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The Concept of Marriage Maintenance According to Classical Fiqh Books and Contemporary Fiqh Books

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Abstract:

Marriage will raise various rights and obligations between husband and wife. Among the many rights of the wife and the obligations of the husband, one of them is sustenance. Based on the annual report of the Religious Court, economic factors (material sustenance) are more dominant as a factor causing divorce than other factors. This study aims to determine the concept of sustenance according to classical and contemporary fiqh books, and what are the similarities and differences in the concept of sustenance brought by the two books. This study uses a comparative-descriptive approach method with a type of research included in the library research category. The results of this study indicate that the concept of sustenance between classical and contemporary books does not substantially have many differences, contemporary scholars still refer to the opinions or fiqh books by classical scholars, only there is an expansion of the description of the value of sustenance due to changes in the times and the needs of life. One of the differences is regarding the level of sustenance given, according to classical books, it must be adjusted to the adequacy of the recipient and the ability of the giver. Besides, according to contemporary books, it must be adjusted to the customs that already apply in the place of residence. This research has not referred to more specific books in each school of thought. In the future, research can be carried out that focuses on each school of thought.

Keywords: Classical Book; Contemporary Book; Marital Sustenance

A. INTRODUCTION

Humans are social creatures whose lives require other people, in the sense that humans cannot do as they please, this is because humans in life are bound by the norms that exist and develop in society. In carrying out their lives, humans themselves must have a desire to have offspring as their successors in the future, so a marriage is needed. Marriage is an absolute requirement that must be met between men and women who want to live together to feel peace and tranquility in this life, so that they are different from other creatures, especially in fulfilling their biological desires. (Sari, 2017).

We have known that marriage, like other contracts, gives rise to various rights and obligations between husband and wife, as an implementation of the principle of

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balance, equality, and equality of the various parties who carry out the contract. Among the rights that must be obtained by a wife and included in the husband's obligations that must be fulfilled is maintenance.

The word livelihood (*nafaqaat*) comes from the word *infaq*, which means spending wealth, and this word is not used for good things. The plural form of livelihood is *nafaqaat* which linguistically means something that is donated or spent by someone for the needs of their family. From this understanding it can be seen that included in livelihood are clothing, food, and shelter. (az-Zuhaili, 2011).

Maintenance is an obligation that must be fulfilled by the husband according to the provisions of the Qur'an, Sunnah, and *ijmak*. Maintenance here means fulfilling the wife's needs in the form of food, shelter, services, and medical treatment, even though the wife is well-off. (Sabiq, 2015).

Sharia requires a husband to provide for his wife because based on a valid marriage contract, the wife has become a party closely related to her husband and is bound by her husband's rights because the husband has the right to enjoy pleasure with her, is obliged to obey her husband, live in his house, take care of his house, raise and educate children. The husband also has the same obligations.

According to Badrul Anwar (2017) who conducted research in Kertanegara Village, Purbalingga Regency. The problems of implementing the concept of sustenance that occurred in the village as a whole are very diverse. Some of them are related to the fulfillment of sustenance by the husband, both in terms of the amount of sustenance given, and the time of sustenance given by the husband. There are also those regarding the wife's request that is beyond the husband's ability so it is very burdensome for the husband. The problem is regarding the husband's request for the return of the marriage dowry to his wife. These problems are the cause of family divorce in Kertanegara Village. So the issue of sustenance cannot be underestimated, in fact, it is one of the factors causing many divorces in Indonesia. Based on the annual report of the Religious Court, economic factors in this case material sustenance are more dominant than other factors causing divorce.

B. METHOD

This type of research is included in the category of library research, namely research conducted by studying various library sources, such as books, journals, scientific articles, and other documents to collect data and information. (Mustofa, et. al., 2023).

This study uses a comparative descriptive approach method, which can be understood as a research method that uses descriptive data. Comparative research is descriptive research that seeks to find solutions through analysis of causal relationships, namely selecting certain factors related to the situation or phenomenon being investigated and comparing one factor with another. (Winarno Surakhmad, 1986).

