

MAINTENANCE RIGHTS FOR CAREER WOMEN ACCORDING TO FIQH FOUR MAZHABS IN TERMS OF MAQASID AL-SYARIAH THEORY IBNU ASHUR

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ABSTRACT The problem of career women that arises today is due to the inability of the head of the family or husband to provide for his wife and children. This can be seen from the number of divorces caused by economic factors. This study discusses the maintenance of career women according to the mazhab scholars and seen from the perspective of contemporary scholars, namely Ibn Ashur. This research uses a method through a conceptual approach in understanding the concept of nafkah according to the four madhhabs in the perspective of maqashid shari'ah Ibn Ashur. The results of this study indicate that the right of maintenance is the husband's obligation towards his wife even though his wife is a career woman, but the husband still has to provide physical responsibility for his wife. Meanwhile, according to Ibn Ashur's maqasid theory, each man and woman has the same rights in working or having a career. And historical facts also reinforce this, although basically Islamic shari'at encourages women to stay at home.

KEYWORDS *Career, Maqashid, Nafkah, Women*

INTRODUCTION

In the classical fiqh tradition, a husband is obliged to provide maintenance to his wife in accordance with the concept that the husband is tasked with being a breadwinner. The sustenance obtained becomes the full property of the husband. Meanwhile, the wife and children are positioned as recipients of maintenance. The husband's obligation to provide maintenance to his wife has been agreed upon by the majority of scholars because the wife is in charge of the house to serve her husband and children. Therefore, when the wife serves or contributes to the private sphere, then a husband must pay for his services in the form of providing maintenance. Nafkah, which is an obligation on the husband, becomes the wife's right that must be received, so she may sue if it is not fulfilled (Mufidah, 201, 136-137). The shift in social phenomena today is caused by several factors. And one of the dominant factors that encourage the rise of women to participate in careers is the inability of the head of the family or husband to provide for his wife and children. This can be seen from the number of divorces caused by economic factors. (Talita, Kompas, 2024).

However, in addition to bringing positive values to the family by increasing income, increasing human resources, and increasing self-confidence, this problem also raises negative values, such as reduced attention to spouses and children because both parents are preoccupied with their respective jobs, promiscuity in children due to reduced parental supervision, and the emergence of a new phenomenon called gono gini property when divorce occurs. In the Islamic world, this is a departure from the custom that emphasises the wife's duty at home and the husband's duty to earn a living. Nafkah in classical fiqh is required for three reasons, namely the existence of marital ties, nasab, and ownership (al-Syarbini, Maktabah Syamilah, 151). As for the Compilation of Islamic Law (KHI), the provisions of nafkah are explained in sufficient detail, including the husband's obligation to support his wife, the kinds of nafkah, the husband's exemption from nafkah by the wife, and the wife's right to nafkah. In KHI Article 80 paragraph (4) states that: in accordance with his income, the husband bears: a. maintenance, kiswah and residence for the wife; b. household expenses, care and medical expenses for the wife and children; c. education costs for children. Meanwhile, paragraph (7) states that the obligation of nafkah is cancelled if the wife

acts nushuz. The nullification of the wife's nafkah is also reinforced by Article 84 paragraph (2) which states that: as long as the wife is nushuz, the husband's obligations towards his wife mentioned in Article 80 paragraph (4) letters a and b do not apply except for matters in the interests of the child. Interestingly, although nafkah is the husband's obligation to his wife, the KHI also states that the wife can also release her husband from the obligation to support her. Article 80 paragraph (6) states: the wife can release her husband from the obligations towards her as mentioned in paragraph (4) letters a and b (Djaja, 2008, 100).

