

Wife Cannot Nullify Husband's Responsibility to Provide *Nafkah*

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Abstract

In the Quran, it explains that the husband has an obligation to provide *Nafkah* for his wife. However, in the Indonesian Islamic Law Compilation, Article 80 Paragraph 6, it is explained that a wife can nullify her husband's obligation to provide *Nafkah*. That Article is used as a legal basis for husbands to instruct their wives to be the main backbone of family. This is a problem that burdens the wife. The aim of this writing is to criticize Article 80, Paragraph 6, of the Indonesian Islamic Law Compilation. So that husbands will not let go of their responsibilities. The writing method used is a literature review method. The author tries to find the legal basis for Article 80, Paragraph 6 of the Indonesian Islamic Law Compilation. The Article will be analyzed in the context of a fiqh perspective. The results of the writing can be summarized as follows: this Article has no legal basis. In fiqh, *Nafkah* that cannot be paid will become a debt that eventually needs to be paid later. And the wife can nullify her husband's obligation to pay that debt. But not for the *Nafkah* that has not been paid yet.

Keywords: *Nafkah; family backbone; Indonesian Islamic Law Compilation.*

Introduction

It is generally known that *Nafkah* is given by the husband to the wife. This is

mandatory for the husband. The *dalil* can be found in the Quran, Hadith and Ijma'.¹

However, it should be noted that the wife is

¹ 'Abdullah Bin Ahmad Bin Muhammad Bin Qudamah, *Al-Mughni Wa Yalib Ash-Sbarh Al-Kabir*, 2nd

ed. (Maṭba'ah Al-Manār Wa Maktabatuhā, 1929), vol. 9:231, waqfeya.net/book.php?bid=5021.



not a *nusyuz*. Compilation of Islami Law also obligates husbands to give *Nafkah* to their wives. However, if the wife is *nusyuz*, then this obligation is void or nullified.² *Nusyuz* can be interpreted as the wife not wanting to submit herself to her husband, such as disobeying what her husband ordered. From this rule, it can be seen that the husband has the obligation to provide maintenance, as long as the husband's rights are fulfilled by the wife.

However, in the current era, many wives work and are able to support themselves without financial assistance from their husbands.³ In several cases, the wives' income is greater than their husbands' income. This means that the wife can become the main backbone of the family, replacing her husband. However, what needs to be taken into account is that the husband will not be able to do the role that only the wife can do, that is to continue the offspring. On the other hand, if the backbone of the family is the wife, and the husband does not do anything or is only able to make a small contribution to the family, the wife is still required to continue the offspring. Then this becomes a problem that burdens the wife's condition. Because she had to overtake her husband's obligation while doing her role as a wife to continue offspring.

In the Quran, it is explained that the husband must provide *Nafkah* for his wife. However, in the Indonesian Islamic Law Compilation, article 80 Paragraph 6, it is explained that a wife can nullifies that obligation. This article is used as a legal basis for husbands to instruct their wives to be the main backbone. Meanwhile, on the other hand, the article itself has no legal basis. In the study of fiqh, if a husband cannot provide *Nafkah* to his wife for some reason, such as not being able to, or being able to provide *Nafkah* but not wanting to give it, then the *Nafkah* is deferred and becomes the husband's debt to the wife. And the wife has the right to collect it or even ask the court for a divorce.

The author(s) found publications that were similar to the themes discussed in this article. With the title '*Tinjauan Hukum Islam Terhadap Nafkah Keluarga Dari Istri Yang Bekerja*', written by Sya'idun, published by *Al-Mabsut: Jurnal Studi Islam dan Sosial*.⁴ The similarity between these two writings lies in the fact that the unpaid *Nafkah* becomes a husband's debt to the wife. The difference between these two articles, our article focuses on criticizing the Indonesian Islamic Law Compilation article 80 Paragraph 6. The author also found publications that were contrary to the conclusions in this article. With

² *Kompilasi Hukum Islam*, 1991, art. 80.

³ Bangun Dasopang, Syukri Albani Nasution, and Hafisah, "Pemenuhan Kewajiban Dan Hak Nafkah Keluarga Masyarakat Petani Di Kabupaten Padang

Lawas Utara (Analisis Gender)," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 2022, 775.

⁴ Sya'idun, "Tinjauan Hukum Islam Terhadap Nafkah Keluarga Dari Istri Yang Bekerja," *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 13, no. 1 (2019).

the title *'Kewajiban Nafkah Dalam Keluarga Perspektif Husein Muhammad'*, written by Wardah Nuroniyah, Ilham Bustomi, and Ahmad Nurdilah.⁵ In other word, regarding the Indonesian Islamic Law Compilation Article 80 Paragraph 6, no one has ever discussed the validity of that article. It is not valid, because according to the *fuqaha*, a wife cannot nullify her husband's obligation to provide *Nafkah*. Even some articles, explain that Article can be used as a legal basis for wife to be able to work, and overtake her husband's obligation to provide *Nafkah*.

