

The Husband's Inability to Provide A Livelihood as An Excuse For Divorce Perspective Hanafi School and Syafi'i School

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Abstract

Imam Abu Hanifah and Imam Syafi'i are two salaf scholars who are very influential in the world of Islamic fiqh so that they become the madzhab or basis for Muslims to living life in the world. Interestingly, these two schools of thought have the most striking differences regarding various fiqh problems that arise in society. Likewise, the problem of the husband's inability to provide a livelihood as an excuse for divorce. The objective of this research are, to identify the concept of livelihood in the perspective of Hanafi School and Syafi'i School and to identify the differences of the Hanafi School and Syafi'i School regarding the husband's inability to provide livelihood as an excuse for divorce. The type of this research is library research by using a comparative approach. Hanafi school argued, the husband is obliged to provide sufficient levels of the wife's needs in accordance with the prevailing tradition and this varies along with differences in place, period, and condition. There is no stipulation on the amount of livelihood that a husband must give to his wife because it is not explained in the syari'ah. Furthermore, wives are advised to wait patiently when the husband is unable to provide a livelihood and it is not justified to ask for a divorce because the husband who does not find a way of business that can produce income cannot be burdened in terms of livelihood. Meanwhile, the Syafi'i school has a different view. The Syafi'i school determines the amount of livelihood that a husband must give to his wife, for the rich with two *mudd*, for those who are middle or intermediate one and a half *mudd*, and for those who are *faqir* one *mudd*. Religion provides provisions for the amount of daily livelihood for the wife, so when the husband does not provide for the wife, then the wife is allowed to sue for divorce from her husband on the grounds that the husband never provides a livelihood.

Keywords: Livelihood, Hanafi school, Syafi'i school

Introduction

Livelihood is something that a husband must fulfill in his wife' life starting from food, shelter, daily necessities of life, and medicine even though his wife is rich. Livelihood is an obligation in accordance with the provisions in the a;-Qur'an, sunnah, and ijma'.¹ As mentioned in the al-Qur'an surah al-Baqarah (2) verse 233 that means: *and the obligation of the father to feed and clothe the mother in the ma'ruf way. Someone not burdened but according to ability levels.*²

¹ Sayyid Sabiq, *Fiqhussunnah*, Juz II (Kairo: al-Fath al-'Ilmi al-'Araby, tt), 109

² Translator Team, *Al-Qur'an dan Terjemahan* (Jakarta: Al Mahira, 2016), 37

In Indonesia there are no regulations governing livelihood in detail. In Article 34 of Law Number 1 Year 1974³ it only states that the husband is obliged to protect his wife and provide all the necessities of household life according to his abilities. The obligation to provide livelihood for a husband to his wife is also regulated in articles 80-84 of the Compilation of Islamic Law (KHI)⁴ in general and does not specify the amount of livelihood of the husband must provide to his wife. In the Syafi'i school of thought, details of amount of the wife's livelihood are explained. Apart of that, the Hanafi school does not offer the amount of the wife's livelihood.

One of the principles in Islamic Marriage Law is to strengthen the marriage bond so that it lasts forever, it can also be said to make divorce difficult. However, when the hope for the creatuin of affection has been destroyed and the bond if continued could cause many dangers then divorce is permitted. In principle, divorce is not desired in married life. Even divorce is something that is hated by Allah SWT, as the hadith narrated from Ibn Umar, he said that Rasulullah SAW said: *"The halal thing that Allah hates mostly is divorce"*. Various dynamics of married life sometimes conflict with the purpose of marriage. If it continues to be enforced, it will undoubtedly more harm result in the household than the benefits. That is why divorce in Islam is allowed only for the goodness and *mashlahah* of the family.⁵

In the al-Qur'an surah al-Baqarah (2) verse 187 that means: *They (wives) are clothes for you and you are clothes for them*.⁶ In this verse it can be seen that the wifw is the guardian of honorary of the husband while the husband is the guardian of honorary of the wifw. So it can be concluded that the two of them complement each others. The destitude of the husband will be comolete by the wife, while the destitude of the wife will be complete by the husband. In the case when the husband is unable to support the family due to various reasons, that is his destitude and wife must cover. In this way, the wife can plays a role in provide livelihood to the family.

Research Method

This research is a type of Library Research by examining and finding material in the form of books written by Imam Hanafi and Imam Syafi'i or tabi'in with Hanafi and Syafi'i as primary data. Also use books, journals, papers, and other references. The research approach uses a comparative approach by examining and comparing the differences thought of Hanafi school and Syafi'i school regarding the husband's inability to provide livelihood as an excuse for divorce. Data collecting method by starting to determining the lagal material, than taking the inventory data, and reviewing the data. Data analisys includes editing, classifying, verifying, analyzing, and concluding.

