

ECONOMIC AND LIVING ISSUES IN THE CASE OF DIVORCE IN INDONESIA: THE PERSPECTIVE OF FIQH

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Abstract: In many cases of divorce lawsuits, the reasons for economics and living are often included in divorce papers, either purely because of economic factors or as a concomitant reason such as domestic violence, sexual crisis, and infidelity. The next problem is that many wives have permanent jobs that certainly have sufficient income, while husbands have permanent jobs and some are non-permanent job which have uncertain incomes every month. On that basis, there are two contradictory tendencies. First, the majority of women tend to burden their husband in living, and on the other hand there are women who tend not to burden their husband in living. Therefore, how exactly is the discourse on the issue of living as the reason for divorce among classical fiqh scholars? Reinterpretation of nas in contextualization at this time is an inevitability in order to find a solution to the high number of divorces for economic and living reasons, without having to get out of the manhaj istinbat classical clerical law.

Introduction

The phenomenon of high divorce trends in several Religious Courts in Indonesia, is an indicator of the existence of indication of family dysfunction and signifies many unresolved marital conflicts (Mudd, 1967:27). Conflict in marriage is natural in human life (Malik, 2017: 10) and is often unavoidable (Emery et al., 1999: 20). This happens because in marriage there is a union of two persons who each have different characters, beliefs, and cultural backgrounds (Farthing, 2001). Therefore, husband and wife need to adjust to these differences in order to form a family that is *sakinah mawaddah wa rahmah*. This adjustment process sometimes leads to clashes, disputes, tensions, which would otherwise lead to divorce (Dewi and Basti, 2008: 42-51).

Empirical facts of divorce rates occurring in Indonesia increase every year, except in 2020 which is slightly decreased due to restrictions on trial hours during the covid 19 pandemic. The rise of divorce in each region is dominated by divorce cases either on the initiative of the wife or at the request of the husband so that the wife alone faces the divorce. The public view that *judicial* divorce is faster process than *talaq* divorce, so one of the strategies undertaken by the husband is to ask the wife to file for divorce and the husband who finances (Nurlaelawati, 2013: 242-271). The increase in divorce in Indonesia every year is evidenced by data released by the Supreme Court Religious Justice Agency in 2018 to 2020. In 2018 the Religious Court throughout Indonesia received 444,358 cases (118,853 *talaq* divorce and 325,505 *judicial* divorces), in 2019 received 480,618 cases (124 776 *talaq* divorces and 355,842 *judicial* divorces), and in 2020 received 465,528 cases (119,442 *talaq* divorces and 346,086 *judicial* divorces) (Badilag, 2018-2020).

One of the causes of divorce is for economic and living reasons, especially in divorce. Words such as "Defendant does not provide physical needs", "Defendant is not responsible for physical needs", "Defendant does not provide physical needs because not working, so to meet household needs is charged to Plaintiff", "Defendant does not provide needs from the beginning of marriage", or "Defendant has a lot of debt, so plaintiff who bears it", and "the living provided by defendant less", often appears in divorce rulings. It is so easy to write down the reasons for

divorce as above, it will make more and more divorces occur, if the family's economic condition begins to "low" because the husband is not working, or the husband's income is little, or indeed the condition of the husband does not allow to work. Then what do the fiqh scholars think about this? Is there a solution to prevent family conflicts caused by this economy and livelihood, so that divorce does not occur? Therefore, it is necessary to explain the concept of living in the perspective of fiqh, then describe some examples of cases due to the economy and living, then find transitional alternatives related to living as a material to prevent divorce that is increasingly massive in Indonesia.

Overview

Living is a material gift that occurs because of the cause of marriage, kinship, or ownership. Nafkah should be given for good purposes, not arbitrarily, and must also be adapted to local customs or traditions that apply (Syafuri, 2013: 201). Al-Zuhayli divides the living into two, namely the living that must be given for yourself and the living that must be given to others (al-Zuhayli, 1989: 765). This obligation to meet the needs of others is done after sufficient for oneself (al-Nasa'i, 1995: 325). This obligation to meet the needs of others occurs because of the cause of marriage, kinship, and also ownership. Menadequate needs of relatives do not apply absolutely as well as meet the needs of wives and children, which under any circumstances must still be given regardless of the husband's factors, but still adjust the husband's ability that is to fulfill the needs (not excessive) or in accordance with the meaning of sufficiency in each region (al-Zuhayli, 1989: 769-70). The husband's obligation to spend for the wife continues despite the good economic condition of the wife, in the sense that the wife has her own income. This is what distinguishes it from the obligation to spend to relatives, which is only given if the husband's economic condition is spacious, as well as the economic condition of relatives in a narrow state only (al-Jauziyah, 1994: 508; Na'mah, 2015: 14-22).