The author(s) hopes that with this article, the wife will not be used as the sole backbone of the family. If the wife's income is greater than the husband's income, then this is not a problem, because Allah has arranged their respective sustenance. For a wife who wants to help her husband in supporting the family, this act is considered a rewarded deeds.⁶ However, the problem is that husbands simply let go of their responsibilities and have no desire at all to support their wives.

The purpose of this article is to provide information to wives that the obligation to give *Nafkah* lies with the husband. This obligation cannot be nullified by anything.

⁵ Wardah Nuroniyah, Ilham Bustomi, and Ahmad Nurfadilah, "Kewajiban Nafkah Dalam Keluarga Perspektif Husein Muhammad," *Mahkamah : Jurnal Kajian Hukum Islam* 4, no. 1 (2019): 119.

⁶ Arini Rufaida, "Pemberian Nafkah Suami Kepada Istri Yang Berpenghasilan Perspektif Sosiologi

Even though the wife's income is much greater than the husband's, the husband is still obliged to provide *Nafkah*. If the husband cannot give *Nafkah*, then that *Nafkah* becomes the husband's debt to the wife. By knowing this, at least. the wife will not be easily manipulated by her husband.

Method

The object studied in this article is Article 80 Paragraph 6 of the Indonesian Islamic Law Compilation. This research is a type of literature review research. This research approach follows a systematic series of steps, encompassing exploration, analysis, evaluation, and the compilation of summaries of scholarly literature focused on discussing about *Nafkah*.⁷ The main source used in this research is an Arabic book with the title *Al-Mawsū'ah Al-Fiqhiyah Al-Kunwaytiyah*. Supporting sources used in this research are books and journals related to the themes discussed, especially regarding the obligation to provide a *Nafkah*.

Discussion

This section is divided into seven sub-discussions.

Hukum Islam," *Qiyas : Jurnal Hukum Islam Dan Peradilan* 7, no. 1 (2022): 7.

⁷ Lawrence A. Machi and Brenda T. McEvoy, *The Literature Review: Six Steps to Success*, Third edition (Thousand Oaks, California: Corwin, 2016), 4.

The Obligation to Provide *Nafkah* Comes From Allah

The *fuqaha* agree that the obligation to provide *Nafkah* lies with the husband, not the wife. ⁸This obligation has been stipulated in the Quran, hadith and ijma'.^{9,10} The following is one of the verses that shows the obligation to provide *Nafkah* for the wife.

لِيُنْفِقَ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قَدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ

“Let a wealthy man spend from his money, and let the poor man spend from what Allah has provided for him.” (Q.s. At-Talaq [65]: 7)¹¹

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ
“Their [i.e., the mothers'] provision and clothing are dependent on the father, according to what is acceptable.” (Q.s. Al-Baqarah [2]: 233)¹²

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمِلٌ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ

⁸ Abdul Aziz Muhammad Azzam and Abdul Wahhab Sayyed Hawwas, *Fiqh Munakahat: Kibitbah, Nikah Dan Talak* (Jakarta: Amzah, 2011), 212.

⁹ Usamah Bin Sa'ad et al., *Mawsu'ah Al-Ijma' Fi Al-Fiqh Al-Islami*, 1st ed. (Riyadh: Dār Al-Faḍīlah Li An-Nashr Wa At-Tawzī', 2012), vol. 3:763, shamela.ws/index.php/book/32535.

¹⁰ *Al-Mawsu'ah Al-Fiqhiyah Al-Kuwaitiyah* (Kuwait: Wizārat Al-Awqāf Wa A-Shshu'ūn Al-Islāmiyah, 2006), v. 35:41, shamela.ws/book/11430; *Al-Fiqh Al-Muyassar Fi Daw'i Al-Kitāb Wa As-Sunnah* (Mujamma' Al-Malik Fahd Liṭibā'ah Al-Muṣṣhaf Ash-Sharīf, 2003), vol. 1:301, shamela.ws/index.php/book/22726.