Biography of Hanafi School and Syafi'i School

Imam Abu Hanifah, his full name is Abu Hanifah al-Nu'man bin Tsabit Ibn Zutha bin Mahin al-Taimy al-Kufi, he is a religious leader, expert on fiqh, include the high Imam of Islam and a role model for scholars. It is said that Imam Abu Hanifah has a lineage from his father, al-Nu'man bin Tsabit bin al-Nu'man bin Marzuban from the descendants of Faris al-Ahrar.⁷ Abu Hanifah was very studious, obedient in worship and earnest in carrying out religious obligations.

³ Law Number 1 of 1974 concerning Marriage

⁴ Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law

⁵ H.E. Hasan Saleh, *Kajian Fiqh Nabawi dan Fiqh Kontemporer*, (Jakarta: PT. Raja Grafindo Persada, 2008), 320

⁶ Translator Team, *Al-Qur'an dan Terjemahan*, 29

⁷ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, *Diskursus Madzhab Fikih Arba'ah* (Malang: Ma'had Al-Jamiah Al-Aly UIN Malang, 2020), 3

He came from Persian descent, born in Kufah, 80 H/699 M during the Khalifah Abd. Al-Malik bin Marwan and died in Baghdad, 150 H/767 M. He lived in two socio-political environments, during the late Umayyah dynasty and the early days of the Abbasiyah dynasty.⁸ He was born and grew up in Kufah, he is busy in the trade sector as a silk seller and his shop is well known in the area of Amr bin Harith. Until one day Allah SWT unite him together with Imam al-Sya'labi. Then Imam al-Sya'labi advise Abu Hanifah to study and follow the halaqah of scholars. The words of Imam al-Sya'labi made an impression on Abu Hanifah's heart, so that he began to concentrate in the field of knowledge.⁹

The first knowledge that Imam Abu Hanifah learned was the science of *kalam* (theology) until he became an expert in the knowledge. And then he studied fiqh and hadith from the great scholar of his time, his name is Imam Hammad Ibn Abi Sulaiman. Abu Hanifah studied with him since age of 22 years until 40 years without interruption and never matched his teacher. There is a global methodology which Imam Abu Hanifah is based in analyzing cases, there are: *al-Qur'an*, *al-Hadits*, *Ijma'*, Companions word, *Qiyas*, *Istihsan*, and *al-Urf*.¹⁰ During his life Imam Hanafi has found various problems of fiqh and recorded them, so these problems can be wrote on book. Until he can write some books, like: *az-Ziyadat*, *al-Jami' ash-Shaghir*, *al-Jami' al-Kabir*, *as-Sairush Shaghir*, and *as-Sairul Kabir*. Abu Hanifah died in the month of Rajab. There are also those who say the month of Sya'ban, in 150 H at the age of 70 years. He was prayed 6 times because of the density of mourners who came and were buried at the al-Khaizuran cemetery in Baghdad.¹¹

Imam Syafi'i, his full name is Imam Abu Abdillah Muhammad bin Idris bin Abbas bin Utsman bin Syafi'i bin Sa'ib bin Ubaid bin Abdi Yazid bin Hisyam bin Muthallib bin Abdi Manaf al-Muthallibi al-Quraishi. He was brought by his mother to Makkah when he was 10 years old. At Makkah, Imam Syafi'i studied from Sofyan bin Uyainah and from Muslim bin Khalid. After that went to Mafinah to learn from Imam Malik to studied for 7 years.¹²

After the death of Imam Malik, he returned to Makkah and then conducted scientific rihlah by studying from the scholars in the city of Yaman and he managed to get a position that was loved by the people in the city of Yaman. Then in 184 H he moved to Baghdad. There he stayed with Imam Muhammad bin Hasan and learned some knowledge from him. Imam Syafi'i returned to Makkah after the death of his teacher, Imam Muhammad bin Hasan in 189 H. Imam syafi'i returned to Baghdad in 195 H for the umpteenth time and made a *fiqh halaqah* one recorded his school of thought. He also wrote *al-Hujjah* on fiqh issue and *ar-Risalah* on *ushul fiqh* issues. These two books were the mouthpieces and characteristics on his first fiqh. Therefore fiqh in this phase is called *qaul qadim*. After gathering knowledge from Hijaz, Yaman, and Iraq, he made up his mind to move to the Egypt. In 199 H he began to settle there while distributing and recording his new school of thought in terms of fiqh and *ushul fiqh* which lasted for 4 years. In this phase that his opinion was known as *qaul jadid*.¹³

Imam Syafi'i in determining the law of the problem that arise in society using the basis, they are al-Qur'an and sunnah, *ijma'* and *qiyas*. The Syafi'i school of thought spread and developed in eastern Islamic countries such as Egypt, Palestine, Armenia, Ceylon, part of the

⁸ Huzaemah Tahido Yanggo, *Pengantar Perbandingan Madzhab* (Ciputat: Gaung Persada, 2012), 104.