The method in this study is descriptive analysis. This method is a research method that collects data according to facts, arranges, processes, and analyzes it to provide an overview of the existing problems (Ramdhan, 2021).

For data collection techniques in the type of library research, the steps that must be taken by researchers are; first, searching for and finding data related to the main problem. Second, reading and examining the data obtained to obtain complete and guaranteed data. And third, recording systematic and consistent data, careful recording is necessary because humans have limited memory.

As for the data analysis technique in this study, according to the data obtained, the researcher used the content analysis technique or content and comparative study. In this case, the concept of marital maintenance according to classical fiqh books and the concept of marital maintenance according to contemporary fiqh books will be expressed descriptively. The technique or method used to draw conclusions through efforts to find message characteristics and is carried out objectively and systematically. This analysis can be used to compare one book with another in the same field. In addition, this method can also be used to draw conclusions from the opinions of several experts on the problems discussed in this study.

C. RESULTS AND DISCUSSION

1. The Concept of Marital Support According to Classical Fiqh Books

A husband is obliged to provide for his wife, namely providing something that is the wife's basic needs and also her clothes. According to Hanafiyah and Malikiyah, the benchmark is according to the wife's sufficiency. According to Syafi'iyah, the benchmark is only the husband's condition. The support provided is adjusted to the level of adequacy and this differs from one person to another. According to Sayfi'iyah, livelihood was set at one mudd which was in effect at the time of the Prophet *Shallallahu 'Alaihi wa Sallam*.

The level of obligation that must be fulfilled by the husband is returned to the judge's *ijtihad*, if there is no agreement between husband and wife. The judge requires the provision of maintenance for the wife according to the wife's sufficiency. According to Syafi'iyah, what must be provided is staple food that is commonly consumed in the area where both live. A wife also has the right to get her needs met in the field of health and cleanliness. Because those tools are useful for the wife to maintain her appearance.

A husband is obliged to buy clothes and clothing that are the needs of his wife. Such provisions have become a consensus among scholars.

A husband is obliged to provide a place to live for his wife. The husband is also obliged to provide his wife's needs for sleeping. All of these needs are adjusted to the customs. If the wife is one of those who cannot serve herself, then the husband is obliged to provide a maid. According to Malikiyah and Syafi'iyah, among the good treatment for a wife is to provide a maid for her. The existence of a maid is a continuous need. Therefore, its status is like the need for sustenance. If a husband does not want to carry

out his obligations towards his wife, or only half of them, then the wife may take what is her right according to her level of need in a good manner.

A husband is obliged to provide maintenance for his wife every day. According to Syafi'iyah, if a husband provides alimony to his wife for one month and the alimony is handed over at the beginning of the month if the marriage then breaks up, then the remainder of the alimony may be asked for back. According to Hanafiyah, this living cannot be asked for back. Because the position is like giving sunnah alms. If a husband has given the maintenance which is his obligation to his wife, then the wife has full rights to use the maintenance assets according to her wishes. A husband is obliged to buy clothes for his wife, one piece for one year. A wife whose status is a *kafir dhimmi* has the same position in matters of living and clothing as a Muslim wife.

If the husband does not provide for his wife and there is nothing belonging to the husband that can be taken by the wife, then the wife chooses to separate from her husband, then the judge is obliged to grant the wife's request. According to Hanafiyah, the wife does not have the right to separate from her husband. Her obligation is to roll up her sleeves to earn a living. According to Syafi'iyah, when the husband is completely unable to provide for his wife, then the wife has the right to ask for separation from him without having to wait. According to Malikiyah, she is given a month. Syafi'iyah in his other opinion said that she was given three months.

