

Prisoners' Obligations to Provide Support for Their Family According to Islamic Law and Positive Law

Ade Jamarudin^{1*}, Ofa Ch Pudin², Muh. Said³,
Ahmad Firman Hidayatullah⁴, Syafi'ah⁵

Abstract: A husband, in his position as head of the household, is obliged to provide the best possible living for his wife and children and provide for them according to his ability. On the other hand, a wife, in her position as a housewife, is obliged to manage the internal affairs of the household, starting from raising and caring for children, and providing food, to maintaining family assets. The wife is not responsible for the family economy, but she can play a role in earning a living for the family with her husband's permission. This research aims to examine the provisions of Islamic law and positive law towards prisoners who cannot carry out their duties to provide support for their families. This type of research includes normative juridical research using data collection techniques in the form of literature studies. The research found that prisoners generally cannot provide a living for their families. Therefore, they are forced to entrust their wife and children to their families or to transfer previous business to the wives, allow their wives to earn a living, and even allow them to divorce and remarry. To overcome this problem, it is hoped that the Government can develop the function of Penitentiary Institutions by creating independent employment opportunities for prisoners so that they can earn income to help ease the burden on their families.

Keywords: husband's rights and obligations, fiqh munâkahat, prisoners' problems, penitentiary function development

Abstrak: Seorang suami, dengan kedudukannya sebagai kepala rumah tangga, berkewajiban untuk memberikan penghidupan yang sebaik-baiknya kepada istri dan anak-anaknya serta menanggung nafkah mereka sesuai dengan kemampuannya. Di pihak lain, seorang istri, dengan kedudukannya sebagai ibu rumah tangga, berkewajiban untuk mengelola urusan internal rumah tangga, mulai dari mengasuh dan merawat anak, menyediakan makanan, hingga memelihara aset keluarga. Istri tidak bertanggung jawab terhadap ekonomi keluarga, namun ia dapat ikut berperan dalam mencari nafkah keluarga atas izin suaminya. Penelitian ini bertujuan untuk mengkaji ketentuan hukum Islam dan hukum positif terhadap suami yang tidak dapat melaksanakan tugasnya memberi nafkah kepada keluarganya karena berstatus terpidana. Jenis penelitian termasuk penelitian yuridis normatif dengan menggunakan tehnik

*Corresponding Author

^{1,4}Universitas Islam Negeri Sunan Gunung Djati Bandung

²STAI Al-Falah Cicalengka, Bandung

^{3,5}Universitas Islam Negeri Sultan Syarif Kasim Riau

E-mail: ¹adejamarudin@uinsgd.ac.id, ²ofachpudin@staialfalah.ac.id, ³said.syafiah@uin-suska.ac.id,

⁴ahmadfirman2032@gmail.com, ⁵said.syafiah@uin-suska.ac.id.

pengumpulan data berupa studi kepustakaan. Hasil penelitian menemukan fakta bahwa umumnya para narapidana tidak dapat memberikan nafkah kepada keluarga. Sehingga agar anak istrinya tidak terlantar mereka terpaksa menitipkan istri dan anaknya kepada keluarga besarnya, mengalihkan usaha kepada istri, mengizinkan istri untuk mencari nafkah, hingga merelakan istri untuk cerai dan menikah kembali. Guna mengatasi problema ini, pemerintah diharapkan dapat mengembangkan fungsi Lembaga Pemasyarakatan dengan menciptakan lapangan kerja mandiri bagi para narapidana agar mereka dapat memperoleh penghasilan sekedar untuk membantu meringankan beban keluarga.

Kata kunci: hak dan kewajiban suami, fiqh munâkahat, problematika narapidana, pengembangan fungsi lembaga Pemasyarakatan

Introduction

Marriage is one of the religious commandments. By getting married, people can protect themselves from adultery and continue their offspring. This order is aimed at men and women who are adults and have the ability/provisions to support their families. For those who are old enough but do not yet have the ability/equipment to marry a woman, it is recommended for him to fast.¹

Islamic law was established for the welfare of mankind so that they can live happily both in this world and in the afterlife. The welfare of society is very dependent on the welfare of the family because the family is the smallest group in society. Community welfare will be achieved by achieving family welfare. The family is not only an institution that is a natural human need, but it is also an important element that must exist for the formation of a society. Since humans have lived on earth until now, the family has existed permanent institution, consisting of husband, wife, and children.²

To build a harmonious and happy family,³ all parties must understand each other and know their rights and obligations. The existence of provisions

¹ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, (Jakarta: PT Raja Grafindo Persada, 2013), p. 53.

