

**THE HUSBAND'S INABILITY TO PROVIDE A LIVELIHOOD AS AN
EXCUSE FOR DIVORCE**

(A Comparative Study of The Hanafi School and Syafi'i School)

THESIS

By:

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SIN 17210166



ISLAMIC FAMILY LAW DEPARTMENT

SYARI'AH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK BRAHIM MALANG

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STATEMENT OF AUTHENTICITY

In the name of Allah SWT,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**THE HUSBAND'S INABILITY TO PROVIDE A LIVELIHOOD AS AN
EXCUSE FOR DIVORCE
(A COMPARATIVE STUDY OF THE HANAFI SCHOOL AND SYAFI'I
SCHOOL)**

It is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 30 March 2021

Writer,



Luthfi Taquiuddin
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**THE HUSBAND'S INABILITY TO PROVIDE A LIVELIHOOD AS AN
EXCUSE FOR DIVORCE (A COMPARATIVE STUDY OF THE HANAFI
SCHOOL AND SYAFI'I SCHOOL)**

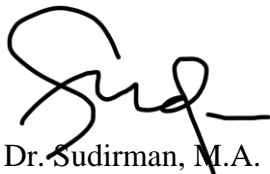
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and has been examined on the Assembly Board of Examiners.

Malang, 4 April 2021

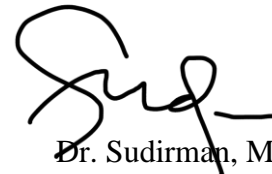
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THE HUSBAND'S INABILITY TO PROVIDE A LIVELIHOOD AS AN EXCUSE FOR DIVORCE (A COMPARATIVE STUDY OF HANAFI SCHOOL AND SYAFI'I SCHOOL)

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MOTTO

وَقُوعُ الْإِخْتِلَافِ بَيْنَ النَّاسِ أَمْرٌ ضَرُورِيٌّ لَا بُدَّ مِنْهُ لِتَوَافُتِ أَعْرَاضِهِمْ وَأَفْهَامِهِمْ وَقَوِيَّ إِدْرَاكِهِمْ وَلَكِنَّ
الْمَذْمُومَ بَغْيَ بَعْضُهُمْ عَلَى بَعْضٍ وَعُدْوَانَهُ

“The occurrence of differences or disagreements among mankind is a necessity. This is due to the variety of motives, scientific levels, and thinking abilities of each human. However, what is despicable from these differences is the emergence of tyranny and hostility”

-Ibnu Qoyyim Al-Jauziyah-

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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This research certainly cannot be separated from the support of various parties. For all the help, supports, directions in completing this thesis, the author would like to thank profusely to:

1. Prof. Dr. Abdul Haris, M. Ag. as the Rector of the State Islamic University Maulana Malik Ibrahim of Malang.
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3. Dr. Sudirman, M.A., as the Head of Islamic Family Law (Akhwal Syakhsyah) Department of Syariah of the State Islamic University Maulana Malik Ibrahim of Malang.
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8. My beloved family, especially my father, mother and little brother who always pray and support me to be patient and keep trying in completing this thesis.
9. All my friends in Malang who always support me to finish writing this thesis.

Hopefully, all the knowledge which had been learned during study in Syariah Faculty of the State Islamic University Maulana Malik Ibrahim of Malang can be useful for the readers and the writer's self. The writer realizes that this thesis is still far from perfection. Therefore, the writer hopes all kind of suggestion, advices, and constructive criticism from various parties so this thesis can be a better improvement.

Malang, 30 March 2021



Luthfi Taquiuddin
SID 17210166

TRANSLITERATION GUIDENCE

A. General

Transliteration is the transfer of Arabic script into Indonesian (latin) writing, not Arabic transliteration into Indonesian. Included in this category are Arabic names from Arab, while Arabic names from nations other than Arabic are written as spelling of the national language, or as written in the reference book. Writing the title of book in the footnote and bibliography, still use the provisions of this transliteration.

B. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	هـ	H
ش	Sy	ء	'
ص	Sh	ي	Y
ض	Dl		

C. Vocal, Long-Pronounce And Diphthong

Vocal <i>fathah</i>	= a		
Vocal <i>kasrah</i>	= i		
Vocal <i>dlomah</i>	= U		
Long – vocal (a) = \hat{A}	e.g.	قال	become Qâla
Long – vocal (i) = \hat{I}	e.g.	قيل	become Qîla
Long – vocal (u) = \hat{U}	e.g.	دون	become Dûna
Diphthong (aw) = و	e.g.	قول	become qawlun
Diphthong (ay) = ي	e.g.	خير	become Khayrun

D. Ta' marbûthah (ة)

Ta' marbûthah translited as “ṭ” in the middle of word, but if Ta' marbûthah in the end of word, it translited as “h” e.g. الرسالة المدرسة become *al-risalat li al-mudarrisah*, or in the standing among two word that in the form of *mudlaf* and *mudla ilaih*, it transliterated as *t* and connected to the next word, e.g. في رحمة الله become *fi rahmatillâh*.

E. Auxiliary Verb and Lafdh al-Jalâlah

Auxiliary verb “al” (ال) written with lowercase form, except if it located in the first position and “al” in lafdh jalâlah which located in the middle of two word or being or become *idhafah*, it remove from writing.

- a. Al – Imâm al – Bukhâriy said...
- b. Al – Bukhâriy in muqaddimah of his book said
- c. *Masyâ Allâh kâna wa mâ lam yasya' lam yakun.*
- d. *Billâh 'azza wa jalla.*

F. Name and Indonesianized Arabic Word

In principle, every word that comes from Arabic must be written using a transliteration system. If the word is an Indonesian Arabic name or an Indonesianized Arabic language, it does not need to be written using transliteration system. Consider the following example:

“.....Abdurrahman Wahid, the former Indonesian President, and Amin Rais, former Chair of the MPR at the same time, have made an agreement to eridicate nepotism, collusion and corruption from the face of Indonesian earth, one way through intensifying prayers in various goverment office, but....”

Look at the writing of the name “Abdurrahman Wahid”, ‘Amin Rais” and the word “salat” written in Indonesian language procedures that are tailored to the writing of his name. Even if these word come from Arabic, they are Indonesian names and are Indonesianized, therefore they are not written by “Abd al-Rahman Wahid”, “Amîn Raîs”, and not written with “shalat”

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ABSTRAK

Luthfi Taqiuddin, 17210166. **Ketidakmampuan Suami Memberi Nafkah Lahir Sebagai Alasan Gugat Cerai (Studi Komparasi Madzhab Hanafi dan Madzhab Syafi'i).**
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Kata Kunci: Nafkah, Gugat Cerai, Madzhab Hanafi, Madzhab Syafi'i

Perkawinan dalam Islam adalah ikatan yang sangat kuat atau *mitsaqan ghalizhan*. Sebagai ikatan yang demikian suci dan mulia, semestinya harus dijaga dan dipelihara dengan sungguh-sungguh oleh suami dan istri. Sesuatu yang sangat dibenci oleh Allah tetapi boleh dilakukan adalah perceraian. Diantara alasan perceraian yang banyak ditemukan adalah karena faktor nafkah. Tentunya diantara banyak ulama ada yang memiliki pandangan yang berbeda mengenai masalah perceraian yang disebabkan nafkah. Madzhab Hanafi dan madzhab Syafi'i, sebagai madzhab utama dalam Islam tentunya memiliki pandangan yang berbeda terkait hal ini.

Tujuan dari penelitian ini adalah, yang pertama, untuk mengidentifikasi konsep nafkah berdasarkan Madzhab Hanafi dan Madzhab Syafi'i. kemudian yang kedua adalah untuk mengidentifikasi perbedaan pendapat terkait ketidakmampuan suami memberi nafkah lahir kepada istri sebagai alasan gugat cerai perspektif Madzhab Hanafi dan Madzhab Syafi'i.

Penelitian ini merupakan jenis penelitian kepustakaan (*Library Research*) dengan cara menelaah dan menemukan bahan berupa buku-buku dan kitab-kitab karangan Imam Hanafi dan Imam Syafi'i atau tabi'in yang bermadzhab Hanafi dan Syafi'i sebagai data primer. Juga menggunakan buku, jurnal, karya tulis, dan referensi lainnya. Pendekatan penelitian menggunakan pendekatan komparasi.

Hasil dari penelitian ini diantaranya: Madzhab Hanafi berpendapat, suami wajib memberikan kadar yang mencukupi kebutuhan istri sesuai dengan yang berlaku dalam tradisi dan hal tersebut berbeda-beda seiring dengan perbedaan tempat, masa, dan kondisi. Tidak ada ketentuan besaran nafkah yang harus diberikan suami kepada istri karena dalam syari'at tidak dijelaskan. Selanjutnya istri dianjurkan untuk bersabar menunggu manakala suami tidak mampu memberikan nafkah dan tidak dibenarkan untuk meminta cerai karena suami yang tidak menemukan jalan usaha yang dapat menghasilkan tidak dapat diberatkan dalam hal nafkah. Sedangkan Madzhab Syafi'i memiliki pandangan yang berbeda. Madzhab Syafi'i menentukan besaran nafkah yang harus diberikan suami kepada istri yaitu, atas orang kaya dua *mudd*, atas orang yang sedang atau menengah satu setengah *mudd*, dan atas orang yang faqir satu *mudd*. Agama memberikan ketentuan besaran nafkah setiap hari untuk istri, maka ketika suami tidak memberikan nafkah kepada istri, selanjutnya istri diperbolehkan mengajukan cerai kepada suaminya dengan alasan suami tidak pernah memberikan nafkah.

ABSTRACT

Luthfi Taquiuddin, 17210166. **The Husband's Inability to Provide A Livelihood as an Excuse for Divorce (A Comparative Study of The Hanafi School and Syafi'i School)**. Skripsi. Islamic Family Law Journal. Syari'ah Faculty. State Islamic University of Maulana Malik Ibrahim Malang
Supervisor: Dr. Sudirman, M.A.,

Keywords: Livelihood, Sue for Divorce, Hanafi School, Syafi'i School.

Marriage in Islam is a very strong bond or *mitsaqan ghalizhan*. As such a sacred and noble bond, husband and wife must take care for it. Something that God hates but is allowed to do is divorce. Among the reasons for divorce that are most found is due to the factor of livelihood. It does not rule out that many of the scholars have comparative legal conclusion, of course there are those who have different views on the issue of divorce due to livelihood. The Hanafi school and the Syafi'i school, as the main schools of thought in Islam, have different views on this matter.

The aims of this research is, first, to identify the concept of livelihood in the perspective of Hanafi School and Syafi'i School. Second, 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.

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.

The results of this study include: Madzhab Hanafi 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.

ملخص البحث

تقي الدين، لطفى، ١٦٦، ١٧٢١، عدم قدرة الزوج في إعطاء النفقة سببا للطلاق (مقارنة المذهبين بين الحنفي والشافعي). البحث العلم. قسم الأحوال الشخصية. كلية الشريعة. جامعة الإسلامية مولانا مالك إبراهيم مالانج.

مشريف: دكتور سوديرمان الماجستير

الكلمات الرئيسية: النفقة، الطلاق، مذهب الحنفي، مذهب الشافعي

الزواج في الإسلام هو رباط قوي جدا أو ميثاقا غليظا. على هذا النحو، يجب على الزوج والزوجة الاعتناء والعناية به. أما الشيء الذي يكرهه الله ولكن يجوز عمله هو الطلاق. من بين أسباب الطلاق غالبا ما تكون بسبب النفقة. ولا يستبعد أن يكون لدى كثير من العلماء استنتاج شرعي واحد فقط، هناك من تختلف وجهات نظرهم في مسألة الطلاق بسبب النفقة. مذهب الحنفي ومذهب الشافعي، كمذاهب الفكرية الرئيسية في الإسلام، لهما وجهان مختلفان على هذا الموضوع.

الغرض من هذه الدراسة هو: أولاً، التعرف على مفهوم النفقة من نظر المذهب الحنفي والشافعي. والثاني، هو تحديد الاختلافات في الرأي على عدم قدرة الزوج على النفقة لزوجته سببا للطلاق من منظور المذهب الحنفي والشافعي.

هذا البحث من نوع البحوث المكتبية بخلال فحص وإيجاد مواد في شكل كتب للإمام حنفي والإمام الشافعي أو تابعين من مذهب الحنفي والشافعي مع بيانات أولية. استخدم أيضاً الكتب والمجلات والأوراق والمراجع الأخرى. نهج البحث يُستخدم نهج المقارن.

ومن نتائج هذه الدراسة هي: يرى مذهب الحنفي أن الزوج ملزم بتوفير كافية من احتياجات الزوجة وفقاً للتقاليد العادة وهذا يختلف باختلاف المكان والأوان والحالة. لا نص على مقدار النفقة الذي يجب على الزوج أن يعطيه لزوجته لأنه لا توجد في الشريعة. علاوة على ذلك، تنصح الزوجة بالانتظار بصبر عندما لا يتمكن الزوج من توفير نفقة العيش ولا تصح لطلب الطلاق لأن الزوج الذي لا يجد طريقة عمل ربحا لا يمكن تحميله أعباء من حيث النفقة. واختلف مذهب الشافعي في ذلك. تحدد الشافعية مقدار النفقة التي يجب على الزوج دفعه لزوجته، أي للأغنياء بمدّين، ومن متوسط مد ونصف، وللقير مد واحد. شرع الدين على مقدار المعيشة اليومية للزوجة، لذلك عندما لا يعول الزوج زوجته، فتسمح للزوجة بطلب الطلاق من زوجها على أساس أن الزوج لا يكسب نفقة العيش.

CHAPTER I

INTRODUCTION

A. Research Background

In Article 1 of Law no. 1 of 1974 on Marriage, it has been stated that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the Almighty God. Marriage according to Islamic law is a strong contract or *mitsaqan ghalizhan* to obey Allah's commands and it is a part of worship, as stated in Article 2 of the Compilation of Islamic Law (KHI). To form a happy household, of course as the smallest unit in the community has a very important role. Over time living a married life will encounter complex problems, especially in terms of welfare. Therefore before marriage, a person must first realize that marriage is a major event and has a great influence on the life of those who live it in the future.

The word *mitsaqan ghalizhan* is used to denote Allah's covenant with the Prophets. The conclusion that can be understood from this expression is the sanctity of the marriage between husband and wife is not much different from the relationship between Allah and His choice, namely the Prophets or the Apostles. As such a sacred and noble bond, both husband and wife must take care for it.¹ The very noble purpose of marriage should be carried out in accordance with the provisions of religious teachings and the prevailing laws and regulations in a country, but there are still many irregularities that occur in reality and will certainly cause serious problems in the marriage bond.² In marriage, many couples have succeeded in creating a *sakinah mawaddah warahmah family*, but not a few who have failed to create a marriage goal and end up in divorce.³ Seeing the current reality, one of the factors causing the breakdown of the household is that the livelihood of a wife from her husband is not fulfilling.

Livelihood is something that a husband must fulfill in his wife's 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 of the al-Qur'an, sunnah and ijma'.⁴ As mentioned in the al-Qur'an surah al-Baqarah (2): 233

¹ Khoiruddin Nasution, *Hukum Perkawinan I* (Yogyakarta: ACAdemIA & TAZZA, 2005), 25

² Nurmala Fahriyani, Gugat Cerai: Membebaskan Perempuan Dari Penderitaan?, *Qawwam*, 13 (Desember, 2019), 102

³ Dedi Junaedi, *Bimbingan Perkawinan, Membina Keluarga Sakinah Menurut Al-Qur'an dan as-Sunnah* (Jakarta: Akademi Presindo, 2010), 15

⁴ Sayyid Sabiq, *Fiqhussunnah*, Juz II (Kairo: al-Fath al-'Ilmi al-'Araby, tt), 109

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا

Meaning: *“And the obligation of the father to feed and clothe the mothers in the ma’ruf way. Someone not burdened but according to ability levels”*⁵

The Hanafiah clerics argued that this obligation to provide for a livelihood began to be borne by the husband after the legal marriage contract, even though the wife had not moved to her husband’s house. In carrying out the obligation to support the wife, there are times when the husband is able but sometimes he is not able to. Household welfare is mostly calculated from economic welfare. Problems will often arise when the wife’s livelihood is not fulfilled and can cause destruction in the household. The reason is because a husband who is truly unable to provide a livelihood or a husband who is actually capable but does not carry out his obligation to provide a 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. Therefore, all efforts must be made so that the sacred bond between the two humans continues. However, when the hope for the creation 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:

⁵ Translator Team, *Al-Qur’an dan Terjemahan* (Jakarta: Al Mahira, 2016), 37

أَبْغَضُ الْحَالِلِ إِلَى اللَّهِ تَعَالَى الطَّلَاقُ

Meaning: “*The halal thing that Allah hates mostly is divorce*”

Various dynamics of married life sometimes conflicts 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 where divorce in Islam is allowed only for the goodnes and *mashlahah* of the family.⁶

In Indonesia, there are no regulations governing livelihood in detail. In Article 34 of Law Number 1 Year 1974⁷ 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)⁸ 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 the amount of the husband's livelihood are explained and allow the wife to suing for divorce because her livelihood is not fulfilled. Apart from that, the Hanafi school does not offer the amount of the husband's livelihood also does not want divorce due to livelihood. A wife must understand the economic conditions that are being lived by her husband.

