

## CHILD SUSTENANCE AFTER DIVORCE ACCORDING TO FIQH SYAFI'IYYAH

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**Abstract:** *The purpose of marriage is to get offspring; the parents are burdened to finance the life of their children. Phenomenon that occurs in some societies, this precious purpose is ignored when the marriage bond is disrupted or even severed, children are no longer properly care the education and life sustenance was ignored, as if this is not a responsibility or obligatory, from this phenomenon the writer wanted to know more the view of fiqh Syafi'iyyah towards child sustenance after divorce. This is a qualitative research with the data analysis the researcher using analysis of content, the research results show that child sustenance who have no property or sufficient after divorce, in the view of fiqh al-Syafi'iyyah the sustenance still charged to the parents. But in the implementation the father and grandfather come first if they are not capable so the child sustenance which cover all life necessities is burden into mother.*

**Keywords:** *Child Sustenance, Divorce, Fiqh Syafi'iyyah*

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### Introduction

A family is formed through a marriage between a man and a woman. The marriage contract, which is a harmonious and practical series of strategies to build a household that has been outlined by Islam, is a very harmonious system, a man and a woman are united in a household with a strong and noble bond based on mutual liking, which was validated with consent and granted as a manifestation of the desire to unite (Ida, 1995)

Marriage in Islam is based on a social contract that makes legal equality an inherent thing for married couples. Islamic marriage, which is based on contractual and monogamous relationships, is at the intersection between the public sphere and the religious moral space. Although the Muslim patriarchal system clearly does not put men and women in an equal legal position, the idea of marriage as something that is contractual is at least in theory to provide equality to women (R. Cecep, 2005). The inner and outer bond between a man and a woman aims to form a family, a happy and eternal household based on the Supreme Lordship.

The family law has put some fundamental things, their relation as the principle and background for the formation of sub-laws in it. The construction of sub-family law thus involves principles that are synergized with the legal format itself. Based on this principle, family law creates consequences in the form of the creation of reciprocal rights and obligations between people in the family. Among these rights and obligations, is when the family needs sustenance to support the household. In this situation, it is absolute if something

must be used to fulfill those needs, starting from clothing and food. All these things, generally referred to by religion as sustenance for his wife and children.

Socially, children have an important role in life, as a connector for the offspring and heirs. Even in customary law, children are the successors of descendants, the successors of kinship, and as a continuation of the decisions of their parents. Meanwhile, on a national scale, as mentioned earlier, children are an invaluable national asset that can be used as one of the main indicators of a nation's economy (Aminah, 1998).

As one of the disadvantages of children in the process of growth and development, both in terms of spiritual and physical aspects, in the form of fulfilling the daily needs of life and proper education for children, is the result of divorce from both parents. As a phenomenon that occurs in some societies, children no longer taken care with education and life needs after their parents' divorce. Therefore, the writer is interested in researching child sustenance after divorce according to fiqh syafi'iyah.

## **Literature Review**

Conducting a study requires a literature review, which serves to find out the studies of other people who have already made research. With this literature review, a researcher will not examine the same things that have been studied by other people. With this literature review, it can show that the problem under study has never been researched by other people or it has but in a different problem. Therefore, the author has first conducted a literature review.

Research conducted by Raihanah Azahari, Bahiyah Ahmad, and Asmak Ab Rahman, Lecturers at the Department of Shariah and Economics, Academy of Islamic Studies, University of Malaya, with the title Determination of Kifayah Levels and Ma'ruf Sustenance for Children and Wives (Study of the Judgment of the Shariah Court). This study is a study that examines the legal considerations of judges in determining the level of income for wives and children which is decided by the Shariah Court in Malaysia. The results showed that judges' legal considerations in determining the level of income for wives and children were based on the husband's ability and the needs of the wife and children (Raihanah Azahari, 2012).