² Abu Bakar, 'Keluarga Sebagai Pondasi Lingkungan Pendidikan', *Equalita: Jurnal Studi Gender dan Anak*, 2.2 (2020), 142 <<https://doi.org/10.24235/equalita.v2i2.7450>>, p. 144.

³ About harmonious and happy family see A. Fauzan, and H. Amroni. "The Concept of *Sakinah* Family in The Contemporary Muslim Generation" *Al-Adalah*, 17.1 (2020): 51–70. Abdul Qodir Zaelani, Issusanto Issusanto, and Abdul Hanif. "Konsep Keluarga *Sakinah* dalam Alquran." *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 2.2 (2021): 36–60.

regarding the rights and obligations of husband and wife in the household is intended to make husband and wife understand each other's respective authorities. Which one is the husband's right or the wife's obligation and which one is the wife's obligation or the husband's right. The husband is the pillar of life in the family. It is the husband that the big responsibility to take care of and lead the family. This is because husbands are considered to have advantages in leading the family compared to wives.

To meet the living needs of his family, a husband must work hard to earn a living to meet food and drink needs, child expenses, and other needs. These enormous economic demands challenge a husband to devote all his energy and thoughts so that his domestic life can run well, peacefully, and prosperous.⁴ The pressure to meet the family's needs sometimes provokes a husband to take the wrong path, whether he does it intentionally or unintentionally. It is not uncommon for a husband to commit criminal acts such as: stealing, pickpocketing, robbing, cheating, and so on, just so he can get money to meet his living needs. As a result, he was forced to deal with the law and had to serve time in prison. In conditions of serving a sentence in a penitentiary institution, where his activities are very limited while he still has the responsibility to support his family, this becomes a serious problem that must be faced, not only by the husband but also by his wife and children. Being separated from his family and society, the husband is practically no longer able to fulfill his rights and obligations as he had to spend his time serving his sentence in prison.

This phenomenon has attracted the attention of several researchers who then studied it through various theoretical approaches and perspectives. One of them is Fifi Sriwahyuni whose research entitled "Maintaining a living for wives and children by convicted husbands in Taro'an Village, Tlanakan District, Pamekasan Regency". Based on the results of her research, Sriwahyuni concluded that the status of a convict does not preclude the possibility for a husband to support his family even though this cannot be done optimally.⁵

⁴ Novi Indriyani Sitepu, 'Etos Kerja Ditinjau dari Perspektif Alquran dan Hadis (Suatu Kajian Ekonomi dengan Pendekatan Tafsir Tematik)', *Jurnal Perspektif Ekonomi Darussalam*, 1.2 (2017): 137-53 <<https://doi.org/10.24815/jped.v1i2.6550>>, p. 148.

⁵ Fifi Sriwahyuni, 'Pemenuhan Nafkah Istri dan Anak oleh Suami Terpidana di Desa Taro'an Kecamatan Tlanakan Kabupaten Pamekasan', *Al-Manhaj: Journal of Indonesian Islamic Family Law*, 2.2 (2020), 110 <<https://doi.org/10.19105/al-manhaj.v2i2.3735>>.

The next researcher on the same topic was Umar Abdul Aziz et al who conducted a case study at the Wonogiri Penitentiary Institution (LAPAS) and reviewed it from an Islamic law perspective. In this research, Aziz et al discovered the fact that the majority of madzhab Imams agree that the status of a husband as a convict does not in any way negate his obligations towards his wife and children. For prisoners who cannot afford it or whose economic life is difficult, the minimum limit for providing support to their wives and children is as long as they can stand upright with minimal food intake. If his family's living costs have been borne by his wife or relatives while he is incarcerated then these costs become a debt that must be paid and will not expire unless there is repayment or release.⁶

Similar research was conducted by Ahmad Sainu with the title: "Fulfillment of Family Support When the Husband in Prison". This research concludes that the obligation to support the family is the husband's full responsibility, but in certain circumstances, this obligation can shift to the wife's responsibility, particularly when the husband is in prison. The obligation to provide a living remains the responsibility of the husband, but, because he is not free to earn a living outside, the wife's expenses become a debt for him which must be paid once he can pay them. If the husband is unable to support the family, the wife may take her husband's assets according to existing needs.⁷

Moreover, Batmang, through his research entitled: "Providing Support for Convicted Husbands to Their Families (Case Study at Kendari class II-a Penitentiary)", discovered the fact that husbands of convicts at Penitentiary Class II-a Kendari can still support their families. The way to do this is by carrying out certain independent activities in prison and getting wages from their work. They then collected the wages and handed them over to the family when they came to visit. Apart from

⁶ Umar Abdul Aziz, B Baehaqi, and Joko Sarjono, 'Tinjauan Hukum Islam Terhadap Pemenuhan Nafkah Bagi Suami Narapidana Terhadap Keluarga Studi Kasus Narapidana Lembaga Pemasyarakatan (LAPAS) Wonogiri', *AL HUKMU: Journal of Islamic Law and Economics*, 3. 2 (2023): 33–40 <<https://doi.org/10.54090/hukmu.240>>.

