

Wahbah Az-Zuhaili And Muhammad Syahrur

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WAHBAH AZ-ZUHAILI AND MUHAMMAD SYAHRUR'S METHODS OF THINKING ABOUT MARRIAGE

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ABSTRACT

By the development of the times, of course the law will also experience various developments, as well as marriage law in Islam which follows the times according to human needs. The development of marriage law in Islam cannot be separated from the existence of Muslim scholars. Among these Muslim scholars are Wahbah az-Zuhaili and Muhammad Syahrur. Az-Zuhaili uses the *Usul fiqh* method in interpreting the laws regarding marriage, while Syahrur uses the hermeneutic method in interpreting the laws regarding marriage. The two of them certainly have different opinions, because the way of thinking and the method of interpretation used are different. Therefore, through this study, the two thoughts of these figures will be examined. The results showed that the two figures viewed marriage as a very solid contract. The difference of opinion between the two lies in the discussion of the dowry, where according to az-Zuhaili that the dowry is a gift from the husband to the wife, and the wife has the right to get it because of the contract or actual intercourse, while Syahrur said the dowry is an unconditional gift given by the husband to his wife. Likewise, there are differences of opinion in the provision of a living and in terms of divorce and polygamy.

Keywords: *Thinking, Wahbah Az-Zuhaili, Muhammad Syahrur, Marriage*

A. INTRODUCTION

Humans as individual beings as well as social beings, who always interact with creatures and the surrounding environment in fulfilling their needs (Faisal et.al., 2021, 82; Maki, 2021, 50). All affairs of life and social relations between humans will not go well if in its implementation is not supported by strong faith and noble character, as well as comprehensive systems. The system regulates every individual behavior both physically and mentally, regulates household rules which are the main elements of the formation of society and also establishes clear rules for people who live in a country (Az-Zuhaili, 2011, 16). Then the community is

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always in a safe, stable and advanced condition. With this system, the state is able to protect its citizens from various diseases that arise in the midst of society.

The family is the smallest community structure so that when a household relationship is carried out well, the community relations will also be created well. Therefore, an understanding of family law must be considered by everyone, where everyone is obliged to understand every rule in the household. In this way, besides that the person has fulfilled the objectives of the Shari'a, the person has also fulfilled the guidance and benefit of mankind. On the other hand, the application of Shari'a is not neglected and its application does not conflict with the main principles of Shari'a or the laws of Shari'a which are still based on the shari'a texts.

The purpose of practicing the Shari'a, especially related to family law, is very important, because in it everyone is commanded to protect the family from hellfire which is an important part of Shari'a, namely protecting religion, the religion of the wife and children. In addition, we protect property in the family and protect offspring from ignorance by providing proper education to children for future provisions.

The family is formed through ⁷ the relationship between a man and a woman through a marriage contract. Etymologically, marriage can mean intercourse (Hasan, 2006, 11-12). There is also the meaning of the agreement. In terminology, marriage according to Abu Hanifah is a contract that is confirmed to obtain pleasure from a woman, which is done intentionally. Inauguration here means a confirmation in accordance with the provisions of the sharia maker, not just an inauguration carried out by two people who make a contract (agreement) with the aim of just getting pleasure (Soimin, 2010, 4).

Discussions about marriage are always interesting and a concern, not because it contains discussions about sexuality, but because marriage is a sacred event in religious teachings (Jafar et.al., 2021, 3). Even marriage is an effort given by Islamic teachings to maintain the correct regeneration process. Marriage is a provision of Islamic teachings which is a very sacred bond, not just a relationship between a man and a woman to justify sexual relations. Allah SWT mentions marriage with the sentence "*mitsaqon ghalizan*" (meaning "close promise"), namely a bond of agreement between a husband and wife. wife in navigating life together, so that if both of them are separated by death in this world, then for couples who are obedient in carrying out the obligations and commands of Allah SWT, they will still be reunited and will continue to live together forever in the hereafter (Shihab, 2002, 387). This is because marriage is not only a civil bond between individuals as usual, but a bond that has religious values (Rofiq, 2000, 69), and is the longest practice of worship in Islamic history (Maki, 2021, 50).