⁹ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, *Diskursus Madzhab Fikih Arba'ah*, 4

¹⁰ *Ibid*, 19

¹¹ *Ibid*, 10

¹² Al-Jundi Abdulhalim, *Al Imam Asy Syafi'i* (Kairo: Daar al-Qalam, 1996), 51

¹³ Fashihuddin, Rofidah, dkk, 105

Persian population, China, Philippina, Indonesia, Australia, Aden and some of the population in Asia. Imam Syafi'i wrote many useful books for the development fiqh Islam, like *ar-Risalah* book and *al-Umm* book, both are the most famous book in the Syafi'i school.¹⁴ In the last years living in Egypt, Imam Syafi'i had hemorrhoids. The longer his condition did not getting better until he died on the last day of the month of Rajab in 204 H at the age of 54 years.¹⁵

Khulu' From The Perspective of Hanafi School

The Hanafiyyah scholars says that, *khulu'* is the loss of ownership of a marriage that has been agreed upon by a woman's acceptance of lafadz *khulu'* or other meaningful words.¹⁶ It states that it is permissible for *khulu'* to use *al-ba'i* (buying and selling). Like a husband saying to his wife, "*I sold you at that price*" then his wife replied, "*I bought it*". Likewise *khulu'* which is hung with a choice (*khiyar*) and the separation between redemption and *khulu'* in the sense that the husband and wife are far apart, the Hanafi school allows this. As Maliki who allows separation between husband and wife who practice *khulu'* does not affect the validity of *khulu'*.¹⁷

Abu Hanifah argued, is a husband is cruel to his wife in behavior and hurts her to make up for redeem, it is forbidden for him to take money, even it from a dowry or something else. And this refers to the word of Allah (فَلَا تَأْخُذُوا مِنْهُ شَيْئًا) (an-Nisa: 20) that stated it is forbidden for the husband to take anything from the dowry even though it is a lot. However, if the wife abuses her relationship with her husband and does not fulfill her husband's rights, or betrays his honor, then he can take compensation in return for her divorce without hatred. Thus Allah says in surah al-Baqarah verse 229 that means: *If you (the guardian) are worried that both of them are not able to carry out the laws of Allah, then both of them are not guilty of the payment (must) be given (by the wife) to redeem themselves.* The first verse explain the inability of husband to take anything from the dowry in two situations. The first situation, if there is a dispute caused by the husband. The second situation, if they are not afraid to enforce the laws of Allah. Then the second verse allows husband to take compensation for divorce in a situation where they are afraid to enforce Allah's laws, and that includes abuse of marital relation and hurting the wife. Each verse has meaning that does not conflict with other meanings. And for every situation when a woman receives *khulu'* with wealth, then the wealth is obligatory for her and happens *khulu'* then the successor belong to the husband. However, if her acceptance to pay compensation is based on hurting and abusing the husband and wife relationship then what he has it as a bad asset, and if it is based on the wife's rebellion and wife's hatred for man then he has it as a good assets.¹⁸

If the husband forces his wife to accept *khulu'*, if he starts with the sentence (خَلَعْتُكَ فَقَبِلْتِ) then *thalaq bain* occurs when using lafadz *khal'i* and is not entitled to money, because pleasure is a condition for the wife's obligation to give money. And if husband says طَلَّقْتُكَ عَلَى مَائَةٍ then the wife is forced to accept the divorce then there is *thalaq raj'i* and the husband is not entitled to have money.¹⁹ The conclusion is if wives are forced to accept divorce with lafadz

¹⁴ Moenawar Chalil, *Biografi 4 Serangkaian Imam Madzhab*, 224

¹⁵ Syaikh Ahmad Farid, *Biografi 60 Ulama Salaf* (Jakarta: Pustaka Al-Kautsar, 2006), 383

¹⁶ Al-Jaziri, *Al-Fiqh 'Ala Madzahib al-Arba'ah*, (Cairo: Al-Daar Al-'Ilmiyyah, 2016), 920

¹⁷ Muhammad Jawad Mughniyah, *Fikih Lima Madzhab* (Jakarta: Penerbit Lentera, 2010), 463