The scholars agreed that providing for wives is the husband's obligation, but they differ on the time of entry into force of this obligation to provide. Jumhur ulama (al-Shafi'i in qawl jadid, Malikiyyah, and Hanabilah), including shi'ah scholars Imamiyyah argue that the obligation to provide is valid since in the beginning of household, that is, since the husband has had sex with the wife. The occurrence of marriage contract does not require the husband to provide, before the wife gives him the possibility to be married (*tamkin*) (Syarifuddin, 2005: 169). Whereas according to the scholars Zahiriyyah the obligation of living was started since the implementation of the marriage settlement not from *tamkin*. This opinion is based on verses of the Qur'an and Hadith that oblige husbands to provide for wives without mentioning the time decree. Thus, when a person has become a husband with a marriage settlement, it is obligatory for him to provide for his wife. (Syarifuddin, 2005: 169).

Similarly, with the limitations in providing a living, there is a difference of opinion among scholars. This is because Islam does not provide provisions on the limits of living that must be given by the husband to the wife. This means that the living that must be given are only limited to adequacy whose standards vary for each person, according to their habits, circumstances and timing that can change according to the conditions experienced by the husband and wife. According to the Hanafiyyah, it is very easy to determine the level of living if the economic condition of husband and wife is rich. Husbands are obliged to spend a lot if the economic condition of husband and wife is rich. Husbands provide little if the economic condition of the husband and wife is poor. However, it will be difficult to determine the level of living if the economic conditions of husband and wife are different. The scholars of Hanafiyyah have two opinions on this matter. First, the rate of living must be determined based on the economic condition of the husband and wife. In this condition, the living that must be given by the husband is a medium living (*nafaqah al-wast*), provided when the husband's economic condition can not provide because of the poor (either because he does not work or his income

is a little), then what is given at that time is a little living and the husband still bears his shortcomings as a living in debt. In this case ulama Malikiyyah and Hanabilah argue the same. *Second*, the amount of living that must be given by the husband is determined based on the economic condition of the husband only. If the husband is rich then he must spend a lot, on the contrary if the husband is poor then he bears only a little (al-Jaziri, 1969: 563-66; Na'mah. 2015: 23-25). While shafi'iyah view that the level of living 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 is to have a wife (*al-tamlík*). On the contrary, the level of living in the form of a place to live is determined by looking at the economic condition of the wife and ignoring the economic condition of the husband, because the purpose of his gift is to please the wife (*al-mut'ah*) (al-Jaziri, 1969: 563; Na'mah. 2015: 25).

Then, what legal efforts can the wife make if the husband's economic condition is narrow and can not provide for the wife? In this case the Hanafiyyah scholars did not allow the wife to ask for divorce. The wife is only allowed to apply to the judge so that the husband immediately provides an unpaid living as a debt through the judge's decision, and not to be killed or erased even though the husband passed away (al-Jaziri, 1969: 581). The Hanafiyyah, based on Q.S. al-Talaq (6:57) and said that the husband's economic condition is sometimes spacious (rich) and sometimes narrow (poor). When the husband's economic condition is narrow, then his inability to provide for the wife is not among the wrongdoing, so it is not permissible to wrong him by divorcing the husband and wife (al-Zuhayli, 1989: 512; Na'mah. 2015: 31).

According to malikiyyah scholars, wives can fill for divorce to the judge if the husband's condition is not able to provide at that time or in the future, while the husband's inability to provide at the time of the past can not be filed as an excuse to ask for divorce because it has become a living owed. The wife can also request a divorce if the wife does not know the husband's economic incompetence at the time of marriage, unless the wife accepts it because she is forced. the wife can also ask for a divorce if the husband is able to provide a living. In this case, the judge did not immediately grant the wife's divorce request, but gave the husband time to fulfill this obligation of living in accordance with the *ijtihad* judge. If the time given has expired and the husband has not been able to provide for it, then the judge can grant the divorce request submitted by the wife. The above condition applies if the husband does not have enough wealth to provide for his wife, but if the husband has sufficient property but claims to be a poor person, then the judge does not divorce them, but takes a living for the wife from the husband's property by force (al-Jaziri, 1969: 581-82; Na'mah. 2015: 26-27).