But unfortunately, KHI does not explain further about the provisions for women who have a career. From the explanation above, the author wants to further examine how the concept of career women's maintenance in the fiqh of the four madhhabs if studied and analysed with Ibn Ashur's maqashid sharia theory. Ibn Ashur as one of the contemporary scholars has a concept of thought regarding Islamic laws called maashid sharia. According to him, all provisions and provisions in the Sharia have a purpose or goal. He based his thinking on four principles, namely al-fitrah (Fitrah), al-samahah (tolerance), al-musawah (equality), and al-hurriyah (freedom). He believes that all the provisions of the Sharia will always be in harmony with these four principles, including the issue of career women's livelihood. And for the application of his theory, Ibn Ashur divides it into three stages, namely through Maqam alKhitab, al-Tamyiz baina al-Wasilah wa al-Maqсад, and istiqlal. The selection of Ibn Ashur's theory as an analytical knife here is because he is one of the scholars who prioritises Maqosid (purpose) over wasa'il (intermediary). According to him, it is very unwise if we debate too much about wasa'il if the goal is different from the theories used by the Imams of the madhhab who are very concerned with wasa'il. Also because the issue of career women's livelihood is a problem that is rampant in the modern era as it is today, so according to the author it would be more suitable if studied with the theory of contemporary scholars, namely Ibn Ashur who died in 1973 AD, and because Ibn Ashur's maqashid al-shariah theory is the development

of the maqashid al-shariah theory of one of the scholars who are very popular in the field of maqashid al-shariah, namely Imam alshathibi. this research will focus on the opinions of the four madhhabs on the rights of career women based on the perspective of maqashid al-shariah Ibn Ashur as a contemporary scholar.

METHODS

The method that the author uses in conducting this research is through a conceptual approach in understanding the concept of nafkah according to the fiqh of the four madhhabs from the perspective of maqashid shari'ah Ibn Ashur. This research is descriptive normative analytical. namely in the form of a description of the maintenance of career women in the fiqh of the four madhhabs which the author then analyses using Ibn Ashur's maqashid alshariah theory which is carried out by examining data sources derived from literature review. As a normative research, the data collection used is through library research. The data collection technique with documentation is data collection obtained through documents (Usman, 2006, 73). The purpose of documents here is data related to the four madhhabs and maqasid theory from Ibn Ashur.

RESULT/FINDINGS AND DISCUSSION

BASIC CONCEPT OF NAFKAH IN FIQH FOUR MAZHABS

The majority of scholars have agreed that maintenance is obligatory with the conditions they have explained. The proofs that make it obligatory can be found in the Qur'an, al-Sunnah, ijma and ma'qul (reasoning). The evidence from the Qur'an includes Surah al-Thalaq verse 7, which means the verse is the obligation to provide maintenance to the wife. Then there is a hadith that says Fear Allah in the affairs of women. Indeed, you took them (made them your wives) with the trust of Allah and made their genitals legal with the words of Allah. And it is your right over them not to let anyone into your bed whom you do not like. If they do that, then beat them with a blow that does not hurt. And their right over you is to provide for them and clothe them in a way that

is fair (Al-Naisaburi, Volume 6, 245). As for the opinions of each fuqaha, according to Imam Malik, providing for the family is the third obligation of a husband after paying the dowry and being fair to his wife. If there is a separation between husband and wife, either due to divorce or death, the wife's original property remains the property of the wife and the husband's original property remains the property of the husband, according to the Maliki madzhab, the time when the provision of maintenance is obligatory when the husband has met his wife. So nafka is not obligatory for the husband before he meets with his wife. As for the size or amount of nafka that must be issued is adjusted to the husband's ability. This nafka must be given to a wife who is not nusyuz. If the husband is present or alive but he is not in the place or is travelling, the husband is still obliged to spend on his wife (Muhammad bin Ahmad, 41).