Marriage contracts are like other contracts that will give rise to various rights and obligations for each party, both before the contract is implemented and after the contract is implemented, including the giving of dowries before the marriage contract is carried out and maintenance after the family is formed through the marriage contract. ² Dowry is a mandatory gift for a prospective husband to a prospective wife and is the absolute right of the wife. Dowry can also be interpreted as a symbol and form of respect for humanity, and a form of the sincerity of a man to have intercourse with a woman in a good manner (Al-Ansyari, 2003, 116). While living can be interpreted as spending or expenses (A. Ali & Mudhlor, 1999, 1934), issue, spend, or finance (Al-Yassu'i, 2002, 756). Living can also mean sufficient food, clothing, and shelter for those who are dependents (al-Khatib, 2005, 164; Az-Zuhaili, 2002, 7348).

The discussion of marriage is one of the topics that is quite interesting if it is associated with the thoughts of Muslim scholars. Because every Muslim scholar has a different methodological framework in devoting each topic of his thoughts, among these Muslim scholars are Wahbah az-Zuhaili and Muhammad Syahrur. Wahbah az-Zuhaili applied the method of *ushul fiqh* in determining the field of marriage, while Muhammad Syahrur applied hermeneutics as a method of solving the problem. Both have different views in explaining marital problems. Therefore, through this article, the author will attempt to describe the two figures' thoughts and see the methodological framework used in discussing marriage.

B. METHOD

This type of research is library research so that the research carried out is not a "*trial and error*" activity (a step activity carried out to try and try again) (Z. Ali, 2009, 11). In other words, *library research* is finding and collecting data from reference materials such as books, lectures, and papers related to the topic to be discussed by the researcher. This *library research* was carried out through a study in the library to look for theories and concepts of Wahbah az-Zuhaili with Muhammad Syahrur about marriage.

The method of analysis and discussion uses a comparative, comprehensive and complete method. The goal is to produce a more perfect legal research product. ¹⁵ The formulation of the problem and research objectives is the scope and control of a qualitative, comprehensive, and complete analysis (Muhamad, 2004, 152). The comparative method will be used to look at the method of determining the law regarding marriage according to Wahbah az-Zuhaili and Muhammad Syahrur's opinion and then compare the two by looking at the similarities and differences of the figures. At the end of the research, ⁶ conclusions are drawn

using deductive thinking, the method of analyzing data using a general method, and then the nature of the general data is taken to draw conclusions that are more specific (Hadi, 2000, 24).

C. DISCUSSION

I. Wahbah az-Zuhaili and Muhammad Syahrur's Method of Thinking

The method of interpretation of Wahbah az-Zuhaili is to compromise between *ma'tsur* and *ma'qul* (Mukarromah & Astutik, 2022; Sulfanwandi, 2021); the *ma'tsur* is a narration from the hadith of the Prophet *Sallallahu Alaihi Wasallam*, and the words of the righteous Salafus (Fauziah, 2021), while the *ma'qul* are those that are in line with recognized rules (Anas, 2021), the most important of which are 3 the first is an authentic explanation of the Prophet, and deep reflection about the meaning of the vocabulary of the Qur'an, the context of the verse, the reasons for the revelation of the verse, and the opinions of the mujtahids, interpreters, senior hadith experts and tsiqah scholars. The second pays attention to the container of the Qur'an which holds the miraculous verses of the Book of Allah until the Day of Judgment, the Arabic language in the highest language style and the most beautiful arrangement, which makes the Qur'an special with the miracles of language style, scientific miracles, language law and others. Where there is no other word that can match his style and method. The proof of this is the Word of Allah *Subhanahu Wa Ta'ala* in Surah al-Israa verse 88. Third, sort out various opinions in commentary books by referring to the noble *maqosid* of shari'a, the secrets and goals to be realized and built by sharia (Az-Zuhaili, 2005, xiii).

