

Understanding and Awareness of Gender Equality In Divorce and its Contribution to Islamic Family Law Reform in Indonesia

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UNDERSTANDING AND AWARENESS OF GENDER EQUALITY IN DIVORCE AND ITS CONTRIBUTION TO ISLAMIC FAMILY LAW REFORM IN INDONESIA

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ABSTRACT

The formation of a family through marriage does not always go well, and it cannot be denied that when forming a marriage bond there are problems that must be lived by both of them. This happens due to various factors in the family. Conflict and discord lead to the end of the family through divorce as a last option. This is what happened in Lampung Province, where 17,229 divorce cases were registered in 14 Religious Courts during the period from January to November 2021. This research is a qualitative descriptive-analytic research. These research data collection methods are observation, interview, and documentation. The data analysis method used is qualitative analysis, and conclusions are drawn using inductive thinking. The results of the study show that the dominant factor influencing divorce in Lampung Province is the economic factor. Understanding and awareness of gender equality among divorcees in Lampung Province indicated that respondents had awareness and understanding of gender, but their partners did not want gender equality. Based on this, it is necessary to accommodate the principles of justice and gender equality in order to realize the goal of marriage to form a happy and eternal household with the addition of the principle of preventing violence in marriage as part of the principles of marriage.

Keywords: *Gender Equality, Divorce, Mubadalah, Islamic Family Law.*

A. INTRODUCTION

Humans as social beings cannot live alone in meeting their various needs (Mansur *et.al.*, 2020; Muazaroh & Subaidi, 2019), this is due to human limitations in fulfilling their various needs independently, therefore Allah SWT makes humans to live in pairs which are implemented with a legal marriage bond (Ja'far *et.al.*, 2021; Muzaiyanah & Arafah, 2021). The goal is that humans can share, fill, help and cooperate in meeting the needs of life by upholding the rights and obligations between the two as the word of Allah SWT. in the Qur'an letter Yasin verse 36.

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The formation of a family through marriage does not always go well, and it cannot be denied that when forming a marriage bond there are problems that must be lived by both of them. Problems in the family is a problematic situation, incompatibility between spouses, creates conflict, disputes and contention between the two (Azani *et.al.*, 2022; Musaitir, 2020). Life in the family will always experience changes and ups and downs, which then turns into a disharmonious married life because both of them are not ready to carry out their roles in marriage (Kemenag RI., 2017). Problems that occur in the household not only cause household life to be disharmonious, but can also lead to divorce (Musaitir, 2020; Trisanto, 2020).

Divorce is the termination of the marital relationship for a reason that is legalized by a judge's decision on the demands of one of the parties or both parties (Said, 2022; Wijayanti, 2021). In Government Regulation (PP) No. 9 of 1975 article 19 jo. The Compilation of Islamic Law has regulated the reasons for divorce that are justified by law in Indonesia (Abdurahman, 1992; Muhadi, 2019), such as: One party commits adultery, one party commits severe persecution, converts religion or apostates, and so on.

Divorce in Islam is something that is lawful, although at the same time it is also hated by Allah SWT. (Muhamad, 1996). This is surely in line with social facts, in which in every relationship that is built, there will always be the fact of separation, including in the context of a family. That's why it makes sense that Islam then regulates this divorce explicitly. Divorce or talak is releasing the marriage bond or breaking up the marriage relationship between husband and wife for a certain time forever (Fikri *et.al.*, 2019; Siregar, 2016). In this case, Islam emphasizes the importance of maintaining the relationship between husband and wife and their respective families, so that divorce does not create hostility between the two (Iqbal & Fawzea, 2020; Maulana, 2018).

According to historical records in Indonesia, before the 1930s, women filing for divorce to the court found it difficult to grant it. At that time the court seemed to make it difficult for divorces filed by women and in favor of divorces filed by men. To make the divorce process easier, a woman commits apostasy (leaving Islam) even though her actions are only camouflage. In 1980 filings for divorce by women began to be facilitated until Law No. 1 of 1974 concerning Marriage by adhering to the principle of divorce is complicated (Na'mah, 2015).