⁷ Ahmad Sainul Nasution Sainul, 'Metode Penelitian Hukum Islam: Pemenuhan Nafkah Keluarga Saat Suami Terpidana', *El-Abli: Jurnal Hukum Keluarga Islam*, 3.1 (2022): 1–14 <<https://doi.org/10.56874/el-ahli.v3i1.745>>.

that, some give their wives the authority to take care of the family's inheritance before they serve their sentence in prison.⁸

Another researcher, Baso Heru Sofyan, through his research entitled "The Impact of Prisoners' Families from an Islamic Legal Perspective (Case Study of Kendari Class II-a Penitentiary)", concluded that in the view of Islamic law the presence of a husband in prison causes more *mafsadat* (bad impacts) than benefits. (positive impact). A husband who is in prison cannot run his role as head of the household, including carrying out his obligations to provide a living for his family. Similarly, delegating responsibility completely to the wife will make things difficult for her, as well as create bad social conditions for their children.⁹

By using a different approach, Yulmitra Handayani, through her research entitled: "Typology of Implementing Support Obligations for Husbands Having Convict Status from an Islamic Legal Perspective (Analytical Study of the Interpretation of *Qirâ'ah Mubâdalab* Theory)", found three typologies in the implementation of support obligations by husbands who have prisoner status. at Batusangkar Class II B State Penitentiary. First, the wife takes over the husband's role in providing for all the daily needs of the children; Second, his relatives make donations to support the livelihood of the prisoner's family even though the quality of the aid may not be optimal. Third, there are efforts made by the authorities to help the husband through independent work.¹⁰

Nurhadi and Alfian Qodri Azizi, through their research entitled: "The Philosophy of Child Support Obligations in the Indonesian Islamic Marriage Law" concluded that in axiological reflection, the existence of legal sanctions in family law regulations in Indonesia functions as social control as well as as a preventive measure and repressive to prevent acts of child neglect.¹¹

⁸ Batmang, 'Pemberian Nafkah Suami Terpidana Bagi Keluarga (Studi Kasus di Lembaga Pemasyarakatan Kelas IIA Kendari)', *Al'Adl*, 10.1 (2017): 15–34.

⁹ Baso Heru Sofyan, Andi Yaqub, and Ahmad Ridha, 'Dampak Keluarga Narapidana Perspektif Hukum Islam (Studi Kasus Lapas Kelas IIA Kendari)', *KALOSARA: Family Law Review*, 1.1 (2021) <<https://doi.org/10.31332/v1i1.2987>>.

¹⁰ Yulmitra Handayani, 'Tipologi Pelaksanaan Kewajiban Nafkah Lahir Suami Yang Berstatus Narapidana Perspektif Hukum Islam (Studi Analisis Interpretasi Teori *Qirâ'ah Mubâdalab*)', *JURIS (Jurnal Ilmiah Syariah)*, 19.1 (2020), 13 <<https://doi.org/10.31958/juris.v19i1.1882>>.

¹¹ Nurhadi Nurhadi and Alfian Qodri Azizi, 'Filosofis Kewajiban Nafkah Anak dalam UUP Islam Indonesia', *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)*, 1.2 (2019), 55 <<https://doi.org/10.31958/juris.v19i1.1882>>.

Similar to Nurhadi et al, M. Mutamakin, through his study entitled: "Philosophical Study of Islamic Family Law on Husband's Obligation to Provide Support for His Wife and Children", concluded that Article 156 of the Compilation of Islamic Law has stipulated that all costs of *hadhanah* (child support) shall be father's responsibility until the child is 21 (twenty-one) years old. A wife who is divorced from her husband still has the right to receive *iddah* support for herself and her children. However, even though maintenance is an obligation that must be fulfilled by the husband, its implementation is still based on the husband's ability as a provider.¹²

From the explanation above, it can be understood that this research is different from previous studies, especially in terms of the type of research and the perspective used.

