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## Research Article

# Obligation of Service Toward Wife and Children According to Legal and Islamic Law

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**Abstract.** Marriage is a form of legal action between husband and wife. Marriage is not only interpreted to realize worship to Allah alone, with the existence of a marriage, it will cause civil law consequences between the two. Here there are arrangements regarding the rights and obligations of each husband and wife, the husband is the heart of life in the family where it is the husband who has the advantage to lead a family compared to a wife who looks after assets and takes care of her husband and children, one of the responsibilities of a husband is in the wheels of the economy. The condition of the convicts who are in the Correctional Institution only participates in coaching program activities, there is no extra effort that must be made by convicts in fulfilling their own living because the independence coaching that is carried out is only limited to training. However, it is different from the situation when the prison itself has adequate facilities so that the convicts can work or manage in

agriculture, animal husbandry or home industry. The research method used is Juridical-Dogmatic or Normative-Juridical. The results of the research conducted show that inmates who are in Correctional Institutions cannot provide a living for their families, but there are efforts they can make, namely first entrusting their wives and children to their families so that their dependents become debts, secondly by leaving a business for their children and wives before they are in the penitentiary.

**Keywords:** Obligation of Service, Wife and Children, Legal Islamic Law

**Abstrak:** Pernikahan merupakan sebagai wujud perbuatan hukum antara suami dan istri, Pernikahan tidak hanya dimaknai untuk merealisasikan ibadah kepada Allah saja, dengan adanya sebuah Pernikahan maka menimbulkan akibat hukum keperdataan antara keduanya. Disini ada pengaturan mengenai hak dan kewajiban suami istri masing-masing, suami adalah jantungnya penghidupan didalam keluarga dimana suamilah yang mempunyai keunggulan untuk memimpin sebuah keluarga di banding seorang istri yang menjaga harta dan mengurus suami dan anak-anaknya, tanggung jawab seorang suami salah satunya ada dalam roda perekonomiannya. Keadaan narapidana yang berada di Lembaga Pemasyarakatan ini hanya mengikuti kegiatan program pembinaan, tidak ada upaya lebih yang harus dilakukan narapidana dalam pemenuhan nafkah itu sendiri karena pembinaan kemandirian yang dilakukan hanya sebatas pelatihan saja. Namun berbeda dengan keadaan bila lepas itu sendiri ada fasilitas yang memadai agar para narapidana itu dapat bekerja ataupun pengelolaan dalam bidang pertanian, peternakan ataupun home industry. Metode penelitian yang digunakan adalah Yuridis-Dogmatis Atau Yuridis-Normatif. Hasil penelitian yang dilakukan bahwa para narapidana yang berada di Lembaga Pemasyarakatan tidak dapat memberikan nafkah kepada keluarga, namun ada upaya yang bisa mereka perbuat yaitu pertama menitipkan istri dan anak kepada keluarga sehingga tanggungan nafkahnya menjadi Utang, kedua dengan cara meninggalkan usaha untuk anak dan istrinya sebelum mereka berada di Lembaga Pemasyarakatan. Pendapat Imam madzhab Hanafi bila suami tidak mampu maka nafkahnya menjadi utang, dan madzhab Imam maliki bahwa suami tidak mampu maka gugur kewajiban nafkahnya

**Kata Kunci:** Kewajiban Pelayanan, Istri dan Anak, Hukum Islam

## INTRODUCTION

Islamic law is stipulated for the welfare of the people, both individually and as a community, to live in this world and in the hereafter. Community welfare will be achieved by achieving family welfare prosperous, because the family is the smallest group in society so that the welfare of society is very dependent on the welfare of the family. Islam regulates the family not in outline but in detail. Families are formed through marriage, because of that marriage is highly recommended by Islam for those who already have the ability.

