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### Legal Protection of Women's Rights after Divorce

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#### Abstract

Divorce results in the termination of the marital relationship, and there are several main reasons that lead to divorce, including the death of one spouse, the decision of the husband or wife to end the marriage, or a judge's decision based on issues within the household. This research uses normative research methodology. A statute approach is used to analyze legal issues related to regulations governing the fulfillment of obligations from the ex-husband to the ex-wife after divorce. Law No. 1 of 1974 on Marriage explicitly regulates the obligation to provide maintenance to the ex-wife after divorce. This provision states that in cases

of divorce that result in the termination of the marriage, the ex-husband is required to bear the living expenses of the ex-wife and/or make certain decisions that benefit the ex-wife. However, in reality, the low awareness of ex-husbands in fulfilling the ex-wife's rights after a court decision becomes a major concern regarding how legal protection efforts ensure women's rights are upheld. The rights that can be claimed by the ex-wife after divorce include maintenance, *muta'ah*, *mahr*, *hadhanah* costs, and the division of joint property.

**Keywords:** Divorce, Rights, Legal Protection

#### 1. Introduction

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the one and only God, as explained in the Marriage Law No. 1 of 1974. With the bond of marriage, the relationship between women and men becomes lawful because they are husband and wife.<sup>1</sup> From the perspective of Islamic law, marriage is a command of Allah SWT whose main aim is to maintain human welfare and prevent damage. This goal includes the protection of religion, soul, mind, lineage and property. Islamic law also guides humans towards truth, justice and wisdom and provides guidelines that must be obeyed. All of these principles are rooted in five main priorities known as *maqasid asy-syari'ah* and come from the Qur'an which is universal and dynamic.<sup>2</sup>

Love from the heart and soul is a strong foundation in building a marriage. Sincere and deep love will make a husband and wife understand, appreciate, and support each other. It's a different story if the marriage is not based on sincere love for each other, then it is likely that the household will be shrouded in endless disputes that can cause the household to shake up and even trigger divorce. Divorce is a condition in which the bond between husband and wife is broken due to various problems in household life. The incompatibility between two people who are related can no longer be maintained or repaired, resulting in separation. In marriage, happiness and a perfect life are the hopes of every couple, so divorce is not something that is

<sup>1</sup> Reza Pahlevi Nurpaiz, Syaik Abdillah, Dahwadin, Hasanudin, D. R. M. Kedudukan Isteri Bekerja Dalam Mengurus Keluarga Perspektif Hukum Islam Reza Fahlevi Nurpaiz, Syaik Abdillah, Dahwadin, Hasanudin, Dwi Reza Meinanti STISNU Tangerang Pendahuluan Perkawinan ialah akad yang menghalalkan pergaulan antara seorang laki-laki dan perempuan. Mutawasith, 3 (1), 2020

<sup>2</sup> Dahwadin dkk (2020). HAKIKAT PERCERAIAN BERDASARKAN KETENTUAN HUKUM ISLAM DI INDONESIA. YUDISIA: JURNAL PEMIKIRAN HUKUM DAN HUKUM ISLAM ISSN: 1907-7262 / e-ISSN: 2477-5339 Volume 11, Nomor 1, Juni 2020 <https://journal.iainkudus.ac.id/index.php/Yudisia/index>

desired.<sup>3</sup> Law No. 1 of 1974, Article 28, explains that what is meant by divorce is the dissolution of a marriage which results in the severance of the relationship as husband and wife.

When viewed from the laws and regulations, there are several reasons for the dissolution of a marriage, starting from the death of a spouse, divorce and based on a court decision. The court will grant the application or lawsuit filed by the principal if the reasons submitted by the principal are in accordance with Article 116 No. 9 of 1975 in the Compilation of Islamic Law (KHI) which mentions several factors that can be the cause of divorce. Among them are the actions of one party committing adultery, alcohol or drug abuse, gambling, or other behavior that is difficult to cure. In addition, divorce can occur if one party leaves the partner illegally for two consecutive years without permission or a valid reason, or if one party is sentenced to 5 years or more in prison. Acts of violence or other cruel behavior that endanger the spouse can also be grounds for divorce, as well as the inability of one party to fulfill obligations as a husband or wife due to physical disability or illness. Disputes and quarrels that cannot be resolved, as well as acts of apostasy are also included in the reasons for divorce recognized in the Compilation of Islamic Law.<sup>4</sup> Ni Wayan Sintia Darma Putri explained that the background to divorce can be caused by problems such as incompatibility during marriage, interference from parents of both parties, financial problems, acts of violence and the presence of another ideal woman or man.<sup>5</sup>