If a husband only has a living for one day and for tomorrow he cannot fulfill it anymore, such a condition cannot be considered as not being able to provide for her and cannot be used as a basis for dissolving the marriage between the two. Because, that is his obligation and that is his ability to provide for her. If a wife is willing to live with her husband whose economic condition is very tight or the wife is willing not to be provided with a living by her husband, or the husband stipulates in his marriage that he will not provide a living, then she has the desire to be *fasakh*, then the wife has the right to ask for her marriage to be *fasakh*. According to the Malikiyah and Hanabilah, a woman in such a position does not have the right to ask for *fasakh*. And her right to ask for *fasakh* is forfeited.

If a wife is happy to live with her husband who is unable to provide for her, then the wife is not obliged to submit herself completely to her husband to have sexual intercourse. Because, the husband does not give anything as a substitute for the wife's obedience.

At some point the husband does not provide maintenance, then the obligation to provide maintenance does not become void. The obligation that has not been carried out becomes a debt for the husband to his wife. According to Malikiyah and Syafi'iyah, there is no difference, whether it is not carried out because of an excuse or not. According to Hanafiyah, the obligation to provide maintenance that has not been fulfilled becomes void, as long as the judge has not decided that it is the husband's obligation to his wife.

If a husband is unable to hand over the wedding dowry, then according to Hanabilah, the marriage does not become *fasakh* because the husband is unable to pay it,

because the dowry is a debt. According to Syafi'iyah, dowry can be equated with past income that has not been paid and is the burden of the husband's obligation to pay it off.

Both husband and wife have different opinions on the issue of maintenance, or have different opinions on the issue of handing over maintenance, then the wife's statement is used as a benchmark. Because the wife's statement is in denial. The initial law is in favor of the wife. According to Syafi'iyah, if the husband is known to have property, then the wife's statement is used as a benchmark, if not, then the husband's statement is used as a benchmark.

A man is obliged and must be forced to provide for his parents and children, if they are all poor and the man has wealth to give. According to Hanafiyah and Syafi'iyah, a mother is also obliged to provide for her child if the child's father has died. According to Malikiyah, a mother is not obliged to be given maintenance and provide maintenance. Because, in the matter of inheritance, the mother is not included as *ashabah* for her child.

There are three conditions that must be met before someone is entitled to receive maintenance. First, the person who is provided for is poor, has no property and no job. Second, a person is obliged to provide maintenance when he is in a good condition, meaning that his own basic needs have been met and there is still some left, either through the property he owns or from the business he does. Third, the person who is obliged to provide maintenance is a person who is included in the line of heirs of the person who is provided for.

2. The Concept of Marital Support According to Contemporary Fiqh Books

The basic requirement for a wife to provide sufficient basic food, clothing and shelter is to meet the needs of the person providing the living and according to the customs that apply in her place of residence. Because obligatory maintenance is a marriage bond. A woman's position as a wife is what gives her the right to receive a living. According to Hanafiyah, the reason why maintenance is mandatory is because the husband has the right to restrain his wife from leaving the house or working after a valid marriage contract.

A husband has the right to take his wife to move to another place for the right purpose and without causing harm to the move, if his wife's dowry has been fully met. If it turns out that the wife refuses to be invited to move, then her income will be lost. If the husband has not paid his wife's dowry, or there is a disadvantage in the transfer, then the wife has the right to refuse the invitation. According to Malikiyah, a husband has the right to take his wife with him if he has fulfilled or paid part of the dowry in advance, even if the husband has not had sex with her. A wife still has the right to receive maintenance if her husband is imprisoned for a crime he committed.

Subsistence in the form of food is estimated at sufficient levels. According to Syafi'iyah and Hanabilah, food sustenance can be estimated according to the husband's economic situation. According to Hanafiyah and Malikiyah, food sustenance is determined based on the husband and wife's economy, maintaining the wife's position and the country's economy.

It is obligatory to provide food to the wife both daily and monthly. According to Hanafiyah and Malikiyah, it is permissible to use money in exchange for food so that he can spend it himself.

According to Hanafiyah and Malikiyah, the timing of food provision is adjusted to economic conditions. According to Syafi'iyah and Hanabilah, the food provided daily is given in the morning after sunrise. However, if the husband and wife have agreed on the time to provide maintenance, then that is permissible.