Marriage is one of the religious orders to men and women who are capable in this regard where the most greeted are the younger generation (al-syabab) to carry it out immediately. Because with marriage, it can reduce the immorality of sight, protect oneself from adultery. Therefore, for those who wish to get married while the provisions for entering into marriage are not ready, it is recommended to fast<sup>1</sup>

In addition, marriage is a form of legal action between husband and wife, marriage is not only interpreted to realize worship to Allah SWT, but on the other

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<sup>1</sup> Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* ( Jakarta : PT Raja Grafindo Persada 2012), revised edition Cet. 1. P. 53

hand, the existence of a marriage will cause civil law consequences between the two. Seeing that the purpose of marriage is so noble, namely to build a happy, everlasting, eternal family based on the belief in the One God, then here there are arrangements regarding the rights and obligations of each husband and wife. If the rights and obligations of each husband and wife are fulfilled then the dream of husband and wife in married life will be realized based on love and affection.<sup>2</sup>

The existence of provisions regarding the rights and obligations of husband and wife in a household is intended so that husband and wife can understand each other, understand what is the authority of each. Between the two, you can find out which is the right of the husband or the right of the wife and which is the obligation of the husband or the obligation of the wife. Because what is the wife's right is the husband's obligation to fulfill it and the husband's right is the wife's obligation to fulfill it, husband and wife must complement each other in various matters in the household.

Basically building a family must understand each other and know their rights and obligations, the husband is the heart of life in the family where it is the husband who has the advantage to lead a family compared to a wife who looks after property and takes care of her husband and children, because that's One of the responsibilities of a husband is in the wheels of his economy.

With regard to the rights and obligations as a husband in the compilation of Islamic law explained in article 80 which regulates the husband's obligations to his wife and family, as follows:

1. The husband is the guide for his wife and household, but regarding matters of household affairs that are important to be decided by the husband and wife together;
2. The husband is obliged to protect his wife and provide everything necessary for household life according to his ability;
3. The husband is obliged to provide religious education to his wife and provide opportunities to learn knowledge that is useful and beneficial for religion, homeland and nation;
4. According to his income, the husband bears:
  - a. A living, kiswa and residence for the wife;
  - b. Household expenses for care and medical expenses for wife and children;
  - c. Education costs for children
5. The husband's obligation to his wife as referred to in paragraph (4) letters a and b above comes into force after the wife's perfect appearance;
6. The wife can release her husband from the obligations towards herself as referred to in paragraph (4) letters a and b;
7. The husband's obligations as referred to in paragraph (5) fall if the wife *Nusyuz*.<sup>3</sup>

Providing maintenance is obligatory for the husband since the marriage contract is legal and correct, so since then a husband is obliged to bear the maintenance of his wife and this means that all the consequences apply according to

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<sup>2</sup> *Ibid*, 147

<sup>3</sup> Kompilasi Hukum Islam, ( Bandung : Fokusmedia 2001) pasal 80 p. 29

the rules. The wife becomes no longer free after the marriage bond is confirmed. This livelihood varies, it can be in the form of food, shelter, lessons, medicine, and also clothing.

In fulfilling this subsistence, a husband has to work extra hard and work hard in his search because the need for the economy almost every day must be met, be it kitchen matters, wife's beauty tools, or children's snacks. So this is a challenge for a husband in building a household with enormous economic demands.

Islam respects people who work with their own hands. When someone is tired after coming home work, then Allah SWT. forgive his sins right then and there. In addition to the people who work with his own hands, whether for his own needs or the needs of his family, is categorized as *jihad fisabilillah*. So Islam gives very high appreciation to those who try their best energy in earning a living.<sup>4</sup>

At the present time, the demands of life in a family that are increasingly severe in meeting the needs of life sometimes make a husband make a mistake in earning a living to meet the needs of his family, while working sometimes a husband makes mistakes and mistakes that are done intentionally or unintentionally, so This action is a violation of the law and makes him a convict so that he is obliged to serve a sentence which is then called a convict.

In the verses of the Koran, it is the responsibility of the husband to provide support for his wife under any circumstances, because it is essentially a matter of degree husband is one level higher than wife. Therefore, in married life whether the wife is rich, or the wife has her own income, the wife is not obliged to do so give to husband. Even if the wife is rich and the husband If you are a poor person, your husband is still obliged to provide a living according to his ability.<sup>5</sup>

There is also a husband who is hampered in earning a living because he is seriously ill or he has an accident in earning a living which causes him to be totally paralyzed and unable to move so that he can no longer fulfill his obligations as the backbone of the household ship.

