

The Stance of Alimony or Maintenance for Working Wives within Working Period: An Analysis from the Qualified Jurists (Muftis)

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DOI Link: <http://dx.doi.org/10.6007/IJARBSS/v7-i4/2800>

Published Date: 15 April 2017

Abstract

Generally in Islam, the husband has the duty to provide maintenance to the wife. However, in this millennial era, many wives have established their own jobs and have their own sources of income. This led to confusion for the husbands over whether or not they should pay alimony for their working wives. This includes the maintenance for the wives during their working time. Hence, to resolve this confusion, this paper highlights two objectives. First, to identify the position of working wives in Islam. Second, to analyze the qualified jurists' views on the wife's maintenance during working period. To achieve the objectives of this study, data were collected using the library method for secondary data. While structured interviews were conducted with respondents consist of elected muftis. After that, these data were analyzed using content analysis method. This study found that Islam allows wife going out to work because there is no passage from the Quran and al-Sunnah that prevent the wife from working. This study also found that the husband is obligated to pay alimony to the wife works provided that she has the consent of the husband. However, the needs during working hours will individually become the responsibility of the wife. The husband is not obliged to provide it because the conditions for ihtibas kamil are not completely fulfilled. However, according to the respondents, the maintenance in this case can be discussed further with the tolerance of the husband.

Keywords: Maintenance, Working Wives, Muftis' View, Women's Occupation.

Introduction

Islam is a systematic religion that has specific rules and in every single life matter including rules of marriage life. In marriage, Islam has established a rule that the husband is obliged to provide maintenance to his wife regardless the status of the wife. Granting alimony to the wife automatically becomes an obligatory responsibility of her husband after the

solemnization of *ijab* and *qabul* (al-Juwaini 2007; Mat Zain, Abdul Manap & Muhd Kusrin 2014).

In Islam, the maintenance is divided into two: the incorporeal (*zahir*) maintenance and spiritual (*batin*). However, this paper will only focus on the former. Maintenance of the wife has been featured by Allah in Surah al-Talaq verse 7. Allah commanded:

Meaning: Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him.

(al-Talaq, 65:7)

This verse explains that the husband has the duty to provide maintenance to his wife. According to Ibn Kathir (2000), this section describes a man's duty to provide for those who are under his charge and responsibility. The maintenance is given based on the husband's ability to provide. In this situation, the wife is basically under the husband's charge or responsibility. Thus, the husband is obliged to provide maintenance to his wife regardless of his wife's economic status.

Nowadays, most of the women started to get involved in the working world and build their own career (al-Qaradawi, 1996). Furthermore, getting into working industry is viewed as a common thing of a woman after graduating. Hence, women especially wives have their own source of income and no longer financially dependent on the husbands. Women including wives in Malaysia that is highly educated have chosen to involve in working sector be it public or private sectors. (Ismail & Hajiah, 2012).

The question is: what is the position of working women and their maintenance when they are working (having their own sources of income)? If they are allowed to work and receive maintenance, what is the position of maintenance during their working periods? To resolve this confusion, this paper has come out with two main objectives: firstly, to identify the position of working wives in Islam and secondly, to analyse the muftis' viewpoint on the maintenance of the working wives during their working period.

Research Methodology

To make this paper more systematic, the methods of data collection and data analysis are determined specifically. This paper uses the method of document analysis to obtain data. According to Jasmi (2012), document analysis method is a method to obtain relevant information from printed materials in the form of documents. To achieve the objectives of this paper, the data collection was conducted by analysing documents such as books, journals, works of ancient and contemporary Islamic scholars which are related to maintenance of working wife. In addition, this study also obtained primary data through interviews with specific respondents. This study has set and selected three respondents who are states mufti in Malaysia. Respondents were the Federal Territory Mufti, Sahibus Samahah Dato 'Dr. Zulkifli Mohd. Second, the Mufti of Negeri Sembilan, Dato 'Hj. Hj Mohd Yusuf. Ahmad. And lastly, the Penang State Government Mufti, Dato 'Dr. Wan Salim Wan Mohd. Noor.

The collected data is then analyzed using content analysis method. According Krippendorff (2004: 18) and Yusof (2004: 34), content analysis is a research technique which is used to systematically and objectively infer the matter based on the data obtained in the form of documents. Marican (2005: 170) and Lebar (2009: 146) also described content analysis as a systematic explanation regarding the content of a written text. The selection of content analysis is parallel to the data gathered from documents and interviews.

Findings

The findings of this paper are divided into two. First, the concept of maintenance for working wives according to Islam. Second, the muftis' view pertaining to the position of maintenance for working wives in their period of working.

The Concept of Working Wives According to Islam

Stereotypically, women especially wives are expected to stay at home managing the housework and fulfilling their children and husband's needs. But nowadays, the tradition of women managing the housework has already revolved. The function of wives is no longer to solely serve the household needs but they also going out to work and have their own sources of income.