The husband is obliged to provide clothes for his wife as part of the mandatory maintenance. According to Malikiyah and Hanabilah, clothing is provided at the beginning of each year by handing it in and there is no obligation to replace it if the clothing is stolen or damaged. According to Hanafiyah and Syafi'iyah, clothes are provided every six months, and if the clothes are damaged before six months, the husband is not obliged to replace them.

A wife has the right to a decent place to live. The criteria for her place of residence are as follows; first, it must be in accordance with the husband's economic condition. Second, it must be her own property, no family members can live there, except with the wife's permission. Third, the place of residence must be complete with furniture and household necessities. A wife is obliged to provide for her servant if the husband is able and the wife is used to being served, or the wife has high status or is sick.

According to Hanafiyah, a husband is obliged to provide household furniture and cleaning tools. According to Malikiyah, husbands are obliged to provide cleaning tools according to their economic level. If the husband has difficulty providing a living, then the husband's obligatory maintenance does not fall even though the economy is experiencing difficulties. According to Hanafiyah, if the husband's economic situation is difficult, the judge may give permission to the wife to seek a loan, even if the husband refuses. There is no legal difference between husband and wife for reasons of poverty or economic difficulties, because the living becomes a debt according to the judge's decision. According to Syafi'iyah and Hanabilah, if the husband is unable to provide a living, then the wife has the right to ask for a divorce. According to Malikiyah, a husband's obligation to provide a living is terminated if he is poor or unable to provide a living, and the living does not become a debt if he is able.

If a husband provides support to his wife in advance, but then the wife does something that results in the loss of her support or the death of one of the two, then the husband or his heirs may be asked to return according to the calculation of the support that has been given. According to Hanafiyah, her husband or heirs do not have the right to ask for back alimony that has already been paid in advance.

It is permissible for a wife to waive her husband's obligatory maintenance on the terms of a judge or mutual consent between husband and wife, because maintenance is a debt that must be paid by the husband, and this may be waived with mutual willingness. As for the exemption from maintenance for the future, the law is invalid because maintenance is not yet considered mandatory. According to Hanafiyah, this is fine as long as there are two conditions. First, liberation from a time that has truly begun.

Second, exemption from alimony in exchange for *khuluk* or divorce, because it is considered a substitute that is the property of the wife.

Alimony debt is a legal debt that does not expire unless it is paid or discharged, whether determined by a judge or done willingly or not. According to Hanafiyah, if the alimony debt is strong (determined by a judge or mutually agreeable decision), then it is permissible for one of the husband and wife to ask for compensation, and the other cannot refuse the compensation because the two debts are equally strong.

According to Hanafiyah, sometimes it is necessary to improve the living wage, such as improving the nominal living wage before it is determined by a judge or after mutual approval.

Three conditions that require child support are; first, parents are considered capable of providing support or are able to work. Second, children are in a state of having no property and are unable to work. Third, they are not of different religions.

The provision for both parents and above is obligatory. What is meant is the father, grandfather, mother, grandmother, and the lineage upwards if there are any. According to Malikiyah, the core category that must be provided for is only the biological father and mother. The *ushul* provision is also obligatory not only for parents, children, but also for grandchildren. According to Malikiyah, provision is not obligatory for grandchildren.

According to Hanafiyah, if the level of kinship between the children is the same, then the sustenance is shared equally. If the level of kinship between the children is different, then the sustenance for the parents is shared equally by the closer relative. According to Malikiyah, the amount of sustenance is shared among them according to their respective economic capabilities. According to Syafi'iyah, if the level of kinship is the same, then the sustenance is shared equally, regardless of the economic circumstances of each child.