When a husband can no longer fulfill his rights and obligations as the backbone of his family, a wife has reasons to ask for a divorce where the KHI regulates the reasons for the divorce contained in article 116 and article 39 paragraph 1 of Law no. 1 of 1974 states:

1. One of the parties commits adultery or becomes a drunkard, addict, gambler, and so on which is difficult to cure;
2. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his control;

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<sup>4</sup> Novi Indriyani Sitepu, ETOS KERJA DITINJAU DARI PERSPEKTIF ALQURAN DAN HADIS (Suatu Kajian Ekonomi Dengan Pendekatan Tafsir Tematik). JURNAL PERSPEKTIF EKONOMI DARUSSALAM Volume 1 Nomor 2, September 2015 ISSN. 2502-6976. (Aceh: Unsyiah, 2015) p. 148.

<sup>5</sup> Bangun Dasopang, Pemenuhan Kewajiban dan Hak Nafkah Keluarga Masyarakat Petani Di Kabupaten Padang Lawas Utara (Analisis Gender). Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam P-ISSN: 2614-4018 DOI: 10.30868/am.v10i02.3050 E-ISSN: 2614-8846. Vol. 10 no. 2. (Bogor: STAI Al-Hidayah, 2022) P.784

3. One of the parties received a prison sentence of 5 (five) years or a more severe sentence after the marriage took place;
4. One of the parties commits atrocities or severe abuse that endangers the other party;
5. One of the parties has a disability or illness with the result that he is unable to carry out his obligations as a husband or wife;
6. Between husband and wife there are constant disputes and fights and there is no hope of living in harmony in the household again;
7. Husband violates the taklik divorce;
8. Conversion of religion or apostasy which causes disharmony in the household.<sup>6</sup>

In the condition of serving a sentence in a penitentiary where all the movements of the convict are very limited, and they still have the responsibility to provide for their wife because they are still legally husband and wife, as well as their children, then this becomes a problem faced by a convicts against the obligation to carry out maintenance.

However, if we look at the penitentiary law, it is explained that there are rights and obligations of a convict, including convicts who have the right to:

- a. Performing worship according to their religion or belief;
- b. Receiving treatment, both spiritual and physical care;
- c. Get education and teaching;
- d. Get proper health and food services;
- e. Submit a complaint;
- f. Get reading material and follow other mass media broadcasts Not prohibited;
- g. Receive wages or premiums for the work performed;
- h. Receive visits from family, legal counsel, or other specified persons;
- i. Obtain a reduction in criminal past (remission);
- j. Get the opportunity to assimilate including leave to visit family;
- k. Get parole;
- l. Get leave before being free; And
- m. Obtain other rights in accordance with the applicable laws and regulations.<sup>7</sup>

Seeing the reality that exists at this time, are all the problems that exist when a husband is exposed to old age, whether sick or convicted, must lead to divorce, because basically everyone does not want incidents like this to happen in building a family, so the question is what is the role of the government in prospering convict's family? does it have to lead to divorce, so the government makes regulations in the compilation of Islamic law after 5 years it is permissible to divorce. What are the views of the scholars on this matter? Is it a sin for a husband to not fulfill his living when he is legally dead?

Based on the description above, research on problems that exist in the scope of the family, especially about husbands no longer being able to carry out their rights

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<sup>6</sup> Kompilasi Hukum Islam Di Indonesia, pasal 116. P. 39

<sup>7</sup> Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections

and obligations, especially fulfilling the maintenance of husbands who become convicts of their wives and children, is interesting and important to do.

1. What are the provisions of Islamic law regarding the obligations of the convict husband to fulfill the maintenance of his wife and children?
2. What are the legal provisions of the Correctional Law regarding the obligations of a convict husband to fulfill the maintenance of his wife and children?