“Place them [out of your means] in a section of where you live and do not hurt them in order to oppress them. And if they are pregnant, spend money on them till they give birth.” (Q.s. At-Talaq [65]: 6)¹³

And from Jabir bin Abdullah, when Rasulullah SAW preached during his Hajj pilgrimage, he said:

... وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ...
“And they have the right to earn sustenance and clothing in a *ma'ruf* (good) way.” (Muslim No. 1218)¹⁴

The Quran has stipulated that husband must provide *Nafkah* for their wives. The Quran is *kalamullah*¹⁵, meaning the command to provide *Nafkah* comes from Allah. Not from my wife, country, or other people. The consequence is that this obligation cannot be nullified by anything or anyone. This obligation means that if it is not fulfilled, it will result in sin. Like the obligatory prayers and fasting in the month of Ramadan, and so on, if you don't fulfil them, you will be sinning.

¹¹ Saheeh International and Muntadā al-Islāmī, eds., *The Qur'an: English Meanings and Notes* (London: Al-Muntadā Al-Islāmi Trust, 2011), 575.

¹² Saheeh International and Muntadā al-Islāmī, 33.

¹³ Saheeh International and Muntadā al-Islāmī, 575.

¹⁴ Abū Al-Ḥusayn Muslim, *Ṣaḥīḥ Muslim* (Kairo: Dār Iḥyā' At-Turāth Al-'Arabī, n.d.), vol. 2:886, shamela.ws/index.php/book/1727.

¹⁵ Nurhidayat, “Pergunaan Gaya Bahasa Simile Dalam Al-Quran,” *Manhaj: Jurnal Penelitian Dan Pengabdian Masyarakat*, 2016, 5; Muhammad Bestari, “Al-Quran Sebagai Wahyu Allah Muatan Beserta Fungsinya,” *Dirasat* 15, no. 2 (2020): 120.

Even if the obligatory prayers and fasting of Ramadan are not fulfilled, then he is obliged to replace or make *qodho*'.

Cause of Obligation to Provide *Nafkah* for Wife

Ulama differ in their opinions regarding the causes of the obligation to provide *Nafkah* to wives. These differences can be broadly divided into 3 opinions. *First*, al-Syafi'i in his *qoul qadim* and the majority of the Hanafiyah and Ibn Hazm from the Zhahiriyyah believe that the obligation to provide *Nafkah* to the wife occurs when an *aqd sahib* (valid contract) is executed. The evidence they use is Surah At-Talaq verse 7 in general:

لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ

“Let a wealthy man spend from his money” (Q.s. at-Talaq [65]: 7)

And because of the hadith of the Prophet SWT. in general:

وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

“And they have the right to earn sustenance and clothing in a *ma'ruf* (good) way.” (Muslim No. 1218)

They argue that Allah SWT has ordered them to provide *Nafkah* without being limited by time. This shows that there is an obligation

to provide *Nafkah* for the wife from the time of the valid contract is executed. If the marriage is invalid, then there is no obligation to provide *Nafkah*.

Second, al-Syafi'i in *qoul jadid*, Malikiyah, and Hanabilah, and a narration from Abu Yusuf reveal that the wife only gets *Nafkah* from her husband when a valid contract is executed, and the wife has surrendered herself to the husband, and there is *tamkin*. The wife's form of surrender can be in the form of the wife's willingness to be physically touched by her husband, or the wife having moved to her husband's house and no longer living with her own family. Meanwhile, *tamkin* is a wife who is allowed to be copulated.¹⁶ This possibility is seen from the wife's physical attributes. So if the wife is not yet mature, then it means she is not yet *tamkin*. They think so based on facts, that Rasulullah SAW. married 'Aisyah when she was 6 years old, and the Prophet did not provide *Nafkah* because 'Aisyah still lived with her father, namely Abu Bakr. Rasulullah gave *Nafkah* to Aisyah after having intercourse with 'Aisyah.¹⁷

The third opinion is the opinion of the old Syafi'iyah circles. They argue that the obligation to provide *Nafkah* is after the contract and *tamkin*. They do not explain that

¹⁶ Erwin Riyan Hidayat and Muhammad Nur Fathoni, “Konsep Nafkah Menurut Muhammad Syahrur Dan Kompilasi Hukum Islam,” *Syakhshiyah Jurnal Hukum Keluarga Islam* 2, no. 2 (2022): 156.

¹⁷ Muslim, *Ṣaḥīḥ Muslim*, vol. 2:1038.

the contract must be valid and do not explain the wife's submission to her husband. In other words, if the wife has reached puberty, the husband is obliged to provide *Nafkah*, regardless of whether the wife is willing to be physically touched or not.

Following the opinion of the majority of *ulama*, the reason for the obligation to provide *Nafkah* is due to a valid marriage contract, the wife's submission to the husband, and the wife's *tamkin*. So obligation to provide *Nafkah* will not be terminated if the husband does not have money. As long as these three reasons exist, the husband is obliged to provide *Nafkah* to his wife. Unless the wife is *nusyuz*.¹⁸ *Nusyuz* can be interpreted as the wife not wanting to submit herself to her husband. Because she didn't obey what her husband said.