The opinion of Shafi'iyah scholars is almost the same as that of Malikiyyah scholars. According to the Shafi'iyah scholars, when the husband's economic condition can not provide a living and the wife can be patient means he has been willing, and the living that is not paid by the husband (food and clothing only) becomes a debt that can be requested when the husband's economic condition has been spacious, provided that the wife continues to carry out her obligations during the period of not being given a living. However, if the wife cannot be patient then the wife can sue for divorce to the judge, provided that if the husband really does not have the ability to spend anything just 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: 582). According to the scholars of Hanabilah in terms of the condition of the husband who really can not afford to pay any living and this has lasted a long time, then the wife can choose to stay with the husband as a husband and wife or choose to separate by applying for divorce to the judge. If the wife chooses to survive with the husband, then the living that is not paid by the husband becomes a debt, and the husband must not restrain the wife either to leave the house or work (al-Jaziri, 1969: 584; Na'mah. 2015: 28-29).

Ulama Malikiyyah, Shafi'iyyah, and Hanabilah allow the wife to ask for divorce when the husband's economic condition is narrow as explained above, based on the evidence of Q.S. al-Baqarah (2): 229 and 231. In addition, al-Shafi'i in *al-um* explains that husbands who are unable to provide for their wives can cause miserable wives to even harm or even threaten their lives. In this case al-Shafi'i use *qiyas awlawi* that the wife may sue the husband for divorce because the husband can not provide an inner living that does not cause the wife's soul to be threatened either in a short time or a very long time, let alone demand a divorce because the husband can not provide for birth, which clearly caused the wife's soul to be threatened by starvation for a short time and for a long time (al-Shafi'i, 1993:154-55). Meanwhile, Imam Malik explained that in this day and age the husband should be able to provide a decent living for his wife, some even listed as a marriage agreement. This is very different from the condition of the wives of the companions of the Prophet who do not demand divorce, even though her husband often has economic difficulties. The situation of these companions and wives can not be equated with the current condition, because the wives of the companions are among the very strong hope for the good of the hereafter, so they tend to ignore the wishes of the *duaniawi*, including the economic condition of her husband who is difficult so that can not provide for them (al-Jauziyyah, 1994, 517; Na'mah. 2015: 31-34).

On this issue, Ibn Hazm (Dahiriyyah scholars) was more inclined to agree with the opinion of Hanafiyyah who did not allow the wife to ask for divorce because the husband could not provide a decent living. For Ibn Hazm, in this condition, the wife is being tested, and the best way is to be patient in the face of difficult economic conditions so that she cannot provide, as found in Q.S. al-Talaq (65): 7 (al-Shafi'i, 1993, 154). Sedangkan Wahbah al-Zuhayli more agreed with the opinion of the majority of scholars (Malikiyyah, Shafi'iyyah, Hanabilah) that allows the wife to sue for divorce because the husband can not provide, on the grounds that there will be danger to the wife, and this is seen more precisely as contained in hadith (*la darara wa la dirar*) (al-Zuhayli, 1989: 512 Na'mah. 2015: 35).

The current conditions in Indonesia, most divorce cases reasons are the economy or living. This is natural, because it gets legitimacy from the Law. As it is known that the majority of Indonesians have Shafi'i, including policy makers, so that in making laws related to marriage and everything related to it, many follow the opinion of al-Shafi'i included in the issue of living.

Special Overview

Women have the right to realize their wishes, both individuals, families and communities (Anwar, 2006: 133). One of the rights in the family owned by women is the right to file for divorce to the Court of Religion (Article 77 paragraph [5] KHI), if indeed the condition of the household is no longer tenable. Wives who filed for divorce began to occur a lot when The Marriage Law No. 1 of 1974 was enacted, which one of the objectives was to elevate the status of women (Nasution, 2002: 15). This is different from what happened before the 1930s. Wives who file for divorce to *pengadilan* find it difficult to be granted by the court, so that some do apostates in order to be divorced by the judge (Na'mah, 2015: 1-3).