Then the research objectives are:

1. To find out the provisions of Islamic law regarding the obligations of a convict husband to fulfill the maintenance of his wife and children
2. To find out the legal provisions of the Penitentiary Law on the obligations of convict husbands to fulfilling a living for his wife and children.

The benefits of this research are:

1. As a Contribution to Thought in Science, Concerning the Implementation of Obligations of Support for Convicted Husbands
2. To become a concern within the community and government regarding the importance of fulfilling a living

This research is basically trying to explore, reveal and explain how to fulfill a husband's living in the community, but more specifically regarding the fulfillment of a husband who has been sentenced to prison. Where this matter of fulfilling a living is seen in Islamic law and positive law in relation to the obligations of a husband who cannot support his family and this will be explored and revealed in this research. This research refers to the formulation of the problem which includes three important discussions that will be discussed, namely: first, efforts to implement the maintenance of a convict husband's maintenance of his wife and children, secondly the view of Islamic law and positive law on the husband's living expenses both physically and spiritually, thirdly efforts carried out by the government to meet the living needs both physically and spiritually for a convict's husband in terms of fulfilling his living. Based on the series of problem formulations, the framework in this study uses a conceptual framework and framework related to matters relating to the obligation to provide for a husband, both in terms of Islamic law and positive law, as well as efforts to be able to carry out his obligations even in the condition of the convicts, both in terms of the government's efforts or the policies of the correctional institution itself so that these convicts can still have income, even if it's a little to fulfill their obligations to their families.

Results of previous research: Mohd Kalam Daud, Syarifah Rahmatillah 2021, "*Persepsi Istri Narapidana Terhadap Pemenuhan Nafkah Ditinjau dari Hukum Islam*" In Islamic law, if a husband cannot carry out his maintenance obligations within a certain period due to his inability then this is a debt for him which must be paid once he has the ability. to pay for it. If a husband experiences difficulties so that he is unable to provide for his wife, the wife can choose between being patient in suffering or asking for a divorce. If someone is in trouble and is unable to provide for his wife, his obligation will be terminated. However, if the economy improves, he is still obliged

to provide for his wife. When a husband is a prisoner, it is a difficult situation because the husband has limited space for movement and thinking to support his wife because the husband is a convict who is serving a sentence. In this very difficult situation, Islam provides a solution and forgiveness that Allah SWT does not burden a person but only what Allah SWT has given him.

Sifa Mulya Nurani, 2021, *Relasi Hak Dan Kewajiban Suami Istri Dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak Dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam Dan Hadits Ahkam)*. First, the relationship between the rights and obligations of husband and wife in the household gives rise to equal rights and obligations between the two, namely: the wife's rights over her husband, the husband's rights over his wife, and joint rights between the two. Second, the interpretation of the ahkam verse with its relevance to the ahkam hadith regarding the rights and obligations of husband and wife in domestic life can be divided into the husband's obligations which are the wife's rights as stated in the Qur'an that the husband must provide for his wife, treat his wife with ma'ruf (good ). This is in line with the interpretation of the Asy'ari hadith which states that the husband has full responsibility for his wife both in terms of living and daily care. Meanwhile, the wife's obligation which is the husband's right is that the wife is obliged to look after everything related to the husband's property. This is in accordance with the hadiths which state the obligations of a wife as a wife. The husband's rights are the wife's obligation to ask her husband's permission when inside the house, outside the house and in terms of utilizing and using property

## METHOD

The approach used in this study is a normative legal research approach which is defined as research on statutory rules, both in terms of the statutory hierarchy and the relationship of statutory harmony.<sup>8</sup>

The research method used is the Juridical-Dogmatic or Juridical-Normative research method, which is research by viewing law as law that solely applies in society, not because of reality, but the basis for the application of law is because other laws are higher.<sup>9</sup> So the research approach carried out in the case of the husband's subsistence obligation who is convicted of a child and wife uses a method of looking at a law that applies to society or husbands who are serving prison sentences.

