Advances in Natural and Applied Sciences, 7(4) Special 2013, Pages: 388-392

AENSI Journals

Advances in Natural and Applied Sciences

Journal home page: www.aensiweb.com/anas/index.html

The Rights of Wives Living With HIV/AIDS According to the Perspective of Islamic Family Law

[1]Md Zawawi Abu Bakar, [2]Rajwani Md Zain, and [3]Wan Ab Rahman Khudzri Wan Abdullah

[1]*School of Social Development, Universiti Utara Malaysia, 06010 Sintok, Kedah, Malaysia*
[2]*School of Social Development, Universiti Utara Malaysia, 06010 Sintok, Kedah, Malaysia*
[3]*School of Social Development, Universiti Utara Malaysia, 06010 Sintok, Kedah, Malaysia*

ARTICLE INFO

Article history:
Received 14 November 2013
Received in revised form 24 December 2013
Accepted 28 December 2013
Available online 18 January 2014

Key words:
HIV/AIDS, rights, wives, Islamic Family Laws.

ABSTRACT

The Islamic Family Laws (IFL) grants certain rights to each husband and wife including the ones living with HIV/AIDS. The infection rate of HIV/AIDS among housewives increases each year. The situation has raised several distressing issues; among them is the effectiveness of preventive measures that can be applied by the wives. Most of the women contracted the infectious disease through heterosexual relationship (with their infected husbands). The purpose of the research is to learn the extent of information a wife living with HIV/AIDS has on her right in the IFL. The qualitative research was conducted in the state of Kedah applying the interview technique (case study) as source of data collection. Eight individuals were interviewed to extract information and the data required. The results showed that the respondents were unaware of their rights in the IFL and thus, lack of knowledge to prevent the infection of HIV/AIDS from their respective husbands. Based on the research findings, several recommendations were drawn to lift the spirit of women living with HIV/AIDS and live in a normal life.

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To Cite This Article: Md Zawawi Abu Bakar, Rajwani Md Zain and Wan Ab Rahman Khudzri Wan Abdullah., The Rights of Wives Living With HIV/AIDS According to the Perspective of Islamic Family Law. **Adv. in Nat. Appl. Sci.,** *7(4): 388-392, 2013*

INTRODUCTION

Every men and women has their own rights and obligations that must be fulfilled by one another once they entered a married life. There are three types of rights and obligations in a marriage, rights and obligations of a husband, rights and obligations of a wife and rights and obligations with each other (Abd al-Rahman al-Sabuni; 1983, al-Maududi, 1985; Abdul Karim Zaidan, 2000; Hisham Qiblan, 1983; Badran Abu al-Ainain Badran ,1985; Muhammad Abu Zahrah, 1971). Both husband and wife must observe a balance between their rights and obligations to achieve a stable and harmonious marriage. However, some wives are facing dilemma in fulfilling the *nafkah batin* (sexual maintenance) with their HIV/AIDS infected husbands.

The statistics of Malaysia Ministry of Health showed that the infection rate among women especially the wives has increased over the years. Until June 2009, 2,865 women were infected with HIV and 568 suffered from AIDS. One of the main causes that contributes to the phenomenon.is due to the husbands who are involved with random and unprotected sex with their wives or sex workers (Rajwani Md. Zain, 2010). Women who are aware of their husbands' social activities presumed that their husbands practiced safe sex but unfortunately contracted the disease. According to Gaskins (1999), the physiology of women makes them easier to get infected by the contagious virus.

Other than the *nafkah batin* dilemma, the wives are also deprived of *nafkah zahir* (material maintenance) by their irresponsible husbands. Most of the HIV/AIDS carriers are drug addicts (61,213 out of 86,127 individuals) and do not have stable occupations or even jobless. Thus, the financial expanses are borne by family members including the wives who are also forced to provide for the family. This is against the Islamic teachings as providing maintenance for the family is the obligation of a husband. In Malaysia, the Islamic Family Law (IFL) is derived from the laws of *syariah* (Md Zawawi Abu Bakar, 2012). All Muslim married couples in the country are bound by the IFL including matters regarding the dilemmas faced by the wives of men living with HIV/AIDS.

The HIV/AIDS inflicts severe effect on the life of its carriers and their families (Hedge, 1999; Demmer, 2001; Carney, 2003). According to Renard, *et al*. (2001); Parrish, Burry & Pabst (2003), mostly the wives will suffer tremendous emotional pressure if the husbands dies of HIV/AIDS especially if they are unemployed.

Corresponding Author: Md Zawawi Abu Bakar, School of Social Development, Universiti Utara Malaysia, 06010 Sintok, Kedah, Malaysia
E-mail: zawawi@uum.edu.my

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They will be deprived of financial security and the welfare of the offspring will be uncertain. Vernon dan Thurman (2009); Abel (2007) stated that among the main issues of women's right and HIV/AIDS are lack of control in sexual aspect, lack of health conscious, bound by tradition and culture, stigma and discrimination, sexual abuse, health status disclosure, and issues of confidentialitiy.