¹⁸ Al-Jaziri, *Al-Fiqh 'Ala Madzahib al-Arba'ah*, 924

¹⁹ Al-Jaziri, 924

'*khal'i*', there occurs *thalaq bain* and husband will not get wealth. And if with *lafadz 'thalaq'* for money occurs *thalaq raj'i* and does not get wealth.²⁰

***Khulu'* From The Perspective of Syafi'i School**

The definition of *khulu'* according to the Syafi'i school, in *syariah*, *khulu'* is a word that indicates the break of the marital relationship between husband and wife with a ransom (from the wife) that meets certain conditions. Every word that refers to *thalaq*, both *sharih* and *kinayah*, then it is valid *khulu'* and occurs *thalaq bain*. Allah says in surah al-Baqarah verse 229 that means: *The divorce (which can be referred) is twice. (after the husband) hold well or let go well. It is forbidden for you to take back what you have given them, unless they are afraid that they will not be able to keep Allah's laws. If you are worried that neither of them (husband and wife) can't keep Allah's laws, then there is no sin on either of them regarding the payment given by the wife to redeem herself. These are the laws of Allah, so do not break them. Whoever violates the laws of Allah, they are the wrongdoers.* Generally the meaning of the verse is a wife who does not like her husband and she is afraid of not being able to carry out laws of Allah and fulfill her obligations to her husband while the husband continues to carry out what is his obligation to his wife, so then it is lawful for the wife to redeem herself. There is no limit in terms of ransom, it could be that the property given as ransom by the wife is more than that given by her husband or vice versa. Caused by the word of Allah SWT which has been described above.²¹

Regarding the legal position of *khulu'* to Imam Syafi'i it is *thalaq*, so it is not imposed except by saying *thalaq*. If the wife gives *iwadh* then the husband has done *thalaq* to his wife even though it does not require intention, the husband will let his wife go. Imam Syafi'i said if the husband performs *khulu'* to his wife and the husband intends *thalaq* but does not say a certain number, then the *khulu'* falls as one *thalaq* and the husband does not have the right to refer to his wife (*ruju'*) because *khulu'* like buying and selling and the husband may not have wife's property.²² As for the reason Imam Syafi'i said that the wife has no right to earn a livelihood because her husband has no right to refer back to his wife. If the husband has done *khulu'* to his wife and then did *thalaq* during the *iddah*, then there is no *thalaq* because *thalaq* is meaningless to his wife cause the husband does not have the right of *ruju'*. Imam Syafi'i said that there is a history about this, from Ibn Abbas. r.a. that a woman who does *khulu'* then dropped by her husband, then the *thalaq* is not handed down to the wife because the husband does *thalaq* to who is not his wife anymore.²³

The Level of Livelihood From The Perspective of Hanafi School

Imam Abu Hanifah argued that an immature husband is obliged to provide a livelihood when wife is an adult. He also argued that level of livelihood is not determined based in the *syariah*. Husbands are obliged to provide their wives with adequate levels of food, spices, meat, vegetables, fruit, oil butter, and everything the need to live, according to the prevailing traditions. It varies with different places, times, and conditions. Besides that, the husbands are also obliged to give clothes to his wife for summer and winter.²⁴ They argue that the wife's obligatory livelihood for the husband is determined based on the husband's condition in terms of wealth and poverty,

²⁰ *Ibid*

²¹ Muhammad bin Idris asy-Syafi'i, *al-Umm*, Jilid 6, (Beirut: Dar al-Wafa, 2005)290

²² Asy-Syafi'i, *al-Umm*, Jilid 6, 376

²³ *Ibid*, 379

²⁴ Sayyid Sabiq, *Fiqh Sunnah* (Mesir: asy-Syirkatu ad-Dauliyatu li ath-Thiba'ati, 2004)

regardless of the condition of the wife, based on the word of Allah SWT in syarah ath-Thalaq verse 6 and 7 that means:

*“Place them (the wives) where you live according to your ability and do not trouble them to constrict their (hearts). And if they (the wives who have been tuned) are pregnant then give them a livelihood until they give birth. Let people who are able to provide livelihood according to their abilities. And the person who has income is reduced must provide a livelihood from the wealth given to him by Allah. Allah does not bear burdens on someone but only what Allah has given him. Allah will one day provide space after a narrow.”*²⁵

As-Sarakhsi (d. 483 H) who is a scholar with the Hanafi School of thought, wrote in his book, *al-Mabsuth*, as follows: It is obligatory for husbands to meet the needs of their wives properly every month, because a livelihood is required to meet their needs. And the obligations are measured in accordance with the habits of the wife’s needs. And what is considered proper is more than enough but not exaggerated. Then he added explanation, this is based on the word of Allah Ta’ala: (*Let those who have the breadth of sustenance provide a livelihood according to their ability*) (ath-Thalaq: 7). This verse explains that the responsibility is based on the spaciousness of the husband’s assets and that the obligation to provide for men depends on their circumstances.²⁶