Based on its nature, the type of data in this study is a qualitative field description. Qualitative data itself is data in the form of words not in numbers. In this case, what is being studied in his research is the Obligation of Livelihoods for Prisoners Against Wives and Children According to Legislation and Islamic Law.

The data sources used as reference in this research are: 1. *Primary Data*, Primary data is data obtained directly from research subjects by using measurement tools or data collection tools directly on the subjects as a source of information sought. In this case, the binding legal materials are: the Al-Qur'an, Hadith, the Law on Marriage, the Corrections Law, and the provisions in the KHI. 2. *Secondary Data*,

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<sup>8</sup> Elisabeth Nurhaini Butarbutar, *metode penelitian Hukum*, ( Bandung, PT Refika Aditama 2018 ) p. 83

<sup>9</sup> Ibid, 34

Secondary data is data obtained through other parties, not directly obtained by researchers from their research subjects. Secondary materials in this research are all legal materials sourced from books or other works whose substance is related to primary data. So what is used is the interview technique.

### **Maintaining rights and obligations in the household**

The rights and obligations of husband and wife in domestic life are actually closely related to several things, namely;

- 1) Understanding the essence and dignity of men as husbands, such as physiological, psychological and functional differences between men and women.
- 2) Having a direct relationship with love and affection as the basis of marriage.
- 3) Criteria for determining prospective husbands and prospective wives<sup>10</sup>

The rights and obligations in domestic life are regulated in the Islamic religion, because it contains very clear signs, for example regarding religious prohibitions and commandments. In the Koran, Allah swt. It touches a lot on the principles which are the common thread of Islam, including justice, honesty, and human solidarity, and so on which lead to the command of *ma'ruf nahi munkar* in domestic life.

Human rights in (human) culture consist of three points, namely;

- 1) Human rights in Islamic culture are in the form of obligations that must be implemented. Therefore everyone should do it. Based on this, in fact these rights are not only rights that belong to the human being concerned as stipulated in various human rights charters issued by international organizations, but are obligations for other members of society.
- 2) This obligation is both an individual and a group obligation. Each party is responsible for carrying out this obligation.
- 3) This obligation in Islam has legal guarantees and sanctions, not just recommendations or moral laws that have no sanctions, as is the case in international charters.<sup>11</sup>

So it is clear that in Islam, obligations are prioritized over rights, so that even in domestic life, the obligations of husband and wife must be maintained completely and inseparably. In this context, there is a reciprocal relationship in maintaining the obligations and rights of husband and wife in domestic life. In this context, husband and wife are expected to mutually provide a sense of empathy, sympathy and ethics to their partner. A husband, for example, is expected to pay great attention to his wife, for example by getting along well, speaking softly, showing affection, remaining open when alone, forgetting mistakes, holding her hand, and forgiving if his wife makes a mistake. Maintain your wife's honor and not argue with her too often, spend money on your wife sparingly and honor your wife's family, always make beautiful promises, and always be passionate about your wife.

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<sup>10</sup> Wawan Susetya, *Merajut Benang Cinta Perkawinan* ( Jakarta : Republika 2008 ), Cet. 1. P. 28

<sup>11</sup> *Ibid*, 29



On the other hand, the wife also pays attention to her husband, for example, always being shy towards her husband, not arguing too often, always obeying all her husband's orders, being silent when her husband is talking, maintaining her husband's honor when he is away, not being treasonous towards her husband's property, always appear fragrant, always have a fragrant mouth and always wear clean clothes, show an attitude of accepting what is qana'ah, display a good attitude of the husband, see the reality of the husband with full priority, accept the results of the husband's work with full priority, accept the results of the husband's work with full feeling gratitude, showing love for your husband when you are near him, showing joy when you see your husband

### **Husband's Obligation to Provide Support According to KHI and Law Livelihood Obligations According to KHI**

The obligation to provide maintenance in the Compilation of Islamic Law is regulated in article 80 which regulates the husband's obligations towards his wife and family, as follows<sup>12</sup>