The end of a marriage certainly brings many harms, especially for women. Financial problems after divorce are often experienced by women, especially for those who did not work during the marriage and preferred to be housewives. It does not stop there, in practice, women's rights after marriage are not given by husbands as ordered by the competent religious court. In fact, in this case, women have the right to sue their ex-husbands to finance their living expenses in accordance with the provisions stipulated in the Marriage Law. However, ex-husbands often ignore this obligation, even after a court decision is issued. This certainly causes difficulties for women in meeting their daily needs, including meeting the needs of their children. Therefore, it is important for the parties involved to comply with existing legal provisions to ensure justice for women after marriage. The phenomenon of low awareness of ex-husbands in providing the rights of ex-wives after a court decision is certainly a major concern regarding how the protection efforts provided by law ensure that women's rights are granted.

## 2. Research Method

The research method used in this study is the normative legal research method. The focus of this study is on norms as the object of study, because the absence of norms is related to the absence of regulations governing institutions to supervise the provision of maintenance from ex-husbands to ex-wives after divorce. The statute approach is used to analyze legal issues related to regulations governing the implementation of obligations from ex-husbands to ex-wives after divorce.

## 3. Results and Discussion

Marriage is a life bond between a man and a woman that is legally recognized by law, both in terms of state law and religious law (sharia) and in accordance with the purpose of building a household and the provisions of applicable laws.<sup>6</sup> According to R Subekti, marriage is a legal relationship between a man and a woman for a long period of time. Meanwhile, BW provides according to positive law only or marriage is only seen from the civil aspect, which means that a marriage is only recognized if it meets the requirements set out in the law, while religious requirements and regulations are not taken into account.<sup>7</sup> Of course, in running a household, both men and women long for a marriage that is eternal and everlasting, meaning that in marriage there is no concept of tempo or time period as a reason for the end of the marriage bond.

Eternal and lasting happiness in carrying out the bonds of household is in line with the concept of the purpose of marriage as explained in Law No. 1 of 1974, these 3 (three) purposes include:<sup>8</sup>

1. Between husband and wife they complement and help each other;
2. Every individual, whether husband or wife, has the right to develop their own personality. To develop that personality, it is important for husband and wife to support and work together.
3. A happy family that is prosperous in material and immaterial aspects;

Instead of longing for eternal and everlasting happiness, it is not uncommon for marriages to end in divorce. Law No. 1 of 1974 article 28 explains that what is meant by divorce is the dissolution of a marriage that results in the severance of the relationship as husband and wife. Quoted from the book Islamic Marriage Law in Indonesia by Amir Syarifuddin, it explains in general that there are several reasons for the dissolution of a marriage, namely:<sup>9</sup>

1. One of the partners died;
2. The dissolution of a marriage is due to the husband's wishes for certain reasons;

<sup>3</sup> Nabila Veronica, Pradana Chairy Azhar & Azri Ranulwady Sugma, Dampak Perceraian Terhadap Psikologi Anak, JBS (Jurnal Berbasis Sosial), Pendidikan IPS STKIP Al-Maksum, Vol. 3, No. 1, April 2022. hlm. 31.

<sup>4</sup> Mirsa Yainahu, Cacat Badan Sebagai Alasan Perceraian (Undang-Undang No.1 Tahun 1974 Tentang Perkawinan dan KHI), Al-Mizan: Jurnal Kajian Hukum dan Ekonomi, Vol. 07, No. 1, Juni 2021. hlm. 12-13.