From Islam perspective there are no explicit prohibitions which clearly prevent a woman or wife from working and have their own income. Therefore, there are various views from scholars of Islam regarding this matter. The first view is an opinion that allows the involvement of women in work and second one is the opinion to ban the involvement of women in employment.

First opinion: scholars allow a woman or wife to work although generally, the duty of a wife is managing the household. However, there are no explicit prohibitions that restrict or prevent them from working outside the home.

The main responsibility of a woman, especially a wife is to manage the household. When there is no specific argument about some matters, Islamic law would be bound by the methods discussed in qawaid fihiyyah. The method is as stated by al-Suyuti (1990: 60):

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

Meaning: The origin of a matter is considered as permitted, as long it is there is specific evidence indicating prohibition.

Scholars of Islam have been using this fihiyyah in determining the legal problems that do not have a clear argument. al-Awwa' (1998: 80-81) argues, this method shows Islam forbids anyone to definitely ban something that is not explained by Allah and his messenger of Allah SWT in the arguments of Islamic that were agreed upon.

According to al-'Ak (2007: 146), some scholars argue that generally, the responsibilities of a woman or a wife are not limited to serving a husband and children alone. In fact, they are also required to voluntarily engage in employment as there is no clear evidence that banned women from doing so. However, this must be subjected to certain conditions.

For example, your wife should ask for permission from her husband to work outside the home because the wife is apparently under the responsibility of the husband.

Second Opinion: prohibition (haram) for women and wife to involve in working sectors. The ban is due to their opinion that the place for a woman or wife is at home rather than being outside of the home.

According to Uqlah (1990: 277), this ban opinion is based on the view the most appropriate place for a woman is in their dwellings. While the real responsibility of a wife is to take care and manage the household and educating children. In addition, to working out will cause the affection between husband and wife eroded. In fact, children will be deprived. The argument used by the word of Allah in Surah al-Ahzab, verse 33. The Word of God:

And abide in your houses and do not display yourselves as [was] the display of the former times of ignorance.

(Surah al-Ahzab 33: 33)

The previous verse explained that God has ordered women to stay at home and prevent them from exposing the jewelry on their bodies. Indirectly, this paragraph forbids the mixing of women with non-mahram men, especially in a situation of business transactions, employment, travel and so on. Therefore, any works that generally involves the mixing of women and men is forbidden by Allah (Uqlah, 1990: 277).

This second opinion also argues using another verse in Surah al-Baqarah verse 228. Allah commands:

Meaning: divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise. (al-Baqarah 2: 228).

This verse explains that the difference between the level and position of husband and wife. Wife falls under a lower position than the husband. Therefore, a wife is forbidden to get themselves involved in the working world which is known is generally viewed as the husband's main responsibility. Based on these two opinions on the legal law of working women; opinion that allows women or wives to go out to work and the opinion that forbid them from doing so, the former is stronger (rajah) than the latter. The second arguments that are used by the scholars were carefully considered and eventually rejected by scholars who support the first opinion. According to Al-Awwa '(1998: 88), verse 33 in Surah al-Ahzab explained that the order for women to be at home and forbade them to leave the house is devoted to the wives of the Prophet Muhammad and not to the other women. Some scholar's commentators explain that the verse is not devoted to the wives of the Prophet Muhammad alone. If they went out for the needs and wishes, then it is allowed but the must keep their modesty and

respectable behavior as a Muslim woman without resembling the jewelry and behavior of the *jahiliyah* (al-Kasymiri, 1357H: 254).

In addition, the second argument for the group of scholars who forbid the wives from working used the verses of Surat al-Baqarah is not very accurate in this case. The text shows the differences between men and women. al'Awwa (1998: 84-85) argues that the verse is devoted solely concerned on family system and does not involve any other fields. Consequently, the wife is not prevented from having equal status with men in the employment sector.

Analysis On Muftis' View On The Maintenance Within Working Period

Maintenance is the obligation of the husband regardless the wife's economic status. However, the question arose whether the husband is obliged to provide maintenance to his wife in his work? This problem appeared when the wife is working so there is no total submission to the husband while it (complete surrender) is one of the reasons why the implementation of maintenance from husband to wife exists beforehand.

In Islam, the husband is obliged to provide maintenance to his wife because of two reasons. First, *ihtibas kamil* (complete submission) by the wife to the husband. Second, the *tamkin* of a wife which means the position of wife under the responsibility of a husband. So, when the wife goes to work, *ihtibas kamil* element cannot be executed.