Research by Gichaara (2008) showed that traditional practice and belief are one of the means that contribute to the increasing number of infection among the wives as they do not have the right and powerless to decline their husbands' sex request. In fact, they might be physically abused if they refuse their husbands' demand (Thomas, Chandra, Suriyanarayanan & Swaminathan, 2009). The qualitative study aims to identify the amount of knowledge that women living with HIV/AIDS has regarding their rights in the IFL. Eight respondents were interviewed in the state of Kedah and the data acquired were analized using a complete qualitative approach.

RESULTS AND DISCUSSION

Respondents' profile:

The respondents and husbands' information are shown in table 1. All respondents have two to six children who are still in school. All the women are living with HIV/AIDS and were infected by their husbands. One of the respondents' children (respondent 3 – Mrs C) is suffering from AIDS and screening tests proved that the rest of their children are healthy.

Table 1: Brief information on the respondents and their husband.

Respondents' background				Husbands' background			
Respondent	Name	Age	Occupation	Name	Age	Occupation	Cause of Infection
1	Mrs A	28	Housewife	Ali	42	Fisherman	IDU
2	Mrs B	30	Housewife	Bidin	39	Fisherman	IDU
3	Mrs C	34	Shop Assistant	Cham	40	Cleaner	IDU
4	Mrs D	33	Housewife	Dino	37	Lorry Driver	IDU
5	Mrs E	50	Tailor	Eman	54	Civil Servant	Random Sex
6	Mrs	38	Housewife surirumah	Fuad	38	Civil Servant	Random Sex
7	Mrs G	35	Shop Assistant	Ghani	40	Club Employee	IDU & Random Sex seks
8	Mrs H	40	Housewife	Hamid	38	House Builder	IDU

* The respondents' husbands are not using their real names

The Rights to Receive Nafkah Zahir and Batin:

Most of the respondents said that their husband did not provide maintenance for the families such as daily expanses or for their children's schooling. Even though, the men have proper jobs, they did not support their family financially instead spending their income on drugs or frequenting sex workers. The respondents' experiences are supported by researches conducted by Parrish, Burry & Pabst (2003); Hedge, (1999); Demmer, (2001); Carney, (2003); Renard, *et al*. (2001).

The result of the researches showed that the wives of persons living with HIV/AIDS face financial dilemma. Deprived of financial security, the women replace their husband role as the breadwinner to ensure the families' survival and provide basic needs for their children.

Table 2: Interview transcript of nafkah zahir.

Respondent	Transcript
Mrs H	*Usually there is no money given for daily use. I have always asked help from my siblings. My children and I will starve if we depend on him (husband)*
Mrs C	*My income pays for the groceries and the children's schooling expanses, it is almost impossible to depend on him (husband). He spends all his money on that thing. Sometimes he even steals money allocated for our children's schooling to buy drugs*

Receiving *nafkah* is a wife's right and it is due to her by the husband. The right is in material form, other than the *mahar* (dowry). The *fuqaha*s (Islamic jurists) have defined *nafkah* as material needs of a wife such as food, clothing, shelter, sleeping place, housekeeper, home accessories and etc. Muhammad Mahmud Syafie, 1998). *Nafkah* is an obligation that must be fulfilled by a husband based on *surah* al-Talak verse 7. *Nafkah* is also a form of *sadaqah* (charity) as the Prophet SAW said:

Nafkah given by a man to his family members is sadaqah:
(*Jami' al-Tirmizi, Mu'jam* 25*, al-bir wa al-silah, Hadis 1965*):

According to the IFL provisions, the *syariah* court may order the husband to pay *nafkah* to the wife or ex-wife. However, the right is void if the wife is *nusyuz* (defiant) against the husband's will until she repents and obeys the husband's command (S. 59 (1) (2) dan (3)). The rate of *nafkah* will be decided by the *syariah* court

based on the husband's affordability and income (S.61). A husband who mistreats his wife or swindles her properties can be fined not less than a thousand ringgit or jailed not less than six month or both (S.127). This IFL provision deters irresponsible and abusive husbands. Besides materials maintenance, respondents also raise issue regarding *nafkah batin* (conjugal rights). The women felt oppressed because they cannot fend off their husbands' sexual approach even though they know about their husbands' health status and fear of HIV/AIDS infection. Some of the husbands forced the women to have sex with them and some deceived their wives saying that they are safe and will not be infected. The statements above showed that respondents lack the information of HIV/AIDS infection and unaware of the right to protect their safety and health.

Table3/Jadual 3: Interview transcript regarding the right to refuse sexual intercourse.