According to Imam Hanafi, fulfilling the wife's maintenance is the second obligation of the husband after paying the mahr in a marriage, maintenance is obligatory for the husband as long as the wife has reached puberty. Regarding the amount of nafka that must be fulfilled by the husband towards the wife, it is adjusted to the place of conditions and time. This is because the ability between one person and another is different. The difference in the amount of nafka is based on the husband's work, so the level or amount of nafka can vary from one family to another. Imam Hanafi's opinion states that maintenance must be given to wives who are not nusyuz (Muhammad bin Ahmad, 42). According to Imam Syafi'i, the wife's right as an obligation of the husband to his wife is to pay maintenance. The nafka includes food, clothing, and shelter. Nafka must be given to his wife who has reached puberty. As for the size of the nafka that must be given to the wife based on their respective abilities. The details are that if the husband is a wealthy person then the nafka that must be issued every day is 2 mud, 31 medium 1 1/2 mud, and if the husband is a difficult person is 1 mud. This nafka must be given to a wife who is not nusyuz as long as the husband is present and free.

According to Hambali, the husband is obliged to pay or fulfil the maintenance of his wife if firstly the wife is an adult and has been married by the husband, secondly, the wife (woman) submits herself completely to her husband (Rohman Al-Jaziri, 1969, 55). Dalil and ijma Ulama have agreed on the obligation of the husband to provide for his wife if the wife has allowed herself to her husband to be married, the wife is physically and mentally capable of being married, and does not refuse her husband without a shar'i element. The evidence for ma'qul is that because the wife is kept at home to serve her husband, is bound to him, and is devoted to him, it is appropriate that her maintenance and needs should be fulfilled by her husband (al-Fiqhiyah al-Kuwaitiyah, 1404-1427 AH, 35).

Basically, nafka is divided into two, namely Zahir nafka and inner nafka. Nafka Zahir is something that must be given by the husband to his wife, children, and relatives that are material in nature. Meanwhile, inner nafka is the husband's obligation to fulfil his wife's biological needs. In this study, what is meant by nafka is nafka Zahir. Meanwhile, career women are women who have a certain level of work or business. The work here is work that is considered to have hope for success, progress, and being able to fulfil their needs. Having a career is different from just working. The difference between the two is in the period of achievement. If the job or business being undertaken has a long period of achievement and believes in the goal, then it can be categorised as a career. However, if the work or business being undertaken only has a short or temporary period of achievement, then it cannot be categorised as a career, but only work. The fiqh of the four madhhabs referred to here are the fiqh of the Hanafi madhhab attributed to Imam Abu Hanifah (died in 148 AH), the fiqh of the Maliki madhhab attributed to Imam Malik (died in 179 AH), the fiqh of the Shafi'i madhhab attributed to Imam Shafi'i (died in 204 AH), and the fiqh of the Hanbali madhhab attributed to Imam Ahmad bin Hanbal (died in 241 AH). These four madhhabs have always been used as guidelines by the Muslim community, especially followers of ahlu sunnah wal jama'ah.

MAQASID SHARIA IBNU ASHUR

This research uses Ibn Ashur's maqasid theory which is used to analyse the problem under study. Ibn Ashur was chosen because the issue of career women's livelihood is a contemporary issue. So it is very suitable to compare the theory of mazhab with the theory of the latest scholars. Ibn Ashur's maqashid alshari'ah theory is the development of maqashid alshariah theory of one of the Ulama who is very popular in the field of maqashid al-shari'ah, namely Imam al-Syathibi. Ibn Ashur has the full name Muhammad al-Tohir bin Muhammad bin Muhammad al-Tohir bin Muhammad bin Muhammad alSyadzili bin al-Alim Abdul Qadir bin Muhammad bin Ashur. He was born on the coast of La Marsa about 20 kilometres from the city of Tunisia in 1296 H coinciding with 1879 AD. He died in Tunisia on Sunday 3 Rajab in 1393 AH coinciding with 12 June 1973 AD. His father Muhammad bin Muhammad al-Thohir bin Ashur was a Sheikh in various fields of knowledge who was nicknamed Sheikh alMaqoshidi, al-Faqih, al-Ushuly, al-Mufassir, al-Lughowi, al-Adibi, alNahwi. While his mother's name was Fatimah, the daughter of Al Vizier Muhammad al-aziz al-Bu'tsur. He was raised by his maternal grandfather, a prominent scholar and statesman, Muhammad Al Aziz al-Bu'tsur (1825-1907 AD), one of the leading figures known as a statesman during the Khairuddin Pasha period who made reform efforts from 1860 AD to 1870 AD.