Research Methods

This research is classified as a qualitative descriptive study. The data collection process is carried out by studying various literary sources or specific documents related to the research object. The data that has been collected is then processed and analyzed using qualitative analysis techniques by comparing theories to develop or discover new theories.

The approach used in this research is a normative legal, namely research on statutory regulations, both in terms of the hierarchy of statutory regulations and the harmonious relationship between statutory regulations.¹³ The method used by the researchers is the Juridical-Dogmatic or Juridical-Normative research method, namely viewing law as a fact that applies in society.¹⁴

org/10.33474/jas.v1i2.3707>.

¹² Ansari Ansari and M. Mutamakin, 'Kajian Filosofis Hukum Keluarga Islam Sebagai Kewajiban Suami Memberikan Nafkah Istri dan Anak', *Al-Bayan: Jurnal Ilmu al-Qur'an dan Hadist*, 3.1 (2020): 47–81 <<https://doi.org/10.35132/albayan.v3i1.84>>.

¹³ Butarbutar Elisabeth Nurhaini, *Metode Penelitian Hukum* (Bandung: Refika Aditama, 2019), p. 83.

¹⁴ Elisabeth Nurhaini, p. 34.

Result and Discussion

Maintaining Rights and Obligations in the Household

Human rights, in the Islamic concept, are a combination of rights and obligations. Every individual has rights and obligations towards other individuals. Based on this view, if someone has a right to another person, it means that the other person has an obligation that must be carried out by him. These rights and obligations originate from relationships between individuals, between individuals and groups, and between one group and another group. For these rights and obligations to be implemented, Islam establishes a set of rules along with legal sanctions.¹⁵

The existence of law in social life cannot be separated from rapid social development and has a reciprocal relationship. Laws are made not only to regulate society but also to respond to the rapid growth of social life which then has an impact on human behavior. Some people may behave following legal norms while some do not. Behavior that does not follow legal norms will give rise to legal problems and harm other communities. To minimize the risk, threats and legal sanctions are made so that every individual is afraid to violate the law and there are punishments for violators to be held accountable for their bad behavior fairly before the law.¹⁶

Human rights in Islam include three things, namely: 1) Human rights in the form of rights and obligations that must be implemented. Everyone must respect rights and fulfill obligations. These rights are not just rights that belong to the person concerned, as regulated in various human rights charters, but are also obligations for other members of society. 2) Individual and collective obligations. Each party is responsible for carrying out its obligations properly and perfectly. 3) The obligation to have guarantees and legal sanctions. In Islam, rules regarding rights and obligations are always accompanied by sanctions, so they are not just recommendations or moral laws that have no sanctions as contained in the international charter.¹⁷

¹⁵ Elisabeth Nurhaini, p. 29.

¹⁶ Dewi Hapsari Prabandari, 'Peranan Lembaga Pemasyarakatan dalam Pelaksanaan Proses Pembinaan Narapidana Perempuan (Studi Kasus di Lembaga Pemasyarakatan Perempuan Kelas II A Semarang)', *Jurnal Hukum, Politik dan Kekuasaan*, 3.1 (2023): 147–70 <<https://doi.org/10.24167/jhpk.v3i1.5969>>.

¹⁷ Prabandari, p. 29.

In Islam, obligations take precedence over rights, even in domestic life the obligations of husband and wife must be maintained completely and inseparably. In this context, there is a reciprocal relationship in maintaining the obligations and rights of husband and wife in domestic life. Married couples are expected to give each other a sense of empathy, sympathy, and ethics towards their partner. A husband is expected to pay great attention to his wife, for example by getting along well, speaking gently, showing affection, forgetting mistakes and forgiving his wife if she makes a mistake, maintaining his wife's honor, avoiding arguing with her, maintaining affection, and respect his wife's family.

On the other hand, the wife must also always pay attention to her husband, try to avoid quarrels, obey all of her husband's orders, be silent when her husband speaks, maintain her husband's honor when her husband travels, not betray her husband's property, always look attractive, always wear clean and fragrant clothes, showing an attitude of *qanâ'ah* (accepting what it is), showing a good attitude towards her husband, seeing the reality of her husband with full priority, accepting the results of her husband's work with full sincerity and gratitude, showing love for her husband when he is there nearby, as well as joy at seeing her husband.

Obligations to Support Living by Husband in Islam

Every married couple wants their married life to be successful and last for a lifetime. The success of a marriage is not only marked by the length of the relationship but also by how intensely the couple develops feelings of affection.¹⁸ In Islamic law, both husband and wife are obliged to carry out obligations in the household, both individual and joint obligations. These rights and obligations cover all things, not only limited to material things. Material obligations are the husband's obligations, while the wife has nothing to do. This is a consequence of the husband as the head of the family and the wife as a housewife.

