; Provide; Husband Liability;*

Abstrak:

Ketika seorang pria dan seorang wanita menikah, mereka secara resmi mempunyai tanggung jawab terhadap satu sama lain. Dan salah satu tanggung jawab seorang suami setelah menikah adalah memberi nafkah kepada istrinya dan menafkahnya. Pendapatan yang dimaksud adalah pendapatan fisik atau roti batin. Jika suami dengan sengaja tidak menafkahi istrinya, maka suami dianggap lalai dan berdosa. Karena itu adalah salah satu tanggung jawabnya. Nafkah bukan sekedar pemberian yang diberikan oleh seorang suami kepada isterinya saja, tetapi juga merupakan suatu kewajiban antara ayah dan anak-anaknya serta mempunyai tanggung jawab antara seorang pemilik dengan sesuatu yang dimilikinya. Pendapatan tersebut juga untuk menutupi kebutuhan istri saat melahirkan, seperti pembiayaan bidan atau dokter yang membantu persalinan, biaya obat dan rumah sakit. Termasuk pula pemenuhan kebutuhan biologis istri. Pendapatan tersebut juga untuk menutupi kebutuhan istri saat melahirkan, seperti pembiayaan bidan atau dokter yang membantu persalinan, biaya obat dan rumah sakit. Termasuk pula pemenuhan kebutuhan biologis istri.

Kata Kunci: *Pendapat Ulama; Menafkahi; Tanggung Jawab Suami;*

INTRODUCTION

Providing is a husband's duty to his wife, and there is no difference of opinion on this issue. Providing for the wife is the husband's duty unless the wife refuses (to give up not being provided for by the husband) or the wife is lawless so that the husband is not obliged to provide for her.¹

The income can be determined for example by food, side dishes, clothing or in the form of certain items. It can also be determined with a sum of money in exchange for the price of the goods needed by the wife. It can be given yearly, monthly, weekly or daily, with the spaciousness of the husband.² Even the Qur'an itself has made it mandatory through the word of Allah, in surah At-Thalaq verse 7:

لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ ۗ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا ءَاتَاهُ اللَّهُ ۗ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَّا ءَاتَاهَا ۗ سَيَجْعَلُ
اللَّهُ بَعْدَ عُسْرٍ يُسْرًا³

It means: "Let him who is able to provide according to his ability. And he who is deprived of his sustenance should provide for him from the wealth which God has given him. God does not carry a burden on a person but only what He gives him. God will one day give spaciousness after narrowness."

A husband who does not pay his wife a living, then according to his jurisprudence, the wife may report it to the judge and forcibly sell her assets to be handed over to the wife. But if it remains in its stance, it is imprisoned until it gives up the predetermined income.⁴

¹ Ibnu Rozali, "Konsep Memberi Nafkah bagi Keluarga dalam Islam", *Jurnal Intelektualita*: Vol. 6, No. 2 Tahun 2017. hlm. 189.

² Ibnu Rozali, "Konsep Memberi Nafkah bagi Keluarga dalam Islam", *Jurnal Intelektualita*: Vol. 06, No. 02, 2017, hlm. 200.

³ Kementerian Urusan Agama Islam, *Al-Qur'an dan Terjemahnya*, (Saudi Arabia: Komplek Percetakan Al-Qur'an Al-Karim, 1442H), hlm. 946.

⁴ Armansyah, "Batasan Nafkah yang Wajib Diserahkan Seorang Suami Kepada Istri", Sangaji: *Jurnal Pernikahan Syariah dan Hukum*, Vol. 2, No. 2, Oktober 2018, hlm. 199.

The husband provides for his rejected wife and children according to his ability, if his wealth, that is, he is poor, then he should provide according to the rate that Allah gives. The poor are not burdened like those who can afford it. God will make spaciousness and sufficiency after the narrowness of lack. Likewise, with the hadith of the Messenger of Allah, he once gave permission to Hindun bint Utbah to take the property of her husband, Abu Sufyan to meet her needs and the needs of her children in a ma'ruf manner. (Muttafaqun Alaih).

Imam Shafi'i mentions, by showing that men are obliged to provide for their wives.⁵ Narrated Jabir bin Abdullah from the Messenger of Allah, he said in the Khutbah wada',

وَأَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ⁶

It means: "Their (wives') right over you (husbands) is for you to give sustenance and clothing to them in a good way" (HR Muslim)."