Linguistically, the word maqashid shari'ah consists of two word elements, maqashid and sariah, both of which are taken from Arabic. Maqashid itself is a plural form of the word Maqsd which has several meanings, such as purpose, fair, not exceeding limits, neither excessive nor deficient, towards one direction (Mawardi, 2010, 178). While the word shari'ah means the path to the source of water. In terms of the term he means the sacred texts of the Qur'an and al-Sunnah mutawatir that has not been interfered with by human thought. The content of sariah in this context includes aqidah, work, and akhlaq (Thoriquddin, 2015, 45). So if the two elements of the word are combined, then maqashid shariah can be interpreted as the ultimate goals that must be realised by the application of sharia.

(Thoriquddin, 2015, 45)

From all these dimensions Ibn Ashur wants to conclude that the mouth to be addressed by the Sharia is one, while the path or intermediaries taken are many and varied. Therefore, it is not wise to debate al-wasail (intermediaries) without looking at the main principles of the construction of al-wasail, namely benefit (Safriadi, 2014, 103). Furthermore, Ibn Ashur divides maqashid sariah into two, ammah and khaahshah. According to him maqashid al-'ammah is the wisdom, and the secret, and the purpose of the revelation of sharia in general without specialising in one particular field. The spirit of the characteristics of shari'a and the general objectives of shari'a fall under the category of maqashid ammah, even including meanings that are not contained in all types of laws, but are implicitly contained in many other forms of law. He gave an example such as the tolerance of sharia in accepting the concept of qiyas analogy as one part of the design of a law (istinbath al-ahkam) (Safriadi, 2014, 100-103).

ANALYSIS

The way to find out maqashid or the purpose of the law according to Ibn Ashur as explained in chapter two is with three elements of stages, namely by understanding Maqam al-Khiṭab al-syar'i, al-Tamyiz baina al-Wasilah wal al-Maqsd, and al-istiqra'. And the theoretical basis is four, namely al-Fitrah, al-musawah, al-samahah, and al-hurriyah. So in analysing the data that has been collected with Ibn Ashur's maqashid shari'ah theory:

The reasons for the obligation and cancellation of maintenance from the perspective of Ibn Ashur's maqashid shariah in the previous explanations, it has been mentioned that the reasons that make maintenance obligatory for wives are mentioned by scholars back to two things:

- a. This is because the husband has the right to withhold from his wife because of the marriage bond between them. This is the view of the majority of Hanafis and the qaadim of Imam Shafi'i. So when this right to withhold from his wife is lost without a shar'i excuse, his obligation to spend on her becomes waived. 105 They base this opinion on the generality of the command in QS. Al-Thalaq verse 7 and the hadith narrated by

Muslim during the farewell pilgrimage. The right to keep the wife at home is agreed upon by the scholars, as explained above. So is the obligation of maintenance for him. This is in accordance with the concept of *al-samâhah* or tolerance and *'adamul haraj* (not narrowing) initiated by Ibn Ashur. Because a wife who is stuck at home for the sake of her husband's rights her space becomes narrower, can not freely move to meet her needs, so the shari'at requires the husband to meet the needs of his wife in order to lift the "narrowness" in her life.

c. The reason that maintenance is obligatory is because the wife allowed her husband to have sexual intercourse with her after a valid marriage between them. This is the view of the majority of the Shafi'is, Malikis and Hanbalis. So *nafkahnya* becomes void if it is not there. (Muhammad al-Mawardi, Juz 5, 460). If we examine further the causes that can nullify the maintenance that has been mentioned by the scholars', then we will find four things, *Nushuz*, *Talak bain* not in a state of pregnancy, this is the opinion of Malikiyah, Shafi'iyah, and Hanabilah, *Wife immature*, this is the opinion of Shafi'iyah and Hanabilah. *Divorce because the wife has committed an offence*. This is the Hanafiyah opinion. If we simplify it further, then the reasons for the cancellation of *nafaqah* come down to two things. The first is the lack of complete submission (*التام التمكين عدم*) which can be caused by *nushuz* and the wife being immature. The second (*الزوجية انقطاع*) the breaking of the marriage bond) which can occur with the divorce of the wife with *divorce bain* and divorced because of committing sin according to Hanafiyah. The following is an analysis with Ibn Ashur's *maqâshid* theory:

1. *Maqam al-Khiṭāb*

Al-Maqam is a tool to find out the purpose of *shara'* by determining one purpose of the *lafadz* and ignoring other clues that are not the purpose of *shara'*. The method is to use *tafsir lughawi li ihtimaliyati al-khiṭab al-syar'I* (linguistic interpretation of the possibilities contained in the *shar'i* text). The majority

of scholars consider that this behaviour of *nushuz* can nullify the right to maintenance because the maintenance is given in return for the wife's obedience to him. So when she begins to disobey with various forms of disobedience, then the *nafkah* is cancelled. While the words *mawaddah* and *rahmah* are interpreted as marriage and children, *mawaddah* is affection for the young and *rahmah* is affection for the old, it is also interpreted that *mawaddah* is affection for the spouse and *rahmah* is affection for the child (Al-Andalusi, 87). It can be understood that the purpose and goal of the *dishari'atkannya* marriage and the rules related to it is to create a harmonious relationship, happy, loving, peaceful, without turmoil between men and women in a household bond. A family can be called *sakīnah* if it is full of peace, happiness, mutual inclination between husband and wife. And the family can be said to be *mawaddah* and *rahmah* if in it full of affection and love and maintain the integrity of the household in order to achieve *riḍa* Allah SWT. And all this can be created if each family member understands their rights and can carry out their respective obligations, and *nushuz* behaviour is certainly contrary to the purpose of marriage. From this it can be understood that the purpose of obliging a husband to spend on his wife and forfeiting the right to spend when his wife is *nushuz* is for the sake of creating a *sakinah mawaddah wa rahmah* family as stated in *Surah al-Rum* above, because if a wife is detained in the house for the sake of her husband's rights, then it is appropriate for the husband to fulfil all the needs of his wife so that the love between the two is maintained.

2. *al-Tamyiz baina al-Wasilah wa al-Maqṣad*

In terms of wealth, Ibn Ashur positions it to five things: *rawaj* (circulation/distribution), *wuduh* (clarity), *hifdh* (preservation), *tsabat* (decree), *'adl* (justice). Distribution here is also positioned as *Maqṣad* or the purpose of *shari'at*, namely the circulation of

property from one person to another in the right way. To realise this Maqṣad, the Shari'ah has prescribed various contracts and transactions as Wasīlah or intermediaries to transfer property rights by means of exchange (mu'awadzah) such as sale, lease, debt and so on, or voluntarily (tabarru') such as gifts, grants, inheritance and so on. In conclusion, the Maqṣad syar'i of rawaj or distribution of wealth has been regulated by shâri' with two Wasīlah in the form of mu'awadzah and tabarru'. While Yusuf Al-Qardhawi makes the basis of maqashid shariah related to property into 5, namely: (Thoriquddin, 2015, 131). Objectives related to the value and portion of wealth. Thus he obliges to protect wealth and be careful that wealth does not become fitnah. 2. Objectives related to the results of wealth. So it is recommended to produce and seek wealth in a way that is shar'i. 3. Objectives related to consuming wealth. So it is allowed to consume good property. 4. Objectives related to the circulation of wealth. So dishâri'atkan transactions in a way that is shar'i. 5. Objectives related to the distribution of wealth. Thus, justice is realised in the distribution of property between groups and individuals, as well as the ownership of the poor and the weak with the obligatory zakat, respect for ownership in particular, and the prohibition of private ownership of property needed by humans in general, and the application of the rules of life coverage in society. Thus, after understanding between Wasīlah and Maqṣad in property, it becomes clear that its special purpose is to be circulated, while the Wasīlah here is through the obligation of the husband to provide for his wife.