Changes in social values that are currently taking place in society have resulted in higher divorce rates. In fact, due to the increasing economic capacity among women, it also influences the high number of divorce claims filed by wives against their husbands (S. Syaifuddin &

Turatmiyah, 2012). The turmoil that develops in society is the tendency of married couples to divorce in solving problems that occur in the household. If in the past the divorce process in marriage was a taboo and disgraceful scourge to do, now divorce has become a common phenomenon in society (Almakstur *et.al.*, 2021; Purwadi, 2021). This is evidenced by the increasing number of divorce cases every year.

The Ministry of Religion of the Republic of Indonesia reports that in 2020 there were 450,000 divorce cases in Indonesia. This figure is equivalent to 10% of the 4.5 million number of marriages in 2021. The number of divorces in 2021 has increased by 50 thousand cases compared to 2020 which reached 500 thousand divorce cases. Other facts from recorded divorce cases indicate a shift in the form of divorce. About 70 percent of divorces that occur in the Religious Courts (PA) are contested divorces or divorces filed by the wife.

As for the divorce data at the Religious Court of Lampung Province, it is known that a total of 17,229 divorce cases were registered in 14 religious courts from January to November 2021. This figure consists of 706 remaining cases in 2020 and 16,523 cases that were submitted in 2021. Of these, 14,994 cases have been decided in court. Meanwhile, 1,529 cases are still in the trial process at the Religious Courts.

Referring to data on the high rate of divorce in Lampung Province, this article aims to further examine the understanding and awareness of gender equality in contested divorces by linking their contribution to the renewal of Islamic family law in Indonesia, so that understanding of gender equality is not the main factor for women to divorce the husband. This research is a continuation of previous research, such as studies conducted by Johar Arifin (2017) and Lilik Andaryuni (2017) who have conducted studies on divorce and gender in various Religious Courts in Indonesia.

B. METHOD

This study uses a qualitative method, research that is used to examine the condition of natural objects, where the researcher is the key instrument (Sugiyono, 2005). This research focuses on qualitative data which is then presented in narrative format, not in numerical format (Danim, 2002). This type of research is *field research* and *library research*, while the nature of this research is descriptive-analytic (Arikunto, 2002). These research data collection methods are observation, interview, and documentation. The data analysis method used is qualitative analysis. Qualitative data analysis is a method of research that produces descriptive analysis data, what is stated by respondents in writing or verbally and also their real behavior is researched and studied as a whole (Soekanto, 1998). After the data analysis is complete, the results will be

presented descriptively, by telling and describing what is according to the problem under study. From these results, a conclusion is drawn which is the answer to the problems raised in this study by using an inductive way of thinking. The inductive way of thinking is a data analysis method by starting from specific data, then general conclusions are drawn (Hadi, 1990; Hanif & Susanto, 2020).

C. THE RESULT OF THE RESEARCH AND DISCUSSION

I. Divorce in Perspective of Islamic Law

According to Islamic law, divorce is known as *talak*, taken from the word **طلق - يطلق** which masdar becomes **قَطَّلَ** means untied, separated and divorced (Alhusaini, 1993; Munawir, 1997). According to Sayyid Sabiq (1990), the word *talak* is taken from the word **الطالق** which is meant by **الرسال** (release) and **التزك** (leave) the marital relationship. In terms of fiqh, divorce is synonymous with the term *al-furqah* according to language it has the meaning of *al-iftiraaq* (separate), the plural is *furaq* (al-Malibari, tt.; Az-Zuhaili, 2011). There are two types of separation, separation by annulment and separation by *talak*. Cancellation can be with the consent of the husband and wife, by means of *khulu'* or through *qadhi* or judge (Az-Zuhaili, 2011; Badrudin, 2020).

Talak are divided into two types, *talak* that are pronounced loudly or clearly (*sarih*) and *talak* that are carried out with innuendo (*kinayah*) (Huda, 2021; Sudarto, 2021). *Sarih* is a lafaz in which the fall of *talak* no longer depends on the intention, because the person pronouncing *talak* does say it to declare *alak*, while *kinayah* is a lafaz that depends fully on intention. So *talak kinayah* does not fall without intention (Alhusaini, 1993).