What is meant in a ma'ruf way is to pay attention to the habits of the community without being excessive and not stingy. Let him provide as much as he can and which is easy for him, and be medium and thrifty. The imams of the madhhab agreed on the obligation of one who provided for those who were obliged to provide for them, such as wives, fathers, and young children.⁷

Jumhur ulama including Imamiyah Shi'a scholars argue that the enactment of income from the commencement of domestic life, that is, since the husband has associated with his wife. In other words, the wife has given her husband the possibility to get married. Which is in fiqh terms is tamkin. With the mere occurrence of a marriage contract, there is no obligation to provide for it. Based on this opinion, when after the

⁵ Ahmad Mushthafa Al-Maraghi, *Terjemah Tafsir Al-Maraghi*, (Semarang: PT. Karya Toha Putra, 1974), hlm. 444.

⁶ Syaikh Hasan Ayyub, *Fikih Keluarga*, (Jakarta: Pustaka Al-Kautsar, 2011), hlm. 444.

⁷ Syaikh al-'Allamah Muhammad, *Fiqih Empat Mazhab*, (Bandung: Hasyimi, 2010), hlm. 411.

marriage contract and has not done tamkin, because of his circumstances he has the right to provide a living.⁸

Lately the phenomenon of world change is increasingly visible among people, which is marked by the current of globalization that tends to change habits and behaviors that are characteristic of human life, including the family. Higher job or economic demands for the cost of married living force married couples to be far apart to meet the needs of their families.⁹

So it is known that the obligation of a person to spend a living to those who are entitled to receive it, just as the husband has the right to provide for his wife, children and even the main income given is aimed at meeting the basic needs of life, namely food, clothing and shelter. The obligation to provide a living is given according to their ability, this can be adjusted to their needs and abilities to be in harmony with their circumstances and living standards.

METHOD

This paper uses a library research approach (literature study), which is research whose subject is in the form of literature literature. The source of the data departs from documentation from books and other scientific articles that discuss the gender approach in Islamic family law.¹⁰ Data collection techniques are carried out by selecting data that correlates with the theme of this article. Collection is carried out by analyzing data in accordance with theory to obtain conclusions.¹¹

⁸ Wardah Nuronyah, dkk. "Kewajiban Nafkah Dalam Keluarga Perspektif Husein Muhammad", Mahkamah: Jurnal Kajian Hukum Islam, Vol. 4, No. 1, Juli 2019, hlm. 113.

⁹ Sri Suwartini, Casmini, "Subjective Well Being Dalam Perspektif Istri Yang Berjauhan Dengan Suami", Mahkamah: Jurnal Perempuan, Agama dan Jender, Vol. 18, No. 1, 2019. hlm. 83-95.6

¹⁰ D, Rosyada, *Penelitian Kualitatif untuk Ilmu Pendidikan*, (Jakarta: Prenada Media, 2020), hlm. 25.

¹¹ L. J Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: PT. Remaja Rosdakarya, 2021), hlm. 20.

DISCUSSION

Definition of Livelihood

Linguistically, *an-nafaqat* is the plural form of the word *nafaqah*; the distinguished verb (mashdar) *al-infaq*, which is to give something well in order to hope for the pleasure of God. Livelihood is divided into two. First, prioritize living for yourself. The Prophet Muhammad said, "Start with yourself and then the people around you." Second, provide for others. This point is caused by three factors, namely, marriage relations, kinship relationships, and ownership relationships, including the obligation to feed livestock.¹²

Sayyid Sabiq in the book of sunnah fiqh mentions that a living is to meet the needs of food, shelter, housekeeper, treatment of the wife if she is a rich person.¹³ According to Djamaan Nur in the book fiqh munakahat, a living is something given by a person to his wife, relatives, and to his property to meet their basic needs. The basic needs are in the form of food, clothing and shelter.¹⁴ From the definition above, it can be concluded that what is called a living is all the costs of spending or spending a person to meet and meet the basic needs needed

Legal Basis of Livelihood

1) The Qur'an

Allah gives legitimacy about it in His words in surah Al-Baqarah verse 233:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ج لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا¹⁵

It means: "And it is the duty of the father to bear their sustenance and clothing in a proper manner. A person is not burdened with more than he can afford."