⁶ H.E. Hasan Saleh, *Kajian Fiqh Nabawi dan Fiqh Kontemporer*, (Jakarta: PT. Raja Grafindo Persada, 2008), 320

⁷ Law Number 1 of 1974 concerning Marriage

⁸ Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law

In the Al Qur'an Q.s Al-Baqarah (2): 187

هُنَّ لِيَاسٌ لَّكُمْ وَأَنْتُمْ لِيَاسٌ لَهُنَّ

Meaning: *“They (wives) are clothes for you and you are clothes for them”*⁹

In this verse it can be seen that the wife is the guardian of honorary of the husband while the husband is the guardian of honorary of the wife. So it can be concluded that the two of them complement each other. The destitute of the husband will be complete by the wife, while the destitute 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 destitute and wife must cover. In this way, the wife plays a role in provide livelihood to the family.

The husband's obligation in providing livelihood for his wife is the opinion of the *mutaqaddimin* ulama which departs from the reality of the past where men or husbands worked, while women or wives only stayed at home and took care of the household. However, it is different from the present era which has entered modern times. Where many changes in Islamic fiqh due to Islamic fiqh which was previously found, the law cannot be applied today because the conditions have changed. As the expression from ulama *تغير الاحكام بتغير الزمان والمكان* which means the law changes according to the time and place.

⁹ Translator Team, *Al-Qur'an dan Terjemahan*, 29

In modern times, there are many who support gender equality, gender equality is the same position between men and women in gaining access, participation, control, and benefits in life activities both in the family, community, as well as in the nation and state. Gender justice is a process towards equality, harmony, balance, harmony, without discrimination.¹⁰ The ministerial decree states that gender equality and justice are conditions that are just and equal in the cooperative relationship between women and men.¹¹ They work together to provide for their household needs in order to maintain welfare and achieve the goal of marriage.

B. Statement of Problem

1. What is the concept of livelihood in the perspective of Hanafi school and Syafi'i school?
2. What are the differences between Hanafi school and Syafi'i school about husband's inability to provide a livelihood as an excuse for divorce?

C. Objective Research

From the formulation of the problems described above, it can be stated that the objectives of this study are as follows:

1. To identify the concept of the Hanafi school and Syafi'i schools regarding livelihood.
2. To identify the differences of the Hanafi school and Syafi'i school about the husband's inability to provide a livelihood as an excuse for divorce.

¹⁰ Mufidah Cholil, *Psikologi Keluarga Islam Berwawasan Gender*, 18

¹¹ Kepmendagri No. 132 of 2003 Chapter I General Provisions, Article 1

D. Benefit of Research

The results of this research are expected to provide positive benefits and contributions both theoretically and practically, namely as follows:

1. Theoretical benefit

From the results of this study, it is hoped that it will be useful for the development of science and broaden the knowledge of readers in general and especially for students in the field of Islamic law which is related to the problem of the husband's inability to provide a living as the reason for being divorced from the perspective of the Hanafi and Syafi'i schools of thought.

2. Practical Benefit

- a. For Lawyer and KUA

With the results of this study, it is hoped that it can provide input on knowledge and a legal basis for determining decision making for lawyers and religious affairs office employees if there is a problem regarding the husband's inability to provide a livelihood as an excuse to sue for divorce.

- b. For Researchers

As a basis and reference for further research related to the inability of a husband to provide a livelihood as a reason for suing for divorce from the perspective of the Hanafi and Syafi'i schools of thought.

E. Operational Definition

In order to make it easier to understand the contents of this research discussion, it is necessary to explain some key words that are very closely related to research:

- Livelihood : Shopping for life; (money) income; shopping given to the wife; sustenance; provisions for daily living.¹²
- Sue for divorce : Divorce suit filed by his wife or proxy at the Religious Court (Article 132 KHI)¹³
- Hanafi School : It is one of the recognized fiqh schools and is the oldest school whose existence has been widespread throughout the world. Muslims both from the laity and the ulama use it as learning, study and guidance in worshipping Allah SWT.¹⁴
- Syafi'i School : One of the schools of fiqh which has solid principles. Its characteristics are different from other schools of thought and have many mujtahids and fiqh experts.¹⁵

F. Previous Research

1. Inability to livelihood of husband as the reason for divorce (comparative study between the opinions of Imam Malik and Ibn Hazm)

This thesis compiled by Azizah, a student of the Sharia Faculty of the State Islamic University of Sunan Kalijaga Yogyakarta, analyzes the comparison of the opinions of Imam Malik and Ibnu Hazm regarding the inability to livelihood as a

¹² National Education Ministry Language Center, *Kamus Bahasa Indonesia* (Jakarta: Pusat Bahasa, 2008), 992

¹³ Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law

¹⁴ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, *Diskursus Madzhab Fikih Arba'ah* (Malang: Mahad Al-Jamiah Al-Aly UIN Malang, 2020), 1

¹⁵ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, *Diskursus Madzhab Fikih Arba'ah*, 101

reason for divorce by describing the opinions of Imam Malik and Ibn Hazm and the legal basis used. This research is a library research. These arguments are narrated using the *tarjih* proposition method, then it is concluded that the most diligent or arjah is the one. The data learning technique is derived from the Hadith books, namely *al-Mudawwanah al-Kubra* and *al-Muwatta'*, while the approach uses the *ulumul hadith* approach and *ushul fiqh* with data processing that begins with data induction, then the comparison and presentation of the data is closed with conclusion. The similarity between the research and this research is that there is a material relationship regarding the inability to provide a living as the reason for the comparison of the perspective of the comparison of the views of the ulama, then it is found that it lies in the focus of the discussion, where in this thesis the researcher was uses qualitative normative and what is discussed is the comparison of the different Hanafi and Syafi'i different views on the topic of the problem.

2. Livelihood Problems as Causes of Divorce in Islamic Law Perspective (Case Study in Kertanegara Village, Purbalingga Regency)

This thesis compiled by A. Badrul Anwar, a student of the Sharia Faculty of IAIN Salatiga, analyzes some of the problems that occur in Kertanegara Village which are the cause of divorce, in addition to explaining the efforts made to overcome these problems from the family to the court. The research approach used a qualitative approach, which belongs to field research (field research), namely a case study in Kertanegara Village, Purbalingga Regency. As for how to study the data by observation, interviews, and documentation, then the data is analyzed and

checked its validity. The similarity of this research is the existence of materi linkages regarding livelihood which is the cause of divorce, then it is found that it lies in the research method and focus of discussion, where in this thesis using normative qualitative and what is discussed is the comparison of the views of the Hanafi and Syafi'i schools of thought with different concepts and views.

3. Legal Review of Divorce Due to Livelihood Factors (Study of Pekanbaru Court Decision No. 1600 /Pdt..G/2017/ PA.Pbr)

This thesis prepared by Bima Armando, a student of the Faculty of Law, University of North Sumatra, Medan, analyzes divorce caused by a living by using statutory analysis. This method uses the empirical normative legal research method which is a combination of the normative legal approach (literature) with the addition of various empirical elements regarding certain legal events that occur in society. The data technique is in the form of court decisions which are then analyzed, statutory regulations and then draw conclusions. The similarity of the research is the existence of materi linkages regarding living which is the cause of divorce, Then the difference lies in the way of analyzing it, namely using statutory regulations, which in this thesis uses the views of the Hanafi and Syafi'i school of thought.

4. Economic Needs and Their Relation to Divorce (Study of Legal Divorce at the Ambon Religious Court)¹⁶

The research is in the form of a journal written by Husin Anang Kalbamay which contains divorces caused by economic problems in general. Namely neglected by their husbands for a long time, which is behavior in irresponsible behavior and husbands who do not think of their wives as wives as a wife. Furthermore, a husbands who is lazy to work or has never worked is dishonorable or not good. Because of this, wives generally refuse to live together at their parents-in-law's house because it is feared that the in-laws' interaction in their household affairs could result in divorce. This research is a field research (field research). The similarity with this thesis research is the discussion of living which are the obligations of husband with wife. The difference is that the author's thesis discusses a living according to the law, namely according to the views of the Hanafi school and the Syafi'i school which have different views which are then compared.

5. Divorce Suit: Freeing Women From Suffering?¹⁷

The journal by Nurmalah Fahriyani, published in the *Qawwam Journal* in 2019, raises problems in the form of factors that are the causes and impacts of a divorce and to foster a *sakinah mawaddah* and *warahmah* family to prevent the

¹⁶ Husin Anang Kalbamay, *Kebutuhan Ekonomi dan Kaitannya Dengan Perceraian (Studi Atas Cerai Gugat di Pengadilan Agama Ambon)*, *Jurnal Tahkim*, XI (Juni, 2015)

¹⁷ Nurmalah Fahriyani, *Gugat Cerai: Membebaskan Perempuan Dari Penderitaan?*, *Qawwam*, 13 (Desember, 2019)

implementation of a divorce. This study uses a descriptive normative approach to describe the actual facts that occur in the community regarding a legal divorce. The similarity between this journal and the author's thesis is that they both discuss divorce, while the difference is that the author makes a comparison against the views of the Hanafi school and the Syafi'i school of divorce caused by income.

For more summary, previous studies can be seen in the following table:

Table I

The similarities and differences this research with the previous research

No	Researcher Name	Research Titles	Similarities	Differences
1.	Azizah, (Thesis of UIN Sunan Kalijaga, Yogyakarta)	Inability to livelihood of husband as the reason for divorce (comparative study between the opinions of Imam Malik and Ibn Hazm)	Discusses divorce caused by the inability of the husband to provide a living	Using the views of Imam Malik and Ibn Hazm by comparing the strength of the argument from each viewpoint
2.	A. Badrul Anwar (Thesis of IAIN Salatiga)	Livelihood Problems as Causes of Divorce in Islamic Law Perspective (Case Study in Kertanegara Village, Purbalingga Regency)	Discusses the problems of living that cause divorce	Analyze from the point of view of the family to court
3.	Bima Armando (Thesis, University of North Sumatra, Medan)	Legal Review of Divorce Due to Livelihood Factors (Study of Pekanbaru Court)	Discusses the income that causes divorce	Analysis using statutory regulations

		Decision No. 1600 /Pdt..G/2017/ PA.Pbr)		
4.	Husin Anang Kalbamay (Journal)	Economic Needs and Their Relation to Divorce (Study of Legal Divorce at the Ambon Religious Court	A living which is an obligation for a husband to his wife	Discuss the economic needs of the family
5.	Nurmalah Fahriyani (Journal)	Divorce Suit: Freeing Women From Suffering?	A divorce due to a living	Discusses the factors that cause and impact of a divorce

G. Research Method

The research method is a method used by researchers to obtain data and information on various matters relating to the problem under study. The research methods that researchers use in conducting research are as follows:

1. Type of Research

In answering the formulation of the problems described above, the researcher uses a type of normative research, particularly library research. The sources used for library research are books, laws and regulations or other library materials that are related to the research topic.

2. Research Approach

Researcher in this study will use a comparative approach. The comparative approach is carried out by making a descriptive legal comparison.¹⁸ The problem in this study is that there are differences of opinion between the 2 schools of

¹⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2005), 172

thought regarding the level of livelihood that should be given to the wife, and also the husband's inability to provide a livelihood as the reason for divorce.

3. Legal Material

The legal materials that will be used by researchers in this research are:

a. Primary Legal Material

Primary legal materials are the main binding legal materials. The primary legal materials used by researchers are: Fiqh books that discuss livelihoods such as *al-Fiqhu 'Ala Madzahib al-Arba'ah*, *Fiqhussunnah*, *al-Fiqh al-Islami wa Adillatuhu*, and supporting books with Hanafi school, like *al-Mabsuth*, *al-Bahru ar-Raiq*, *al-Durr al-Mukhtar*, *Tabyin al-Haqaiq Syarh Kanzu Daqaiq*, *al-Hidayah Syarah Budayatu al-Mubtadi* and Syafi'i school, like *al-Umm*, *Raudhatu ath-Thalibin*, *Bayan fi Madzhabi Imam Syafi'i*, *al-Muhaddzab*, *al-Majmu'*.

b. Secondary Legal Material

Secondary legal materials are supporting material to provide an explanation of primary legal materials in the form of books, theses, theses, journals and other literature related to this research topic.

c. Tertiary Legal Material

Tertiary legal materials are materials that provide guidance and explanation for primary and secondary legal materials, such as dictionaries, encyclopedias.

4. Legal Material Collection Methods

The author uses the method of collecting legal material by starting to determine the legal material, then taking an inventory of the legal material, then reviewing the legal material. The author will first conduct an inventory of references related to the topic and then conduct an assessment of the legal material.

5. Data Processing Methods

The data obtained from the field is processed and analyzed to answer some of the problems that exist in the study. In concluding facts, reality and answering a problem, several stages are carried out in processing the data as follows:

a. Editing

After the data is collected, then the writer conducts an examination to ensure that the data collected is in accordance with the topics discussed in the form of literature on income and gender equality.

b. Classifying

To simplify the research, data classification is carried out after data checking is carried out. The data that has been collected are classified according to the existing problem formulations. Also classifies data in the form of primary data or supporting data.

c. Verifying

This stage aims to obtain information from literature data and cross-check the validity of discussion of livelihood according to the opinion of the Hanafi school and Syafi'i school.

d. Analyzing

The researcher will analyze the opinions of the Hanafi and Syafi'i schools regarding the level of livelihood then express their opinions regarding the husband's inability to provide a livelihood as the reason for suing for divorce.

e. Concluding

The results of the analysis that have been done before, then draw conclusions from the comparison of the Hanafi school and Syafi'i school regarding the husband's inability to provide a living as the reason for suing for divorce.

H. Writing Organization

In order for the writing of this research to be focused and comprehensive, the discussion is systematically organized into four chapters:

Chapter I on introduction. In this chapter, the researcher describe in general the content and purpose of the research. The contents of this chapter consist of background, problem formulation, research objectives, research benefits, methods used in research, and systematic discussion.

Chapter II, in this chapter to obtain satisfactory results, researcher assess the literature as one of the comparisons in this study. From here it is expected to provide the formulation of a problem found in the object of research as an analysis. This section consists of the concept of subsistence and its legal basis and divorce due to limitations.

Chapter III Research Results and Discussion. In this section, the researcher explain the biography, the concept of livelihood, and the thought of the Hanafi school and Syafi'i school about the husband's inability to provide a livelihood as a reason for suing divorce.

Chapter IV concerning Conclusion. This chapter contains content and suggestions which constitute the final series of research. Brief conclusions that answer the questions or problem formulations in chapter one. In addition, this chapter also provides suggestions for data analysis and exposure.

CHAPTER II

LITERATURE REVIEW

A. Definition of Livelihood

Etymologically, livelihood or *nafaqa* in arabic (in the form of *muta'addiy anfaqa* in arabic) means the act of turning and diverting something. Then the livelihood as the root word, will mean something that is transferred and expended for a certain thing and purpose. The word *nafaqah/infaq* is only used in a positive sense.¹⁹ Livelihood also means shopping, something that is given by a husband to his wife, a father to his children, and his relatives as a basic necessity for them.²⁰ In fiqh terminology, *Fuqaha* defines a livelihood as a cost that must be incurred by a person for something that is in his/her responsibility, including costs for food, clothing, and

¹⁹ Abu Bakar bin Sayyid Muhammad Syatha Dimiyati, *I'alah at-Thalibin* Juz 4 (Beirut: Daar al-Fikr, tt), 60

²⁰ Direktorat Jenderal Pembinaan Kelembagaan Agama Islam Departemen Agama, *Ilmu Fiqh*, Jilid II, (Jakarta: 1985), 184

housing, including secondary needs such as household furniture.²¹ There are also those who specifically limit the meaning of livelihood to only three main aspects, namely food (*math'am*), clothing (*malbas*), and boards (*maskan*),²² even narrower than that is *math'am* only.