Al-Marghinani (d. 593 H) who has also a salafy scholar with the Hanafi school of thought, wrote in his book, *al-Hidayah Syarah Bidayatu al-Mubtadi*, as follows: it is the obligation of the husband to provide his wife with a place to live alone together, which is not mixed with one of his relatives, unless the wife chooses this, because the place to live is a part of wife’s needs, the law is obliged to be like a livelihood. For a husband is obliged to provide for a Muslimah or Kafirah wife if he has married her and brings her to his house, it is obligatory for the husband to provide for his wife, provide for his clothes, and provide her with a place to live. This is based on the word of Allah Ta’ala: (*Let those who have the breadth of sustenance provide a livelihood according to their ability*) (ath-Thalaq: 7). Also the word of Allah: (*And the obligation for the husband to bear the livelihood and clothe of his wife in an appropriate manner*) (al-Baqarah: 233). Also said the Prophet during the hajj wada’: “*It is obligatory for you (husbands) to provide for your wives and provide for clothing in an appropriate manner*”²⁷

Abu al-Barakat Hafizuddin an-Nasafi (d. 710 H) who is a scholar that adheres to the Hanafi school of thought write in his book, *al-Bahru ar-Raiq*, as follows: (He rahimakumullah said: it is obligatory for the husband to provide for his wife and meet the needs of her clothes according to his ability) the purpose of livelihood here is in term of food, drink, clothing, and home. This is based on the word of Allah Ta’ala: (*Let those who have the breadth of sustenance provide a livelihood according to their ability*) (ath-Thalaq: 7) also word of Allah: (*And the obligation for the husband to bear the livelihood and clothe of his wife in an appropriate manner*) (al-Baqarah: 233)²⁸

Az-Zaila’i (d. 743 H) who was also a follower of the Hanafi school of thought during his lifetime wrote in his book, *Tabyin al-Haqaiq Syarah Kanzu ad-Daqaq*, as follows: meanwhile,

²⁵ Translator Team, *Al-Qur’an dan Terjemahan*, 559

²⁶ As-Sarakhsi, *Al-Mabsuth*, jilid 5 (Beirut: Dar al-Ma’rifah, t.t), 181-182

²⁷ Al-Marghinani, *al-Hidayah Syarah Budayatu al-Mubtadi*, jilid II (Pakistan: Idaratu al-Qur’an wa al-‘Ulum al-Islamiyah, 1994), 285

²⁸ Abu al-Barakat Hafizuddin an-Nasafi, *al-Bahru ar-Raiq*, Jilid IV (Beirut, Dar al-Kutub al-‘Ilmiyah, 1997), 293

the argument of *ijma'* is due to the fact that people agree that livelihood and clothing are the obligations of husbands for their wives.²⁹

The Level of Livelihood From The Perspective of Syafi'i School

Imam Syafi'i argued that a livelihood is determined by the amount. For the rich, is two *mudd*, over middle or intermediate people, is one and a half *mudd*, and for the poor, is one *mudd*. 1 *mudd* is same as 675 gram of wheat/rice, than 1 ½ *mudd* is same as 1012 gram wheat/rice, and 2 *mudd* is same as 1350 gram wheat/rice. They base this opinion in the word of Allah in surah ath-Thalaq verse 7 that mean: *Let people who are able to provide a livelihood according to their abilities. And the person whose income is reduced must provide a livelihood from the wealth given to him by Allah. Allah does not burden anyone.*³⁰ They said that in this verse Allah distinguishes between the rich and the poor and than obliges each of them to support each others according to their conditions without explaining the level. Therefore, this level must be determined based on *ijtihad*.³¹ They said that if the door of sufficiency for women was opened without a determination of levels, there would be endless disputes. Therefore it is necessary to determine the inappropriate level in an appropriate manner. Providing livelihood and clothing in an appropriate manner to protect the wife from the dangers of her lay os obligation. This is done by taking a middle course of what is sufficient.³²

In his book, *al-Umm*, Imam Syafi'i writes that there are two kinds of livelihoods, a livelihood when it is spacious and a livelihood when it is narrow, that is a person who is *faqir* and the minimum livelihood must be spent by a husband whose livelihood is in accordance with the customs of his country, although the *ma'ruf* but the majority are served by the needs, servants for them, and nothing more. And at least of what he gave her and served her what someone did not less than him, namely one *mudd* by the size of Prophet's *mudd* everyday and the food he ate in his country, be it wheat with all kinds of *hinthah*, *sya'ir*, corn, rice, or other types of wheat, and for servants it is the same as it is. And side dishes according to the country, be it oil, fat to taste about 30 *mudd* in a month and likewise the same as sufficiency. And don't give it to the maid, because this is not a custom for her.³³