¹² Wahab Zahaili, *Fiqh Imam Syafi'i*, (Jakarta: Almahira, 2010), hlm. 41.

¹³ Sayyid Sabiq, *Fiqh Sunnah, Alih bahasa oleh Moh. Thalib. juz 7*, (Bandung: PT. AlMa'arif, cet. 12, 1996), hlm. 73.

¹⁴ Djamaan Nur, *Fiqh Munakahat*, (Semarang: CV. Toha Putra, cet. I, 1993), hlm. 101.

¹⁵ Kementrian Urusan Agama Islam, *Al-Qur'an dan Terjemahnya*, (Saudi Arabia: Komplek Percetakan Al-Qur'an Al-Karim, 1442H), hlm. 57.

Sustenance here is the obligation of a father to provide enough food and clothing or clothing whose main function is to cover the aurat, so that no part of the body is forbidden to be shown, as well as for safety, and maintaining honor.

Ibn Kathir in his tafsir of the verse states; "It is the duty of the father of the baby to provide the cost of living and clothing accrued to the mother of the baby in accordance with the customs applicable to them in their respective countries, without exaggeration or deficiency, and in accordance with the ability and smoothness of the father of the baby".¹⁶ It is incumbent upon the father to provide for the baby's mother in a ma'ruf manner, in accordance with the father's ability.

2) Hadith

In Hajj wada' the Prophet addressed his people, it is narrated that the Prophet said:

فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ وَاسْتَحْلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُؤْطِنَنَّ فُرُوشَكُمْ
أَحَدًا تَكَرَّهْتُمْ إِنْ فَعَلْنَ ذَلِكَ فَاصْرَبُواهُنَّ ضَرْبًا غَيْرَ مُبْرَحٍ وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ¹⁷

It means: "Fear Allah about women, for verily you have taken them by Allah's commission and you have justified their genitals with Allah's words. You have a right that is their duty, which is that they should not put in your house people you don't like. If they do, then hit them with a painless punch. They also have the right that is your duty, which is to provide for them and clothe them in an accrued manner". (HR Malik, Muslim, Abu Dawud, at-Tirmidhi, Ibn Majah, an-Nasai, ad-Darimi, Ahmad, Ibn Hibban, al-Baihaqi, Ibn Khuzaimah, Abad ibn Humaid, Ibn Abi Shaibah, etc.)

This is where there is leniency in the reason because indeed the wife has the right to provide that must be fulfilled by her husband. When a man's contract with a woman is established and in order to maintain the eternity of love, it will unravel afterwards the obligation of bread.¹⁸

¹⁶ Muslih Abdul Karim, *Keistimewaan Nafkah Suami & Kewajiban Istri*, (Jakarta: Qultum Media, 2007), hlm. 55.

¹⁷ Muslih Abdul Karim, *Keistimewaan Nafkah Suami & Kewajiban Istri*, (Jakarta: Qultum Media, 2007), hlm. 57

¹⁸ Muslih Abdul Karim, *Keistimewaan Nafkah Suami & Kewajiban Istri*, (Jakarta: Qultum Media, 2007), hlm. 58.

From the hadith discusses the rights between husband and wife that must be obeyed, the husband has the right to forbid to put the person he likes into the house and the wife has the right to earn a living and clothing.

3) According to Ijma' (agreement of scholars)

Ibn Qudama said, "Scholars agree on the obligation of a husband to spend on his wives, when they are at puberty, unless the wife is disobedient."¹⁹

Types of Livelihood

The obligatory type of bread, that is, everything that is needed by the wife and her family, as Ibn Qudamah said. This category of compulsory income (without any clerical dispute) includes primary needs, such as food, drink, clothing and shelter, jewelry and the means and equipment needed by the wife to meet her primary needs, as well as the fulfillment of her biological needs.²⁰ All of these must be fulfilled by the husband.

As for other needs, such as medical expenses and the procurement of domestic helpers, there are disagreements among scholars. The majority of fiqh experts argue that the wife's medical expenses are not mandatory for the husband. Likewise, the provision of domestic servants is not compulsory for the husband, unless it (giving a housekeeper) has become a common thing in the wife's family, or among other families in his people. But the important thing must be noted, the procurement of this domestic helper is also inseparable from the husband's ability to fulfill it. If he is unable to provide a housekeeper for his wife, it is not obligatory for the husband to provide one, because God does not burden a person beyond his means.²¹

Livelihood Rate

If a husband lives with his wife and provides for all his wife's needs such as food, clothing, and so on, then the wife has no right to demand a determination of the amount of her income,

¹⁹ Muslih Abdul Karim, *Keistimewaan Nafkah Suami & Kewajiban Istri*, (Jakarta: Qultum Media, 2007), hlm. 58.