¹⁸ Badriah Badriah, Chaula Luthfia, and Qotrun Nida, 'Hak dan Kewajiban Suami Istri Perspektif Hukum Islam (Studi Kasus Wanita Karir di Desa Benda Kec. Sirampog Kab. Brebes)', *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum*, 3.1 (2023): 73–89 <<https://doi.org/10.51825/sjp.v3i1.19800>>, p. 25.

To achieve success in marriage, many things are important for every married couple to pay attention to. Among others is the matter of living. The issue of livelihood is important in household life, even though many people don't pay attention to it. In fact, in the book of fiqh, the obligation for men who can provide support for their wives and children has been stipulated.¹⁹

The husband is obliged to bear the wife's support as long as the marriage is carried out legally and correctly. This obligation to earn a living is stated in several Qur'an verses, including Surah at-Thalaq verses 6-7, and Surah al-Baqarah verse 233. This verse explains that husbands are obliged to provide a living for their wives whether they are still married or after divorce as long as the wife is still undergoing the *iddah* period, or is pregnant or breastfeeding. Husbands are also obliged to provide spiritual support for their wives as mentioned in Surah an-Nisa' verse 19 and Surah al-Baqarah verse 228.²⁰ The husband's obligation to provide support for his wife occurs under any circumstances, whether or not the wife is wealthy or has her income. Meanwhile, the wife is not obliged to support her husband, even if she is rich and her husband is poor.²¹

The scholars agree that legal maintenance is obligatory for all husbands. Even though the Hadith of the Prophet Muhammad SAW has not determined the amount of support that a husband must provide to his wife and family members, it requires that the necessities of life be provided following daily needs, especially those related to clothing and food. This provision is intended so that rich husbands can provide for more than the needs of their wives and families, while poor husband is not burdened with providing for their wives from what they can afford. The Prophet Muhammad SAW once said in a Hadith which emphasized

¹⁹ Tarmizi M Jakfar and Fakhurrrazi Fakhurrrazi, 'Kewajiban Nafkah Ushul dan Furu' Menurut Mazhab Syafi'i, *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam*, 1.2 (2017), 352 <<https://doi.org/10.22373/sjhk.v1i2.2385>>, p. 356.

²⁰ Mahdum Kholit Al-Asror Idum, 'Aspek Filosofis Nafkah Suami Terhadap Istri Perspektif Ulama Tafsir', *Al-Gharra: Jurnal Ilmu Hukum dan Hukum Islam*, 2.2 (2023), 2.

²¹ Bangun Dasopang, Syukri Albani Nasution, and Hafsa Hafsa, 'Pemenuhan Kewajiban dan Hak Nafkah Keluarga Masyarakat Petani di Kabupaten Padang Lawas Utara (Analisis Gender)', *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*, 10.02 (2022): 775–88 <<https://doi.org/10.30868/am.v10i02.3166>>.

that the income a husband gives to his family is a valuable alms, and therefore, gets a reward.²²

Furthermore, Imam Shâfi'i and Imam Hambali also explained that if the husband is completely unable to support his living, then the wife may ask for *fasakh* (annulment of marriage). This is based on the words of Prophet Muhammad SAW to a man who was unable to provide for his wife: "Divorce them" (HR. Daruqutni and Al-Baihaki from Abū Hurairah). In contrast to this opinion, according to Imam Hanâfi and Imam Mâliki, a husband who is unable to support his wife's maintenance should not be separated (divorced). According to Imam Hanâfi, the unpaid living of a husband who cannot afford it becomes a debt for him which he must pay when he is able. Meanwhile, according to Imam Mâlik, a husband's obligation to pay for his wife's living ends when he is unable to carry out his obligations.

Obligation to Support Living by Husbands in Marriage Law in Indonesia

The regulation of marriage law in Indonesia consists of 2 (two) forms of legal regulations, namely; (1) Law No.1 of 1974 concerning Marriage, which was later revised by Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage, and (2) Compilation of Islamic Law (KHI) which determination is based on Presidential Instruction No. 1/1991 concerning Socialization of the Compilation of Islamic Law.