Imam syafi'i said, if the wife is from country whose staple foods is all kinds of grains, then for her it is the grains that is the majority consumed in that country. And there are those who argued: for meat four *rithl* a month, every Friday one *rithl* of meat and thats *ma'ruf* in his country. And provide for her clothes that are in accordance with the customs of her country and the capacity of her husband's condition that is lacking, that cotton made by Kufah, Bashrah and like that, and for her servants such as *ribas* (white cotton), *tubban* (clothes) and like that.³⁴

Furthermore, asy-Syirazi (d. 476 H) who is a follower of the Syafi'i school of thought, wrote in his book, *al-Muhadzdzab*, as follows: if the husband is someone who is capable to provide a livelihood with his assets or the result of his work, then for him obligation to support everyday is two *mudd*, if the husband is not able and is not too able to provide a livelihood, then for him one *mudd*. And the husband is obliged to provide a livelihood in the form of food that can be eaten in his country. Husbands are also required to give their wives complementary foods, such as side

²⁹ Az-Zailai, *Tabyin al-Haqaiq Syarah Kanzu ad-Daqaiq*, jilid III (Beirut: Dar al-Kutub al-'Ilmiah, 2000), 51

³⁰ Translator Team, *Al-Qur'an dan Terjemahan*, 559

³¹ Sabiq, *Fiqh Sunnah*, 590

³² *Ibid*, 591

³³ Asy-Syafi'i, *al-Umm*, Jilid VI, 286

³⁴ *Ibid*, 287

dishes according to the standard needs of the country. Husbands are obliged to provide for their wives in the form of combs, fragrances, hair oil, and the bathroom meastery budget if they are accustomed to using the bathroom.³⁵

The husband is obliged to provide clothes for his wife from a wealthy circle, so it is obligatory for her to wear best clothes, whether from cotton, linen, *khaz*, and silk. If the husband is not well established then the wife is clothed with coarse cotton and linen. If from the middle class, then between the two are standart nad ordinary. Thu husband is obliged to provide blankets and sheets, and pillows, and things commonly used for sleeping. For a wife whose husband is well-capable, she is entitled to the best qiality. On the other hand, if her husband is not capable then she gets the qualit that is of the usual standart. If the wife is from the middle class then between the two. And it is better to provide for his wife a place to live, because the wife cannot be without a place to stay. To hide from prying eyes. To act, to have fun. The place of residence is in accordance with the ability of the husband, capable or not capable or intermediate, as already mentioned in the livelihood chapter.³⁶

An-Nawawi (d. 676 H) who is a follower of the Syafi'i school of thought wrote in his book, *Raudhatu ath-Thalibin*, as follows: providence for the wife is an obligation based on texts and *ijma'*. The first discussion of mandatory matter is six of types: (1)First, the staple food, the levels depends on the financial condition of the husband who is in space or has little sustenance. (2)Second, side dishes or complementary foods and their type are adjusted to the habits of the place, such as oil, wijen oil, butter, dates, vinegar, cheese, and so on as discussed in staple foods, the levels are adjusted to the condition of the husband. (3)Third, servant. There are two kinds of women, there are those who cannot serve their own needs in some countries, there are always these who serve their needs, if the wife is from such a circle, then the husband must provide her according to this opinion and the clerics. And this returns to the women's condition when she was at her parent's house. (4)Fourth, it is obligatory to provide adequate clothing, which is suitable for her, tall, short, thin, and fat. And also in accordance with the conditions of residence during the summer and winter. (5)Fifth, the tools needed to clean self. A husband is obliged to provide his wife with the tools needed to clean herself, the amount is adjusted to local conditions. (6)Sixth, the husband is obliged to provide a suitable place to live according to local conditions.