²⁰ Syamsul Bahri, "Conjugal Need Concept In Islamic Law", *Kanun Jurnal Ilmu Hukum*. No. 66, Th. XVII Tahun 2015. hlm. 386.

²¹ Syamsul Bahri, "Conjugal Need Concept In Islamic Law", *Kanun Jurnal Ilmu Hukum*. No. 66, Th. XVII Tahun 2015. hlm. 386.

because the husband always fulfills his obligations. When the husband is miserly, does not meet the needs of his wife or leaves her without providing for himself, for food, clothing and shelter. The judge is obliged to decide his livelihood and the husband is obliged to comply if his wife's charges are true.²²

Indeed, there is no definite provision that regulates the issue of the level of iddah income related to how much, both in the Qur'an and Hadith, or in positive law. Regarding the level of bread, in the Qur'an Sura At-Thalaq verses 6 and 7 only give a general description that the income is given to the wife according to the adequacy of daily needs and according to the income of the husband. In the KHI it is also not explained in detail how much the income rate for the wife, it is contained in Article 80 Paragraph 2 of the Compilation of Islamic Law which reads: "The husband is obliged to protect his wife and provide all the necessities of married life according to his ability."²³ Because there is no explanation of the specific level of income, there is a difference of opinion among jurists. Based on the jumhur opinion that the socio-economic status of husband and wife is not always the same, in this case there are three opinions about who is used as a measure of determining bread, namely.²⁴

First: the opinion of Imam Ahmad who said that what is used as a measure in determining Nafaqah is the socioeconomic status of husband and wife together.

Second: The opinion of Imam Abu Haneefa and Imam Malik who say that what is used as a standard is the needs of the wife. This is based on the word of Allah in the Qur'an Surah Al-Baqarah verse 233:

Meaning: "And it is the duty of the father to feed and clothe the mothers in the manner of Ma'ruf".²⁵ Third: The opinion of Imam Shafi'i and his followers is that what is used as a standard in the measure of a wife's income is the state and economic ability of the husband. And the ujlama of the Imamiyyah school also issued the same opinion that, the

²² H.S.A. Alhamdani, *Risalah Nikah*, (Jakarta: Pustaka Amani, 1989), hlm. 127.

²³ Lihat pasal 80 (2) Inpres Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam

²⁴ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia* (Antara Fiqih Munakahat dan UU Perkawinan), (Jakarta: Prenada Media, 2007), hlm. 170.

²⁵ Departemen Agama RI, *al-Quran dan Terjemah*, hlm. 38.

income is measured based on the needs of the wife which includes food, side dishes, clothing, shelter, household appliances according to the level of life of people like him in his area, while other schools say that what is used as a measure is the condition of the husband not the condition of the wife.²⁶

The scholars have agreed on the issue of compulsory living, but regarding the amount or amount of income that must be spent, the scholars still disagree. Abu Haneefah, Malik and Ahmad argued: "The wife's livelihood is measured and proportioned to circumstances". While Ash-Shafi'i argues: "The wife's income is measured by the size of sharia and is related to the condition of the husband, the rich give two mud a day, the one who is giving one and a half mud a day, and the poor give one mud a day".²⁷ Thus, the fuqaha limit the amount of income that must be provided by the husband to his wife and children for the sake of mutual benefit, so that each husband and wife know the rights and obligations regarding the bread.

The wife may take some of her husband's property in a good manner, even without the husband's knowledge to provide for her needs if the husband neglects his obligations. People who have rights can take their own rights if they are able to do so.²⁸ Some scholars argue that religion does not determine the amount of income. However, the husband is obliged to give *nakah* to his wife in moderation which includes food, such as; meat, vegetables, fruits, olive oil, and samin as well as all the necessities needed daily and according to the general circumstances. These standards vary according to local circumstances and situations. This group determines the amount of income for the wife is determined according to the husband's ability, rich or poor, not looking at how his wife is doing.²⁹

²⁶ Muhammad Jawad Mughniyah,, *Fiqh Lima Maz/hab*, (Jakarta: Lentera, Cet. VII,2008), hlm. 423.