Scholars differ on the law of *talak*. A stronger opinion is that it is *makruh* if there is no intent to cause it, because *talak* means *kufur* towards the blessings of Allah SWT which means that it is unlawful. *Talak* is not lawful unless it is an emergency, if there is no intention to induce *talak*, it means *kufur* for the blessings of Allah SWT. (Komalasari *et.al.*, 2022; Widodo & Kalimatusyaro, 2021). The opinion of scholars regarding *talak* is based on the Qur'an surah an-Nisa verses 20 and 130, al-Baqarah verses 227, 229, 231 and 236, and at-Thalaq verse 1. Meanwhile, one of the hadiths of the Prophet which is used as the basis for divorce law which reads: Meaning: **Telling us Kasir bin Ubaid Al-Himsiy, preaching to us Muhammad bin Kholid, from Ubaidullah bin al-Walid al-Wasshafiy, from Muharib bin Ditsar, from Abdullah bin Umar, he said: The Messenger of Allah said: "What is lawful the most hated by Allah is talak"** (al-Bukhori, tt.; al-Naisaburi, tt.; Majah, 1992).

Meanwhile, the forms of divorce in Islam are died or death divorce, and *talak* divorce (M. Syaifuddin *et.al.*, 2022; Zakaria & Nurhadi, 2021). What is meant by death which is the cause of the breakup of a marriage in this case includes both physical death, that is, indeed with his death the corpse is known, so that death is truly biologically identifiable. Juridically, a death that is *mafqud* (disappeared, it is not known whether he is still alive or has died) with the court process the judge can determine the husband's death (Ghozali, 2010). Meanwhile, *talak* divorce means removing the marriage bond so that after the loss of the marriage bond the wife is no longer lawful for her husband, and this happens with *ba'in* talak, while the meaning of reducing the release of the marital bond is the reduction of the right of *talak* for the husband which results in a reduction in the number of *talak* that become the husband's rights from three to two, from two to one, and from one to *talak*. The right to divorce is lost, which occurs in *talak raf'i* (Ghozali, 2010).

2. Divorce in Perspective of Positive Law

Divorce is the abolition of a marriage by a judge's decision, or the demands of one of the parties to the marriage (Azizah, 2012; Matondang, 2014). According to Indonesian Language, divorce means "separate" from the root word "divorce". According to the term divorce is a term for releasing the marriage bond (Alhusaini, 1993). According to Law Number I of 1974 concerning Marriage, it is explained that a marriage can be broken up because of: death, divorce, and on a court decision (Fitri *et.al.*, 2021; Siregar, 2017). So, the term "divorce" legally means the dissolution of a marriage, which results in the breaking of the relationship as husband and wife (Fitri *et.al.*, 2021; Novitasari *et.al.*, 2019; Siregar, 2017).

The term divorce according to the Marriage Law as a positive legal rule regarding divorce indicates the existence of: *First*: Legal action that can be taken by a husband or wife to terminate the marital relationship between them; *Second*: Legal events that break the relationship between husband and wife, the death of the husband or wife concerned, which is a definite and direct provision determined by God Almighty; *Third*: A legal decision declared by a court which results in the termination of the marital relationship between husband and wife (Fauziah *et.al.*, 2020; Zulkifli, 2019).

Divorce as the last alternative way of solving family problems in Indonesia has been regulated in Law Number I of 1974 concerning marriage and the Compilation of Islamic Law (KHI). In Article 34 of the Marriage Law paragraph (3) and Islamic Law Complications Article 77 paragraph (5) states that "If a husband or wife neglects their respective obligations, they can file a lawsuit with the Religious Court" (Abdurahman, 1992). Violation of household

obligations can be committed by a husband and can be committed by a wife. The obligations of husband and wife are regulated in the Law on Marriage. The husband's obligations that must be given to the wife and the wife's obligations that must be given to the husband are regulated in the Law and are absolute or must be given by each party, however the level of fulfillment of obligations depends on the ability of each party. Neglecting this obligation is an act of violation in the household according to the marriage law in Indonesia.