From this understanding it can be concluded that a person's obligation to spend a livelihood to those who have the right to receive it, such as a husband having the right to provide a livelihood for his wife, children, even the main income is given aims to meet the basic needs of life, such food, cloth, and a place to live. The obligation to provide a livelihood is given according to their ability, this can be adjusted to their needs and abilities so that they are in line with their circumstances and standard of living. Likewise for poor relatives and neglected children.²³

B. Legal Basis of Livelihood

Giving a livelihood means all kinds of expenditures that are incurred by someone to fill the needs of a husband, wife and children.²⁴ The legal basis for providing livelihood for the family is obligated for the husband based on the text of the Qur'an.

²¹ Abdurrahman Muhammad 'Aud Al-Jaziry, *Al Fiqh 'Ala Madzahib al Arba'ah* (Faidh al 'Ilmiy, 2016), 260

²² Al-Hasfakiy, *al-Durr al-Mukhtar*, Juz 3 (Beirut: Daar al-Fikr, 1386 H), 572

²³ Syamsul Bahri, "Konsep Nafkah Dalam Hukum Islam" *Kanun Jurnal Ilmu Hukum*, XVII ,(Agustus, 2015), 382

²⁴ Muhammad Thalib, *Ketentuan Nafkah Istri dan Anak*, Cet. 1 (Bandung: Irsyad Baitus Salam, 2000), 19

- a. Allah says in Al-Baqarah (2) verse 233:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِمَّ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۖ

Meaning: *Mothers should breastfeed their children for two years, for those who want to complete breastfeeding. And it is the father's obligation to provide their livelihoods and clothing in an appropriate manner...*²⁵

- b. Allah says in Ath-Thalaq ayat 6:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمُّوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَمَشْرُوعٌ لَهُ أُخْرَىٰ

Meaning: *You put 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 divorce) are pregnant, then give them a livelihood until they give birth*²⁶

- c. Allah says in Ath-Thalaq ayat 7:

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

Meaning: *Let someone who is able to provide a livelihood according to his ability. And the person whose sustenance is reduced must provide a livelihood from the wealth given to him by Allah. Allah does not carry a burden on someone but*

²⁵ Translator Team, *Al-Qur'an dan Terjemahan*, 57

²⁶ Translator Team, *Al-Qur'an dan Terjemahan*, 558

(simply) what Allah gives him. Allah will one day provide relief after the narrow.²⁷

Apart from the word of Allah which explains the obligation of a husband to provide for his wife, it is also found in the Hadith, that the Prophet Muhammad said:

فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَحَدْتُمُوهُنَّ بِأَمَانَةِ اللَّهِ وَاسْتَحْلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ وَإِنَّ لَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئَنَّ فُرْشَكُمْ أَحَدًا تَكُفُّمُ هَوْنَهُ فَإِنْ فَعَلَنَّ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرِحٍ وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ (رواه ابن ماجه)²⁸

Meaning: *You must be devoted to Allah in the affairs of women. For verily you took them with the word of Allah, you legalize their genitals (honor) with the word of Allah. It is obligatory for them (wives) not to enter into your house anyone you do not like. If you violate that, beat them, but don't hurt. They are entitled to shopping (income) from you and clothes in a ma'ruf way.*

In another narration the Prophet said:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: دَخَلْتُ هِنْدَ بِنْتُ عُنْتَبَةَ امْرَأَةَ أَبِي سُفْيَانَ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّ أَبِي سُفْيَانَ رَجُلٌ شَحِيحٌ لَا يُعْطِينِي مِنَ النَّفَقَةِ مَا يَكْفِينِي وَيَكْفِي بَيْتِي، إِلَّا مَا أَحَدْتُ مِنْ مَالِهِ بِغَيْرِ عِلْمِهِ، فَهَلْ عَلَيَّ فِي ذَلِكَ مِنْ جُنَاحٍ؟ فَقَالَ: خُذِي مِنْ مَالِهِ بِالْمَعْرُوفِ مَا يَكْفِيكَ وَيَكْفِي بَيْتِيكَ (رواه مسلم)²⁹

Meaning: *From 'Aisyah ra said: "That Hindun binti 'Utbah, the wife of Abu Sufyan, had gone to the Prophet Muhammad and she said: "Messenger of Allah, actually Abu Sufyan was a stingy person, he did not want to spend enough for*

²⁷ Translator Team, *Al-Qur'an dan Terjemahan*, 558

²⁸ Ibnu Majah, *Sunan Ibnu Majah*, Juz II, (Kairo: Waar al Hiirats, t.t), 1025

²⁹ Imam Muslim, *Shahih Muslim*, Juz II (Beirut: Daar al Kutub al Ilmiah, t.t), 60

me and my child, but with his property which I took without his knowledge, is that a sin for me?" So he replied: "Take from his wealth which is enough for you and your children in a good way"

Requirements for a livelihood from the marriage that have the terms and conditions cause arising the rights and obligations. This means that the wife has the right to earn a livelihood in accordance with the provisions of the verses and hadiths. The scholars agree that after the marriage contract the wife has the right to earn a livelihood, it's just that the scholars have different opinions when discussing whether the right to support is obtained when the contract occurs or after *tamkin* or when the wife has moved to the husband's residence.³⁰

C. Obligatory for a Livelihood Causes

The reasons for the obligation to provide a livelihood can be classified into three reasons, because there is still a relationship between relatives/descendants, because of ownership, and because of marriage.³¹

1. Relationship Between Relatives/Descendants

In Islam, nasab relation or descent is a vertical that can dominate, mean with a nasab relation one can receive one's assets. Because family relationships are very close can arising rights and obligations. As in the case with the obligation

³⁰ Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Juz 10 (Suriah: Daar al Fikr bi Damsyiq, 2002), 7374

³¹ Imran Abu Amar, *Fathul Qarib* (Menara Kudus,t.t), 96

to provide a livelihood, both to the wife and to the husband, to the child or both parents.³²

The expert of fiqh stated, “That the kinship that causes a livelihood is a close family who needs help”.³³ The point is a family that has a direct relationship up and down, such as parents to their children, children to their parents, even grandparents and other close relatives if they are able to just make ends meet. Imam Hanafi argued, “It is obligatory for relatives to provide a livelihood for their relatives by other relatives. The kinship between them should be a relationship that causes the prohibition of marriage”.³⁴ So a family that has a direct vertical relationship up and down, obliges someone to provide a livelihood. This is in accordance with the opinion of Imam Malik who stated that the livelihood is given by the father to the child, then the child to the father and mother.³⁵

Imam Malik reasoned with the word of Allah in the al-Isra’ verse 23:

وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا ۖ إِمَّا يَبُلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا
أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا أُفٍّ وَلَا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا

Meaning: *And your God has commanded that you do not worship other than Him and that you should do the best you can to your mother and father.*³⁶

³² Syamsul Bahri, “Konsep Nafkah Dalam Hukum Islam” *Kanun Jurnal Ilmu Hukum*, 348

³³ Imran Abu Amar, *Fathul Qarib*, 96

³⁴ Muhammad Jawad Mughniyah, *Fiqh Lima Madzhab* (Jakarta: Basrie Press, 1994), 150

³⁵ Zakaria Ahmad al-Barry, *Ahkam al-Auladi Fil Islam* (Jakarta: Bulan Bintang, 1977), 74

³⁶ Translator Team, *Al-Qur’an dan Terjemahan*, 284

Providing a livelihood to a close relative is an obligation for someone if they are capable enough and their close relative really needs help because they are poor and so on. Close relatives who are more entitled to be supported and supported than distant relatives, even though both of them need assistance if the assets provided for only sufficient for one of the two.

Based on the word of Allah in Al-Isra' ayat 26:

وَأْتِ ذَا الْقُرْبَىٰ حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا

Meaning: *And give to families who are close to their rights, to the poor and those who are traveling; and do not squander (your wealth) lavishly.*³⁷

From the above verse, it can be concluded that it is the obligation to provide for close families and to the poor.

2. Because of Ownership

A person is obliged to provide livelihood for what he has, such as slave servants and domestic animals, must be given food and drink that can support his life. If the person does not want to carry out this obligation, the judge may force that person to provide a livelihood for the pet and the servant. Quoting the opinions of Imam Malik and Ahmad that judges may force people who have animals to

³⁷ Translator Team, *Al-Qur'an dan Terjemahan*, 284

provide a livelihood for the animals, if they are unable to support them, they may be forced to sell them.³⁸

If someone has a pet, it is obliged to provide food and take care of it not to be burdened more than appropriate. Likewise to the slave or servant. Based on the words of the Prophet Muhammad:

عن أبي ذر قال: قال رسول الله صلى الله عليه وسلم إخوانكم جعلهم الله تحت أيديكم فأطعموهم مما تأكلون وألبسوهم مما تلبسون ولا تكفؤهم ما يغلبهم فإن كفتموهم فأعينوهم (رواه ابن ماجه)³⁹

Meaning: *From Abi Zar said: Rasulullah SAW said, “Allah made your brother under your control, so give them (your slaves) what you eat and clothe them from what you wear and do not burden them to do what you do. hard to do, if you burden them then help them” (Narrated by Ibn Majah)*

From the explanation of the hadith above, it can be seen that it is not right for someone to impose heavy tasks that cannot be done for something they have. If someone confines animals without feeding and drinking, then that person will be tortured by Allah, because this is an animal torture. Therefore, a person who does not carry out his obligations properly, the judge may force him to provide a livelihood or order to sell or release him. If they still don't want to let go, the judge may act in a good way.⁴⁰

³⁸ Muhammad Hasbi Ash-Shiddieqy, *Hukum-Hukum Fiqh Islam* (Jakarta: Bulan Bintang, t.t), 272

³⁹ Ibnu Majah, *Sunan Ibnu Majah*, Juz II, 1216

⁴⁰ Syamsul Bahri, “Konsep Nafkah Dalam Hukum Islam” *Kanun Jurnal Ilmu Hukum*, 386

3. Because of Marriage

Marriage is one of the instinctive needs of the human being to fulfill his life's needs in making biological and family relationships. Islam strongly recommends marriage, this can be seen from the many verses of the al-Qur'an and the hadith of the Prophet which explain the suggestion to marry, including the Prophet Muhammad said:

عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: يَا مَعْشَرَ الشَّبَابِ، مَنْ اسْتَطَاعَ مِنْكُمْ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصَرِ، وَأَخْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ، فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وَجَاءٌ (رواه مسلم)⁴¹

Meaning: *From Abdullah bin Mas'ud Rasulullah SAW said, "Young people, whoever is able to marry, because marriage will lower one's view and more respect, if not able then fast, because fasting will be a shield for him". (Narrated by Muslim)*

Based on the hadith above, it can be seen that marriage already taught in Islam, because marriage can calming the soul, close the eyes of everything that is forbidden by Allah and to get the love of husband and wife that is permitted by Allah SWT and to strengthen the love of their fellowmen.

Marriage occurs due to a sense of affection, a sense of love which eventually arises a desire to belong to each other. So in this case if there is a man and a woman who wish to live together, they must first perform the marriage

⁴¹ Imam Muslim, *Shahih Muslim*, Juz II, 534

contract which is the most important thing in a marriage. Marriage is one of the reasons for the obligation to provide for a livelihood, because with the existence of a marriage contract, a wife becomes tied to her husband, takes care of children and manages the household and so on. Then all the needs of the wife are the responsibility of her husband. As the Prophet SAW said:

وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي حَدِيثِ الْحَجِّ
بَطُولُهَا قَالَ فِي ذِكْرِ النِّسَاءِ: وَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ (أَخْرَجَهُ
مُسْلِمٌ)⁴²

Meaning: *From Jabir r.a from the Prophet SAW in a long hadith hajj. He said: about mentioning women, "You are obliged to provide for them and dress in a good manner". (Narrated by Muslim)*

Based on the hadith above, it is clear that a husband is obliged to provide livelihood for his wife, fulfill his needs as long as the husband and wife bond is still continueing, the wife is not *nusyuz* and there is no other reason that will cause the loss of livelihood. Likewise, the wife is obliged to obey her husband's orders and obey her husband, because the existence of a marriage contract creates rights and obligations between them. The obligation to provide a livelihood is not only reserved for wives, but their parents also have the right for got the livelihood if the parents are poor. Even to orphans and abandoned children, if it is able and possible.

⁴² Al Hafidh Ibnu Hajar Al Asqalani, *Bulughul Maram* (Beirut: Maktabah at Tijarah al Kubra, t.t), 250

A husband is obliged to provide livelihood for his wife, which is sufficient to live in a household, such as a place to live, daily livelihood and so on. Household needs that must be met by husbands include:

- a. Shopping for daily household needs;
- b. Expenditures for the maintenance of children's lives;
- c. School spending and children's education.⁴³

Especially with regard to maintenance and education expenditures, it is mandatory if the child is still small, but if the child is older and has the power to do business and has property, then a father is not obliged to provide a livelihood for the child. In this case, if the child is an adult but is still studying, the obligation to provide for himself does not fail. This is in accordance with Imam Hanafi's opinion which states that an adult child, if he is still studying, then the father is obliged to provide a livelihood. So a husband or father is obliged to support his wife and children, because the father is the head of a household. The Word of Allah SWT, in surah an-Nisa' verse 34:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ
فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُورَهُنَّ فَعِظُوهُنَّ
وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنِ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ
عَلِيمًا كَبِيرًا

⁴³ Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan (UU No. 1 Tahun 1974)*, (Yogyakarta: Liberty, 1982), 90

Meaning: *Men are leaders for women, because Allah has exaggerated some of them (men) over some others (women) and because they (men) have spent part of their wealth.*⁴⁴

From that argument, it is stated that a husband becomes the head of the household because of marriage. Therefore, the husband is obliged to bear all the needs of his wife and children according to his ability, so that his wife and children do not live abandoned without a place to live.

D. Definition of Divorce

Divorce (*thalaq*) is taken from the word *ithlaq* which means to let go or leave. Lafadz *thalaq* in the era of ignorance was used as a separation between husband and wife. Then, instead of that, the law states that lafadz *thalaq* is specifically meant for divorce. Meanwhile, according to the term *thalaq* releasing the marriage bond or it can also be called releasing the bond by using certain *lafadz*. The meaning of renouncing the marriage bond is the lifting or canceling of a marriage contract so that the husband and wife relationship is no longer lawful thereafter.⁴⁵

The breakup of a marriage between husband and wife is commonly known as “divorce”. Divorce comes from the root word for divorce which according to the language is “separates” or “talak”.⁴⁶ Meanwhile, divorce in fiqh is called “*thalaq*” or

⁴⁴ Departemen Agama RI, *Al Qur'an dan Terjemahannya*, 84

⁴⁵ Abdurrahman Muhammad 'Aud Al-Jaziry, *Al Fiqh 'Ala Madzahib al Arba'ah*, 869

⁴⁶ Depdikbud, *Kamus Besar Bahasa Indonesia*, 164

“*farqah*”.⁴⁷ Talak means breaking ties or canceling agreements, while *farqah* means divorce, the opposite of gathering. Then these two words were used as terms by *Fuqaha*’ which means talak (breaking of the marriage) between husband and wife.⁴⁸

There are several definitions of divorce given by the *Fuqaha*, including:

1. Imam Hanafi means that divorce in syari’at is breaking the marriage bond immediately (with *thalaq ba’in*) or at one time (with *thalaq raj’i*) by using a certain *lafadz*.
2. Imam Maliki argues that divorce in syari’at is breaking the legal ties in marriage.
3. Imam Syafi’i defines talak in the syari’at as breaking the ties of marriage by using *lafadz thalaq* and etc.
4. Imam Hambali means that divorce in syari’at is breaking the ties of marriage.

Divorce according to the Sayyid Sabiq is:

حَلُّ رَابِطَةِ الزَّوْجِ وَإِثْمَاءِ الْعَلَاقَةِ الزَّوْجِيَّةِ

Meaning: *Releasing the ties of husband and wife and breaking the marital relationship.*

⁴⁷ Ahmad Syaibi, *Kamus An Nur* (Surabaya: Halim Jaya, 2002), 186

⁴⁸ Kamal Muchtar, *Azas-Azas Hukum Islam tentang Perkawinan* (Jakarta: Bulan Bintang, 1987), 144

There are also those who interpret divorce as the breaking of the marriage between husband and wife in a family relationship.