- a. The husband is the guide for his wife and household, however, important household matters are decided by the husband and wife together;
- b. The husband is obliged to protect his wife and provide all the necessities of household life according to his ability;
- c. Husbands are obliged to provide religious education to their wives and provide opportunities to learn knowledge that is useful and beneficial for the religion, homeland and nation;
- d. According to his income, the husband bears:
  - 1) Support, *kiswah* and residence for the wife;
  - 2) Household costs, care costs, and medical costs for wife and children;
  - 3) Education costs for children
- e. The husband's obligations towards his wife as stated in paragraph (4) letters a and b above apply after there is *tamkin* from his wife;
- f. The wife can free her husband from obligations towards her as stated in paragraph (4) letters a and b;
- g. The husband's obligations as referred to in paragraph (5) are terminated if the wife is *nusyuz*;

In article 80 letter d regarding *kiswah* or clothing, namely: *Kiswah* support, meaning income in the form of clothing or clothing. This *kiswah* is a husband's obligation to his wife. Therefore, the *kiswah* is the wife's right. The clothing in question is all the necessities that are closely related to the body parts. Apart from clothing, *kiswah* income consists of the following things:

- 1) Wife's physical maintenance costs;
- 2) Health care costs;
- 3) Costs for jewelry needs;

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<sup>12</sup>Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia...*, 150

- 4) Costs for recreational needs;
- 5) Costs for children's education;
- 6) Costs for unexpected things<sup>13</sup>

### **Supporting obligations according to law No. 1 of 1974 concerning marriage**

Meanwhile, the husband's obligation to provide maintenance is regulated in Law No. 1 of 1974 concerning marriage in article 34, namely:<sup>14</sup>

- 1) The husband is obliged to protect his wife and provide all the necessities of household life according to his ability;
- 2) The wife is obliged to manage household affairs as well as possible;
- 3) If the husband or wife neglects their respective obligations, they can file a lawsuit with the court;

The husband does not provide support for household living needs according to his ability. In the provisions of the Marriage Law, the amount of maintenance that must be provided is not stipulated, it is only stated that it is in accordance with the husband's ability.

Furthermore, the Marriage Law states that if a husband or wife neglects their obligations, each can file a lawsuit with the Court (Article 34 paragraph (1) of the Marriage Law). This means that if the husband does not provide support for household needs, the wife can sue the District Court or the Religious Court (depending on the religion adhered to by the husband and wife).

The prisoner's maintenance obligations towards his wife and children according to Islamic law and law are:

1. Review of Islamic law relating to the obligation to fulfill the maintenance of a husband who is a prisoner for his wife and children. From the perspective of Islamic law, a husband is legally obliged to provide maintenance for his wife according to his abilities, which is confirmed in Q.S Surat At-Thalak verse 7 and Q.S Al-Baqarah verse 23, as well as its provisions according to the imams of the madzhab, among these opinions, namely according to Imam Maliki, that the husband's obligation to provide a living is invalidated if he is poor or unable to provide a living and Imam Hanafi states that the husband's obligation is if he is unable then There is a debt for the husband and when he is able to support his family again, it must be paid. And according to Imam Syafi'i and Imam Hambali, maintenance must still be given to the wife according to the husband's ability. Karana, in essence, Islam provides an easy solution that means living according to one's abilities and one is not burdened but according to the level of one's abilities.
2. Review of the laws and regulations relating to the obligation to fulfill the support of a husband who is a prisoner towards his wife and children. Based on the husband's obligation to provide maintenance, Law no. 1 of 1974 concerning Marriage, and the Compilation of Islamic Law. In this law, a husband has the rights and obligations to provide support for his wife and children, as well as in Law No.

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<sup>13</sup> Mustofa Hasan, *Pengantar Hukum Keluarga*, ( Bandung: CV Pustaka Setia, 2011), p. 176

<sup>14</sup> Mustofa Hasan, *Pengantar Hukum...*,170.

22 of 2022 concerning Corrections in article 09 paragraph 1 letter j, which means that if this building of independence can be carried out effectively and efficiently.