The method that Wahbah az-Zuhaili took, namely compromising between true *matsur* and *makbul* was revealed by the word of Allah *subhanahu wa taala* in the letter an-nahl verse 44. The first sentence explains the task of the Prophet *Sallallahu 'alaihi wa sallam* to explain, interpret, and apply it in real terms within the Nabawi Madrasah and the formation of the pattern of Muslim life. While the second sentence explains the range of interaction with the Book of Allah, with human reflection on this Prophetic explanation correctly and in the community and by expressing wise opinions that arise from the depth of mastery of Islamic sciences and understanding of various Arabic styles and revealing the extent of Ijtihad that can be achieved. The meaning of Allah ta'ala in the content of this noble verse strengthens the words of the Prophet narrated by Abu Daud and Tirmidhi from Al Miqdam Bin Ma'dikarib ra, "Know that I was given a book (the Quran) and was given something like it." It means that he was given al-Qur'an as a revelation from Allah *subhanahu wa ta'ala* and given an explanation similar to the Qur'an, so that he can expand or narrow the scope of a verse adding and establishing laws that are not in the Qur'an and in matters of obligation to practice it and accept

it. This status of the explanation of the prophet is the same as the verse of the Qur'an. This is stated by al-Khatthabi in Ma'aalimus Sunan. In other words, the Sunnah of the Prophet coexists with the Qur'an and serves it (Az-Zuhaili, 2005, xiv).

Muhammad Syahrur, a controversial liberal thinker from Syria who is dubbed as Immanuel Kant of the Arab world and Martin Luther of the Islamic world (Fanani, 2009; Fuadi, 2021), is an intellectual who has a critical awareness of the above. He loudly and sharply criticized the conservatism of Islamic thinkers and tried to deconstruct classical thought which is still firmly entrenched in the knowledge and consciousness of Muslims. He loudly called on all Muslims to dissect and peel Islamic thought all this time down to its deepest roots, ethical thinking system held by Muslims to this day; Conservative Islamic scholars who claim to have religious authority are nothing but gatekeepers of truth who do not find their epistemological basis in reality in terms of religious interpretation and thought (Syahrur, 2015, xiv).

For Syahrur, the truth of a main thought resulting from the product of reading the holy book of the Qur'an can only be considered true and valid if it is relevant to the context of the reality of Muslims today. So with a sense of wonder he questions how it is possible that the products of conservative thought will be relevant and find an epistemological basis in today's reality, if they still maintain the orthodoxy of classical reason that existed several centuries ago. However, syahrur is not a talkative thinker who can only throw a hot ball of thought into the community without a solid knowledge base as many other thinkers do. There are at least 4 Bible books: *Wa al-Quran Qiroah Muasiroh*, *Dirasah Islamiyah Mu'ashirah fi ad-Daulah wa al-Mujtama, al-Islam Wa al-Iman Man Zumat al-Qiyam* and *Nahwa Usul Jadidah al-Fikih al-Islami*. We can see Syahrur's seriousness in working on and finalizing his ideas. In his books he mixes ideas with philosophical foundations that he explores from western and eastern philosophers such as Kant, Hegel, Karl Marx, Ibn Rushd, Charles Darwin, and others. It was from them that Syahrur reflected and produced astonishing ideas. Furthermore, he also complemented his methodology with modern mathematics, so it would not be an exaggeration if Andreas stated that Syahrur actually uses a defamiliarization approach because Sahrul's thoughts are foreign to ears that are already crowded and full of special classic Orthodox discourse. In this journal the author tries to reflect on the basic thoughts of Syahrur and presents a reading capital, especially those related to marital issues such as dowry, living, polygamy, and divorce.

In Muhammad Syahrur's case of polygamy, polygamy is permissible for him as long as he fulfills two conditions: First, the second, third and fourth wives must be widows who have orphans and secondly, there is a fear of not being able to do justice to the orphans. He firmly

stated as in the Qur'an that a person is prohibited from polygamy if his 2nd, 3rd and 4th wives are still virgins or widows but do not have children. For him, it is not polygamy that is recommended by Allah *subhanahu wa ta'ala*, all of it is of course for the social benefit of Muslims themselves in general, and with respect for women and orphans in particular (Syahrur, 2015, xv).

This is only a small part of the product of Muhammad Syahrur's thoughts and there are many more that you will get in Muhammad Syahrul's thoughts, for example about living, housing, divorce and so on. It is important to emphasize that Muhammad Syahrul's thoughts are mainly thoughts that are understood by Muslims which they want to be open to that thought.