Basically, household life must be based on *sakinah*, *mawaddah*, and *rahmah*, that husband and wife must play their respective roles, meaning that one must complement each other. Besides that, uniformity, gentleness, closeness and mutual understanding must also be realized so that the household becomes a pleasant thing, filled with enjoyment and happiness and can give birth to a good generation.⁴⁹ If the springs of love and affection have dried up and no longer radiate water so that the heart of one of the two parties no longer feels love, then both of them do not care for each other and do not want to carry out their respective duties and obligations, so left behind is quarrels and trickery. Then both of them tried to improve but it was unsuccessful, as well as his family had tried to help with the repair but failed, so at that time divorce was the most appropriate word.

The principle of marriage according to the Marriage Law No. 1 Year 1974 is to form a happy and eternal family. In Article 1 it is emphasized that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming happiness and eternal family based on the Almighty God. This Law also adheres to the principle of making it difficult for divorce to occur in order to allow the divorce to have certain reasons and be carried out before a court session. Even though divorce is permitted by Islam, its implementation must be based on strong reasons and

⁴⁹ Syaikh Hasan Ayyub, *Fikih Keluarga* (Jakarta: Pustaka al Kautsar, 2002), 209

is the last resort for husband and wife. If other methods have been tried before, it is still unable to restore the integrity of the husband and wife's household.⁵⁰ Therefore, divorce is present and is the only alternative in resolving household disputes and has a positive impact. Even divorce as one of the *syari'at* can be believed to have a noble purpose besides containing its secrets.

Article 117 of the Compilation of Islamic Law (KHI) defines divorce as a husband's pledge in the Religious Court which is one of the reasons for breaking up a marriage, as referred to in Articles 129, 130 and 131. In Islamic law, divorce is only one form which can causing a break in the marriage. So it can be seen that divorce is basically a way to break the bond of marriage and it has become a rule of law that divorce is the right of the husband and only he can do to his wife.⁵¹ Divorce can only occur if it is carried out in front of a court, whether it is the husband because himself has handed down the divorce or because the wife is suing for divorce or asking for the right to divorce because *sighat ta'liq thalaq*. Even though in Islamic teachings, divorce is considered valid if it is immediately abused by the husband, it must still be done in front of the court. Its purpose is to protect all rights and obligations arising from the legal consequences of the divorce.⁵²

⁵⁰ Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*, 105

⁵¹ M. Djamil Latif, *Aneka Hukum Perceraian di Indonesia* (Jakarta: Ghalia Indoensia, 1985), 40

⁵² Budi Susilo, *Prosedur Gugatan Cerai* (Yogyakarta: Pustaka Yustisia, 2007), 17

E. Forms of The Breakup of Marriage

A marriage can break up because of several things, cause of the divorce that the husband has given to his wife or cause of a divorce between the two of them or for other reasons. The things that cause a marriage to break will be explained below.

1. *Thalaq*

Thalaq is eliminating the marriage bond so that after the loss of the marriage bond the wife is no longer lawful for her husband. According to Abu Zakaria Al-Anshari, talak is:

حَلُّ عَقْدِ النِّكَاحِ بِلَفْظِ الطَّلَاقِ وَنَحْوِهِ⁵³

Meaning: *Breaking the marriage contract with the word talak and other like that.*

Talak according to Article 117 of KHI states that *thalaq* is a husband's pledge in the Religious Court which is one of the causes for the breakdown of a marriage.⁵⁴ Meanwhile, according to Soemiyati, talak in the term fiqh has 2 meanings, in the general meaning and special meaning. Divorce according to the general meaning is all kinds of divorce, whether imposed by the husband, a judge's decision or which falls by itself or the death of one of the husband and wife.

⁵³ Abu Yahya Zakariya Al-Anshari, *Fath al Wahhab* (Singapura: Sulaiman Mar'i, t.t), 72

⁵⁴ Inpres Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam

Meanwhile, according to a special meaning, it is the divorce that a husband gives to his wife.⁵⁵

a. Kinds of *Thalaq*

In terms of the time the talak was dropped, it is divided into two types:

- 1) *Thalaq sunni*, which is a divorce that is dropped by a husband on his wife, which is allowed or in accordance with the provisions of syara'.
- 2) *Thalaq bid'i*, divorce that is dropped by the husband to his wife which is not allowed or contrary to syara'.⁵⁶

In terms of the presence or absence of the possibility of a former husband referring to his ex-wife again, it is divided into two types, as follows:

- 1) *Thalaq raj'i*, is divorce that is dropped by a husband against his wife who has been intercourse with, not because of getting compensation for property from the wife, divorce that is dropped for the first time or the second time. After the *thalaq raj'i* occurs, the wife is obliged to perform idleness, if the husband wants to return before the end of the iddah period by making a statement of *ruju'*, but if during the iddah period the ex-husband does not do *ruju'* then with the end of the iddah period the position of divorce

⁵⁵ Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*, 104

⁵⁶ Abdul Rahman Ghazali, *Fiqh Munakahat* (Jakarta: Kencana, 2015), 193

becomes *thalaq ba'in* . If the iddah period has ended and the husband wants to return to his ex-wife, a new marriage contract and a new dowry must be made.

2) *Thalaq ba'in*, is talak which does not give the ex-husband the right of *ruju'* to his ex-wife. To return the former wife to a marriage bond with the former husband, she must go through a new marriage contract, complete with harmonies and conditions. Talak *ba'in* is divided into 2 kinds:

- *Thalaq ba'in sughra*, is talak *ba'in* which eliminates ownership of the ex-husband of the wife but does not eliminate the lawfulness of the former husband to remarry with his ex-wife. This means that the ex-husband may enter into a new marriage contract with his ex-wife, both during his iddah period and after the iddah period ends. Which includes talak *ba'in sughra* are:
 - 1) divorce before gathering;
 - 2) divorce with replacement of property (*khulu'*); and
 - 3) Divorce due to disgrace (physical disability), because someone was imprisoned, divorce due to persecution, or the like.
- *Thalaq ba'in kubra*, is talak which eliminates the ownership of the former husband of the former wife and eliminates the lawfulness of the ex-husband to remarry with his ex-wife, except after the ex-wife has married another man, then has

gathered with her husband and has been divorced regularly reasonable and have finished carrying out iddahnya. Talak *ba'in kubra* occurs in the third divorce.⁵⁷ This is in accordance with the word of Allah SWT in Surah Al-Baqarah verse 230:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ ۗ

Meaning: *Then if the husband is giving talak (after the second talak) then the woman is no longer lawful for him, until he marries another husband.*⁵⁸

Meanwhile, in terms of positive law in Indonesia, talak is divided into 2 types, they are:

- 1) Divorce, is divorce imposed by the husband against his wife, so that their marriage breaks up and a husband who intends to divorce his wife must first submit an application to the Religious Court
- 2) Sue for divorce, is divorce based on the existence of a lawsuit filed by the wife, so that the marriage with her husband is broken and a wife who intends to divorce from her husband must first file a lawsuit at the Religious Court.

⁵⁷ Abdul Rahman Ghazali, *Fiqh Munakahat*, 199

⁵⁸ Translator Team, *Al-Qur'an dan Terjemahan*, 36

2. *Khulu'*

Khulu' is the handover of property by the wife to redeem herself from her husband's. Divorce in this way is permitted in Islam, accompanied by several laws of difference from ordinary divorce. *Khulu'* in Arabic is to undress, it means to give up his authority as a husband and give to his wife in the form of divorce. This is because wives are clothes for men as men are clothes for women.⁵⁹

Legal Basis of *khulu'* is the Qur'an in Al-Baqarah verse 229:

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا
 آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا
 جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ
 فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: *It is not lawful for you to take back something that you have given to them (wives) unless both are worried that they will not be able to carry out Allah's laws. If you worry that neither of them can live the laws of Allah, then there is no sin against both of them regarding the payment that the wife gives to redeem herself. These are the laws of Allah so do not break them. Whoever violates the laws of Allah, they are the ones who dhalim.*⁶⁰

⁵⁹ Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Juz 9, 417

⁶⁰ Translator Team, *Al-Qur'an dan Terjemahan*, 36

As the legal basis of the hadith, as stated by Ibn Abbas:

عَنِ ابْنِ عَبَّاسٍ قَالَ: جَاءَتْ امْرَأَةٌ ثَابِتِ بْنِ قَيْسِ بْنِ شَمَّاسٍ إِلَى النَّبِيِّ ص فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنِّي مَا أَعْتَبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ، وَ لَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ. فَقَالَ رَسُولُ اللَّهِ ص: أَتَرُدِّينَ عَلَيْهِ حَدِيثَهُ؟ قَالَتْ: نَعَمْ. فَقَالَ رَسُولُ اللَّهِ ص: اقْبَلِ الْحَدِيثَ وَ طَلِّقِيهِ تَطْلِيقًا (البخارى ٥٢٧٥)⁶¹

Meaning: *It was narrated from Ibn Abbas that the wife of Tsabit bin Qais met Rasulullah SAW and said, “Messenger of Allah, I do not blame Tsabit bin Qais, only when I am afraid that I will not be able to maintain behavior and religion if I remain with him” Rasulullah said, “Will you return the kebin that was given to you as a dowry?” He said, “yes” Rasulullah said, “Accept the garden and divorce him with one divorce.”*

Fuqaha disagreed with the validity of the *khulu'* it is suggested that the wife should be *nusyuz* or not? The Zhahiriyah group and the opinion of Ibn Mundzir, that for the validity of the *khulu'* it must be because the *nusyuz* wife is based on the hadith that the heir's wife asks for a divorce, which means that she is in a *nusyuz* state. Furthermore, Abu Hanifah, Syafi'i and most scholars argue that *khulu'* is valid even though the wife is not in a *nusyuz* and *khulu'* condition is valid with mutual willingness between husband and wife even though both are in normal and fine conditions.⁶²

⁶¹ Imam Az-Zabidi, *Ringkasan Shahih Bukhari* (Bandung: Penerbit JABAL, 2012), 644

⁶² Abdul Rahman Ghazali, *Fiqh Munakahat*, 223

The possibility of divorce using the *khulu'* way is to compensate for the divorce rights that exist in the husband. With *khulu'* the wife can take the initiative to break the marital relationship by means of redemption. The redemption or substitute that a wife gives to her husband is called '*iwadl*'. The validity of *khulu'* are:

- a. Divorce with *khulu'* must be carried out with the willingness and consent of husband and wife.
- b. The wife is the legal object to drop divorce on him.
- c. *Khulu'* is imposed by the husband who has the right to drop the divorce and he is the husband who have the eligibility requirements.
- d. The pronouncement is pronounced using the word *khulu'* or something that has the same meaning, such as the pronouncement of "liberation" and "ransom".
- e. *Khulu'* occurs with the ransom given by the wife, because she is the one who wants to be separated from the bonds of husband and wife where there is no happiness as stated.⁶³

3. *Ila'*

The word *ila'* according to the language is a mashdar from the word "*al-yukli-laan*" in the wazn with "*a'tha-yu'thi-i'tha'an*" which means oath. According to the term of Islamic law *ila'* is the husband's oath by saying the name of Allah

⁶³ Abdul Majid Mahmud Mathlub, *Paduan Hukum Keluarga Sakinah* (Solo: Era Intermedia, 2005), 409

or His nature which is directed to his wife not to approach him, either absolutely or limited by saying forever, or limited to four months or more.⁶⁴

The legal basis for setting *ila'* is the word of Allah SWT surah Al-Baqarah verses 226-227:

لِّلَّذِينَ يُؤَلُّونَ مِن نِّسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِن فَاءُوا فَإِنَّ اللَّهَ عَفُورٌ رَّحِيمٌ وَإِن
عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

Meaning: *To people who do ila' to his wife is given four months tough (duration). Then when they return (to their wives), then verily Allah is Forgiving also Most Merciful. And if you have 'azam (resolved to) divorce, then Allah is Most Hearing also Most Knowing.*⁶⁵

Allah has set a limit of 4 months for husbands who want to *ila'* their wives to contain lessons for both husbands and wives. This makes no interaction between husband and wife and it causes longing between the two. It is also a lesson for the wife, then she regrets her past attitude, improves herself as a provision for her past attitude and then changes to be better than previous times. In this case, if the husband is good, he returns to his wife, he is obliged to pay a *kaffarah* oath because he has used the name of Allah for his own needs. The oath *kaffarah* is in the form of:

- a. Feeding 10 poor people, or

⁶⁴ Zakiah Darajat, *Ilmu Fiqh*, Jilid II (Yogyakarta: Dana Bakti Wakaf, 1995), 200

⁶⁵ Translator Team, *Al-Qur'an dan Terjemahan*, 36

- b. Dressing 10 poor people, or
- c. To set a slave free

If you do not do any of the three, then the kaffarah is fasting for 3 consecutive days as described in the word of Allah in Surah al-Maidah verse 89.⁶⁶ For the wife who is *ila'* by her husband, the isolation by the husband for 4 months becomes a means of education for her, giving the opportunity to think about her past non-sympathetic attitude, realizing her shortcomings in serving her husband so far.

After a period of 4 months has passed since the husband declared the vow *ila'*, it turns out that the husband did not retract his oath, meaning that during that time there was no change towards improvement, so the husband wanted a divorce. With the passing of the 4 months period there was a divorce between the two, either by the husband passing divorce to his wife or the wife complaining to the judge, then the judge who decreed the divorce. It is narrated from Ibn Abbas r.a that the *ila'* of the ignorant people is a year, two years, even more. So Allah gave a time limit for 4 months. Whoever is *ila'* less than 4 months then it is not *ila'*.⁶⁷

⁶⁶ Abdul Rahman Ghazali, *Fiqh Munakahat*, 236

⁶⁷ Ahmad Ali Al-Jurjawi, *Hikmah al Tasyri' wa Falsafatuhu (Falsafat Hukum Islam)*, Terj. Hadi Mulyono dan Shobahussurur (Semarang: CV. Asy-Syifa, 1992), 333

4. *Fasakh*

Fasakh is destroying or canceling. This means that the marriage is terminated or destroyed at the request of one of the parties by a judge at the Religious Court. Usually it is the wife who demands *fasakh* in court. As for the reasons that a wife is allowed to claim *fasakh* as follows:

- a. Husband is mad.
- b. Her husband suffered from an incurable contagious disease.
- c. The husband is unable or loses the ability to have sexual relations.
- d. Husbands fall into poverty so they are unable to provide for their wives.
- e. The wife feels cheated whether in line of nasab, wealth or husband's position.
- f. The husband went without knowing where his residence was and without any news so that it was not known whether he was alive or dead and the time had been long enough.⁶⁸

5. *Syiqaq*

Syiqaq means a dispute or according to the term *fiqh* means a husband-wife dispute which is settled by two judges, one person from the husband's side and one person from the wife's side. The Word of God in Surah An-Nisa verse 35 states:

⁶⁸ A. Rahman I. Doi, *Penjelasan Lengkap Hukum-Hukum Allah (Syari'ah)* (Jakarta: PT Raja Grafindo, 2002), 224

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا
يُوفِّقَ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Meaning: *And if you are worried that there is a dispute between the two, then send a hakam from a male family and a hakan from a female family. If the two hakam intend to make improvements, surely Allah will give taufik to the husband and wife. Allah is All-Knowing, All-Knowing.*⁶⁹

Surah An-Nisa verse 35 states that in the event of *syiqaq* (quarrel), the judge is ordered to bring in rights taken from each husband and wife's family or other parties who are capable of being mediators or peacemakers. This shows that divorce should be avoided and made difficult, because it will affect the family, especially the ex-wife and their children. Hakamain was given the task of performing *ishlah* (peace). However, if the two cannot be reunited, then the right to hand it back to the judge to carry out legal action, namely divorce.⁷⁰

F. Divorce in Indonesia

Basically, the marriage is carried out for eternity until the death of one husband and wife. This is exactly what Islam wants. but in certain circumstances there are things that require the break-up of the marriage (divorce) in the sense that if the marital relationship is continued, then harm will occur. In this case Islam justifies breaking the

⁶⁹ Translator Team, *Al-Qur'an dan Terjemahan*, 84

⁷⁰ Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Juz I, 215

marriage as the last step in the effort to continue the household, thus divorce is a way out.⁷¹

According to Article 199 BW, that a marriage can break up or dissolve because:

- a. By death;
- b. By the absence of husband and wife (*afwezigheid*) for ten years, which was followed by a new marriage of the wife or husband;
- c. By a judge's decision after separating the table and bed (*scheiding van tafel en bed*);
- d. By divorce

Meanwhile, according to Law no. 1 of 1974 concerning Marriage in article 38 states that a marriage can break up because:

- a. Dead;
- b. Divorce; and
- c. On the court's decision

Article 39 of Marriage Law confirm that:

- a. Divorce can only be carried out before a court session after the court in question has tried and failed to reconcile the two parties;
- b. To do a divorce there must be sufficient reason, that the husband and wife will not be able to live harmoniously as husband and wife.