The Marriage Law gives the wife the widest possible access to file for divorce, if there is a reason that causes her to file for divorce. So far, the reason for the divorce is the ongoing quarrels and disputes (Article 9 letter (f) PP no.9/1975 jo. Article 116 letter (f) KHI). Economic reasons and living are only one part that causes quarrels between husbands and wives. However, this reason is widely used as a reason for divorce, when not a few wives who have income that can economically support the needs of the family. Disputes that occur in the home begins from the husband's inability to provide for his family or the attitude of the wife who feels less with the gift of the husband. Whereas if it is observed from some divorce rulings, the condition of the wife also works so that if the husband is not able to provide or the husband's income is insufficient, actually *isteri* can replace the position of her husband to meet the needs of the

family. But along with the development of the times, husband and wife who live adequately by working, can be negligent. Realized or not, this pattern change can be a problem in the family due to the negligence of one of the parties to its obligations, which can make a dispute between the two (Saadah, 2018: 54).

One of the problems that is often encountered in a husband and wife relationship is the absence of balance from the financial side. Moreover, almost all circles put this financial problem as a big problem. It is undeniable that the continuity and happiness factors of a marriage are strongly influenced by its financial life. The needs of life will be fulfilled properly if the couple has adequate financial resources. Income or income is very important in the family. With enough income can provide birth and inner satisfaction as the fulfillment of all family needs. The living that is given to the wife with a chest, without the slightest element of miserliness, is the main contribution that can bring balance and happiness of the household (Hamid, 2006: 71).

Nowdays, it is not uncommon husband's income is not able to fill the needs of the household, so the wife is looking for alternatives to work to help the husband in order to support the economic needs of the family. Ironically, many divorce cases are filed by wives who are financially well. There are several examples of divorce cases for economic and living reasons, among them the verdict no. 2758/Pdt.G/2020/PA.Bks. which causes because the husband is not open in economic matters. Verdict no. 4224/Pdt.G/2019/PA.Bks. and 3096/Pdt.G/2020/PA.Bks. which is caused by husband willingly in providing. There are also rulings no. 2467/Pdt.G/2018/PA.Bks., 3072/Pdt.G/2019/PA.Bks., and 2104/Pdt.G/2020/PA.Bks. which is because husbands are less responsible in providing household needs. From the six cases, judging by the wife's work, there are two cases in which the wife works, and the rest are housewives. This will be an issue in the future, which increases the number of divorces for economic reasons and living, even though the wife has a job.

The position of working women is very dilemma. One side, women want change their status to only in private areas by expanding into public areas. On the other hand, working women still depend on their right to a living to their husband. Moreover, there is a doctrine that often circulates in the community that the husband's money belongs to the wife while the wife's money only belongs to the wife. This will be a problem if the husband does not work so can not provide, while the wife has enough income to support the family. This condition, if there is no balance between the husband and wife through good communication and also 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, are already entrenched in people's social life (Qadir, 2017: 224). While social reality proves that women are not what they think they are, they are considered weak, gentle, incapable of carrying great responsibility, not intelligent and emotional (Qadir, 2017: 244).

Many years ago came the pros and cons with the family resilience bill, one of which is due to the high issue of divorce on economic grounds. The Family Resilience Bill became a controversy because women's positions were no longer a consideration by being returned to domestic positions. Women are not allowed to enter public areas. There is an opinion that the number of divorce cases is due to the number of women working in public areas, which should be the territory of men, so many men become unemployed. Of course, this reasoning poses a counter especially for feminists who have been promoting equal rights of men and women. Marriage law is considered to provide a great opportunity for divorce, because the wife demands her rights, especially the right to a living that is not paid by the husband. It is also legalization of the qur'anic verse concerning the obligation of living is the responsibility of the husband (Q.S. al-Nisa' [4]: 34). In addition, it also gets legitimacy from the opinions of the majority of scholars (Shafi'iyah, Malikiyyah, and Hanabilah) who allow wives to ask for divorce because the husband does not fulfill his obligation in supporting the wife materially (al-

Jaziri, 1969: 581-584). Then is there another way to reduce the divorce rate for economic reasons, but still respect the rights and obligations of the husband and wife?