3. Similarities and Differences in the Concept of Marital Maintenance According to Classical and Contemporary Fiqh Books

Based on the description that has been outlined above regarding the concept of marital maintenance put forward by classical fiqh books and contemporary fiqh books, the author will analyze the similarities and differences of the concept of marital maintenance according to classical fiqh books and contemporary fiqh books. As mentioned above, the author found that between classical fiqh books and contemporary fiqh books in presenting the concept of marital maintenance there are similarities and differences. The similarities of the concept of marital maintenance according to classical fiqh books and contemporary fiqh books include:

1. Classical and contemporary Islamic jurisprudence books both state that the rights to maintenance that a husband must fulfill towards his wife are: food and side dishes, clothing, cleaning equipment, household furniture, a place to live, and a maid

2. Classical and contemporary fiqh books both state that a husband is obliged to provide food for his wife every day, or according to the agreement between husband and wife
3. Classical and contemporary fiqh books both state that the maintenance that is not paid by a husband to his wife does not become void, and becomes a debt for the husband. There is no difference whether the failure to pay the maintenance is due to an excuse or not. This is according to the opinion of the Malikiyah, Shafi'iyah, and Hanabilah schools of thought
4. Classical jurisprudence books and contemporary jurisprudence books both state that a husband is obliged to buy one piece of clothing for his wife for one year by handing it over and there is no obligation to replace it if the clothes are stolen or damaged. This is according to the opinion of the Malikiyah and Hanabilah schools
5. Classical and contemporary fiqh books both agree that there are two conditions that must be met in order for someone to be eligible to receive sustenance. The first is that the person who is provided for is poor, has no wealth or job. And the second is that the person who provides sustenance is in a condition where he is able and free, meaning that his own basic needs have been met and there is still some left over

Meanwhile, the differences in the concept of marital maintenance according to classical Islamic jurisprudence books and contemporary Islamic jurisprudence books are:

1. The level or measure of sustenance given to a wife or relative, according to classical fiqh books, is adjusted to the adequacy of the recipient of the sustenance or the ability of the provider. Meanwhile, according to contemporary fiqh books, everything is returned to the customs that already apply in the place of residence
2. In the Hanafiyah school of thought, in viewing maintenance obligations that have not been fulfilled, according to classical books, these obligations can become void, as long as the judge has not decided. Meanwhile, according to contemporary books, if the maintenance debt is strong, then it is permissible for the husband or wife to ask for compensation, and the other person may not refuse the compensation
3. Regarding the mother who is given a living, the Malikiyah school of thought has differences. In the classical fiqh book, it is stated that a mother is not obliged to be given a living. This is because the mother is not included as *ashabah* for her child. However, in the contemporary fiqh book, it is stated that the core category that must be supported is only the father and biological mother

D. CONCLUSION

The concept of marital maintenance according to classical books concerns the level of maintenance given to the wife or relatives which must be adjusted to the adequacy of the recipient of the maintenance or the ability of the provider. In the case of maintenance obligations that have not been fulfilled, according to the Hanafiyah school of thought, these maintenance obligations can be void as long as they have not been decided by a judge. In the case of providing maintenance to the mother, according to the

Malikiyah school of thought, it is not obligatory to provide maintenance to the mother, because the mother is not included as *ashabah* for her child.

The concept of marital support according to contemporary books on the issue of the level of support given to the wife or relatives is returned to the customs that already apply in that area. Regarding the maintenance obligation that has not been fulfilled, according to the Hanafiyah school of thought, this obligation remains valid if the maintenance debt is strong, so it is permissible for the husband or wife to ask for compensation, and the other cannot refuse the compensation. In the case of providing support to the mother, according to the Malikiyah school, among the core categories that must be provided for are only the biological father and mother.

The concept of marital maintenance according to classical and contemporary *fiqh* books substantially does not have many differences, contemporary scholars still follow the opinions and refer to the books of classical scholars, only there is an expansion of the elaboration of the value of maintenance due to changes in the times and the needs of life. Among the differences between the two books are as we have mentioned above.

Observing the results of this study, the author would like to put forward suggestions so that future researchers can conduct further research on the concept of marital maintenance by referring to more specific books in each school of thought.

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