⁷¹ Amir Syarifuddin, *Garis-Garis Besar Fiqh* (Jakarta: Kencana Pranamedia Group, 2003), 124

It is also explained in Article 114 of the Compilation of Islamic Law,⁷² that the termination of a marriage due to divorce can occur because of the divorce requested by the husband (Article 129) or a divorce lawsuit filed by the wife (Article 132). The reasons for divorce based on Article 116 of the Compilation of Islamic Law are:

- a. One of the parties commits adultery or becomes a drunkard, compactor, gambler and so on which is difficult to cure;
- b. One of the parties leaves the other for 2 consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his control;
- c. One of the parties gets a punishment of 5 years or a heavier punishment after the marriage takes;
- d. One of the parties commits atrocities or severe persecution that endangers the other party;
- e. One of the parties gets a disability or illness as a result of not being able to carry out his obligations as husband or wife;
- f. Between husband and wife there are continuous conflicts and quarrels and there is no hope of living in harmony in the household;
- g. Husband violates taklik talak;

⁷² Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law

- h. Religious conversion or apostasy that causes disharmony in the household.

CHAPTER III

COMPARISON BETWEEN HANAFI SCHOOL AND SYAFI'I SCHOOL ABOUT THE LIVELIHOOD AND DIVORCE

A. Hanafi School and Syafi'i School of Thought

1. History of Hanafi School

The Hanafi school was founded by a great scholar of that time named Abu Hanifah. His full name is Al-Nu'man ibn Tsabit ibn Zuthi (80-150) H. He was born in Kufa during the Umayyah dynasty, to be precise during the empire era of Abdul Malik bin Marwan. The Hanafi school of thought is the oldest and the first school in Islamic history.

Initially Abu Hanifah was an ordinary seller who turned into a science developer at the advice of Al-Sya'labi. Abu Hanifah studied fiqh from Iraqi chlerics. Abu Hanifah invited his people to be freer in thinking problem solving

that were new and not yet contained in the al-Qur'an and Sunnah. Abu Hanifah relied a lot on qiyas (analogy) in determining the law of a problem. Throughout history that the companions of Abu Hanifah who recorded his Madzhab were 40 peoples. Among them are Imam Abu Yusuf and Imam Zafar. Then to begin with writing his books was Asad bin 'Amar.⁷³

Then when Harun Al-Rasyid became head of state for the Islamic world, for the judicial affairs of his government he left it to Imam Abu Yusuf, who was famous after 170 H and was a student of Imam Abu Hanifah. After the handover, the judicial affairs in the kingdom of Al-Rasyid were in the hands of Abu Yusuf, who then did not act to hand over judicial affairs to each city but to the appointed person.⁷⁴

The Hanafi school was known to Egyptians after 164 H, it began with the appointment of the head of state to become a *Qadhi* named Al-Mahdy, who was a follower of the Hanafi school and first broadcast the Hanafi school in Egypt. Especially after the Islamic government was in the hands of the head of state from the Abbasiyah descent, the Hanafi school of thought continued to develop until the year 358 H. When the country of Egypt was in the hands of kings of Fathimiyah descent, then brought their school, namely the Syi'ah Ismailiyah Madzhab, not only spread because of it. However, the position of *Qadhi* was also influenced by

⁷³ Munawar Chalil, *Biografi Empat Serangkai Imam Madzhab: Hanafi, Maliki, Syafi'i, dan Hambali* (Jakarta: Bulan Bintang, 1994), 180

⁷⁴ Munawar Chalil, *Biografi Empat Serangkai Imam Madzhab: Hanafi, Maliki, Syafi'i, dan Hambali*, 181

that school of thought, and even the Syi'ah school had become a government school officially. Namely, the law enforced by the government in Egypt adheres to the Syi'ah school, in contrast to the issue of worship, people are given the freedom to perform worship according to their respective schools of thought, but for the Hanafi school it is prohibited.⁷⁵

During the time when the Egyptian government was in the hands of Al-Ayyubi, they fought, oppressed, and even cut down the Syi'ah schools and all the sects related to Syi'ah. During that time, the Al-Ayyubi kingdom established many schools to produce clerics who followed the Hanafi and Maliki Schools. Sultan Salahuddin Al-Ayyubi builded a school to teach the Hanafi School and was named the Ash-Shuyufiyah School. Since then Madzhab Hanafi has regained strength to fame and flourish in the midst of Egypt. Then in 641, a school called the Ash-Shalihiyah school by Sultan Shalih Najmuddin was founded, this school taught its students four famous schools ranging from Hanafi, Maliki, Syafi'i, and Hambali in response to eradicating the other schools. After that the Hanafi school spread and developed to the countries of Syria, Iraq, India, Afghanistan, Caucasus, Turkey and Balkans. Most of the population in Turkey Usmani and Albania are followers of the Hanafi School. The development of this school of thought was through the mediation of the kings powers.⁷⁶

⁷⁵ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzhab* (Jakarta: Sinar Grafika Offset, 2001), 25

⁷⁶ Munawar Chalil, 183

a. Biography of 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, including 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 al-Marzuban from the descendants of Faris al-Ahrar. Based on the lineage as mentioned, the majority of scholars said that Abu Hanifah was an *'ajam* person, that is not of Arab descent.⁷⁷

His chewing name is Abu Hanifah because he often carries an inkpot, which in Iraqi is called *hanifah*. Abu Hanifah was very studious, obedient in worship and earnest in carrying out religious obligations. He came from Persian descent, born in Kufah in 80 H/699 M during the Khilafah Abd. al-Malik bin Marwan and died in Baghdad in 150 H/767 M. He lived in two socio-political environments, during the late Umayyah dynasty and the early days of the Abbasiyah dynasty.⁷⁸

⁷⁷ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, *Diskursus Madzhab Fikih Arba'ah* (Malang: Ma'had Al-Jamiah Al-Aly UIN Malang, 2020), 3

⁷⁸ Huzaemah Tahido Yanggo, *Pengantar Perbandingan Madzhab* (Ciputat: Gaung Persada, 2012), 104.

b. Growth of Development Period and Educational History

Imam Abu Hanifah was born and grew up in Kufah. However, it is not known whether he has been in the concentration of scientific studies since his development or not. It only says that he is busy in the trade sector as a silk seller and his shop is well known in the area of Amr bin Harits. Until one day Allah unite him together with Imam al-Sya'bi. Then Imam al-Sya'bi also saw the potential for intelligence and expertise in Abu Hanifah then he advised Abu Hanifah to study and follow the *halaqah* of the 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.⁷⁹

The first knowledge that Imam Abu Hanifah learned was the science of *kalam* (theology) until he became an expert in that knowledge, finally Allah SWT moved Abu Hanifah's heart to turn away from the knowledge of *kalam*. Once upon a time Imam Abu Hanifah was sitting near the *halaqah* of Imam Hammad bin Sulaiman. Then a woman came to ask him about the problem of syariah (fiqh) but he did not find the answer. Then the woman went to Imam Hammad and asked him. Imam Hammad answered. The woman returned to Imam Abu Hanifah and said, "*You have tricked me! I have heard what you say, and it turns out you can't do anything*". The woman was disappointed with Abu Hanifah, who often opened up theological studies and became an

⁷⁹ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, *Diskursus Madzhab Fikih Arba'ah*, 4.

expert, but it turned out that when he was confronted with the issue of fiqh, Abu Hanifah was unable to answer. This then led Imam Abu Hanifah for leaving the knowledge of *kalam* and intensively coming to Imam Hammad's halaqah to deepen his fiqh so that he became an expert in that knowledge to a position where no one could excel.⁸⁰

Imam Abu Hanifah studied from the great scholar of his time, namely Imam Hammad Ibn Abi Sulaiman since the age of 22 years for 18 years without interruption and never matched his teacher. On his way Imam Abu Hanifah said:

*“After 10 years I studied science from Imam Hammad, I had time to find myself looking for a position. I wish to quit Imam Hammad's halaqah and set up my own halaqah. One day in the blind morning I came out with the full desire to make it happen. But when I entered the mosque, I saw him and didn't have the heart to look away. I also approached him and sat down with him. Later that night, it was reported that one of his relatives in Basrah had died and left his property but had no heirs other than him. Imam Hammad asked me to replace him temporarily. While Imam Hammad was gone I had many questions which I had never heard from him. I also answered and wrote the answer and then I presented it to him. Then when he came, I submitted a note of the problem. There are 60 problems, from these answers, 40 of them are correct and 20 are wrong. I also decided not to separate from him until he died. And so it happened”.*⁸¹

Hammad Ibn Abi Sulaiman was one of the high (prominent) Imams at that time. He is a student of 'Alqamah Ibn Qais and al-Qadhi Syuriah. Both were figures and fiqh experts who were well known in Kufah and the Tabi'in

⁸⁰ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 5

⁸¹ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 5

faction. It was from Hammad Ibn Sulaiman that Abu Hanifah learned fiqh and hadith. After that Abu Hanifah several times went to the Hijaz to study fiqh and hadith as an added value of what he had obtained in Kufah. After Hammad's departure, the Kufah Madrasah Council agreed to appoint Abu Hanifah as the head of the school. During that time he served and issued many fatwas on fiqh matters. His fatwas are the main basis of the thinking of the schools known today.⁸²

It is said that Imam Abu Hanifah greatly honored his teacher, so that when he pooping, he never went to the house of his teacher, Imam Hammad. Even while sleeping, he never stretched out his feet to face his teacher's house. It was also said that Imam Abu Hanifah was reluctant to increase the number of teachers because he was worried about the many rights of his teachers so that he could not fulfill them.⁸³

Imam Abu Hanifah succeeded in educating hundreds of students who had broad views on the issue of fiqh. Dozens of his students served as judges in the governments of the Abbasiyah, Seljuq, 'Utsmani, and Mughal dynasties. As for Imam Abu Hanifah's teachers who had many services and always gave him advice: Imam Amir Ibn Syahril al-Sya'by and Hammad Ibn

⁸² Huzaemah Tahido Yanggo, *Pengantar Perbandingan Madzhab*, 106

⁸³ Muhammad Fasihuddin, Ni'ma Rofidah, dkk, 6

Sulaiman al-Asy'ari, he studied qira'at and tajwid from Idris 'Asim. He was very diligent and always obeyed and obeyed his teacher's orders.⁸⁴

c. Imam Hanafi's Teachers and Students

1) Imam Hanafi's Teachers

According to history, his teachers at that time were the tabi'in scholars. Among them Imam Atha' bin Abi Rabah (d. 114 H), Al-Sya'labi (d. 104 H), Nafi' Maulana bin Umar (d. 117 H). Then among the people who had been his teacher were Amr bin Dinar, Qatadan bin Du'amah, Ibnu Syihab al-Zuhri, Muhammad bin al-Munkadir dan Hisyam bin 'Urwah. His great teacher in fiqh and *takhrij hadith* was Imam Hammad bin Abi Sulaiman (d. 120 H).⁸⁵

2) Imam Hanafi's Student

Imam Hanafi's students who served at the Kufah Madrasah and recorded his fatwas so that they were known in the Islamic world, they: Abu Yusuf Ya'qub bin Ibrahim Al-Anshary (113-182 H), Muhammad ibn Hasan Al-Syaibany (132-189 H), Zufar ibn Huzailibn Al-Kufy (110-158 H), Al-Hasan ibn Ziyad Al-Lu'lu (133-204 H).⁸⁶

⁸⁴ Huzaemah Tahido Yanggo, 6

⁸⁵ Moenawar Chalil, *Biografi 4 Serangkaian Imam Madzhab*, Cet. I (Depok: Gema Insani, 2016), 8

⁸⁶ Huzaemah Tahido Yanggo, *Pengantar Perbandingan Madzhab*, Cet. I (Jakarta: Logos Wacana Ilmu, 1997), 101

d. Legal Basis Excavation

Imam Abu Hanifah never described the methodology used in building schools of thought and there were no specific rules that he used to describe his studies and his *ijtihad*. There is a global methodology which Imam Abu Hanifah is based in analyzing cases.⁸⁷

1) Al-Qur'an

Al-Qur'an is the basis and the main source that is used as a reference in every taking of the Hanafi School of Law. This is inseparable from the content of al-Qur'an which *qat'iyu tsubut*.⁸⁸

2) Al-Hadits

The second Sharia guidelines serve to explain and interpret some verses in the Al-Qur'an. Imam Abu Hanifah took the authentic hadith from the Prophet. Often times he only used the really good and famous hadith that were passed on by many narrators to other narrators.⁸⁹

3) Ijma'

Ijma' is used if the answer is not found in the texts of the al-Qur'an and hadith. This can be indicated from Abu Hanifah's statement:

⁸⁷ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 19

⁸⁸ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 20

⁸⁹ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 21

*“and every action that always refers to the al-Qur'an, al-Hadith and ijma”.*⁹⁰

4) Companions Word

When the companions differed and produced a lot of *qaul*, then Imam Abu Hanifah chose friends *qaul* who were close to the sharia and did not come out (diverge) from these *qawl*.⁹¹

5) Qiyas

Qiyas is used if you don't find the answer in al-Qur'an, hadith, ijma' and the *qaul* of friends. If the answer is still found in the four bases of taking the law, he will not take the path of qiyas even though his dzahir text does not match qiyas.⁹²

6) Istihsan

Istihsan is carried out if way of qiyas there is still no answer. Istihsan according to Imam Abu Hanifah is not an opinion that comes from mere lust without any arguments for the Sharia, because he is too *wara'* to do such a thing. For Imam Abu Hanifah istihsan is as stated by Imam Hasan al-Kurhi: *“Istihsan is the transfer of the law of a problem which should be punished in accordance with the general law and then moving to another law*

⁹⁰ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 22

⁹¹ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 22

⁹² Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 22

because there is a stronger factor". This understanding is considered the most appropriate definition according to Imam Abu Zahrah.⁹³

7) *Al-Urf*

Urf is used if there are no texts from the al-Qur'an, hadith, ijma' or factors that encourage the use of qiyas and istihsan. In this case, he considers the prevailing tradition among the community and establishes laws according to these traditions. The implementation of *urf* is valid as long as it does not differ from the information that has been stated in the madzhab books.⁹⁴

e. Periodization of Development Hanafi School

The period of growth and development of the Hanafi School began at the beginning of the second century of Hijriah, in the year 120 H. At that time Imam Abu Hanifah occupied the position of Mufti and teacher to replace Syaikh Hammad bin Abi Sulaiman, therefore that year was the beginning of the growth *mu'tamad* (strong) school of fiqh. With the existence of a fiqh study which was pioneered by Imam Abu Hanifah, the Hanafi school of thought began to spread widely, because Imam Abu Hanifah had many students who always attended his halaqah, recorded his thoughts as well as broadcast them. Therefore Imam Abu Hanifah's students had a major

⁹³ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 23

⁹⁴ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 23

influence in the establishment and distribution of schools of thought, especially Imam Abu Yusuf and Imam Muhammad.⁹⁵

The first period is called the stage of formation and development of schools of thought. This period starts from the time of Imam Abu Hanifah until the death of his oldest student, al-Hasan bin Ziyad al-Lu'lu'i (204 H). In this period there was the establishment of the Hanafi School, where there began to determine the source of law in the school and formulate rules whose function would be used for legal *istinbath* (digging for law) and answering the problem of *furu'* (branch of law) where all of these things have been thoroughly concocted by Abu Hanifah with his senior students. This is clearly illustrated by Abu Hanifah's teaching method by discussing various fiqh issues with his students. So that when a legal formula was determined, at that time he ordered Abu Yusuf to record it.⁹⁶

The second period starts from the death of Imam Hasan bin Ziyad (204 H) to the death of al-Imam Hafizuddin, Abdullah bin Ahmad bin Mahmud al-Nasafi (710 H) author of the book *Kanzu al-Daqaiq*. This period is precisely at the beginning of the third century Hijriyah until the end of the seventh century Hijriyah. This period was the peak of the Hanafi school's heyday in terms of the expansion and dissemination and expansion of *ijtihad* and the

⁹⁵ Abdul Aziz Asy-Syinawi, *Biografi Empat Imam Madzhab*, terj. Abdul Majid dan Arif Mahmudi, Cet I (Jakarta: Ummul Qura, 2016), 30

⁹⁶ Abdul Aziz Asy-Syinawi, *Biografi Empat Imam Madzhab*, 31

development of the views of the school of thought. Starting to actively book and compile books and classifying fiqh problems in several chapters and began to circulate the delivery of views of schools of thought from new cases that have occurred. Also began to circulate *matan* and *mukhtasar* books such as *Mukhtasar al-Tahawi*, *Mukhtasar al-Karkhi*, *Mukhtasar al-Quduri*, *Bidayah al-Mubtadi* belonging to Imam al-Marghinani and others.⁹⁷