2. Dowry and Living

The dowry in Arabic terms is called *ash-shadaq* which comes from the word *ash-shidq*, to show the expression of feelings of how strong the love (desire) of the husband for his wife. This word has seven languages and eight names: *shadaq, mahr, nihlah, faridhah, hiba', ajr, uqr, dan 'alaiq* (Ash-Shan'ani, 2013, 706-707). The whole word implies an obligatory gift in return for something received (Syarifuddin, 2009, 85). The mazhab scholars put forward several definitions (Az-Zuhaili, 2005, 230-231):

- a. The Hanafi school defines dowry as something that a woman gets as a result of a marriage contract or intercourse. According to Imam Abu Hanifa, the dowry is an additional obligation in the marriage contract, the same status as a living (Nasution, 2005, 139).
- b. The Maliki school defines it as something that is given to a wife in return for intercourse with her.
- c. The Shafi'i school defines it as something that is obligatory because of marriage or intercourse, or the helpless passing of women's honor, such as due to the arrangement and withdrawal of witnesses.
- d. The Hambali school defines it as a substitute in the marriage contract, whether the dowry is determined in the contract, or is determined afterward with the pleasure of both parties or the judge. Or a substitute in marital conditions, such as intercourse with doubts, and forced intercourse.

Dowry is a reward given in marriage or the like through a government decree or according to the agreement of the bride and groom. This reward is also called shadaq since it implies the sincerity of the husband's intention to marry his wife (Salim, 2007, 663). If the wife accepts her dowry without coercion and deceit, then she gives part of the dowry, so it is

acceptable and not to blame (Ghazali, 2008, 84). Dowry is an important property influence in the marriage contract (Azam & Hawwas, 2011, 174).

Islam allows a husband to give a dowry in any form, with the lowest possible value, the important thing is that it has a value even though it is not large; the important thing is that both parties are happy and willing to accept the dowry. However, there are several conditions that must be met in giving a dowry to a prospective wife. The dowry given to the prospective wife must meet the following requirements (Ghazali, 2008, 87):

- 1) Valuable assets/objects. The dowry is not valid with the worthless, even though there is no provision for a lot or at least a dowry. However, if the dowry is small but valuable, it is still valid (Az-Zuhaili, 2005, 236).
- 2) The goods are sacred and can be taken advantage of. Dowry is not valid with *khamr*, pork or blood, because all of them are prohibited and worthless (Az-Zuhaili, 2005, 240).
- 3) The goods are not *ghasab* goods. *Ghasab* means taking someone else's property without his permission, but not intending to own it because he intends to return it later.
- 4) It's not something that's unclear. It is not valid to give a dowry by giving an item which condition is not clear, or the type is not stated.
- 5) Teaching that the Qur'an can be used as a dowry, according to Maliki and Shafi'i opinions, while according to the Hanafi School, it should not be used as a dowry (ad-Dimasyqi, 2004, 334).
- 6) Everything that can be used as a price in sales can be used as a dowry. According to the *jumhur* of scholars.

In another opinion, there are three conditions for the dowry (Az-Zuhaili, 2005, 237-238): *First*, it is an item that can be owned and sold (gold), goods, and the like. It is not permissible to give a dowry in the form of *khamr*, pork, and anything other than the two that cannot be owned; *Second*, it must be something known. Because the dowry is a substitute for the right that is given in exchange, then it resembles the price of the finished goods, it cannot be with something that is unknown, except in a *tafwidh* marriage, where both parties enter into a silent contract when the dowry is determined in the contract; *Third*, free from deception. The dowry must not be in the form of a runaway slave, a stray camel, or an item that resembles both.

² Dowry may be in the form of money, jewelry, household furniture, animals, services, trading assets, or other objects that have a price. It is required that the dowry must be known clearly and in detail, for example a piece of gold, ³ or a sack of wheat. If it cannot be known from various aspects that allow the determination of the amount of the dowry, then according to all schools except Maliki, the contract is still valid, but the dowry is invalid. Meanwhile, Maliki

argues that the contract is fasid (invalid) and must be faskh before intercourse happens. But if it has been mingled with, the contract is declared valid by using a mitsil dowry (Mughniyah, 2001, 365).

Wahbah az-Zuhaili explained that a husband is obliged to pay a dowry to his future wife. Wahbah az-Zuhaili explained that Allah SWT ordered husbands to give their wives their dowry willingly (Az-Zuhaili, 2013, 574). According to Syahrur, Allah SWT has made it mandatory to give something to a woman to be a wife, a dowry. Allah places special emphasis on the nature of this gift, which is called *nihlah* (Syahrur, 2015, 603). In Arabic, the term *nihlah* means unconditional gift or is called a gift. This gift which is the obligation of a man to his future wife, whether in large or small amounts, is what Syahrur calls a 'symbolic gift' (Az-Zuhaili, 2013, 604).