²⁷ Muhammad Hasbi Ash-Shiddieqy, *Hukum-Hukum Fiqh Islam*, Cet. IV, (Jakarta: Bulan Bintang, 1980), hlm. 268.

²⁸ Tihami dan Sohari Sahrani, *Fiqh Munakahat*, (Jakarta: PT RajaGrafindo Persada, 2010), hlm. 165.

²⁹ Muslih Abdul Karim, *Keistimewaan Nafkah Suami & Kewajiban Istri*, (Jakarta: Qultum Media, 2007), hlm.64.

Review of Islamic Law on Unhoused Living

If a husband goes near or he has wealth, the court can determine the woman's livelihood from the wealth left behind. If the husband does not have clear wealth then it can be suspended. If he does not send money to his wife, the judge may divorce her after a grace period. If the husband is far away and cannot be contacted because the address is not clear or the sumi is missing and it is clear that the husband did not leave wealth to provide for his wife, then the judge can divorce the marriage.³⁰

Providing for the wife also considers her attitude towards her husband including reasonable obedience. The attitude of the wife who is reluctant to obey her husband in the context of ma'ruf, then it can be categorized as nusyuz, which is an act of aborting the right to provide during the nusyuz period. Nusyuz itself is defined as the attitude of the wife who does not obey the husband in terms of reasonable commandments, orders to stay in a proper residence or leave the residence without the husband's permission or there is no reason in accordance with shara'.³¹

Ulema Opinion on the Livelihood of Wives Who Do Not Live in the House

The marriage relationship is a binding relationship and gives birth to obligations that must be fulfilled by husband and wife that did not previously exist. One such obligation is the obligation to provide a living. Livelihood is one of the obligations set by sharia to a husband towards his wife. Livelihood must be provided based on the Qur'an, Sunnah, Ijma' Ulama.³²

In the middle of a household trip, sometimes married couples are forced to live far apart. When a long-distance relationship is forced to be an option for husband and wife and both are equally happy, there is no coercion or rejection from either of them, then the wife is still entitled to a living and the husband is still obliged to provide for her.³³

³⁰ S.A. Alhamdani, *Risalah Nikah*, (Jakarta: Pustaka Amani, 1989), hlm. 135.

³¹ Subaidi. "Konsep Nafkah Menurut Hukum Perkawinan Islam", *Isti'dal: Jurnal Studi Hukum Islam*, Vol. 1, No. 12, Juli-Desember 2014, hlm. 161

³² Jumni Nelli, "Analisa Tentang Kewajiban Nafkah Keluarga Dalam Pemberlakuan Harta Bersama", *Al-Istinbath: Jurnal Hukum Islam*, Vol. 2, No. 1, 2017, hlm. 32.

³³ Aini Aryani, *Fiqh LDR Suami Istri*, (Jakarta: Rumah Fiqih Publishing, 2018), hlm. 15.

According to Ijma' Ulama. All kinds of wife's income fell because of nusyuz even for a while. Al-Qurthubi said,

قَالَ ابْنُ الْمُنْذِرِ: اتَّفَقَ أَهْلُ الْعِلْمِ عَلَى وُجُوبِ نَفَقَاتِ الرِّجَالِ عَلَى أَزْوَاجِهِنَّ إِذَا كَانُوا جَمِيعًا بِالْغَيْبِ إِلَّا النَّاسِيزَ مِنْهُنَّ
وَقَالَ أَبُو عُمَرَ: مَنْ نَشَرَتْ عَنْهُ امْرَأَتُهُ بَعْدَ دُخُولِهِ سَقَطَتْ عَنْهُ نَفَقَتُهَا. الْمُمْتَنِعَةَ

One of the consequences for a wife who commits nusyuz is that she is not entitled to earn a living from her husband when she does not want to return to obey her husband. This issue is indeed disputed by scholars, jumhur ulama argue that a wife who commits nusyuz is not entitled to earn a living from her husband and is not entitled to a place to live. Another opinion states that the wife is still entitled to earn a living even though she has done nusyuz to her husband.³⁴

Opinions that agree that husbands have the right not to provide for Nushuz wives, among others from Shaykh Muhammad bin Qasim. In the book "Fathul Qarib", Shaykh Muhammad explained that Nusyuz also resulted in legal consequences in the form of cutting off of income, "There are two things that can fall due to Nushuz, namely the right to turn and the right to earn a living," explained Shaykh Muhammad. Nusyuz also occurs with the wife leaving the residence, even though it is the wife's father's house, without the husband's permission and predicting that the husband will be willing. So the exit of the wife without the husband's willingness is disobedience and nushuz.