3. Gender Equality and Justice Concept

Gender issues are discourses and movements to achieve equal roles, rights and opportunities between men and women (Ajizah & Khomisah, 2021; Wahyudi, 2018). The understanding of gender in society still needs to be improved because wrong knowledge will lead to wrong interpretations in society. Wrong understanding of gender will also lead to confusion in society (Jacobus *et.al.*, 2022). Community development and development programs created by the government cannot be separated from gender issues. The need for an understanding of sex and gender is an important point in efforts to create justice and gender equality (Rokhmansyah, 2016). Sex (gender), sex is the division of the nature of the two sexes biologically attached to a particular sex. For example, a man whose characteristics are having a penis, having an Adam's apple, and producing sperm. As for women, they have a vagina, uterus, and breasts which are nothing but for giving birth, producing ovum, and breastfeeding. Biologically these tools can not be exchanged between men and women. Permanently this does not change and is a provision from God or what is also called nature (Azisah, *et.al.*, 2016).

Gender according to Jary and Jary, in the Dictionary of Sociology, sociologists and psychologists argue that gender is more defined into the division of "masculine" and "feminine" through socially and social psychologically attached attributes (Saviana D. & Sulistyowati, 2010). This is confirmed by anthropologists who emphasize that gender is not defined biologically but socially and culturally. Gender is viewed culturally and historically, as meanings, interpretations, and expressions of the two variants of gender across cultures. It is surely influenced by social factors, expressions and gender experiences which give rise to the fact that gender cannot be equated simply with sex or sexuality (Saviana D. & Sulistyowati, 2010).

According to the Islamic perspective, basically the spirit of the relationship between men and women is fair (*equal*) (Ismail, 2015; Rosnaeni, 2021). Therefore, subordination to women is a belief that develops in society that is not in accordance with or contrary to the spirit of justice taught by Islam (Ramdhan, 2016; Rosnaeni, 2021). The concept of gender equality

between men and women in the Qur'an can be equated with the same as servants who were created to serve Allah SWT as contained in the Qur'an letter Az-Zariyat verse 56.

On the other hand, the Qur'an also outlines its views on women in various letters and descriptions concerning various aspects of life. There are verses that talk about their rights and obligations; there are also those that describe the privileges of female figures in the history of religion and humanity. In general, the Qur'an letter An-Nisa verse 32 shows women's rights, the verse reads: "And in no wise covet those things in which Allah Hath bestowed His gifts More freely on some of you than on others: To men is allotted what they earn, and to women what they earn: But ask Allah of His bounty. For Allah hath full knowledge of all things". (Q.S.an-Nisa (4) : 32)

4. Understanding and Awareness of Gender Equality Perpetrators of Divorced Lawsuit in Lampung Province The Perspective of *Mubadalah* and Its Contribution to the Reform of Islamic Family Law in Indonesia

Mubadalah comes from the Arabic root of the syllable *badala*, which means to replace, change and exchange (Yunus, 2010). The word *mubadalah* itself is a form of mutuality (*mufaalah*) and cooperation between two parties (*musyarakah*) which means replacing, changing or exchanging one another (Kodir, 2021; Wagianto, 2021; Werdiningsih, 2020). The *mubadalah* pronunciation is the masdar of the *badala-yubadilu-mubadalatan* tasrif which adheres to the wazan of *fa'ala-yufa'ilu-mufa'alatan*. This wazan has the benefit of *lil musyarakah baina isnaini* or for mutuality with one another (Muhammad, 2016).

Referring to this meaning, the term *mubadalah* will be developed for a perspective and understanding in a certain relationship between two parties, which contains the values and spirit of partnership, cooperation, mutuality, reciprocity, and reciprocal principles. Good relations between humans in general, the state and the people, employers and workers, parents and children, teachers and students, the majority and minorities. The term *mubadalah* can also be used for a method of interpretation or method of reading of Islamic source texts which requires men and women as equal subjects, both of whom are addressed by the text and must be included in the meaning contained in the text (Kodir, 2021; Werdiningsih, 2020). This method is used because in Islamic texts sometimes only men are addressed by the text. Or there are also those who only greet women. So that textually, the verse only applies to the subject addressed by the text (Muhammad, 2016). So broadly speaking, *mubadalah* is a method of how to greet, mention, invite men and women in a text that only mentions a certain gender by understanding the main idea or major meaning, which can be applied to both men and women

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in a text (Handayani & Hadi, 2020; Zakiyah, 2020). That way, not only men or women but both of them can also become subjects, or actors in the text.