The third period starts from the death of Imam An-Nasafi (710 AH) or from the beginning of the eighth century Hijriyah until now. What distinguishes this period from the previous one is that the stagnation in fiqh is inversely proportional to the previous period. The scholars of the Hanafi Madzhab were satisfied with what their predecessor scholars had left by quoting their opinions on matters of fiqh. The composition of the book only revolved around *syarah* (explanation), *khasiyah* (footnote), *ta'liqat* (interpretation) and *rudud* (rejections). Much of the work of this period was concerned only with this.⁹⁸

f. Imam Hanafi's Works

- 1) Kitab *az-Ziyadat*
- 2) Kitab *al-Jami' ash-Shaghir*
- 3) Kitab *al-Jami' al-Kabir*
- 4) Kitab *as-Sairush Shaghir*

⁹⁷ Abdul Aziz Asy-Syinawi, 32

⁹⁸ Abdul Aziz Asy-Syinawi, 33

5) Kitab *as-Sairul Kabir*

g. The Death of Imam Abu Hanifah

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.⁹⁹

2. History of Syafi'i School

Syafi'i School is the school of fiqh which was found by Muhammad bin Idris asy-Syafi'i or better known as Imam Syafi'i. When he was 7 years old he had memorized al-Qur'an and after the age of 10 he had memorized *al-Muwattha'* (the book of Imam Malik). After he was almost 20 years old he went to Madinah because he heard the news of Imam Malik, who was so famous as an alim of hadith and fiqh. There he studied with Imam Malik then moved to Iraq and mingled with the friends of Imam Abu Hanifah. Continue on to Parsi and several other lands for two years to travel. After the age of 20, he received permission from his teacher, Muslim bin Kholid, to take religious law. Said 'Ali bin Usman: *"I have never seen anyone smarter than Syafi'i, in fact no one could compete with him at that time, he was smart in all knowledge so that in throwing arrows it can be guaranteed 90% will hit the target"*.¹⁰⁰

⁹⁹ Muhammad Fasihuddin, Ni'ma Rofidah, dkk, 10

¹⁰⁰ Ahmad Asy-Syurbasi, 143

The thought of this school of fiqh was initiated by Imam Syafi'i who lived at the time of the conflict between the traditions of *Ahlul Hadith* and *Ahlur Ra'yi*. Imam Syafi'i studied with Imam Malik as a figure of *Ahlul Hadith* and Imam Muhammad bin Hasan asy-Syaibani as a figure *Ahlur Ra'yi* who was also a student of Imam Abu Hanifah. Then he formulated his own school of thought which could be said to be between the two groups. Imam Syafi'i rejected *istihsan* from Imam Abu Hanifah and *mashlahah mursalah* from Imam Malik. However, the Syafi'i school of thought accepted the wider use of qiyas than Imam Malik. Although different from the two main streams, Imam Syafi'i's excellence as a scholar of fiqh, ushul fiqh and hadith in his time made his school gain a lot of followers. While the basis of Imam Syafi'i itself is al-Qur'an, sunnah, ijma' and qiyas.¹⁰¹

Syafi'i schools are mostly adopted by residents of lower Egypt, western Saudi Arabia, Syria, Indonesia, Malaysia, Brunei, the Coromandel Coast, Malabar, Hadramaut, and Bahrain. The dissemination of the Syafi'i school of thought is different from the Hanafi and Maliki Schools in that the development of their schools is through the influence of the khalifah and the king. Beginning with the book ushul fiqh *ar-Risalah* and the book of fiqh *al-Umm*, the main thoughts and basic principles of the Syafi'i school of thought were then disseminated and developed by his students.¹⁰²

¹⁰¹ Dedi Supriyadi, *Perbandingan Madzhab Dengan Pendekatan Baru* (Bandung: CV Pustaka Setia, 2008), 125

¹⁰² Dedi Supriyadi, *Perbandingan Madzhab Dengan Pendekatan Baru*, 135

a. Biography of Imam Syafi'i

He is al-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-Quraisyi. Syafi'i bin Sa'ib was the grandfather who became the patron of Imam Syafi'i.¹⁰³ Imam Ibn Hajar al-Asqalani said that Imam Syafi'i when he was seven years old had finished memorizing the Qur'an. Not only memorizing it, but he also mastered the knowledge of interpretation and all kinds of knowledge contained in the al-Quran. Then when he was ten years old, he had memorized the hadith book *al-Muwattha'* by Imam Malik. Imam Syafi'i was born in Gaza, in 150 H coinciding with the year of the death of Imam Abu Hanifah an-Nu'man bin Tsabut. His father died not long after he was born, then his mother took him to the city of Makkah to his people, Bani Muthallib.¹⁰⁴

h. Growth of Development Period and Educational History

Imam Syafi'i when he was about 10 years old was brought by his mother to Makkah, when he had memorized the Qur'an. In Makkah he got a lot of hadith from hadith scholars. Because of his poverty, he often picks up papers that have been discarded and then uses them to write. When his enthusiasm for studying became stronger and realized that the Qur'an was a very beautiful language and had a very deep meaning, he went to the Hudzail

¹⁰³ Huzaemah Tahido Yanggo, 121

¹⁰⁴ Huzaemah Tahido Yanggo, 122

tribe to study and deepen Arabic literature and follow Muhammad SAW advice on life, in his childhood. There he memorized ten thousand Arabic verses. At Makkah Imam Syafi'i studied from Sofyan bin Uyainah and from Muslim bin Khalid. After that went to Madinah to learn from Imam Malik. He brought a letter from the wali of Makkah to the wali of Madinah so that it would be easy to meet Imam Malik. At that time Imam Syafi'i was 20 years old. Then studied from Imam Malik for 7 years.¹⁰⁵

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. However, some of the instigators hated him, which resulted in him having to move to Iraq, because it was alleged that he had conspired with the Bani 'Alawiyyin to get out of the Abbasiyah Dynasty. Then in 184 H he moved to Baghdad. There he stayed with Imam Muhammad bin Hasan and learned some knowledge from him so that Imam Syafi'i considered Imam Muhammad as the second teacher after Imam Malik. In this phase he studied a lot from several scholars, including: Waki' bin Jurrah, Abdul Wahhab bin Abdul Majid ats-Tsaqafi, and Ismail bin Ibrahim al-Basri. All these scholars are recognized as Imam Syafi'i teachers while in Iraq by historians.¹⁰⁶

¹⁰⁵ Al-Jundi Abdulhalim, *Al Imam Asy Syafi'i* (Kairo: Daar al-Qalam, 1996), 51

¹⁰⁶ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 104

Imam Syafi'i returned to Makkah after the death of his teacher, Imam Muhammad bin Hasan in 189 H. In this phase Imam Syafi'i introduced a new fiqh, namely between the fiqh of the people of Madinah and the fiqh of the Iraqi population. Many scholars have studied fiqh from Imam Syafi'i, among them the most famous and noble is Imam Ahmad bin Hanbal. In 195 H, Imam Syafi'i returned to Baghdad for the umpteenth time and made a fiqh halaqah once recorded his school of thought. He also wrote *al-Hujjah* on fiqh issues and *ar-Risalah* on ushul fiqh issues. These two books were the mouthpieces and characteristics of 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 city of Egypt. In 199 H, he began to settle there while distributing and recording his new schools of thought in terms of fiqh and ushul which lasted for 4 years. It was in this phase that his opinion was known as *qaul jadid*.¹⁰⁷

b. Imam Syafi'i's Teachers and Students

1) Imam Syafi'i's Teachers

While in Makkah his teacher are Sufyan bin 'Uyainah, Muslim bin Khalid and Imam Malik. While in Baghdad his teacher are Imam

¹⁰⁷ Muhammad Fashihuddin, Ni'ma Rofidah, dkk, 105

Muhammad bin Hasan, Waki' bin Jarrah, Abdul Wahhab bin Abdul Majid ats-Tsaqafi, and Ismail bin Ibrahim al-Bashri.

2) Imam Syafi'i's Students

While return to Makkah his students are Imam Ahmad bin Hanbal dan Imam Ishaq bin Rahawaih. Then while return to Baghdad his student are Abu Tsaur al-Kalbi, Abu Ali al-Karabisi dan Hasan az-Za'farani. Including the most popular students in Mesir are al-Imam Buwaithi, Imam al-Muzani dan Imam Rabi' bin Sulaiman al-Muradi.

c. Legal Basis Excavation

Imam Syafi'i in determining the law of a problem that arises in society using the basis, namely al-Qur'an and sunnah, ijma' and qiyas.

1) Al-Qur'an and Sunnah

Imam Syafi'i views al-Qur'an and al-Sunnah as being of one dignity, because according to him the sunnah describes the al-Qur'an, except for the hadiths that are not the same value as the al-Qur'an and the hadith *mutawatir*. Besides that, because al-Qur'an and sunnah are both revelations, even though the power of sunnah separately is not as strong as the al-Qur'an.

In practice, Imam Syafi'i took the method that if in the Qur'an there was no evidence for which he was looking for, he used the hadith *mutawatir*. If it is not found in the hadith *mutawatir*, he uses

the hadith *khobar ahad*. If there is no evidence of all of these, then try to establish a law based on *zahir al-Qur'an* or sunnah respectively.¹⁰⁸

2) Ijma'

Imam Shafi'i determined that ijma' is hujjah and he put ijma' after al-Qur'an and sunnah before qiyas. Imam Shafi'i accepted ijma' as evidence on matters not explained in the al-Qur'an and sunnah. Ijma' according to Imam Shafi'i's opinion is the ijma' of scholars at one time throughout the Islamic world, not the ijma' of a country alone and not the ijma' of a particular people. However, Imam Syafi'i acknowledged that the ijma' friend is the strongest ijma'. The ijma' that used by Imam Syafi'i as a legal argument is ijma' which is based on the texts or there is a history of the Prophet Muhammad. He firmly said that ijma' which has the status of legal proposition is ijma' a friends of Muhammad SAW.¹⁰⁹

3) Qiyas

Imam Syafi'i was the first mujtahid to discuss qiyas with his standards and explain its principles. While the previous mujtahid had used qiyas in performing ijtiha'd, they had not yet formulated a standardized rule of thumb, even in practice in general they did

¹⁰⁸ Huzaemah Tahido Yango, *Pengantar Perbandingan Madzhab*, 128

¹⁰⁹ Huzaemah Tahido Yango, *Pengantar Perbandingan Madzhab*, 130

not have clear standards, so it was difficult to know which results of ijihad were correct and which were wrong. As a argument for using qiyas, Imam Syafi'i based it on the word of Allah in al-Qur'an surah al-Nisa verse 59:

..... فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

Meaning: ... *then if you disagree about something, then go back to Allah (al-Qur'an) and to the Prophet (al-Sunnah) ...*

Imam Syafi'i explained that the meaning of “*return to Allah and His Messenger*” is *qiyas* to one, from the al-Qur'an or sunnah.¹¹⁰

d. Periodization of Development Syafi'i School

The history of Imam Syafi'i's life was always learning and teaching religious knowledge. When he was still a student, Imam Syafi'i was among those who were privileged by Imam Malik. It is evident that Imam Syafi'i was asked by Imam Malik to live in the same house with him and all expenses both for living and for other necessities were borne and provided for. Thanks to the persistence he was always close to his teacher, he became a loyal follower of the Maliki School. This was proven when in Makkah they still adhered to the Maliki School and then studied in Iraq, where they followed the Hanafi School of thought. Because of this situation, Imam Syafi'i turned into a follower of the Hanafi School. Then after returning from Iraq, he settled in Makkah and

¹¹⁰ Huzaemah Tahido Yanggo, 132

brought Iraqi fiqh which was perfect and then developed it through discussions in the *majlis ta'lim* which was located at the Grand Mosque, and that was where he began to develop new fiqhs, namely Madinah-style fiqh and Iraqi-style fiqh. This means that fiqh is mixed between *naqli* and *aqli*.¹¹¹

The Syafi'i school of thought spread and developed in eastern Islamic countries, then developed little by little to other countries. As for now, generally the followers of the Syafi'i school are in Egypt, Palestine, Arminia, Ceylon, part of the Persian population, China, the Philippines, Indonesia, Australia, Aden and some of the population in Asia. In India there are a large number of followers of the Syafi'i Madzhab also in Syria, it is estimated that a quarter of the population follows the Syafi'i School.¹¹²

e. Works of Syafi'i School

- 1) Kitab ar-Risalah
- 2) Kitab al-Umm
- 3) Kitab Ikhtilaf Malik wa al-Syafi'i
- 4) Al-Imla'
- 5) Al-Amaly
- 6) Harmalah
- 7) Mukhtashar al-Muzaniy

¹¹¹ Ash-Shiedieqy, *Pokok-Pokok Pegangan Imam-Imam Madzhab dalam Membina Hukum Islam* (Jakarta: Bulan Bintang, 1973), 23

¹¹² Moenawar Chalil, *Biografi 4 Serangkaian Imam Madzhab*, 224

8) Mukhtashar al-Buwaithiy

9) Kitab Ikhtilaf al-Hadits

f. The Death of Imam Syafi'i

In the last years living in Egypt, Imam Syafi'i had hemorrhoids. The longer his condition did not improve until he died on the last day of the month of Rajab in 204 H at the age of 54 years, as told by his student, Imam Rabi' al-Muradi, "Imam Syafi'i died on Friday night after maghrib. At that time I was beside him. His body was buried on the Friday after Ashar, the last day of the month of Rajab. When we came home from accompanying his body, we saw the new moon of the month of Sya'ban 204 Hijriyah". The death of Imam Syafi'i was a deep sorrow for Muslims.¹¹³

The similarities dan differences about Hanafi School and Syafi'i School

	Similarities	Differences
Hanafi School	<ul style="list-style-type: none"> - Is the main school in Islam - Clasical scholars 	<ul style="list-style-type: none"> - Ahlu ra'yi scholar - Growing in Egyp
Syafi'i School		<ul style="list-style-type: none"> - Ahlu hadits scholar - Qaul qadim (Baghdad, Makkah) and qaul jadid (Mesir)

¹¹³ Syaikh Ahmad Farid, *Biografi 60 Ulama Salaf* (Jakarta: Pustaka Al-Kautsar, 2006), 383

B. *Khulu'* from the Perspective of Hanafi School and Syafi'i School

Linguistically, *al-khul'u* is uprooting and removing. *Al-khul'u* is the ism (noun) of *al-khal'u* and women are men's clothes in the majazi sense. Allah says in Surah al-Baqarah verse 187:

هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ

Meaning: *They (your wives) are garments for you and you are garments for them.*

Meanwhile, according to the sharia term, there are various statements of fuqaha regarding its definition. The conclusion from these definitions is that *khulu'* is the occurrence of divorce between husband and wife with the willingness of both and with compensation (ransom) given by the wife to her husband.¹¹⁴

The reasons that allow *khulu'* are:¹¹⁵

- Husbands practice polygamy without the permission and knowed of the first wife.
- Husband cheated on her.
- The husband acts violently which causes his wife's life to be threatened.
- Husband disappeared for a long time and did not provide physical and spiritual livelihood.

¹¹⁴ Abu Malik Kamal bin as-Sayyid Salim, *Shahih Fiqh Sunnah*, (Jakarta: Pustaka Tazkia, 2006), 464

¹¹⁵ Boedi Abdullah dan Beni Ahmad Saebani, *Perkawinan Perceraian Keluarga Muslim*, (Bandung: Pustaka Setia, 2013), 259-260

- The husband is imprisoned and the wife is unable to bear the shame of the husband's actions which are the cause of imprisonment.
- The husband has physical disability and the wife is unable to take care of her husband or the wife can't wait for her husband who has a physical disability.
- Husband suffers from an incurable disease.

The reasons that prohibit *khulu'* are:

- From the husband's side. In this case, the most important thing is not the initiative from husband, for example, the husband does various ways to make his wife sick and asks the *khulu'* to get divorced by way of lawsuit divorce. Hurting the wife to ask for *khulu'* is forbidden.
- From the wife's side. In marriage, the wife asks to separate from her husband in a *khulu'* way but does not have a explicit and syar'i reason, so in this case is prohibited in the sense that it is forbidden if the wife asks for a divorce without a logical reason.