Wives are allowed out of the house in several ways,³⁵

- 1) When the house will collapse.
- 2) When the wife worries about herself or her property to the fasiq or thief.
- 3) When the wife goes out to the qadli to demand the husband's bread.
- 4) Exit to learn the sciences of fardlu 'ain.
- 5) When the wife goes out of the house to earn a living by working, when the husband experiences destitution.

³⁴ Subhan, Moh. "Rethinking Konsep Nusyuz Relasi Menciptakan Harmonisasi dalam Keluarga." *Al-Adalah: Jurnal Syariah dan Hukum Islam*. Vol, 4. No. 2 Tahun 2019. hlm. 194-215.

³⁵ Syaikh Zainuddin 'Abdul 'Aziz Al-Maribariy, *Fathul Mu'in*, Terj. KH. Aliy As'ad (Jakarta: Menara Kudus, 1980), hlm. 218-219.

- 6) If the wife without the husband's permission goes out not in the attitude of nusyuz when the husband is out of the area for pilgrimage or visiting relatives (not men or women outside relatives), according to some faces, because such, according to Urf is not counted as nushuz.³⁶

From the overall results of the research, the views of scholars on the livelihood of wives who do not live in the same house are some scholars who argue that the income of wives who leave home on the basis of work depends on mutual agreement and also on the blessing of the husband and wife to leave the house.

Islamic Law's Perspective on the Livelihood of a Wife Who Does Not Live in the Same House

Among the duties of the wife is to live in a house that has been determined by her husband. Because by living with her husband that is what causes a wife to be entitled to a living. It is in Fiqh called tamkin. Tamkin linguistically means to settle. It means to settle the wife and live with her husband.³⁷ The obligation to provide for a living only applies when the wife begins to live permanently with her husband after the marriage contract. That is, the husband's obligation to provide for his wife has not applied if he has just contracted but has not lived together.

In the book *Al-Kifayah 'Ala Al-Hidayah* (4/192-193) it is mentioned:

إِذَا لَمْ تُرَفَّ إِلَى بَيْتِ زَوْجِهَا لَا تَسْتَجِبُ النَّفَقَةَ³⁸

This opinion is a fatwa from the *jumhur* (majority) of fiqh scholars from the schools of Al-Malikiyah, Ash-Shafi'iyah and Al-Hanabilah. The basis is what the Prophet (peace be upon him) did to Aisha radhiyalalhuanha. Indeed, there was a time lag from when he married Aisha until Aisha lived together. Some say that Aisha was married when she was 6 years old and only lived with the Prophet SAW when she was 9 years old. And during the period of not

³⁶ Syaikh Zainuddin 'Abdul 'Aziz Al-Maribariy, *Fathul Mu'in*, Terj. KH. Aliy As'ad (Jakarta: Menara Kudus, 1980), hlm. 218-219.

³⁷ Subaidi, "Konsep Nafkah Menurut Hukum Perkawinan Islam", *isti'dal; Jurnal Studi Hukum Islam*, Vol. 1, No. 2, Juli-Desember 2014. hlm. 161.

³⁸ Aini Aryani, *Fiqih LDR Suami Istri*, (Jakarta: Rumah Fiqih Publishing, 2018), hlm. 15.

being at home, it turned out that the Prophet SAW had not provided him with a living.³⁹ From this fact, *jumhur ulama* argue that the income only applies when the wife starts living with the husband, not since the occurrence of the marriage contract.