Article 30 to Article 34 specifically regard the husband's obligations towards his wife. According to Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage: 1) The husband is obliged to protect his wife and provide all household necessities according to his ability; 2) The wife is obliged to take care of household affairs as well as possible; This law does not regulate the amount of maintenance that a husband must give to his wife, it is only stated according to the husband's ability.²³ The Marriage Law also emphasizes that if a husband or wife neglects

²² Dasopang, Nasution, and Hafsa, p. 779.

²³ Ilham Fathurrahman Dharmawan and Enggar Wijayanto, 'Gugatan Nafkah Madliyah dalam Perkara Cerai Gugat: Studi Kasus Perkara Nomor 744/Pdt.G/2020/PA.Btl', *MAQASID*, 12.2 (2023) <<https://doi.org/10.30651/mqsd.v12i2.19520>>, p. 47.

their obligations, each party can file a lawsuit in court. This means that if the husband does not provide for his household needs, the wife can sue the District Court or the Religious Court.

Moreover, the Marriage Law also regulates *kiswah* (clothing). The clothing in question is all necessities that are closely related to parts of the body. This *kiswah* is a husband's obligation to his wife. Therefore, the *kiswah* is also the wife's right. Apart from clothing, the husband's obligation includes 1) Costs for the physical maintenance of the wife; 2) Health service costs; 3) Cost of jewelry needs; 4) Cost of recreational needs; 5) Children's education costs; 6) Costs for unexpected things, etc.²⁴

The provisions above can also be found in the Compilation of Islamic Law (KHI). According to the provisions of article 80 of KHI, the husband is the leader of his wife and household. However, for household matters and other important matters, he must still consult with his wife. The husband is obliged to protect his wife and provide everything necessary for married life according to his ability. He is also obliged to provide religious education to his wife and provide opportunities to study knowledge that is beneficial to religion, the homeland, and the nation. The husband covers the wife's living, clothing, and shelter, as household expenses for the care and treatment of the wife and children, including the costs of children's education according to their income level. In addition, the husband is also responsible for 1) The costs of physical maintenance of his wife; 2) the Cost of jewelry needs; 3) the Cost of recreational needs; and 4) the Costs of unexpected things.²⁵ The husband's obligations towards his wife as referred to in paragraph (4) letters a and b above come into effect after the wife behaves as a wife perfectly; The wife can release her husband from his obligations towards her as intended in paragraph (4) letters a and b; and the husband's obligations as intended in paragraph (5) will be void if the wife is disobedient (*Nusyūz*).²⁶

When a husband can no longer fulfill his obligations as the backbone of his family, a wife has reason to ask for a divorce. Law no. 1 of 1974 in article 39 paragraph 1 as well as KHI in article 116 set out several

²⁴ Mustofa Hasan, *Pengantar Hukum Keluarga* (Bandung: CV. Pustaka Setia, 2011), p. 176.

²⁵ Hasan.

²⁶ Rofiq, p. 150.

reasons that can be used as reasons for divorce, namely: One party commits adultery or becomes a drunkard, addict, gambler, and so on which is difficult to cure; One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his or her control; One of the parties receives a maximum prison sentence of 5 (five) years or more after the marriage takes place; One party commits serious cruelty or abuse that endangers the other party; One of the parties has a disability or illness which results in him being unable to carry out his obligations as husband or wife; Between husband and wife there are always disputes and quarrels and there is no longer any hope of living in harmony in the household; Husband violates divorce agreement; Changing religions or apostasy causing disharmony in the household.²⁷

The Obligation of a Convicted Husband to Support His Wife and Children

Rights and obligations in domestic life have been regulated in Islam through very clear signs in the form of commands and prohibitions. In the Qur'an, Allah SWT several times reveals the principles that guide Islamic law, including justice, honesty, human solidarity, etc. In the Islamic view, the rights and obligations of husband and wife in domestic life are closely related to several things, namely; 1) The husband's position as head of the household and the physiological, psychological, and functional differences between men and women. 2) a relationship of love and affection as the foundation of marriage. 3) Criteria for determining prospective husbands and prospective wives.²⁸

As explained in the previous discussion, according to Islamic law, the husband is obliged to provide support for his wife under any circumstances. In other words, even though the wife has wealth or has her income, the obligation still exists and must be fulfilled by the husband. This obligation can be terminated if the husband falls into poverty or is unable to support his wife and children or because his wife disobeys

²⁷ Tim Redaksi Fokusmedia, *Kompilasi Hukum Islam* (Bandung: Fokusmedia, 2010), article 39 dan 116.

²⁸ Wawan Susetya, *Merajut Cinta Benang Perkawinan* (Jakarta: Penerbit Republika, 2008), p. 28.

him. However, as is the opinion of the majority of ulama, a husband's inability to pay for his wife's maintenance does not mean that he has abandoned his obligations altogether, but rather remains the husband's debt which must be paid when he is able.