If *Nafkah* Is Not Paid, It Will Become a Debt

If the wife has the right to receive *Nafkah*, but the husband does not provide *Nafkah*, then the *fuqaha* agrees that the husband is in debt to the wife.¹⁹ However, the *fuqaha* differ in opinion regarding 'the time' when the husband is considered to be in debt. And the *fuqaha* has its criteria for when a husband is considered to be in debt.²⁰

The first opinion is that if the wife supports herself from the money she produces, or from other people, (it can be from gifts from other people or the wife owes other people), without a decision from the judge regarding the wife's *Nafkah*, or without the husband's consent regarding the amount of money used by the wife, then the money used by the wife will not become a debt for the husband. So, if the wife supports herself after the husband agrees, *Nafkah* is suspended, or from a judge's decision, then it will become the debt for the husband. Ultimately, the husband has pay this debt to the wife or the wife's guardian. However, the wife can nullify the husband's obligation to pay the debt, if she is willing. Unless the wife has borrowed money from someone else without her husband's consent, then the money borrowed does not become the husband's debt. Last, if the wife supports herself after a judge's decision and gets the husband's consent to borrow money from someone else, then the money used by the wife become the husband's debt. This is Hanafiyah's opinion.

The second opinion is that *Nafkah* will be considered a debt if the husband refrains from paying it. This debt will not be settled unless it is paid by the husband, or the wife agrees that the husband does not need to pay

¹⁸ *Al-Mamsu'ah Al-Fiqhiyah Al-Kuwaytīyah*, vol. 41:56.

¹⁹ Sya'idun, "Tinjauan Hukum Islam Terhadap Nafkah Keluarga Dari Istri Yang Bekerja," 99.

²⁰ *Al-Mamsu'ah Al-Fiqhiyah Al-Kuwaytīyah*, vol. 41:53.

the debt, like other types of debt. This is the opinion of the Malikiyah, Syafi'iyah, and Hanabilah. Because *Nafkah* is an obligation that must be fulfilled whether husband is poor or not. And this debt will not vanish over time. It will forever be a debt, such as property rent and other debts in general. And because *Nafkah* is compensation that the husband must provide according to Sharia', which is a command from Allah SWT. So *Nafkah* is compensation for binding the wife to the obligations that the wife must fulfill for her husband, as well as for arranging the affairs and interests of the household.

Amount of *Nafkah*

In the discussion of *fiqh*, the measurement of *Nafkah* is also discussed. In general, Hanafiyah, Malikiyah, some Syafi'iyah, and most Hanabilah say that the measure of *Nafkah* is seen from the adequacy of the wife. In other words, if before marriage, the wife was used to eating chicken as a daily dish, then ideally after marriage the wife can still eat chicken, or better yet beef as a daily dish. Although the strongest opinion among the Shafi'iyah is 2 mud if the husband is wealthy, 1.5 mud if the husband is from the middle class, and 1 mud if the husband is not wealthy, this is too difficult to apply to countries other than Imam Syafi'i's country.

Because Imam Syafi'i said that the size of mud is based on bread. Meanwhile, the staple food in Indonesia is rice, along with side dishes. These measurements are in the context that husband and wife are equal or on the same level.²¹

However, if both are not at the same level, then there is another measure. *Ulama* has different opinions regarding this. According to Hanafiyah in their clearest arguments, and Syafi'iyah's opinion, the measure depends on the husband's condition. According to some Hanafiyah, it is necessary to look at the wife's condition. According to Malikiyah and Hanabilah, it is seen from the condition of husband and wife together. This means taking the middle, if the husband is from a wealthy family, while the wife is from the less wealthy, then her *Nafkah* will be like that of middle-class people.²²

Islam Came to Elevate the Status of Women

Seeing the differences in opinion regarding the amount of *Nafkah*, the author(s) concludes that the ideal marriage is indeed a marriage between husband and wife who are equal on the same level. To reduce disputes regarding the amount of *Nafkah*. And indeed, the opinion of the majority of *ulama* makes the same level as a natural condition of marriage

²¹ *Al-Mansu'ah Al-Fiqhiyah Al-Kuwaytayah*, vol. 41:39.

²² *Al-Mansu'ah Al-Fiqhiyah Al-Kuwaytayah*, vol. 41:41.