There are several simple illustrations regarding the implementation of how to fulfill the livelihood of a prisoner's husband, namely:

- a. Responsibility for support for the wife and children is left entirely to the husband's family;
- b. A wife continues the family business as what her husband left behind;
- c. A wife works to provide for the family based on the permission of the convicted husband;
- d. Marital status that has ended (divorce) at the husband's request;

### **Islamic law provisions regarding the obligations of a convicted husband to provide for his wife and children**

A husband is still obliged to provide maintenance, but this obligation will fail and become a debt if the husband is unable to provide for it, as is the opinion of the majority of scholars, the inability of a husband to pay for his wife's maintenance does not mean that his obligation to pay for maintenance is completely terminated, but it remains a debt for the husband. which must be paid when he is able. In fact, according to the Imam Syafi'i and Imam Hambali schools, if a husband is unable to pay a living at all, his wife may ask for *fasakh*. This is based on the words of Rosulullah SAW to a man who was unable to pay his wife's maintenance: "Divorce them" (HR. Daruqutni and Al-Baihaki from Abu Hurairah). However, according to the Imam Hanafi and Maliki Madzhab, a husband who is unable to pay his wife's maintenance should not be separated (divorced), according to the Imam Hanafi Madzhab, the living that has not been paid by the husband who cannot afford it becomes a debt for him which he must pay when he is able, even according to According to the Imam Maliki school of thought, because the husband is unable to pay his wife's maintenance, during this incapacity, the husband's obligation to support the maintenance falls off.

The obligation to provide maintenance in the Compilation of Islamic Law is regulated in article 80 which regulates the husband's obligations towards his wife and family, as follows<sup>15</sup>

1. The husband is the guide for his wife and household, however, important household matters are decided by the husband and wife together;
2. The husband is obliged to protect his wife and provide all the necessities of household life according to his ability;
3. The husband is obliged to provide religious education to his wife and provide opportunities to learn knowledge that is useful and beneficial for the religion, homeland and nation;
4. According to his income, the husband bears:
  - a. Support, *kiswah* and residence for the wife;
  - b. Household costs, care costs and medical costs for wife and children;
  - c. Education costs for children;

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<sup>15</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia...*, 150

5. The husband's obligations towards his wife as stated in paragraph (4) letters a and b above apply after there is a tamkin from his wife.
6. The wife can release her husband from obligations towards him as stated in paragraph (4) letters a and b;
7. The husband's obligations as referred to in paragraph (5) are terminated if the wife is *nusyuz*;

According to the opinion of Imam Hanafi and the Imam Maliki school of thought, according to the opinion of Imam Hanafi and the Imam Maliki school, the view in Islamic law is that a husband still has obligations, but these obligations may fail or there will be a debt for the husband and if he is able to support his family again, this must be paid according to the opinion of Imam Hanafi and the Imam Maliki school, but it is different. According to the opinion of Imam Syafi'i Madzhab and Imam Hambali, the wife may apply for divorce.

### **Provisions of the Corrections Law regarding the obligations of a convicted husband to provide for his wife and children**

Corrections are part of an integrated criminal justice system that carries out law enforcement in the field of treatment of prisoners, children and inmates in the pre-adjudication, adjudication and post-adjudication stages. The administration of correctional institutions as part of an integrated criminal justice system is based on a system known as the correctional system, which is an arrangement regarding the direction and boundaries as well as methods for implementing correctional functions in an integrated manner between officers, prisoners, children, inmates and the community.