The same thing is also regulated in Indonesian family law. As explained previously, the Marriage Law provides specific details regarding the husband's obligations towards his wife as regulated in articles 30 to 34 of Law no. 1 of 1974. The law also explains that if a husband or wife neglects their obligations, each party can file a lawsuit in court (Article 34 paragraph (1) of the Marriage Law). In other words, if the husband does not provide support for household needs, the wife can sue the District Court or the Religious Court (depending on the religion of the husband and wife).

Based on the description above, a prisoner's obligation to support his wife and children, both according to Islamic law and Indonesian family law, is absolute and conditional according to the husband's capabilities.²⁹ The problem now is how can this obligation be carried out if the husband is in prison. To answer this question requires an in-depth study by considering all aspects, both technical and substantive.

In general, there are several simple illustrations regarding how a prisoner's husband provides his family with a living, namely: a). handing over responsibility for supporting the wife and children to the husband's family; b). If before the husband was imprisoned, he had a business, then the wife would continue the business left by her husband; c). The wife works to support the family after first asking permission from the convicted husband; d). Ending the marriage (divorce) and allowing the wife to marry someone else.

Apart from the methods above, there are other ways, but they depend on government involvement, especially the policy of the Ministry of Law and Human Rights, which oversees penitentiary institutions throughout Indonesia.

²⁹ Susi Susanti, Jamaluddin Jamaluddin, and Ramziati Ramziati, 'Pertanggungjawaban Suami Memberikan Nafkah Kepada Isteri Pada Masa Tunggu Ikrar Talak di Kabupaten Bener Meriah', *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, 11.2 (2023), 475 <<https://doi.org/10.29103/sjp.v11i2.13053>>, pp. 475-497.

Developing the Role and Function of Penitentiary Institutions

Penitentiary Institutions are part of an integrated criminal justice system that carries out law enforcement in the field of treatment of prisoners from the pre-adjudication, adjudication, and post-adjudication stages. In Law Number 12 of 1995 concerning Penitentiary, it is stated that in running a social system there are 3 elements involved, namely: a. Prisoners as Subjects. b. Penitentiary officers as educators. c. Society as citizens will accept former convicts back after they have finished serving their sentences.

The administration of penitentiary institutions as part of an integrated criminal justice system is based on a system known as the penitentiary system. This system regulates and provides direction regarding how to carry out penitentiary functions in an integrated manner between officers, prisoners, and the community, including the limitations. Law enforcement officials consisting of police officers, prosecutors, courts, and penitentiary institutions should be aware of their very strategic position, especially about their role in realizing an Indonesian state that is just and prosperous. When the founding fathers founded the Unitary State of the Republic of Indonesia, the Indonesian state was a state based on law (*rechstaat*) and not based on mere power (*machstaat*).³⁰

The treatment of prisoners in Indonesia adheres to the penitentiary system because the prison system is not in accordance with the principles contained in Pancasila and the 1945 Constitution. This is because prisoners are essentially human beings who must be treated with dignity. On the other hand, prison is not a place of revenge but a place of founding. For this reason, the role of penitentiary institution officers as educators is very important to achieve the expected development goals.³¹

The Penitentiary System is implemented to guarantee the protection of prisoners' rights and improve the quality of their personality and independence so that they realize their mistakes, improve themselves,

³⁰ Akbar Datunsolang, 'Perlindungan Hak Asasi Manusia Bagi Narapidana dalam Sistem Pemasyarakatan (Studi Kasus Lembaga Pemasyarakatan Kelas II A Manado)', *Jurnal Hukum UNSRAT*, 21.4 (2013), 111.

³¹ Doris Rahmat and others, 'Hambatan Hukum dalam Pelaksanaan Pembinaan Narapidana di Lembaga Pemasyarakatan', *Jurnal Jurisprudencia*, 1.1 (2021), 13.

and not repeat their actions. After carrying out their sentences, former convicts are expected to be accepted again by society and be able to live normally as good citizens, obeying the law, and being able to play an active role in development while protecting society from the recurrence of criminal acts.