Research conducted by Anjar S C Nugraheni, Diana Tantri C, and Zeni Luthfiyah, Lecturer at the Faculty of Law, Sebelas Maret University, entitled Comparison of Custody and Child sustenance in Divorce Decisions in the Surakarta District Court and Religious Court. This study is a study that examines the legal protection of children's rights after the divorce of both parents, both custody and child sustenance. The results showed that most of the decisions (+ 75%) did not contain verdicts regarding custody and child sustenance, both in the divorce decisions in DC and RC. This means that there is still a lack of legal protection for children's rights after the divorce of their parents. The difference in legal protection identified by the author between RC and DC is that in RC, the custody authority is preferable to the mother if the child is not yet 12 years old and after the age of more than 12 years, the child can choose who holds custody of him and the age of maturity is 21 years. Meanwhile, in the DC, there is no clear stipulation on who the custody authority is, the term *mumayyiz* is not known and the age of maturity is considered to be 18 years old but some are up to 21 years old (Anjar S C, 2013).

Research conducted by Subaidi, a lecturer at the Islamic University of Nahdlatul Ulama (UNISNU) Jepara, entitled the concept of sustenance according to Islamic marriage law. This study focuses on the meaning of sustenance and the implications of providing sustenance. The results obtained from this study indicate that sustenance can be defined in

terms of costs that must be incurred by a person for something that is in his / her responsibility, including costs for food, clothing, and housing, as well as secondary needs such as household furniture. Apart from that, sustenance in Islam is also seen as a form of worship in which its implementation will result in not only material (worldly) problems, but also considerations of ascetic life which are ukhrawi in nature. The implications of living in the family law system are understood from various opinions of scholars and fuqaha', which are examined from various points of view regarding the living in which, among others: 1) living expenses for tamkīn and nusyūz, 2) income for career wives, 3.) sustenance for divorce, 4) sustenance and a portion of the inheritance (Subaidi, 2014).

## Method

This research is a qualitative research and in analyzing the data the researcher uses content analysis techniques. The data sources used were legal materials such as books by the scholars of Shafi'iyyah, such as the book Al-Majmu' by Imam Nawawi, the book Fathu Al-Mu'in by Zainuddin Al-Malibari, the book Fiqh al-Islam Wa Adillatuh, by Wahbah al-Zuhaili, the book Fathu Al-Wahab by Zakaria Al-Ansari and the book Al-Mahalli by Jalaluddin Al-Mahalli.

## Result and Discussion

Sustenance comes from Arabic, namely nafqah, which is isim masdar which means ikhraj or zihab which means to take out or leave, taken from the words infaq and fi'il madhi anfaqa which means to spend (A. Warson, 2002). Definition of a Sustenance according to fiqh scholars:

إخراج الشخص مؤونة من تجب عليه نفقته من خبز وادم وكسوة ومسكن ونحو ذلك.

Expenditures given by a person to the people who is obliged to support, from bread and dishes, clothes, shelter and other necessities (Abdurrahman, 2005).

The obligation to provide for the children is basically the responsibility of the father. Abdul Fatah Idris and Abu Ahmadi stated that the obligation to provide for a living is due to one of three things: (a) because of relatives, (b) because of ownership, (c) because of marriage (Abdul Fatah Idris, 1994). For the second and third things the owner is obliged to belonging, and the third is obliged the husband to provide for his wife who is obedient in terms of food, clothing, shelter, household utensils, etc. according to their respective circumstances and places the husband's ability is not the other way around.

A father is obliged to fulfil the economic demands of the family, in pursuing an ideal family, full of happiness and prosperity must be supported by the fulfilment of all needs. The need for food, clothing, a shelter for oneself and for children, because neglect of material needs will likewise leave opportunities for rifts in a family. In the literature of fiqh, especially fiqh syafi'iyyah, it has completely regulated the obligation to support children and does not differentiate between husband and wife who are still married or if they are divorced. As Sheikh Sulaiman bin Umar bin Mansur al-Ajili al-Azhari mentions in his book Hasyiah Jamal 'Ala Syarh Manhaj as follows:

(ومن له أبوان) أي أب، وإن علا وأم (فعل على الأب) مؤنته

For a child who still has both mothers and fathers, it is the father's responsibility to fulfill all his needs (Syekh Sulaiman, 2000).