Respondents	Interview transcript
Mrs A	*Ever since I knew he has HIV, I refuse to sleep with him but he said that I cannot turn down his desire*
Mrs G	*I have decided not to be with him but when he returned home high and drunk…he hit and raped me*
Mrs E	*He always coaxes me saying that even though he has HIV, I will still be safe. I thought he uses the condom when he sleeps with a prostitute*

The objective of a marriage is to permit sexual relation between a man and a woman and with that both husband and wife deserve the rights to be pleased sexually with one another. *Istimta'* (derived benefits) is a mutual right for both husband and wife (Al Baqarah, 187). Wahbah al-Zuhaili (1997) said that both husband and wife deserved to be pleased sexually by one another because it is in the nature of human beings to fulfill their sexual needs and instinct. It must be fulfilled on the conditions that the women are free from *haid* (menstruation), *nifas* (post natal bleeding) or sickness. Once the wife is free of menses, the husband is allowed to fulfill his sexual desire. The wife must oblige and never refuse unless if there are reasons prevented by the *syariah*. Muhammad Kamaluddin Imam (1998) said that the right of i'*faf* or the right to have sexual intercourse between a husband and a wife is to fulfill the sexual needs and instincts of human beings. It is permissible as long as there is no reason that the *syariah* forbids especially during haid, nifas or etc. Islam permits sexual relation between a husband and a wife on the condition that the act does not produce *dharar* (grievous harm) to any of the spouses. Based on the cases studied in this research, the wife is allow to refuse their husband sexual request (unprotected sex) to prevent HIV/AIDS infection.

The wife involve may refuse the request subtly or to a certain extent, according to *fiqh (*laws), ask for a divorce to prevent *dharar syarie*. The IFL allows a wife to ask for *talaq* (divorce) but she must apply and pledge her request in the *syariah* court (S.45). Once the court finds that the husband agrees to the request, and satisfies that *talaq* is the only solution to a marriage problem then the court will advise the husband to announce the *talaq* (S.47 (2) and (3).

The Rights to Prevent HIV/AIDS:

The research findings showed that the wives were denied the right to protect their health; even though they are aware of the risks of infection they still fulfill their husbands' wish. Some of the respondents believed that the men have manipulated the power as head of the family and husband to coerce the wives to obey their every wish. The wives are unable to resist because they have limited knowledge and resources; moreover they are bound by the culture and belief. The respondents feel that they have no idea where to report or who to talk when such issue arises especially on sexual matters. The respondents' custom and belief forbids them to discuss domestic problems and sexuality issues must not be shared with outsiders not even with other family members.

Table 4: Interview transcript on infection prevention knowledge.

Respondent	*Interview transcript*
Mrs F	*My husband doesn't allow me to use condom, he said he will not be satisfy. I am forced to obey*
Mrs H	*I don't know where to refer or who to ask if I were to seek for a divorce; he is infected with HIV, I'm afraid and I don't know who can I report to*

According to Taha Abdullah Al-Afify (1995), the wife has a right to request for a *talaq* from the husband through a *qadi* (judge) if she does not wish to be with her oppressive or abusive husband anymore. In the cases above, the respondents might proceed with the same measure but because of cultural belief and limited information, they just simply obey they husbands. Muhammad Kamaluddin Imam (1998) stressed that Islam permits sexual relationship between a husband and a wife to fulfill the human natural instinct provided that both are healthy and clean. However, in cases above, Islam allow the wives to protect themselves from any grievous health risks. One of such measure is to request for a *talaq* in a syariah court. The provisions of the IFL allow the wife to seek *talaq* on the grounds of well-being protection against an irresponsible husband. There are many reasons for a wife to file for a *talaq* request; among them are husband missing for over a year, never provide maintenance for the family more than three months, jailed more than three years, has not have sex more than a year without valid reason, suffers from erectile dysfunction during the wedding that the wife is unaware of,

become insane or carry infectious disease, the wife is forced to wed when she is only sixteen and before reaching eighteen refuse to be married and has not been touch by the husband, and abusive husband (S. 52 (1).

Conclusion:

Based on the study conducted, the researchers recommend the husbands and wives involved to prepare themselves with extended knowledge and information regarding their respective rights and obligations provided by the *syariah* and IFL. Besides that, they must also know the source and process to face the rising issues. The married couples should first refer their problems to an expert of Islam then proceed to Islamic department and finally to Syariah Court if further action is required to solve the sexual and material *nafkah* issues. The married couples also need to see medical practitioner regarding HIV/AIDS prevention during sexual intercourse. As a conclusion, women must empower themselves with knowledge of their rights and methods of claiming the rights under the IFL provisions. This is important because they can continue living in a better life even if they are burdened with problems such as health status dilemma, being neglected and other domestic issues. Islam, in fact, has the wisdoms to deal with various types of marriage problems. Dissolution of a marriage is a last resort to such problems but not the best solution for couples living with HIV/AIDS. The spouse who has contracted the disease can still lead a normal life and must avoid unhealthy activities, maintain personal hygiene, practice balance diet, undergo constant medical check-up and obtain the appropriate treatment. Both the husband and wife should observe their respective obligations and live according to the teachings of Islam to ensure a harmonious and peaceful life.

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