According to Law 22 of 2022 concerning penitentiary, a convict, even though he is serving a sentence, still has several rights in the form of: a. Carrying out worship according to one's religion or belief; b. Get treatment, both spiritual and physical care; c. Obtain education, teaching, and recreational activities as well as opportunities to develop potential; d. Get adequate health services and food according to nutritional needs; e. Receive legal counseling and legal assistance; f. Submit complaints and/or grievances; g. Obtain reading materials and follow other mass media broadcasts that are not prohibited; h. Receive wages or bonuses for work performed; i. Accept/refuse visits from family, legal advisors, or certain other people; j. Get a reduction in criminal past (remission); k. Getting the opportunity to assimilate including permission to visit family; l. Obtaining parole; m. Leave before release; and n. Obtain other rights following applicable laws and regulations. Apart from these rights, prisoners also have the right to receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and all acts that are detrimental to the body and soul; get work safety guarantees, wages, or work premiums; get social services.

Regarding the issue of wages and premiums as stated in the regulations above, the law explains that what is meant by "wages" are rewards in the form of money for prisoners who carry out productive work that produces goods and/or services. Meanwhile, what is meant by "premium" is a gift in the form of money or goods to prisoners who carry out work activities/skills training or maintenance work, for example working in the kitchen or cleaning the environment.

The inclusion of the issue of wages/premiums indirectly provides an opportunity for the development of the role and function of penitentiary institutions, from being just a place for coaching prisoners to being developed into a place for earning income. The forms of business that can be developed may vary, starting from home industries such as: making

handicrafts, souvenirs, and snacks, to those in the form of services, such as opening consulting services, making advertisements/applications via computer, translating/writing books, and so on.

It is very possible for such efforts to be carried out and developed considering that prisoners have very extensive and long free time in line with the term of sentence they must serve. In this way, prisoners can use their free time to make money which they can send to their families just to help reduce the economic burden on their families while they are in prison. In this way, the function of penitentiary institutions can be developed, not only as a place to train prisoners but also as a vehicle that can provide skills and create jobs for the inmates.

It must be acknowledged that realizing the development program as described above is not an easy thing. The government must do many things, starting from providing facilities/infrastructure, establishing partnership programs with the business world, preparing instructors, to creating a security system to prevent prisoners from taking advantage of these opportunities to commit cyber crimes, commit suicide, or escape from prison.

Apart from the government, local community members can also participate in easing the economic burden on prisoners' families so that they are not displaced because the head of the household is in prison. This participation can be done by raising funds, especially for the well-off community, simply to cover the basic needs of poor prisoners' families so that they can survive and avoid the danger of starvation. Apart from residents, assistance can also be provided by zakat institutions, BAZNAZ, or other social institutions by including the families of poor prisoners on the list of aid recipients.

It must be acknowledged that life problems for prisoners' families are not trivial. Not only do they have to accept the scorn and ridicule from the community members due to their husband's actions which violate the law, but also have to face various other difficulties, especially economic difficulties. This difficult situation and conditions require a helping hand from many parties because if they are not helped, it is feared that new problems will arise for the children of prisoners' families, such as psychological mental disorders or a tendency to follow in their

father's footsteps and slip into the abyss of crime. Imposing criminal sanctions on criminals, therefore, is indeed a solution for the wider community, but it must be prevented so that the policy does not create new problems for the wider community. The public must also be aware that social responsibility does not always have to be directed at physical development such as building mosques, schools, orphanages, nursing homes, and so on, but it can also be directed at increasing community resilience in preventing or reducing the emergence of social problems.

Conclusion

Starting from what has been explained in the previous discussion, it is clear that the husband's obligation to provide for his wife and children, both according to Islamic law and Indonesian family law, is absolute although it remains adjusted to his existing abilities. This obligation can be waived if the husband falls into poverty or is unable to support his wife and children or because his wife has disobeyed him. However, as is the opinion of the majority of ulama, a husband's inability to pay for his wife's maintenance does not mean that he has abandoned his obligations altogether, but rather remains the husband's debt. Which must be paid when he is able.

To find a way out for convict husbands so that they can carry out their obligations in providing support for their wives and children, a breakthrough is needed, namely by developing the function of penitentiary Institutions not only as a place to educate prisoners but also as a vehicle that can provide skills and create jobs for them. Its residents. For this reason, the involvement of all parties is needed, both from government and private sectors, as well as from families and residents.

Authors Contribution

Ade Jamarudin is tasked with looking for concepts regarding the husband's obligations in supporting the family, especially seen from the perspective of Islamic law; Ofa ch pudin designed a suitable approach for material analysis; Muh. Said designed the research framework and collected supporting data. Ahmad Firman Hidayatullah helped write

and edit manuscripts and research reports; Meanwhile, Syafi'ah helped analyze the research data and then compile it in the form of articles that would be published to the wider community.

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