The Correctional System is implemented in order to guarantee the protection of the rights of prisoners and children as well as improve the quality of personality and independence of inmates so that they realize their mistakes, improve themselves and not repeat criminal acts, so that they can be accepted again by the community and can live normally as good citizens. , obey the law, be responsible, and can actively play a role in development and at the same time provide protection to the community from repetition of criminal acts.<sup>16</sup>

Based on the explanation of the correctional law, the role of the government in efforts to fulfill a convicted husband in this regard is that which has the authority of the Ministry of Law and Human Rights which oversees correctional institutions throughout Indonesia. This policy for prisoners requires uniformity in terms of adequate facilities in the matter of fostering work independence. The issue of providing livelihoods for prisoners cannot be fully addressed, so the role of the government must take part in solving existing problems because if it ends in divorce it will give rise to new problems such as psychological disorders for children who want to become adults, efforts that the government must make. is to create a policy related to paying attention to the family life of those who have been punished. such as social services or we implement the Baznas system which prioritizes the distribution of

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<sup>16</sup> Law number 22 of 2022 concerning corrections article 09

zakat to families who have criminal cases in order to reduce the burden on the families left behind, not just for building mosques. Because someone who is imprisoned must be trained as well as possible so that they don't make any more mistakes after leaving prison. Because basically punishment is a solution for everyone, rather than giving rise to new problems, be it because of the loss of family which is not properly paid attention to by the guarantor and guarantor, namely the government itself.

In terms of getting wages, there is actually a law that regulates wages for prisoners which are regulated in Law No. 22 of 2022 concerning Corrections which is contained in article 09, namely:<sup>17</sup> Prisoners have the right:

- a. carry out worship in accordance with their religion or beliefs;
- b. receive care, both physical and spiritual;
- c. get education, teaching and recreational activities as well as opportunities to develop potential;
- d. get adequate health services and food in accordance with nutritional needs;
- e. obtain information services;
- f. receive legal counseling and legal assistance;
- g. submit complaints and/or grievances;
- h. obtain reading materials and follow mass media broadcasts that are not prohibited;
- i. receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and all acts that are physically and mentally harmful;
- j. get work safety guarantees, wages, or work premiums;
- k. getting social services; And
- l. accept or reject visits from family, advocates, companions, and the community

In the article, letter j, what is meant by "wages" is compensation in the form of money and so on for prisoners who carry out productive work that produces goods and/or services. Meanwhile, what is meant by "premium" is a gift in the form of money or goods for prisoners who carry out work/skills training activities or maintenance work, for example working in the kitchen or cleaning the environment. Efforts that can be made to protect the rights of prisoners can only be carried out for husbands with prisoner status who collaborate with third parties, for those who do not collaborate with third parties, they do not receive wages for the work they do. This makes it difficult for husbands with convict status to provide support for their wives

## CONCLUSION

Review of Islamic law relating to the obligation to fulfill the maintenance of a husband who is a prisoner for his wife and children. From the perspective of Islamic law, a husband is legally obliged to provide maintenance for his wife according to his abilities, which is confirmed in Q.S Surat At-Thalak verse 7 and Q.S Al-Baqarah verse

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<sup>17</sup> Law number 22 of 2022 concerning corrections article 09

23, as well as its provisions according to the imams of the madzhab, among these opinions, namely according to Imam Maliki, that the husband's obligation to provide a living is invalidated if he is poor or unable to provide a living and Imam Hanafi states that the husband's obligation is if he is unable then There is a debt for the husband and when he is able to support his family again, it must be paid. And according to Imam Syafi'i and Imam Hambali, maintenance must still be given to the wife according to the husband's ability. Karana, in essence, Islam provides an easy solution that means living according to one's abilities and one is not burdened but according to the level of one's abilities.

Review of the laws and regulations relating to the obligation to fulfill the support of a husband who is a prisoner towards his wife and children. Based on the husband's obligation to provide maintenance, Law no. 1 of 1974 concerning Marriage, and the Compilation of Islamic Law. In this law, a husband has the rights and obligations to provide support for his wife and children, as well as in Law No. 22 of 2022 concerning Corrections in article 09 paragraph 1 letter j, which means that if this building of independence can be carried out effectively and efficiently.

There are several simple illustrations regarding the implementation of how to fulfill the livelihood of a prisoner's husband, namely:

- a. Responsibility for support for the wife and children is left entirely to the husband's family;
- b. A wife continues the family business as what her husband left behind;
- c. A wife works to provide for the family based on the permission of the convicted husband;
- d. Marital status that has ended (divorce) at the husband's request;

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