This is also explained by Abu Hasan 'Ali al-Mawardi in his book al-Hawi al-Kabir as follows:  
قال الماوردي: نفقة الأولاد على الآباء بدليل الكتاب والسنة والإجماع والعبرة.

Imam al-Mawardi said: The sustenance of the child is borne by the father, with the evidence of the holy book Al-Qur`an, the hadith of the Prophet Muhammad, ijma 'ulama, and' as in the books of fiqh (Abu Hasan, 2001).

Based on the explanation of the text of the ulama al-Syafi'iyyah above, it shows that the economic burden of the family, especially the children, is borne by the father. the father is obliged to provide sustenance for his children according to their suitability and level of ability. The husband must do his best to get results that can fulfill the economic needs of the family. In addition, the role of a wife is necessary to provide support to her husband in seeking sustenance. And herein lies a wife to continue to encourage her husband to work optimally and get optimal results as well.

The same thing was mentioned by Abu Zakaria Mahyi al-Din Yahya bin Syarf al-Nawawi in his book al-Majmu " Ala Syarh al-Muhazzab, as follows:

ويجب على الأب نفقة الولد لما روى أبو هريرة رضي الله عنه أن رجلاً جاء إلى النبي صلى الله عليه وسلم فقال: يا رسول الله عندي دينار فقال: "أنفقه على نفسك" قال: عندي آخر فقال: "أنفقه على ولدك"

It is obligatory for the father to provide for his child, based on a hadith narrated by Abu Hurairah ra, that a man went to the Prophet Muhammad, so he said: O Messenger of Allah, by my side there are several dinars, Rasulullah SAW replied: take care of yourself, The man said again, O Messenger of Allah remains, Rasulullah SAW replied: provide for your children (Abu Zakaria, 2001).

Based on the information above, it can be seen that a father is obliged to provide for his child, because Rasulullah SAW orders someone after being sufficient to spend himself, to provide for his children The same thing was mentioned by Imam Ahmad bin Muhammad bin Ahman Al-Ansari Ibnu Ruf'ah, in his book Kifayah al-Tanbih fi Syarh al-Tanbih as follows:

وعلى الوالدين نفقة الأولاد وإن سفلوا؛ ذكورا كانوا أو إناثا، أي: إذا كانوا أحرار

It is borne by both mothers and fathers to provide for their children and great-grandchildren, both male and female, in the sense that if the children are free (Ahmad bin Muhammad, 2000).

تعالى فإن أرضعن لكم فآتوهن أجورهن وأما البالغ فبالاستصحاب.

Regarding the position of child sustenance in the family, Imam Syamsy Al-Din bin Abi Al-Abbas Al-Ramli, also mentions in his book Nihayah Al-Muhtaj as follows:

(ومن له أبوان) أي أب وإن علا وأمّ (ف) نفقته (على الأب) ولو بالغا.

A child who still has both mothers and fathers, then his sustenance is borne by the father, even though he is an adult (Syamsy Al-Din, 2000).

As for the sustenance that must be provided by a father to his children, the scholars of fiqh Syafi'iyyah did not measure and limit to a certain level and size, but what is required is an adequate size for his life needs. This can be understood from Ibn Hajar's explanation in his book Tuhfah Al-Muhtaj as follows:

(يلزمه نفقة) أي: مؤنة حتى نحو دواء وأجرة طبيب (الولد).

Parents must meet their children's sustenance, including for example medicines and medical expenses (Ibnu Hajar, 2000).

Imam Al-Ramli, also mentioned in his book Nihayah Al-Muhtaj as follows:

(و) يلزم الأصل الحر أو المبعوض ذكرا أو أنثى مؤنة (الولد) أي حتى نحو دواء وأجرة طبيب

It is obligatory for parents who are independent, or partially independent, both male and female parents to spend all the needs of their children, including medicines and medical expenses (Syamsy Al-Din, 2000).

This is also as Abu Hasan 'Ali al-Mawardi mentions in his book al-Hawi al-Kabir the following:

قال الشافعي رحمه الله تعالى: في كتاب الله تعالى ورسوله صلى الله عليه وسلم بيان أن على الأب أن يقوم بالمؤنة في إصلاح صغار ولده من رضاع ونفقة وكسوة وخدمة دون أمه.