Hanafi School's Thought Regarding The Husband's Inability To Provide A Livelihood as An Excuse For Divorce

The Hanafiyyah clerics and those who agree with them collide with the arguments of al-Qur'an, hadith and qiyas:

Allah said in the surah ath-Thalaq verse 7 that mean: *Let people who are able to provide livelihood according to their abilities. And the person who has income is reduced must provide a livelihood from the wealth given to him by Allah.*³⁷ And in the surah al-Baqarah verse 286 that means: *Let people who are able to provide a livelihood according to their abilities.*³⁸ They argued that, if the husband does not find a way of business that can be productive, he cannot be burdened, based on these two verses. Allah SWT does not burden the husband to provide for his wife in this

³⁵ Asy-Syairazi, *al-Muhadzdzab*, Jilid IV (Damaskus: Dar al-Qalam, 1996), 608

³⁶ Asy-Syairazi, *al-Muhadzdzab*, Jilid IV, 610

³⁷ Translator Team, *Al-Qur'an dan Terjemahan*, 559

³⁸ *Ibid*, 49

case, and leaving something that is not obligatory is not sinful. Thus there is no reason to separate between husbands and wives.³⁹

They also took evidence using the word of Allah in surah al-Baqarah verse 280 that means: *And if he is trouble, then give tough until he is relaxed.*⁴⁰ They argued that at least the livelihood is owed to the husband's responsibility. Because the husband is unable to provide a livelihood, the wife is ordered to wait. This according to the *nash*.⁴¹

The proof from the hadith narrated by Imam Muslim in his *Shahih* book, that mean: *Once upon a time Abu Bakr entered the Prophet's house and then found many people sitting in front of his door, not one of them was allowed to enter. Then Abu Bakr and Umar asked permission to enter and were allowed. The two of them saw the Prophet SAW sitting surrounded by his wives, while he SAW was silent and upset. Abu Bakr said, "I said a joke that made the Prophet laugh" Then Abu Bakr added, "If I saw Kharijah's daughter asking for a livelihood from me, I would stand up and beat her neck." So Rasulullah SAW laughed and said, "They surrounded me. as you can see, they ask for a livelihood". Then stood Abu Bakr r.a. towards Ayesha hitting her neck and standing up Umar also r.a. to Hafshah beat him in the neck. Both of them said, "Is it proper for you all to ask Rasulullah SAW something that is not there?" They all answered, "By Allah, we do not ask Rasulullah something that is not there." After this incident Rasulullah SAW left them for a month or 29 days.*

The Hanafiyyah scholars said, *"Abu Bakr and Umar Khattab beat their two daughters in frint of the Prophet Muhammad SAW when they both of them asked for livelihood from the Prophet that was not there. It is not possible for Abu Bakr and Umar radhiyallu'anhuma to hit twi girls who demanded their rights also be justified by Rasulallah SAW. So this incident shous that the wife has the right to got livelihood from her husband in a state of poverty. If demanding a livelihood because the husband is in a poor state is null and void, then how can a wife ask for fasakh because of something she has no right to ask for and is also not lawful?"*⁴²

It was explained that among companions of Prophet Muhammad there were those who were capable and some who are not. Those who cannot afford are much greater in number than who can. The Prophet SAW never allowed a wife to ask for *fasakh* on the ground of the husband's inability, nor did he ever tell her that *fasakh* was her right. If it is true according to *syara'* that the wife has *fasakh* right because of her husband's inability, of course there would have been such a case submitted to the Prophet Muhammad SAW even though it was only one person. The wives submitted their complaints to the Prophet Muhammad SAW regarding things that were more trivial than that, and even those were not many. Among these what happened in the hadith regarding Rif'ah's wife, and you already know what happened to the wives of Prophet Muhammad SAW who asked him for livelihood, while they were the best wives.⁴³

As for the argument according to *qiyas*, it has been estabiished according to *syara'* that if there is no other way, apart from committing one of the two crimes, choosing the lesser crime is obligatory. It cannot be denied that carrying out *fasakh* and separation has canceled the rights of the husband as a whole, while obliging the wife to wait and take into account the husband's debt is to delay the wife's rights. Delaying the right is lesser crime than canceling the right. Therefore it becomes obligatory to choose something that is in accordance with the rules that have been

³⁹ Syaltut, *Fiqih Tujuh Madzhab*, 184

⁴⁰ Translator Team, *Al-Qur'an dan Terjemahan*, 47

⁴¹ Syaltut, *Fiqih Tujuh Madzhab*, 184

⁴² Syaltut, *Fiqih Tujuh Madzhab*, 185

⁴³ Syaltut, 185

established according to *syara'*. Likewise, continuing the marriage in an incapacitated state only causes loss of property, but if doing *fasakh* it means losing offspring and peace of mind which is the goal of marriage. Thus it is better to lose property than to lose the purpose of life.⁴⁴

They are scholars of the Hanafiyyah group and who agree with him say, "*Today there is no treasure, maybe on another day the treasure will be there. Allah SWT has determined that the marriage contract is a strong bond. Therefore, how can the continuity of the contract depend on the rich and poor, while the two things come and go to the servants of Allah SWT*". Even if it is permissible for those who fall into poverty, so that their marriage is *fasakh*, surely calamities and crimes will be rampant on this earth, as well as more marriages being abused in this world and the right to divorce will be in the hands of the wives.⁴⁵