3. Istiqra' (Induction) The theory of istiqra' here is intended to clarify the desired level of maqâshid. This can be obtained by further examining the shar'i texts related to it, namely Al-Qashas 77 From the above texts it can be understood that the general purpose of property ownership is to be redistributed in order to lead the owner to achieve the riḍa of

Allah SWT, and that everything he has is only Wasīlah for the sake of achieving eternal enjoyment in the hereafter. The texts also explain how wealth should be used, namely through charity, infaq, and so on. Allah also reminds us that whatever we do with our wealth should not neglect us to remember Him, that all because of His favours and gifts that will all be accounted for in the hereafter. The verse also illustrates that the ideal man is one who is not distracted by all kinds of tricks of the world, especially by commerce, buying and selling, and everything related to wealth. He always remembers his Creator by being obedient to prayer, paying zakat, and believing in the Last Day so that he will always try to prepare himself to face it. Thus, after examining the causes of the obligation and abrogation of maintenance through the three stages of Maqâm al khitab, alTamyiz baina al-Wasīlah wa al-Maqṣad, and istiqra' it can be understood that the goal is in accordance with Ibn Ashur's maqâshid sharī'ah. More details can be seen in the following diagram: Maqshad obliged & cancelled nafkah: For the sake of creating a family of samawa Maqshad al-Khas: Wealth must be distributed Maqshad al-'Am: For the sake of achieving Allah's pleasure.

c. The right to a career for women from the perspective of Ibn Ashur's maqashid shariah a. Maqam al-Khiṭab It has been explained previously that each of the men and women has the same rights in working or having a career. And historical facts also reinforce this, although basically Islamic shâri'at encourages women to stay at home with the discovery of texts that explain the virtues of women who stay at home. Among the Quranic verses that are used as a basis for women not to leave the house is surah alAhzâb verse 33 as follows: The Mufasssir (commentators) in interpreting this verse differ in opinion, especially in interpreting the word command which is the core word in the verse, namely lafadz وَقَرْنَ at the beginning of the verse. Some read it as

"waqarna" with the letter qaff in fathah, meaning "stay in your homes and remain there", and this is the opinion of the scholars of Madinah and some scholars of Kufa. There are also those who read "waqirna" with a kasrah-flavoured qaff meaning "stay in your homes quietly and respectfully", and this is the opinion of the scholars of Basrah and some scholars of Kufa.¹¹⁴ The first reading gives a clear meaning that women are called upon to stay at home. Whereas the second reading calls for women to be quiet in the house. The Mufassir (commentators) in their books mostly mention the first reading model with emphasis on women to stay at home. Among the books of tafsir are Tafsir Ibn Kathir, Tafsir al-Munir, including contemporary tafsir books such as *al-Asas fi al-Tafsir li Fayd al-Hawa* (Mufidah, 2010).

CONCLUSION

The following career women's livelihood is analysed using Ibn 'Ashur's maqashid shariah theory, so the following conclusions can be drawn by the author:

1. In Islam, women also have the right to own and use their property, transact fully without the need for permission from anyone as long as they have reached puberty, are of sound mind, and are not bankrupt.
2. In Islam, women also have the same rights as men to have a career. It's just that Islamic shâri'at urges women to be more at home, it is to protect it from various bad possibilities that might occur out there which is commonly called fitnah.
3. The reason why a career wife's maintenance is cancelled is not because she has a career, but because of nushuz, one of which is when the wife leaves the house without her husband's permission.

Analysis of the right to a career for women The arguments that are considered as evidence for the prohibition of women to leave the house or have a career are advisory, not absolute. Its Maqsad al-khas is to keep her away from fitnah. While the Maqsad al-'âm is to give her freedom (iṣbat al-hurriyah) and equality (iṣbat al-musâwâh) to survive (hifdhu al-nafs) and obtain all the needs needed to continue to exist (hifdhu al-mal).

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