Imam al-Syafi'i said: In the book of Allah SWT and in the hadith of Rasulullah SAW it is explained that it is burdened on the father to fulfill all the needs of his child, consisting of breastfeeding, living, clothing and servants. This is not borne by the mother (Abu Hasan, 2001).

Provision for children according to fiqh al-Shafi'iyah does not determine a certain size and level, but only the measure of adequacy that is needed by the child, there is not even a single argument in Islam that determines the child's sustenance by a certain size, will but only provides limits with sufficiency according to the ma'ruf. And what the ma'ruf is already known, is not something specific and is not known from one side only, but from every aspect that has been used by the person concerned.

Sustenance for children is not limited to basic necessities, but all necessities include medical expenses and medicines. Basically, all the necessities of sustenance the child according to the strong opinion in fiqh Syafi'iyah are borne by the father. Whereas if a child is no longer his father or father is poor and unable to sustain his children, then the child's sustenance is borne by the grandfather. This is as Abu Yahya bin Abi Khair Al-Imrani mentions in his book Al-Bayan Fi Mazhab Al-Imam Al-Syafi'i as follows:

يجب على الأب أن ينفق على ولده فإن لم يكن هناك أب، أو كان ولكنه معسر، وهناك جد موسر وجبت عليه نفقة ولد الولد وإن سفل وإن لم يكن هناك أحد من الأجداد من قبل الأب وجبت النفقة على الأم

It is obligatory for the father to provide for his child, so if there is no father, or poor father, and he has a rich grandfather, then the grandfather is obliged to provide for his grandchildren, while if there is no grandfather on the father's side, then the child's sustenance is borne by the mother (Abu Al-Husaini, 2000).

When the fathers and grandparents are unable to provide for their children and grandchildren, the mother is entitled to fulfill the child's living if she is able. So the provision for children is not only obliged by the father, but the provision of the child is obliged to the asal, which includes the father and mother. This is as Imam Syamsy Al-Din bin Abi Al-Abbas Al-Ramli, mentions in his book Nihayah Al-Muhtaj, as follows:

(و) يلزم الأصل الحر أو المبعوض ذكراً أو أنثى مؤنة (الولد) المَعصوم الحر أو المبعوض كذلك (وإن سفل) ولو أنثى كذلك.

For parents who are independent or mub'adh, male or female are obliged to sustain for their children who are ma'sum, free or mub'adh and their children and grandchildren, even women (Syamsy Al-Din, 2000).

The same thing was mentioned by Kamal Al-Din Muhammad bin Musa, in his book, Najm Al-Wahaj fi Syarh Minhaj Al-Thalibin as follows:

(والولد وإن سفل) أي: الحر ذكراً كان المنفق أو أنثى. وعند مالك: لا نفقة على الأم بحال، وهو وجه شاذ عندنا.

Parents are obliged to provide sustenance for their children, both male and female parents. As for the opinion of the priest Malik, there is nothing for a mother to oblige a living, this is a very weak opinion in the syafi'i mazhab (Kamal Al-Din, 2000).

Abu Hasan 'Ali bin Muhammad al-Mawardi, also mentioned in his book *al-Iqna'*, as follows:

فإن أغسر الأب بنفقة الأولاد تحملها الأمهات

If the father is poor and is unable to sustainance for his child, the child must be supported by the mother (Abu Hasan a.-M., 2001).

## Conclusion

*Based on the results of research that has been done, it can be concluded that the sustenance of children who do not have sufficient assets or business after the divorce, according to fiqh Syafi'iyah is still borne by the parents. However, in the implementation, fathers and grandfathers take precedence, if they are not able to afford it, then the child's sustenance, which includes all their life needs, is borne by the mother. Fiqh al-Syafi'iyah does not provide a maximum age limit for the child whose parents are obliged to sustainance it, likewise if the child has his own assets, then the parents may take the child's sustenance as sustenance for the child. Parents seem to fulfill all the necessities of living for their children, especially for the sake of education because the success of a child is very much influenced by the attention and concern of the parents.*

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