Who can guarantee that he will never experience poverty at some point so that he will always be able to provide for his wife? Therefore, determining *fasakh* because of poverty is very contrary to a strong relationship, namely the relationship of calm love and affection, also reduces the degree of marriage from psychological to material relationship. Even though Allah Ta'ala has made the marriage relationship psychologically based. *Fasakh* justified because of poverty, making the relationship just a trade relationship that is devoid of loyalty and inhuman. If a wife has a disease which then recurs, causing the husband to *istimta'*, the husband is not exempted from the obligation to provide a livelihood and he also does not have *fasakh* rights, then how can the husband be sued for divorce by his wife for reasons that are outside reach of his hand. There is no reason to add to the suffering of the person who is suffering.⁴⁶

Syafi'i School's Thought Regarding The Husband's Inability To Provide A Livelihood as An Excuse For Divorce

In this case Imam Syafi'i argued: Imam Syafi'i said, both in the al-Qur'an and in the Sunnah, it has been explained that the husband's obligation to his wife is to fulfill her needs and it is her right to take pleasure from him. Making each of them everything that belongs to the husband is the property of the wife and the property of the wife also belongs to the husband. It is possible that the man will not be able to hug the woman, to enjoy her and prevent her from being indifferent to others, and to prevent the woman from being beaten in the country. He does not find anything that can meet the needs of his wife, if so (it doesn't fulfill the right of the wife), then the wife can choose between staying with him or separating from him. If choose separate from him, then it is disunity without divorce, because it was not something that was put by her husband and no one put it on to anyone.⁴⁷

On the basis of this brief explanation, it can be concluded that the wife is allowed to sue for divorce her husband on the ground that the husband never provides a livelihood. The livelihood that has not been given during the period of marriage must still be given, because it is the right of the wife. So the livelihood that has not been given is considered the husband's debt to the wife with the argument that it provides provisions for the amount of daily livelihood for the wife.

To strengthen that argument among scholars who agree with Imam Syafi'i that a wife is allowed to sue for divorce against her husband for not providing a livelihood is the word of Allah in surah an-Nisa verse 34 that means: *Man are leader for woman, because Allah has exaggerated some of them (man) over others (woman), and because they (man) have spent part of their wealth.*

⁴⁴ *Ibid*, 186

⁴⁵ *Ibid*

⁴⁶ *Ibid*, 187

⁴⁷ Asy-Syafi'i, *al-Umm*, Jilid VI, 291

Therefore, a pious woman is one who is obedient to Allah and takes care of herself when her husband is not there, because Allah has taken care of (them). The woman you are worried about nusyuz, so advise them and separate them in their beds and beat them. Then if they obey you, then don't look for a way to trouble them. Verily Allah is Most High and Most Great.⁴⁸ The verse clearly reinforces why man are protectors of woman. Because among other things, man spend the part of their assets. In the context of the relationship between husband and wife, the verse must be read that the husband is the protector of his wife, because the husband is the one who fulfill his wife's livelihood. Thus, if the husband does not want to provide livelihood, the wife does not have a protector. And when there is no protector, she can choose between staying with him and being patient with the condition he is facing or choosing to separate from him.⁴⁹

Conclusion

Ulama from the Hanafiyyah school and the Syafi'i school have different opinions regarding this cases. Hanafiyyah scholars argues that the level of livelihood is not determined based on *syari'ah*. Husbands are obliged to provide their wives with adequate levels of food, spices, meat, vegetables fruit, oil, butter, and everything they need to live, shelter and clothing, according to the prevailing traditions. Then Hanafiyyah scholars argued that the wife is ordered to wait when the husband is unable to provide livelihood, it means for the wife that forbidden to sue for divorce to her husband because of livelihood. At least the livelihood becomes a debt that is borne by the husband. Meanwhile, Syafi'iyah scholars have different opinion, they argues that a livelihood is determined by the amount. Husbands are obliged to provide their wives like shelter and clothing, and of course food, for the rich is two *mudd*, over middle or intermediate people is one and a half *mudd*, and for the poor is one *mudd*. So than, it is able for a wife to sue for divorce against her husband on the grounds that the husband never provide a livelihood. The livelihood that has not given during the period of marriage must still be given, because it is the right of the wife.

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⁴⁸ Translator Team, *Al-Qur'an dan Terjemahan*, 84

⁴⁹ Mahmud Syaltut dan Ali as-Sayis, *Perbandingan Madzhab (Dalam Masalah Fiqih)*, 203

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