Respondents M1 for example did not mention that meeting the needs of the wife during her working period is the responsibility of the husband. This means the husband is not obliged to provide for his wife during her working period. In addition, providing wife's maintenance including corporate attire, car, laptop, and sustenance cost while she is working depends on discussions between husband and wife. He mentions this as:

"This matter should be discussed between the spouses and depending on the discretion of husband and wife in marriage. Preparing wife's needs to go to work is just a matter of *maarif*. It is not the duty of a husband. In the marriage, ones should not abuse or oppress one another and make sacrifices instead. But the sacrifices must not be one sided or eventually the sacrificing party will be sacrificed. It does not work that way. "

The views of M1 respondent are supported by the M2 respondent. Respondent M2 opinion is:

"Now, working wife may require a lot of clothes. So, the husband must understand the situation of his wife because he allowed her to work at the first place. Wife also need to understand that it is her husband that allowed her to work. "

M3 respondent's view is quite similar to the view of both respondents M1 and M2 who said that it is not the duty of the husband to provide the needs of the wife to work. This is due to the husband's duty is to provide maintenance to his wife, including food, shelter and clothing. Discussions should exist between husband and wife if the wife need some help in meeting its requirements when she is working. The views of respondents M3 is as follows:

"When you're married, there must be a discussion. So, if we look into the fundamental rules, the responsibility of the husband is to meet the needs of food, shelter and clothing. It is all on the husband. But if the husband allowed his wife to work, off course the wife will have her own source of income. So if there is any additional needs for instance, shoes, cars etc. That can be discussed with the husband. The husband can ask wife to use her own money on that particular needs because she already has her own source of income. Basically, it is how it works. Formerly, no matter the spouse is working or not, the family's cost of living is under the responsibility of the husband. But if the wife is allowed to work, then it is decided by further discussion. Needs such as corporate attire, vehicle must be discussed between husband and wife."

All those three respondents are from qualified jurists. They believe that providing the needs of the wife during her working time is secluded from the husband's responsibilities to fulfill. However, these things can be achieved through discussion and tolerance between husband and wife.

Discussion

Generally, the maintenance of the wives shall be a mandatory when they meet requirement which are *iktibas kamil* and *tamkin*. However, problems arise when these conditions cannot be met by the wife because of her working life even though it is permitted by the husband.

There are a few disagreements in the school (*mazhab*) of four pertaining to the duty of the husband to provide maintenance to his working wife even though she has the permission from her husband:

1. The majority of scholars' of the Hanafi, Maliki, Hanbali and Shafi'i.

The majority of scholars deemed that the responsibility to provide maintenance for the working wife that has their husband consent, does not subside or vanish. However, only some of the Shafi claimed that the responsibility to provide maintenance for the working wife that has their husband consent. Opinion from the Hanafi School is quoted by al-Marghinani (2000). In addition, the opinion of the Maliki School is narrated by Ibn 'Abd al-Bar (1978) and Ibn al-Hajib (2004). The opinion of the Shafi is quoted by al-Juwaini (2007), 'al-Baghawi (1997) and al-Rafi'i (1997).

The majority of scholars deemed that the responsibility to provide maintenance for the working wife that has their husband consent, does not subside or vanish. Husbands has accepted and pleased with the partial or flawed submission of their wife (Ibn 'Abidin, 2003; Zaidan, 1994).

Secondly, working does not mean that the wives are not obeying their husband. This is because the wives and gives permission to his wife to work, the husband's responsibility to provide maintenance to his wife is still on going and impeccable. This is because the husband's permission shows that the husband waived his right to hold his wife from going out for the detention was the right of a husband. Therefore, the husband's consent work as the evidence

that the husband is pleased with imperfect surrender of the wife. As a result, the husband is obliged to provide maintenance to his wife (al-Zuhayli, 2010)

2. Particular Shafi'ites

According to al-Juwaini (2007), al-Baghawi (1997) and al-Rafi'i (1997), a part of al-Shafi'ites claimed that the responsibility to provide maintenance for the working wife is unenforceable even though the wife already had the husband's permission regarding that matter. This is because the maintenance apparently works as a return to the wife's settling towards their husbands.

In addition, there are also other causes of some Shafi'i said the responsibility to provide maintenance for the working wife is unenforceable even though the wife already had the husband's permission. It is because there is no total submission if the wife is out there working. This is due principle by Shafi which says the only mandatory condition to provide maintenance is *ihtibas kamil* which means complete submission to the husband (al-Kasani, 2000; Ibn Nujaim, 1997; al-Syarbini, 1958; al-Shirazi, 1992).

Based on the preceding discussion, the selected respondents consists of the Malaysian muftis tend to view Shafi in debating the matter. They had chosen the opinion in which the responsibility to provide maintenance for the working wife is unenforceable. This is because they are unable to complete the terms or condition to receive the maintenance which is *ihtibas kamil*

Conclusion

Maintenance is the obligation of the husband and wife regardless of whether the wife has her own income or not. This is because Islam does not forbid his wife to go to work, provided the husband himself allows his wife go out to work.

Even so, the maintenance of his working wife only includes food, clothing and shelter with her husband in particular. This does not include the needs of the wife when the wife is on duty such as a financing, vehicle, clothes for works and so on. Muftis which are the respondents also agreed even though her husband had given permission for them to work. However, this is subject to courtesy and tolerance in providing the maintenance to the spouse.

Acknowledgement

Special appreciation is owed to Universiti Sultan Zainal Abidin (UniSZA), Research Management, Innovation & Commercialization Centre (RMIC) UniSZA.

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