1. *Khulu'* From The Perspective of Hanafi School

The Hanafiyyah clerics says that *khulu'* is:

الْخُلْعُ هُوَ إِزَالَةُ مِلْكِ النِّكَاحِ الْمَتَّوَقَّفَةِ عَلَى قَبُولِ الْمَرْأَةِ بِلَفْظِ الْخُلْعِ أَوْ مَا فِي مَعْنَاهُ¹¹⁶

¹¹⁶ Al-Jaziri, *Al-Fiqh 'Ala Madzahib al-Arba'ah*, (Cairo: Al-Daar Al-'Ilmiyyah, 2016), 920

“*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.”

The opinion of the Hanafiyyah scholars 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 to 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 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'*.¹¹⁷ Abu Hanifah equates *khulu'* with *thalaq* and *fasakh* at the same time.

Abu Hanifah argued, if 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 words of Allah (فَإِذَا تَأَخَّذُوا مِنْهُ شَيْئًا) [an-Nisa:20] in that verse it is stated that 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 SWT says in surah al-Baqarah verse 229:

فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَالَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ

¹¹⁷ Muhammad Jawad Mughniyah, *Fikih Lima Madzhab* (Jakarta: Penerbit Lentera, 2010), 463

Meaning: *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 explains the inability of husbands 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 husbands to take compensation for divorce in a situation where they are afraid to enforce Allah's laws, and that includes abuse of marital relations and hurting the wife. Each verse has a meaning that does not conflict with other meanings. And whoever says, verily the second verse erases the first verse, he has no basis. And for every situation when a woman receives *khulu'* with wealth, then the wealth is obligatory for her and happens *khulu'* then the successor belongs 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 men then he has it as a good asset.¹¹⁸

But if the husband forces his wife to accept *khulu'*, if he starts with the sentence: *حَلَعْتُكَ فَقَبِلْتِ مُكْرَهَةً* "I divorced you and you accept it by force" then *thalaq bain* occurs when using lafadz *khal'i* and is not entitled to money, because

¹¹⁸ Al-Jaziri, *Al-Fiqh 'Ala Madzahib al-Arba'ah*, 924

pleasure is a condition for the wife's obligation to give money . And if the husband says: طَلَّقْتُكَ عَلَى مِائَةٍ “I divorce you a hundred times” then the wife is forced to accept the divorce then there is *thalaq raj'i*, and the husband is not entitled to have money.¹¹⁹

The conclusion is if wives are forced to accept a divorce with lafadz “*khal'i*”, there occurs *thalaq bain* and husband will not get wealth. And if with the lafadz “*thalaq*” for money there is *thalaq raj'i* and does not get wealth.¹²⁰

2. Khulu' From The Perspective of Syafi'i School

The definition of *khulu'* according to the Syafi'i school as follows:

الْخُلْعُ شَرْعًا هُوَ اللَّفْظُ الدَّالُّ عَلَى الْفِرَاقِ بَيْنَ الزَّوْجَيْنِ بِعَوَضٍ مُتَوَفِّرَةٍ فِيهِ الشُّرُوطُ
الآتِي بَيَانُهَا فِي شُرُوطِ الْعَوَضِ، فَكُلُّ لَفْظٍ يَدُلُّ عَلَى الطَّلَاقِ صَرِيحًا كَانَ أَوْ كِنَايَةً
يَكُونُ خُلْعًا يَقَعُ بِهِ الطَّلَاقُ الْبَائِنُ؛¹²¹

“Khulu' in sharia 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:

الطَّلَاقُ مَرَّتَيْنِ ۖ فَاِمْسَاكُ بِمَعْرُوفٍ أَوْ تَسْرِيحُ بِإِحْسَانٍ ۗ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا
أَنْتُمْ مُوهِنٌ شَيْئًا إِلَّا أَنْ يَخَافَا إِلَّا يُتَيْمَمَا حُدُودَ اللَّهِ ۗ فَإِنْ خِفْتُمْ أَلَّا يُتَيْمَمَا حُدُودَ اللَّهِ ۖ فَلَا

¹¹⁹ Al-Jaziri, *Al-Fiqh 'Ala Madzahib al-Arba'ah*, 924

¹²⁰ Al-Jaziri, 924

¹²¹ Al-Jaziri, *Al-Fiqh 'Ala Madzahib al-Arba'ah*, 922

جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ
فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: *The divorce (which can be referred) is twice. (after the husband can) 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.¹²²

Regarding the legal position of *khulu'* according 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

¹²² Al-Imam asy-Syafi'i, *al-Umm*, 290

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.¹²³

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 his wife because the husband does *thalaq* to who is not his wife anymore.¹²⁴

C. The Level of a Livelihood From The Perspective of Hanafi School and Syafi'i School

In fact, there are so many schools of thought in fiqh, especially during the development and formation of laws. However, in this thesis the review is only focused on two well-known schools of thought and become references in the world today.

1. 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 the wife is an adult. He also argued that the level of living is not determined based on the Sharia. Husbands are obliged to provide their wives with

¹²³ Al-Imam asy-Syafi'i, 376

¹²⁴ Al-Imam asy-Syafi'i, 379

adequate levels of food, spices, meat, vegetables, fruit, oil, butter, and everything they need to live, according to the prevailing traditions. It varies with different places, times, and conditions. Besides that, the husband is also obliged to give clothes to his wife for summer and winter.¹²⁵

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, regardless of the condition of the wife, based on the word of Allah SWT in surah *ath-Thalaq* verse 6:

أَسْكُنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ
أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ.....

Meaning: *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 living until they give birth.*¹²⁶

And word of Allah in surah *ath-Thalaq* verse 7:

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا
إِلَّا مَا آتَاهَا سَيِّجَعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

Meaning: *Let people who are able to provide a living according to their abilities. And the person whose income is reduced must provide a living from the wealth given to him by Allah. Allah does not bear burdens on someone but only what Allah has given him. God will one day provide space after a narrow.*¹²⁷

¹²⁵ Sayyid Sabiq, *Fiqh Sunnah* (Mesir: asy-Syirkatu ad-Dauliyatu li ath-Thiba'ati, 2004),

¹²⁶ Translator Team, *Al-Qur'an dan Terjemahan*, 559

¹²⁷ Translator Team, *Al-Qur'an dan Terjemahan*, 559

As-Sarakhsi (d. 483 H) who is a scholar with the Hanafi school of thought, wrote in his book *al-Mabsuth* as follows:

فَرَضَ لَهَا عَلَيْهِ مِنَ النَّفَقَةِ كُلَّ شَهْرٍ مَا يَكْفِيهَا بِالْمَعْرُوفِ لِأَنَّ النَّفَقَةَ مَشْرُوعَةٌ لِلْكَفَايَةِ.
فَإِنَّمَا يَفْرَضُ بِمِقْدَارِ مَا يَعْلَمُ أَنَّ تَقَعُ بِهِ الْكَفَايَةَ. وَيُعْتَبَرُ فِي الْمَعْرُوفِ، ذَلِكَ وَهُوَ فَوْقَ
التَّقْتِيرِ وَدُونَ الْإِسْرَافِ¹²⁸

“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.”

وَقَالَ اللَّهُ تَعَالَى: لِيُنْفِقُ ذُو سَعَةٍ مِنْ سَعَتِهِ (الطلاق: ٧) الْآيَةُ تُبَيِّنُ أَنَّ التَّكْلِيفَ
بِحَسَبِ الْوُسْعِ وَأَنَّ النَّفَقَةَ عَلَى الرِّجَالِ بِحَسَبِ حَالِهِمْ¹²⁹

“Then he added, this is based on the word of Allah Ta’ala: (Let a person who has the breadth to provide a livelihood according to his 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.”

Al-Marghinani (d. 593 H) who is also a salaf scholar with the Hanafi school of thought, wrote in his book *al-Hidayah Syarah Bidayatu al-Mubtadi* as follows:

فَصَلِّ وَعَلَى الزَّوْجِ أَنْ يَسْكُنَهَا فِي دَارٍ مُفْرَدَةٍ لَيْسَ فِيهَا أَحَدٌ مِنْ أَهْلِهِ إِلَّا أَنْ تَخْتَارَ
ذَلِكَ لِأَنَّ السُّكْنََى مِنْ كِفَايَتِهَا فَتَجِبُ لَهَا كَالنَّفَقَةِ¹³⁰

¹²⁸ As-Sarakhsi, *Al-Mabsuth*, jilid 5 (Beirut: Dar al-Ma’rifah, t.t), 181

¹²⁹ As-Sarakhsi, *Al-Mabsuth*, 182

¹³⁰ Al-Marghinani, *al-Hidayah Syarah Bidayatu al-Mubtadi*, jilid II (Pakistan: Idaratu al-Qur’an wa al-‘Ulum al-Islamiyah, 1994), 288

“Article, It is the obligation of the husband to provide his wife with a place to live alone, which is not mixed with one of his relatives, unless the wife chooses this, because the place to live is a part of the wife’s needs, the law is obliged to be like a livelihood.”

باب النفقة قال: النفقة واجبة للزوجة على زوجها مسلمة كانت أو كافرة إذا سلمت نفسها إلى منزله فعليه نفقتها وكسوتها وسكنائها والأصل في ذلك قوله تعالى (لِيُنْفِقُ ذُو سَعَةٍ مِنْ سَعَتِهِ) (الطلاق: ٧) وقوله تعالى: وعلى المولود له رزقهن وكسوتهن بالمعروف (البقرة: ٢٣٣) وقوله عليه الصلاة والسلام في حديث حجة الوداع وهن عليكم رزقهن وكسوتهن بالمعروف¹³¹

“For a husband who 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 him 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 living according to their ability*) ath-Thalaq verse 7. Also the word of Allah: (*And the obligation for the husband to bear the livelihood and clothing of his wives in an appropriate manner*) al-Baqarah verse 233. Also said the Prophet during the hajj wada': “*It is obligatory for you to provide for your wives and provide for clothing in an appropriate manner*””

Abu al-Barakat Hafizuddin an-Nasafi (d. 710 H) who is a scholar who adheres to the Hanafi school of thought writes in his book *al-Bahru ar-Raiq* as follows:

(قَوْلِهِ تَجِبُ النِّفْقَةُ لِلزَّوْجَةِ عَلَى زَوْجِهَا وَالْكَسْوَةُ بِقَدْرِ حَالِهِمَا) أَيِ الطَّعَامِ وَالشَّرَابِ بِقَرِينَةِ عَطْفِ الْكَسْوَةِ وَالسَّكَنِ عَلَيْهَا وَالْأَصْلُ فِي ذَلِكَ قَوْلُهُ تَعَالَى (لِيُنْفِقُ ذُو سَعَةٍ مِنْ

¹³¹ Al-Marghinani, *al-Hidayah Syarah Budayatu al-Mubtadi*, jilid II, 285

سَعْتِهِ) (الطلاق: ٧) وَقَوْلِهِ تَعَالَى: وَعَلَى الْمَوْلِدِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ (البقرة:

٢٣٣)¹³²

“(He rahimakumullah said: It is obligatory for the husband to provide for his wife and meet the needs of his clothes according to his ability). The purpose of livelihood here is in terms 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 living according to their abilities*) ath-Thalaq verse 7. Also the word of Allah: (*And the obligation for the husband to bear the livelihood and clothing of his wives in an appropriate manner*) al- Baqarah verse 233.”

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

وَأَمَّا الْإِجْمَاعُ فَلِأَنَّ الْأُمَّةَ أَجَعَتْ عَلَى أَنَّ النَّفَقَةَ وَالْكِسْوَةَ وَاجِبَتَانِ لِلزَّوْجَةِ عَلَى
زَوْجِهَا¹³³

“Meanwhile, the argument of ijma’ is due to the fact that people agree that income and clothing are the obligations of husbands for their wives.”

2. The Level of Livelihood From The Perspective of Syafi’i School

Imam Syafi’i argues that a livelihood is determined by the amount. For the rich, two *mudd*, over middle or intermediate people one and a half *mudd*, and on the poor one *mudd*. 1 *mudd* = 675 gram wheat/rice, 1.5 *mudd* = 1012 gram

¹³² Abu al-Barakat Hafizuddin an-Nasafi, *al-Bahru ar-Raiq*, Jilid IV (Beirut, Dar al-Kutub al-‘Ilmiah, 1997), 293

¹³³ Az-Zailai, *Tabyin al-Haqaiq Syarah Kanzu ad-Daqaiq*, jilid III (Beirut: Dar al-Kutub al-‘Ilmiah, 2000), 51

wheat/rice, 2 *mudd* = 1350 gram wheat/rice. They base this opinion on the word of Allah in surah ath-Thalaq verse 7:

لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا
إِلَّا مَا آتَاهَا سَيِّجَعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

Meaning: *Let people who are able to provide a living according to their abilities. And the person whose income is reduced must provide a living from the wealth given to him by Allah. Allah does not burden anyone.*¹³⁴

They say that in this verse Allah distinguishes between the rich and the poor and obliges each of them to support each of them according to their conditions without explaining the level. Therefore, this level must be determined based on *ijtihad*.¹³⁵ And the most suitable *qiyas* to rely on for a livelihood is food for *kafarat* because food for *kafarat* is food that must be given under the *syari'at* to prevent hungry. The highest level for *kafarat* that must be given to the poor is two *mudd*, namely in the disturbance *fidyah* (*fidyatul-adza'*). The meaning of a disturbance to the head that forces a person who is on the pilgrimage to shave his hair prematurely. And the minimum level that must be given is one *mudd*, namely the level for *kafarat jima'* in the month of Ramadhan. If a person's condition is intermediate, he is obliged to give one half of the *mudd*. He cannot be combined with the rich above him nor with the poor who are below him so that he is assigned one and a half *mudd*.

¹³⁴ Translator Team, *Al-Qur'an dan Terjemahan*, 559

¹³⁵ Sayyid Sabiq, *Fiqh Sunnah*, 590

They said that if the door to 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 law is obligation. This is done by taking a middle course of what is sufficient.¹³⁶

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 their 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 the Prophet's *mudd* every day 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.¹³⁷

Imam Syafi'i said, if the wife is from a country whose staple food 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 argue: for meat four *rithl* a month, every Friday

¹³⁶ Sayyid Sabiq, 591

¹³⁷ Al-Imam asy-Syafi'i, *al-Umm*, Jilid VI, 286

one *rithl* of meat and that is 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, namely cotton made by Kufah, Bashrah and like that, and for her servants such as ribas (white cotton) tubban (clothes) and the like.¹³⁸

And provide for her in the cold country is at least enough to withstand the cold of coarse robes, jackets, blankets, pants, shirts, headgear, the kind of clothes to withstand the cold. And for the maid, robes made of fur, clothes that can give a feeling of warmth, shirts, head coverings, shoes above the ankles, and whatever he needs. Then provide for her in the summertime clothes, clothes that can cover and cover a head, and enough for him to wear silk for two years, and a robe of coarse cloth can be worn for 2 years.¹³⁹

Furthermore, Asy-Syirazi (d. 476 H) who is a follower of the Syafi'i school 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 results of his work, then for him obligation to support every day 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 dishes according to the standard needs of the country. Husbands are obliged to provide for their wives in the form of combs,

¹³⁸ Al-Imam asy-Syafi'i, 287

¹³⁹ Al-Imam asy-Syafi'i, 287

frangrances, hair oils, and the bathroom monastery budget if they are accustomed to using the bathroom.¹⁴⁰

The husband is obliged to provide clothes for his wife from a wealthy circle, so it is obligatory for him to wear the 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 standard and ordinary. The husband is obliged to provide blankets and sheets, and pillows, and things commonly used for sleeping. For a wife whose husband is well-established, she is entitled to the best quality. On the other hand, if her husband is not well-off then she gets the quality that is of the usual standard. 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 at will, to have fun. The place of residence is in accordance with the ability of the husband, stable or not established or intermediate, as already mentioned in the livelihood chapter.¹⁴¹

If a wife cannot serve herself because she is from a wealthy circle or because she is sick, he is obliged to provide a servant. The husband is not obliged to provide more than one and the helper must be a woman or a *mahram*. If the servant belongs to the husband and they agree that the slave is used to help the husband, it is the husband who is obliged to give livelihood the servant. If he is able, then he

¹⁴⁰ Asy-Syairazi, *al-Muhadzdzab*, Jilid IV (Damaskus: Dar al-Qalam, 1996), 608

¹⁴¹ Asy-Syairazi, *al-Muhadzdzab*, Jilid IV, 610

obligatory to give one and one third *mudd* of the staple food in the country, if he is from the middle class and the poor, he obligatory to give one *mudd*.¹⁴² Husbands are obliged to provide their wives with daily support from the start when the sun rising, because it is the beginning of the wife's needs and is obliged to dress them every six months because usually clothes will change at this time.¹⁴³

An-Nawawi (d. 676 H) who is a follower of the Syafi'i school wrote in his book as follows:¹⁴⁴

Providence for the wife is an obligation based on texts and ijma'. The first discussion of mandatory matters is of six types:

- a. First, the staple food, the levels vary depending on the financial condition of the husband who is in space or has little sustenance.
- b. Second, side dishes or complementary foods and their types are adjusted to the habits of the place, such as oil, sesame oil, butter, dates, vinegar, cheese and so on as discussed in staple foods, the levels are adjusted to the condition of the husband.
- c. Third, servant. There are two kinds of women, there are those who cannot serve their own needs as in some countries, there are always those who serve their needs, if the wife is from such a circle, then the husband must provide her according to this opinion and the number.