Living is meeting the needs of food, shelter, treatment of the wife (if sick), it is clear that living is a gift from the husband that must be given to the wife because of the legal marriage bond (Sabiq, 2006, 55). The amount of living is based on the husband's economic condition and cannot be forced according to the wife's will (Enizar, 2008, 119).

Wahbah az-Zuhaili explained that living is a material right that must be accepted by the wife (Az-Zuhaili, 2013, 6624). Wahbah az-Zuhaili explained that the husband is obliged to provide a living for his wife. Wahbah az-Zuhaili also explained that a living is obligatory in three aspects; namely clothing, food and a place to live, as long as the wife is obedient to her husband, it is obligatory for a husband to continue to provide for her. But if she disobeys then the husband is not obliged to provide a living.

If we understand the concept of Syahrur's limits, we can define problems regarding living using the minimum and maximum limit methods that this livelihood changes with the times where the minimum method is clothing, food and shelter, which has existed since ancient times (primary needs), it's just that In today's era the method of determination has changed, namely there are more limits than clothing, food and shelter. That the wife is also entitled to a vehicle and is also entitled to a means of communication (secondary needs). This of course aims for the welfare of a family relationship with the fulfillment of basic needs in the household.

3. Polygamy

Wahbah az-Zuhaili explained that it is difficult for husbands to be able to do justice in terms of intercourse and living in a marriage with two, three, or four wives. Only one wife is the closest act to your not falling into wrongdoing (Az-Zuhaili, 2013, 6626). If so limiting four wives is a moderate justice and protects the wives from injustice.

Muhammad Syahrur with his limid theory (*nadzariyah al-hudud*), asserted that the issue of polygamy consists of a minimum limit (*al-had al-adna*) and a maximum limit (*al-had al-alla*). According to Syahrur, the minimum limit of a marriage is a wife. This means that here the actions of someone who is below the minimum limit, is not allowed in Islam, such as an unmarried person. Meanwhile, according to Syahrur, the maximum limit is four wives (Azni, 2015, 57). In terms of quantity, while for the quality requirements, the second, third and fourth wives are widows who have children. Meanwhile, Wahbah az-Zuhaili allows the second to fourth wives to marry, whether they are girls or widows.

4. Divorce

Divorce in the language of fiqh is called talak, Wahbah az-Zuhaili explains the meaning of divorce according to the language meaning the release of bonds and liberation (Az-Zuhaili, 2013, 6634). Included in the sentence of talak is the sentence *naaqatun thaliqun*, meaning released without restraint. Also with the sentence *asiirun muthaliqun*, which means to be untied and free from it, but tradition specializes in talak with the meaning of releasing the ties by marriage. According to Wahbah az-Zuhaili, talak is in the hands of the husband.

Muhammad Syahrur argues that men and women have the same (equal) rights in filing for divorce. Bear in mind that a verbal divorce is not valid (Syahrur, 2015, 623). If a husband says to his wife "I am divorcing you" this utterance has no legal force at all because the divorce is declared valid if it is declared before the court.

D. CONCLUSION

Based on what has been explained above, it can be concluded that several problems have different opinions in the field of marriage, namely dowry, polygamy and divorce. Where these two figures have different concepts of thought, Wahbah az-Zuhaili uses the method of *usul fiqh* in applying sharia laws including in the field of marriage, while Muhammad Syahrur uses the hermeneutic method in explaining the contents of the Qur'an, especially thoughts in the field of marriage. The discussion about the marriage of the two figures views marriage as a very solid contract. The difference of opinion between the two lies in the discussion of the dowry, where according to Wahbah az-Zuhaili, the dowry is a gift from the husband to the wife, and the wife has the right to get it because of the contract or actual intercourse, while Muhammad Syahrur said that the dowry is an unconditional gift given by the husband to his wife. Likewise, differences of opinion in providing a living, divorce and polygamy have several differences, such as the criteria for a wife who is married after the first wife according to Muhammad Syahrur must be a widow who has children, while Wahbah az-Zuhaili does not provide these criteria.

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