Analysis

Along with the changing era, and the increasingly campaign concept of equality of men and women, then in the context of the obligation of living needs to be reinterpreted in order to be accepted by all circles. If the concept of living in the classical clergy era is applied then there will be problems or inequality in the household, which results in many cases of wives filing divorce lawsuits in the Religious Court, which is then used as the reason for the lawsuit by the wife or as a reason for divorce because it is not granted by the husband, which is permissible according to the number of scholars except Hanafiyyah. Ulama Hanafiyyah does not allow the wife to ask for divorce to the judge, but the judge only forces the husband to fulfill his obligations and as long as it has not been paid, it is punishable as a debt.

To prevent divorce happening for economic and living 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. Husein Muhammad (a kyai and female activist) about the obligation of living. In this case, KH. Husein Muhammad did not impose a living obligation on either party, namely the husband. In a home life no one is burdened with a special obligation to make a living. It means anyone who can afford to make a living or make a living, then he who is burdened with family expenses. According to KH. Husein Muhammad, for centuries the husband's position as the insurer of family expenses, because the husband is considered as a public role while the wife is considered as a domestic role who is the dependent of the husband. It is based on the view that men (husbands) are more capable than women (wives). When in the context of a wife is smarter, more able to carry responsibility, or more productive than the husband in making a living, then according to him there is no element of justice and no benefit if the burden of the obligation of living is still given to the husband, as the husband is not able to as a party burdened with family expenses (Nuroniayah, Bustomi, Nurfadilah, 2019: 114). Therefore, the most important thing is justice and mutual benefit without distinguishing their gender. Justice and benefit are conclusive reflections that have been in the Qur'an since the beginning (Qadir, 2017: 239). Thus QS. al-Nisa (4): 34 must be understood contextually.

According to KH. Husein Muhammad if QS. al-Nisa (4): 34 to be understood textually will mean men who provide living. This understanding has become common place in patriarchal societies, because in the verse women are positioned as helpless beings, considered incapable, and as domestic beings who are only at home. In other words, the life of household is determined by men, so the obligation is on his shoulders. KH. Husein Muhammad, interpreting the leadership in Q.S. al-Nisa' (4): 34 with "not all men can be leaders over women", for the continued verse explains that "*Allah has preferred some of them (men) over others (women)*". It indicates that not all men are given an edge by Allah Swt. , and vice versa with women, not all women are superior to men. The verse means that in social reality when the verse is descended, in general men as leaders, protectors, and protectors, because Allah Almighty. has exaggerated in general men over in general women (Nuroniayah et al. , 2019: 119). According to KH. Husein Muhammad's advantage over reason, physical, and mental is not a nature that can not change. It can be obtained by anyone with their efforts - be it male or female. Therefore, any work that can be done by men can also be done by women (Nuroniayah et al. , 2019: 116-117). Thus, male superiority over women is based on men as breadwinners, in fact it is not something that is natural, but functional (Muhammad, 2016: 179-180).

Based on the explanation above, when the husband cannot provide living, and the wife is able to provide the needs of the family, then she is free from the obligation to provide for her, until she becomes a man who is able to make a living. If this concept is applied in domestic life,

it will reduce the number of divorces (divorces) on the grounds of economic and living factors. What has been circulating in the community that the wife's property should begin to be replaced with the wife's property and become joint property when the husband is unable to provide living. It means when the husband is not able to provide living, even though he is already working but not enough, or he has tried to find a decent job but does not exist, or the husband is in a state of economic downturn. In this case it is really necessary the patience of wife, especially if the wife is given excess rizki by God. If the wife works and her income exceeds the husband, then the husband does not have to worry and jealous even feel oppressed, and the wife does not need to change character, but still polite and respectful in family life and remain committed in fostering a family that *is sakinah mawaddah wa rahmah* (Sa'adah, 2018: 123).

Conclusion

From the above discussion, it can be concluded that the view of the majority of scholars (*ulama*) concerning wives may ask for divorce to the judge if the husband does not provide a living needs to be reinterpreted. Because if the opinion of the fiqh scholars continue to be applied will further add to the case of divorce (divorce) for economic reasons and living. Moreover, this step gets legitimacy from stakeholders through marriage legislation. Interpretation of KH. Husein Muhammad on Q.S. al-Nisa' (4): 34 should be used as a reference in updating the law on the obligation of living, so that it is expected that no more divorces are made for economic and living reasons. wallahu a'lam bisshowab.

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