¹⁴² Asy-Syairazi, 611

¹⁴³ Asy-Syairazi, 612

¹⁴⁴ Imam an-Nawawi, *Raudhatu ath-Thalibin*, Jilid 9 (Beirut: al-Maktab al-Islami, 1991), 40-52

And this returns to the woman's condition when she was at her parents' house.

- d. Fourth, it is obligatory to provide adequate clothing, which is suitable for him, tall, short, thin and fat. And also in accordance with the conditions of residence during the summer and winter.
- e. Fifth, the tools needed to clean yourself. A husband is obliged to provide his wife with the tools needed to clean himself, the amount is adjusted to local conditions.
- f. Sixth, the husband is obliged to provide a suitable place to live according to local conditions.

Table II**Opinions of the Hanafi and Syafi'i Schools regarding the level of livelihood that husband must provide their wives**

Hanafi School	Imam Abu Hanifah argued that an immature husband is obliged to provide a livelihood when the wife is an adult. He also argued that there is no provision in the syari'ah for the level of a livelihood. Husbands are obliged to provide their wives with adequate levels of food, spices, meat, vegetables, fruit, oil, butter, and everything they need to live, according to the prevailing traditions. It varies with different places, times, and conditions. Besides that, the husband is also obliged to give clothes to his wife for summer and winter.
Syafi'i School	Imam Syafi'i argued that a livelihood is determined by the amount. For the rich is two <i>mudd</i> , over middle or intermediate people is one and a half <i>mudd</i> , and on the poor is one <i>mudd</i> . They say that in this verse Allah distinguishes between the rich and the poor and obliges each of them to support each of them according to their conditions without explaining the level. Therefore, this level must be determined based on <i>ijtihad</i> .

From the table above, it can be seen the differences of opinion between the two schools of thought. Imam Hanafi argued that an immature husband is obliged to provide a livelihood to an adult wife. There is no stipulation on the amount of livelihood in the syariah. Obligated to provide a livelihood to meet the necessities of life in accordance with the prevailing tradition. Meanwhile, Imam Syafi'i argued that the husband is obliged to provide for his wife. But, according to him, there is a stipulation on the amount of livelihood. For the rich is two *mudd*, for middle or intermediate people is one and a half *mudd*, and over the poor is one *mudd*.

D. Analysis of The Husband's Inability to Provide Livelihood as an Excuse for Divorce From The Perspective of Hanafi School and Syafi'i School

The scholars agreed on the husband's obligation to support his wife. They also agreed that if the husband is unable to provide for his wife, but his wife is willing to live with him, there is no divorce and no *fasakh*. However, they disagree when the wife feels unwilling to live together. The jumhur ulama agreed that the wife has the right to ask for divorce and the judge has the right to separate the two even though they differ in their opinion on the category of separation, whether divorce or *fasakh*, and whether there is immediate or postponement of several days, or a month, or a year.¹⁴⁵

1. Analysis of Husband's Inability to Provide Livelihood as a Reason for Divorce From The Perspective of Hanafi School

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

لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ ۖ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ ۗ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا

Meaning: *Let people who are able to provide a livelihood according to their abilities. And the person whose income is reduced must provide a living from the wealth given to him by Allah.*¹⁴⁶

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

¹⁴⁵ Mahmud Syaltut, *Fiqih Tujuh Madzhab*, Terj. KH. Abdullah Zakiy al-Kaaf (Bandung: CV Pustaka Setia, 2000), 180

¹⁴⁶ Translator Team, *Al-Qur'an dan Terjemahan*, QS ath-Thalaq ayat 7, 559

Meaning: *Let people who are able to provide a livelihood according to their abilities.*¹⁴⁷

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 case, and leaving something that is not obligatory is not sinful. Thus there is no reason to separate between husbands and wives.¹⁴⁸

They also took evidence using the word of Allah surah al-Baqarah verse 280:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ

Meaning: *And if he is in trouble, then give tough until he is relaxed.*¹⁴⁹

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 is according to the text.¹⁵⁰

The proof of the hadith narrated by Imam Muslim in his Sahih book,

دَخَلَ أَبُو بَكْرٍ يَسْتَأْذِنُ عَلَىٰ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَوَجَدَ النَّاسَ جُلُوسًا بِيَابِهِ، لَمْ يُؤْذَنَ لِأَحَدٍ مِنْهُمْ، قَالَ: فَأُذِنَ لِأَبِي بَكْرٍ، فَدَخَلَ، ثُمَّ أَقْبَلَ عُمَرُ، فَاسْتَأْذَنَ فَأُذِنَ لَهُ، فَوَجَدَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ جَالِسًا حَوْلَهُ نِسَاءُهُ، وَاجِمًا سَاكِتًا، قَالَ:

¹⁴⁷ Translator Team, *Al-Qur'an dan Terjemahan*, QS al-Baqarah ayat 286, 49

¹⁴⁸ Mahmud Syaltut, *Fiqh Tujuh Madzhab*, 184

¹⁴⁹ Translator Team, *Al-Qur'an dan Terjemahan*, 47

¹⁵⁰ Mahmud Syaltut, *Fiqh Tujuh Madzhab*, 184

فَقَالَ: لِأَقُولَنَّ شَيْئًا أُضْحِكُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: يَا رَسُولَ اللَّهِ، لَوْ رَأَيْتَ بِنْتَ خَارِجَةَ، سَأَلْتَنِي النَّفَقَةَ، فَمُتُّ إِلَيْهَا، فَوَجَّأْتُ عَنْقَهَا، فَضَحِكَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وَقَالَ: هُنَّ حَوَالِي كَمَا تَرَى، يَسْأَلْنِي النَّفَقَةَ، فَقَامَ أَبُو بَكْرٍ إِلَى عَائِشَةَ يَجُؤُ عَنْقَهَا، فَقَامَ عُمَرُ إِلَى حَفْصَةَ يَجُؤُ عَنْقَهَا، كِلَاهُمَا يَقُولُ: تَسْأَلْنَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَا لَيْسَ عِنْدَهُ، فَقُلْنَ: وَاللَّهِ لَا نَسْأَلُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَيْئًا أَبَدًا لَيْسَ عِنْدَهُ، ثُمَّ اعْتَزَلَهُنَّ شَهْرًا، أَوْ تِسْعًا وَعِشْرِينَ

Meaning: *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 scholar said, "Abu Bakr and Umar bin Khattab beat their two daughters in front of the Prophet Muhammad when they both asked for livelihood from the Prophet who was not there. It is not possible for Abu Bakr and Umar *radhiyallahu 'anhuma* to hit two girls who demanded their rights also be justified by Rasulullah SAW. So this incident shows that the wife has the right to get 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?”¹⁵¹

It was explained that among the companions of the Prophet Muhammad there were those who were capable and some who were not. Those who cannot afford are much greater in number than those who can. The Prophet SAW never allowed a wife to ask for *fasakh* on the grounds 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* rights because of her husband’s incompetence, of course there would have been such a case submitted to the Prophet even though it was only one person. The wives submitted their complaints to the Prophet 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 also already know what happened to the wives of the Prophet SAW who asked him for sustenance, while they were the best wives.¹⁵²

As for the argument according to qiyas, it has been established 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

¹⁵¹ Mahmud Syaltut, *Fiqih Tujuh Madzhab*, 185

¹⁵² Mahmud Syaltut, *Fiqih Tujuh Madzhab*, 185

rights. Delaying a right is lighter than canceling a right. Therefore it becomes obligatory to choose something that is in accordance with the rules that have been established according to the *syara'*. Likewise, continuing the marriage in an incapacitated state only causes loss of property, but if you do *fasakh* it means losing offspring and peace of mind which is the goal of marriage. Thus it is better to lose the property than to lose the purpose of life.

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 agreement. Therefore, how can the continuity of the contract depend on the rich and the poor, while the two things come and go to the servants of Allah”*. Even if it is permissible for those who fall into poverty, so that their marriages are abolished, 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 wife.¹⁵³

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

¹⁵³ Mahmud Syaltut, *Fiqih Tujuh Madzhab*, 186

psychological to material relationships. Even though Allah ta'ala has made the marriage relationship psychologically based.

Fasakh justified because of poverty, making this 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. Is there any reason to add to the suffering of the person who is suffering?

It can already be seen that the Hanafi school of thought is disengaged from the wife's hand, in that case so that he tries. His business, according to the path that was worked out, did not depend on divorcing him and renouncing the high ties of marriage. The Egyptian Syar'iyah Court in this matter always decides according to the Hanafi school of thought until Law No. 25 of 1929 in Article 4 which reads:¹⁵⁴

“If the husband does not want to provide livelihood for his wife, if the husband has visible assets, the judge decides to pay for the livelihood by taking the assets from him. If the husband does not have visible assets and he does not admit to being poor or rich but he does not want to provide a livelihood, the judge at that time also divorces the wife. If the husband charges that he is incapable, but cannot prove it, the judge will divorce him immediately. And if he can prove his poverty, the judge suspends for a period of not more than one month. Then if he doesn't also provide a living, the judge divorces after that.”

¹⁵⁴ Mahmud Syaltut dan Ali as-Sayis, *Perbandingan Madzhab (Dalam Masalah Fiqih)*, terj. Andul Zakiy al-Kaaf (Jakarta: PT. Bulan Bintang, 2000), 202

2. Analysis of Husband's Inability to Provide Livelihood as a Reason for Divorce From The Perspective of Syafi'i School

In this case Imam Syafi'i argue that:

قَالَ الشَّافِعِيُّ: دَلَّ كِتَابُ اللَّهِ عَزَّ وَجَلَّ ثُمَّ سُنَّةُ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى أَنَّ عَلَى الرَّجُلِ أَنْ يَعُولَ امْرَأَتَهُ. فَلَمَّا كَانَ مِنْ حِمِّهَا عَلَيْهِ أَنْ يَعُولَهَا، وَمِنْ حَقِّهِ أَنْ يَسْتَمْتِعَ مِنْهَا وَيَكُونَ لِكُلِّ عَلَى كُلِّ مَا لِلزَّوْجِ عَلَى الْمَرْأَةِ وَلِلْمَرْأَةِ عَلَى الزَّوْجِ، اِحْتَمَلَ إِلَّا يَكُونَ لِلرَّجُلِ أَنْ يُمْسِكَ الْمَرْأَةَ يَسْتَمْتِعُ بِهَا وَيَمْنَعُهَا غَيْرَهُ تَسْتَعِينِي بِهِ وَيَمْنَعُهَا أَنْ تَضْرِبَ فِي الْبَلَدِ، وَهُوَ لَا يَجِدُ مَا يَعُولُهَا بِهِ، فَاحْتَمَلَ إِذَا لَمْ يَجِدْ مَا يُنْفِقُ عَلَيْهَا أَنْ تُخَيَّرَ الْمَرْأَةُ بَيْنَ الْمَقَامِ مَعَهُ وَفِرَاقِهِ، فَإِنْ اخْتَارَتْ فِرَاقَهُ، فَهِيَ فِرْقَةٌ بِإِلَّا طَلَاقٍ، لِأَنَّهَا لَيْسَتْ شَيْئًا أَوْقَعَهُ الزَّوْجُ وَلَا جَعَلَ عَلَى أَحَدٍ إِيقَاعَهُ¹⁵⁵

“Imam Syafi'i said, both in the 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 does not fulfill the rights of the wife), then the wife can choose between staying with him or separating from him. If you choose to separate from him, then it is division without divorce, because it was not something that was put by her husband and no one put it on to anyone.”

¹⁵⁵ Al-Imam asy-Syafi'i, *al-Umm*, Jilid VI, 291

On the basis of this brief explanation, it can be concluded that the wife is allowed to sue divorce her husband on the grounds 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 this 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 which reads,

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۗ
فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ
وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْبِرْهُنَّ ۗ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْعُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ
عَلِيمًا كَبِيرًا

Meaning: *Men are leaders for women, because Allah has exaggerated some of them (men) over others (women), and because they (men) have spent part of their wealth. 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 women 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, Most Great.*¹⁵⁶

¹⁵⁶ Translator Team, *Al-Qur'an dan Terjemahan*, 84

The verse clearly reinforces why men are protectors of women. Because among other things, men 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 fulfills his wife's livelihood. Thus, if the husband does not want to provide a livelihood, the wife does not have a protector. And when there is no protector, he can choose between staying with him and being patient with the conditions he is facing or choosing to separate from him.¹⁵⁷

Table III

The differences of between Hanafi School and Syafi'i School regarding the suing divorce from wife because of livelihood

<p>Hanafi School</p>	<p>They argued that, at least the livelihood is owed by their husbands. Because the husband is unable to provide a livelihood, the wife is ordered to wait. If the husband does not find a way of business that can be productive, he cannot be burdened. Allah SWT does not burden the husband to provide livelihood for his wife in this case, and leaving something that is not obligatory is not sinful. Thus there is no reason to separate between husband and wife.</p>
<p>Syafi'i School</p>	<p>A wife can file for divorce from her husband on the grounds that the husband never provides a living. The living that has not been given during the period of marriage, must be given, because it is the right of the wife. So the income that has not been given is considered a debt of the husband to the wife with the argument that religion provides a provision for the amount of daily living for the wife.</p>

¹⁵⁷ Mahmud Syaltut dan Ali as-Sayis, *Perbandingan Madzhab (Dalam Masalah Fiqih)*, 203

From the opinions of the Hanafi school and the Syafi'i school that have been stated, it can be seen from the viewpoint of the Hanafi school that it does not permitted divorce because the husband is unable to provide a livelihood. Because a husband who does not find a way of business that can produce results cannot be burdened to provide a livelihood. The wife is advised to wait and the unpaid livelihood becomes the husband's debt which must be paid when he is able. Meanwhile, according to the opinion of the Syafi'i school, it is permitted for a wife to sue for divorce on the grounds that the husband does not provide a livelihood. Because religion stipulates the amount of livelihood that a husband must give to his wife. If this amount is not met, the wife may ask for a divorce.

In Indonesia, it is permissible for a wife to file for divorce from a husband who is unable to provide her livelihood. This is regulated in Inpress number 1 of 1991 concerning the Compilation of Islamic Law. because all regulations regarding family matters in this KHI tend to be based on the Syafi'i school of thought.

CHAPTER IV

CLOSING

A. Conclusion

Based on the descriptions that have been presented in the previous chapter, it can be concluded that:

1. Ulama from the Hanafiyah school and the Syafi'iyah school have different opinions regarding the amount of a husband livelihood must provide to his wife as long as the marriage bond is maintained. Imam Abu Hanifah argued that the level of livelihood is not determined based on the 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. It varies with different places, times, and conditions. Imam Syafi'i argues that a livelihood is determined by the amount. Husbands obliged to provide their wife like shelter and clothing, and food for the rich two *mudd*, over middle or intermediate people one and a half *mudd*, and for the poor one *mudd*.

2. The Hanafi school and the Syafi'i school also have different opinions regarding the ability or inability of a wife to sue a divorce due to the husband's inability to provide for a livelihood. Hanafiyyah scholars argued that the wife is ordered to wait when the husband is unable to provide livelihood. At least the livelihood becomes a debt that is borne by the husband. Meanwhile, the Syafi'iyyah scholar argues that it is able for a wife to sue a divorce against her husband on the grounds 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.

B. Suggestion

1. Researcher

As a basis and reference for further research relate to the inability of the husband to provide a livelihood as a reason for suing divorce from the perspective of the Hanafi School and Syafi'i School.

2. For the Lawyer and KUA

With the result of this study, it is hoped that it can provide input on knowledge and a legal basis for determining decision making for lawyers and religious affairs office employees if there is a problem regarding the husband's inability to provide livelihood as an excuse for sue divorce.

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2016-2017 University of Darussalam Gontor
2017-2018 Ma'had Sunan Ampel al-'Aly

Organisational Experience

Katalis Pendidikan
Forum Mahasiswa Putra Delta Sidoarjo
BIMAGO Sidoarjo
Ikatan Keluarga Pondok Modern Cabang Sidoarjo