So when the husband invites his wife to live together, but he refuses and insists on living separately from the husband, then the husband's obligation to provide for him falls by itself. Family conditions or husband and wife relationships that conflict, result in conditions that are actually not expected in normal situations, such as mutual selfishness, even one partner leaves the residence, both wife and husband.⁴⁰

This kind of condition has other consequences such as the position and position of the husband's income towards the wife. If the wife leaves home, then deliberately she no longer wants any improvement in the relationship with her husband. In this condition, the wife who deliberately moves house or residence with her husband, the wife is considered to be *nusyuz* or disobedient. Four scholars of the *madhab* agree that if the wife leaves the house without the permission of the husband, or leaves the house without a *shari'i* reason, then her income is considered void, meaning that the husband is no longer obliged to provide for his wife. On the other hand, if the wife *nusyuz* just does not want to be associated, then scholars differ in opinion, *Hanafi* scholars see her as still being provided with a living, while other schools actually view it as not obligatory to provide a living.

If the separation of the house is precisely from the husband's side, or in other words the husband leaves their house and the wife remains in the house, then the husband is still obliged to provide for his wife. The absence of the husband in the house does not make his dependents fall away, so that the mandatory income for the wife is still the husband's dependent. However, if the husband does not provide a living, then the wife has the right to claim her husband's

³⁹ Aini Aryani, *Fiqh LDR Suami Istri*, (Jakarta: Rumah Fiqih Publishing, 2018), hlm. 15-16.

⁴⁰ Aini Aryani, *Fiqh LDR Suami Istri*, (Jakarta: Rumah Fiqih Publishing, 2018), hlm. 16.

divorce through *khiyar* (choosing to continue the marriage or end it) to the court. The wife is given the opportunity to exercise the right of *khiyar* to choose her marriage to be terminated.⁴¹

Sometimes the husband and wife separate and have a long-distance relationship and both are equally happy with the situation, then the wife is still entitled to a living and the husband is still obliged to provide for her. When a husband and wife live far apart, there are several things that a wife must do. These include:⁴²

1) Ask your husband for permission when you want to travel from home

Among the obligations of the wife to her husband is to ask permission to leave the house when going to travel. The obligation to ask permission from the husband is certainly not permission every second and every time he leaves the house. If she leaves the house because of an acceptable routine, and her husband has allowed it, she doesn't need to ask her husband for permission every time. It is different if the wife wants to leave the house outside the routine known by her husband. For example, when the wife wants to leave the house for social gatherings, reunions and so on. Here the wife is obliged to inform the husband and ask for his permission.

2) Not accepting male guests

When the husband is not at home and lives far away, a wife is not allowed to receive male guests, let alone welcome into the house. Unless the guest is his own family or mahram and the husband is forgiving.

3) Maintain self-honor

When the husband is not with her, a wife is obliged to guard her honor from all bad things, especially if it is approaching adultery. Included in this is the prohibition of excessive decoration when leaving the house, excessive joking with male friends or co-workers, leaving the house for purposes that are not too important, especially at night.

⁴¹ Ali Abubakar, Rispalman, *Nurbaiti*, "Persepsi Masyarakat Kecamatan Terangun Kab. Gayo Lues Terhadap Tanggung Jawab Nafkah Bagi Pasangan Pisah Rumah", *El-Usrah: Jurnal Hukum Keluarga*, Vol. 4, No. 1, Januari-Juni 2021, hlm. 159

⁴² Aini Aryani, *Fiqih LDR Suami Istri*, (Jakarta: Rumah Fiqih Publishing, 2018), hlm. 21-24.

4) Safeguarding the husband's property

In addition to maintaining her honor, when living far away the wife is also obliged to maintain the husband's trust in the form of property entrusted to her. A wife should spend her husband's property in a ma'ruf manner, and not excessively or out of necessity except with her husband's permission.⁴³

CONCLUSIONS AND RECOMMENDATIONS

Providing for the wife is the husband's duty unless the wife refuses (to let go not to be provided for by the husband) or the wife does disobedience so that the husband is not obliged to provide for her. The income can be determined for example by food, side dishes, clothing or in the form of certain items. It can also be determined with a sum of money in exchange for the price of the goods needed by the wife. It can also be given yearly, monthly, weekly or daily, with the spaciousness of the husband. Wives who participate in earning a living to provide for the family are mubah (may). The reason may be because wives do not shirk their primary responsibilities in the household, may be because husbands are willing and feel grateful for their wives' participation in helping to meet economic needs, may be because the work done by wives does not violate religious rules.

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⁴³ Aini Aryani, *Fiqih LDR Suami Istri*, (Jakarta: Rumah Fiqih Publishing, 2018), hlm. 21-24.

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