Then related to the data on contested divorce in Lampung Province, the factors causing the divorce filed by the research respondents were the economy, domestic violence, lack of responsibility, and extramarital affairs. According to the data obtained, in 2021 there were 962 cases of divorce due to economic factors at the Tanjung Karang Religious Court, 980 cases at the Gunung Sugih Religious Court, 783 at the Kalianda Religious Court. There were 150 cases of divorce due to domestic violence at the Tanjung Karang Religious Court, 200 cases at the Gunung Sugih Religious Court, and 150 at the Kalianda Religious Court. Meanwhile, there were 66 cases of adultery at the Tanjung Karang Religious Court, 179 cases at the Gunung Sugih Religious Court, and 33 at the Kalianda Religious Court.

Based on the arguments of the respondents, behind the high number of contested divorces there is an awareness of their rights which is influenced by an understanding of gender. All respondents based their arguments that the divorce suit was due to injustice in the household, rejection of violence, and no responsibility. There is awareness of their rights and economic independence that encourages respondents to file for divorce. For this reason, the author analyzes to look for common threads in understanding gender and the high rate of divorce.

The increase in lawsuits or divorce cases ² indicates an increase in the quantity and quality of wives' dissatisfaction with their married life, especially with their husbands. Fulfillment of the family economy is considered capable of providing guarantees for the needs of parties entitled to earn a living, and is also considered capable of anticipating the negative consequences of the possibility of parties neglecting their responsibilities. Fulfillment of the family economy has a major influence in forming a happy, secure and prosperous household. Vice versa, not fulfilling the family economy is the cause of quarrels and chaos in the household which results in divorce.

Economic problems are a very vulnerable factor in causing household problems, both sufficient and even excessive economic problems to insufficient or even very deficient economic problems or problems in family financial arrangements. The existence of negligence in fulfilling the family economy so that those who support them become neglected is a problem that often occurs among Islamic families, especially in people who lack knowledge about the obligation to fulfill the family economy. As a result, not a few abandoned wives and children were left by their fathers without defense. The result of interviews with respondents, divorce is one of the

issues of gender inequality. Therefore, the author analyzes understanding and gender equality of divorce actors in Lampung Province with the *mubadalah* theory.

Referring to Kodir's (2021) opinion and various premises that serve as benchmarks for finding universal ideas in the Qur'anic text that are gender-just. Based on the workflow described by Kodir, it can be understood that subsistence is a partial-implementative issue which ranks third in the workflow of interpreting *mubadalah*. Therefore, to understand the concept of subsistence from Kodir's perspective, one must begin by explaining universal ideas, and then proceed to partial ideas. Kodir concluded that the universal idea in marriage is *mu'asyarah bil ma'ruf*, "mutuality" which demands that the husband and wife be demanded together to behave well. The next universal idea is related to the purpose of marriage in the form of obtaining peace (*sakinah*) with a foundation of feelings and attitudes of love (*mawaddah*) and love (*rahmah*)³⁷ as explained in the Qur'an surah Ar-Ruum verse 21.

Regarding the issue of livelihood, Kodir (2021) begins the explanation by first presenting the concept of subsistence from a classical *fiqh* perspective. According to him, in classical *fiqh* the issue of financial support is obligatory on the husband towards the wife, even though under certain conditions the wife is also asked to contribute. The logic built in classical *fiqh* is that men's needs are more inclined to the aspect of sex, while women's needs are more inclined to material living. Another fundamental reason put forward in classical *fiqh* is that women must go through the reproductive phase while men do not. The reproductive phase requires special energy so that women do not have time to make a living. Therefore, it becomes very relevant if the husband is given the authority to support his wife. In short, classical *fiqh* in the concept of subsistence tends to the concept as adage "obligation of subsistence by men and sex by women" (*al-nafaqah fi muqabalat al-budh*).

Furthermore, by using the pillars of *zawaj* and *mu'asyarah bil ma'ruf*, Kodir (2021) states that all the needs of the family are joint responsibility of the husband and wife, then the living is also the same. In support of his opinion, Kodir (2021) begins his interpretation by basing it on the Qur'an surah al-Jumu'ah verse 10 concerning seeking sustenance after performing prayers.