(not a condition for the validity of the marriage).²³ However, in essence, the author(s) believes that an ideal marriage is not a marriage that lowers the status of the wife. If before marriage the wife often ate chicken meat, then after marriage, chicken meat is the minimum limit as a daily dish. Another example is if in the wife's family, the average person in the family is a graduate, then if the wife is married and has not yet graduated, the husband is obliged to pay for the wife's education costs until she becomes a graduate. That is the minimum limit. So that the wife's status does not decrease due to the effects of her marriage. Because Islam came, one of the reasons was to elevate the status of women.²⁴

Indonesian Islamic Law Compilation Article 80 Paragraph 6

The opposite hand, the Indonesian Islamic Law Compilation in Article 80 Paragraph 6 states that a wife can nullify her husband's obligation towards her as stated in Paragraph 4 letters a and b. This means, with the wife's willingness, the husband can be released from the obligation of providing (a) *Nafkah*, *kiswah* (clothing) and a home for the wife to live, and (b) household expenses, care expenses and medical expenses for the wife and children.²⁵ This Article is very unclear about what it means and there is no

explanation whatsoever from the author of the Indonesian Islamic Law Compilation. It is said to be unclear because there is no legal basis that allows a wife to nullify her husband's obligation to provide *Nafkah*. Even though the legal basis for the husband's obligation to provide *Nafkah* is clearly written in the Quran, and that is an order from Allah SWT.

In the worst-case scenario, this article is used by husbands as a basis for abandoning the obligation to provide *Nafkah* to their wives if the wife is able to support herself. So the husband no longer needs to think about providing for his wife, while the wife still has to carry out her obligations as a wife. If the wife fails to fulfill her duty as a wife, this is referred to as *nusyuz* and as a result, she is not eligible for *Nafkah*.²⁶ However, when the wife is able to support herself, and the husband does not carry out his obligations as a husband, the impact is that the wife can nullify the husband's obligation to provide *Nafkah* for his wife. It is truly an issue that strengthens men and weakens women.

Nullify Husband's Responsibility To Provide *Nafkah*

In the discussion of *fiqh*, it is explained that a wife can nullifies her husband's obligation to provide *Nafkah*, but this is only limited to deferred *Nafkah* so that it becomes

²³ Wahbah Bin Muṣṭafā Az-Zuhaylī, *Al-Fiqh Al-Islāmī Wa Adillatuh*, 4th ed. (Damaskus: Dār Al-Fikr, n.d.), vol. 9:6738, shamela.ws/index.php/book/384.

²⁴ Muḥammad Bin Ibrāhīm Bin 'Abdullah At-Tawayjiri, *Mawsū'ah Al-Fiqh Al-Islāmī*, 1st ed. (Bayt Al-

Afkār Ad-Dawliyyah, 2009), vol. 4:63, shamela.ws/index.php/book/37532.

²⁵ *Kompilasi Hukum Islam*, art. 80 (6).

²⁶ *Kompilasi Hukum Islam*, art. 84.

the husband's debt. The author(s) believe *fujaba* argues such a thing is because the *Nafkah* that is not paid, actually already belongs to the wife. This means that *Nafkah* should be paid to the wife, but for some reason, the *Nafkah* cannot be paid, so it becomes the husband's debt. In this condition, the wife has the right if she wants to collect it or wants to give it up. If she wants to collect the debt, the wife can sue on the court, or even ask for a divorce. If want to give up, of course, the wife has to do it by saying clearly to the husband that the wife is willing to not receive any payment from the debt. As for *Nafkah* which is not yet due, it is still the property and the right of the husband. This *Nafkah* must be paid to the wife when the time comes. This obligation is an order from Allah, and cannot be nullified just by the willingness of wife if it is not paid.

Conclusion

Providing *Nafkah* for the wife is an obligation that the husband must fulfill. The command to give *Nafkah* for one's wife is contained in the Quran, which indicates that it is an instruction from Allah SWT. However, in the Indonesian Islamic Law Compilation, article 80 Paragraph 6 states that a wife can nullify that obligation. According to the author(s), this is a problem that weakens wives. According to fiqh, if the *Nafkah* is not

paid for any reason, it becomes the husband's debt. This debt will ultimately need to be paid, or if the wife is willing, the husband will no longer need to pay that debt. Because it has already become the wife's money. However, it is still the husband's money for *Nafkah* that is not yet due (for example, *Nafkah* for next month). This *Nafkah* must be paid to the wife when the time comes. This obligation cannot be nullified simply by the wife's willingness.

This article still has several flaws that have not been explained in depth. The author suggests that readers write from other perspectives, such as calculating the ratio of *Nafkah* given to wives who are not yet working versus wives who are already working. Of course, this is an intriguing debate. It is also suggested to supplement or refute this article.

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