Kodir (2021) then interpret one of the central verses that has become a polemic among Western feminists, the Qur'an in Surah An-Nisa' verse 34. From Kodir's perspective, this verse is still literal, it has not been preached yet. If then using the *mubadalah* perspective, the meaning contained in the lafadz "*al-rijalu*" is not interpreted by men, but can be interpreted in general "men and women". Like the lafadz "*rijalun*" contained in the Qur'an surah at-Taubah verse 108 that means a person who likes to purify.

Referring to the various existing opinions, the Kodir (2021) principle of mutuality must be interpreted flexibly, meaning that if both of them are able (physically and psychologically), then both of them must contribute to each other in matters of subsistence. However, if one of them is incapacitated (physically and psychologically), it is the person who is capable who must contribute. In the case that one of them does not have the ability, then the principle of "equality" that must be emphasized is that the responsibility for providing for the family is not based on superiority between the two, but based on proportional justice in accordance with circumstances that make rights and obligations in the family flexible.

Substantially ⁴¹ the Marriage Law regulates the position and relations ¹¹ of husband and wife in the household. The position of women in Article 31 paragraph (1) ¹¹ of the Marriage Law stipulates that: "The rights and position of the wife are in balance with the rights and position of the husband in domestic life and association in living together in society". The article establishes a principle of "balance" of rights and the position between husband and wife. That is, the position of women in marriage in Indonesia is the same as the position of men in the eyes of the law. ³³ This is emphasized in Article 31 paragraph 2 ¹¹ of the Marriage Law which states emphatically ⁴⁴ that each party has the right to commit an act. However, Article 31 paragraph 3 and Article 34 ¹² of the Marriage Law, explain that the roles and duties of each husband and wife are different, namely ¹² that the husband is the head of the household and the wife is the housewife.

This ²¹ article provides justification that the husband's position as ²¹ the head of the household (leader) is responsible for providing for his family, so ²¹ their duties are in the public domain, while the wife is a housewife in charge of the domestic sphere, taking care of the children and also the husband. The domestic-public role dichotomy is a form of discrimination against women, coupled with the lack of respect for domestic work, this places women as the second creature (*the second sex*).

Moving on from the legal facts above, according to the author, in order to create a pattern of gender-equitable husband and wife relations, ²⁶ Article 31 paragraph 3 and Article 34 paragraphs 1 and 2 ²⁶ of the Marriage Law should be replaced with the intention to show that there is a relationship between the roles of husband and wife in household life statute with Article 33 of the Marriage Law, which reads: "Husband and wife must love one another, respect ⁹ each other, be loyal and provide physical and spiritual assistance to one another. Then Article 31 paragraph (3) ¹² of the Marriage Law which says that "The husband is the head of the family and the wife is the housewife" is replaced with "Husband and wife are joint partners in

managing household life". Article 34 paragraph (1) which reads "The husband is obliged to protect his wife and provide everything necessary for household life according to his ability", replaced by "Husband and wife must protect each other and provide each other with everything necessary for household life according to their respective abilities", and paragraph (2) which reads "The wife is obliged to manage household affairs as well as possible", replaced by "Husband and wife are obliged to manage household affairs together as well as possible".

The legal argument for offering this concept is based on the fact that the role of women is currently expanding, not only taking care of the domestic area, but also many working in the public sector. Women have had independence in the economy by working in the public sector. This shows that women's thoughts and attitudes are now more egalitarian, by having a role simultaneously in the economic sector by working in the public sphere and are still responsible for the domestic sector. Today, women actually use the concept of multiple roles which adds to the burden on women, especially those who work outside the home. Therefore, the pattern of gender relations built in Indonesian Marriage Law must also be more gender responsive.

D. CONCLUSION

The dominant factor that influences the contested divorce in Lampung Province is the economic factor. Understanding and awareness of gender equality among divorcees in Lampung Province indicated that respondents had awareness and understanding of gender, but their partners did not want gender equality. Based on this, it is necessary to accommodate the principles of justice and gender equality in order to realize the goal of marriage to form a happy and eternal household with the addition of the principle of preventing violence in marriage as part of the principles of marriage. Meanwhile, in *mubadalah* interpretation, husband and wife must share roles. If the husband earns a living to fulfill the family's economy, the wife must be at home/domestic taking care of the household. Conversely, if the wife makes a living, the husband is at home to take care of the household. If husband and wife both earn a living, then look for helpers to take care of the household, so that the wife does not need to file for divorce when she has shared roles.

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