<sup>5</sup> Ni Wayan Sintia Darma Putri (2020). PENGAWASAN TERHADAP KEWAJIBAN PEMBERIAN NAFKAH OLEH MANTAN SUAMI KEPADA MANTAN ISTRI PASCA PERCERAIAN. Jurnal Kertha Semaya, Vol. 8 No. 10 Tahun 2020, hlm. 1598-1607

<sup>6</sup> Mohammad Nurul Huda (2022). Kompilasi Tujuan Perkawinan dalam Hukum Positif, Hukum Adat, dan Hukum Islam. Voice Justisia Volume 6, Nomor 2, September 2022

<sup>7</sup> Ronald Saja, Roger F.X.V. Letsoin, Buku Ajar Hukum Perdata, Yogyakarta, CV BUDI UTAMA, 2016, hlm. 12

<sup>8</sup> Achmad Asfi Burhanudin, "Perkawinan Dan Keharusan Pencatatannya", Jurnal El-Faqih, Vol. 3, Nomor 2, Oktober 2017, Kediri, hlm. 7

<sup>9</sup> Amir Syarifuddin, Hukum Perkawinan Islam di Indonesia, (Jakarta: Kencana Prenada Media Group, 2006), 197

3. Termination of marriage due to the will of a wife can be triggered by various factors, such as family interference, the wife's disagreement with the management of the household with her husband, or reasons in accordance with religious law. This process is known as khulu;
4. Fasakh or the existence of a judge's decision as a third party which causes the end of the marriage between husband and wife, is of course based on endless problems in the household;

For married couples who no longer wish to continue their married life together, the Compilation of Islamic Law (KHI) has regulated sufficient reasons to carry out a divorce. These reasons are regulated in article 116, namely:<sup>10</sup>

1. The wife or husband commits adultery, is a drug addict, a drunkard, a gambler and other similar things that are difficult to cure;
2. A husband or wife leaves his or her partner for 2 (two) consecutive years without the permission of the surviving party and without providing a clear reason;
3. One of them will receive a prison sentence of at least 5 (five) years after the marriage takes place;
4. Husband or wife commits acts of violence or other cruelty that threaten safety;
5. The husband or wife has a physical disability or illness so that he or she cannot carry out the obligations as husband or wife;
6. Husband or wife experience continuous disputes or arguments so that there is no longer any hope of continuing married life;
7. Husband violates divorce vow;
8. Husband or wife changes religion (apostasy);

With various legal umbrellas in place, the Marriage Law still tries to make divorce difficult because marriage has a noble and sacred essence, so that it is hoped that every marriage will give birth to a harmonious, committed and happy life based on love for one another. Allah hates divorce so much, because from marriage the status of a woman is raised so that it is equal to the dignity of a man.<sup>11</sup> Termination of marriage does not mean leaving no legal consequences. For ex-wives, there are several rights that can be requested from their ex-husbands. These rights have been regulated in KHI article 148. This article stipulates that if a divorce occurs, the ex-husband has an obligation to provide intrinsic rights, including the following:<sup>12</sup>

<sup>10</sup> Arifin Abdullah dkk(2023). Sebab-Sebab Terjadinya Perceraian Dan Dampaknya Terhadap Perempuan Di Aceh (Analisis Perbandingan Putusan Mahkamah Syar'iyah Meulaboh Aceh Barat dan Mahkamah Syar'iyah Jantho Aceh Besar Tahun 2019-2021). Jurnal Takammul: Jurnal Studi Gender dan Islam serta Perlindungan Anak Volume 12. No. 1 Januari – Juni 2023 DOI: <http://dx.doi.org/10.22373/Takammul.v12i1.20465>

<sup>11</sup> Muhammad Abdulkadir, Hukum Perdata Indonesia, Cet.V. (Bandar Lampung: Citra Aditya Bakti, 2014)

<sup>12</sup> Rizky Silvia Putri, "Implementasi Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum Terhadap Perkara Cerai Gugat (Studi Pengadilan Agama Kelas 1A Tanjung Karang)", Tesis, UIN Raden Intan Lampung (2020), 34.

## 1. Rights of maintenance, maskan and kiswah

A husband has obligations and responsibilities towards his family, including providing financial support and education. If a divorce occurs and all of the husband's obligations have been fulfilled, the wife does not have the right to ask for maintenance. However, if the husband is irresponsible and does not fulfill his obligations, the wife can take legal action to demand her rights. The judge has the authority to determine the amount of maintenance that must be given to the wife, either in the form of iddah maintenance or madhiyah maintenance (past maintenance). Iddah is a waiting period for a wife after a divorce, either due to divorce or death. If the divorce is due to death, the waiting period is set for 130 days from the time the husband dies, while the waiting period for divorced women is 90 days from the time the court decision has permanent legal force.<sup>13</sup>

## 2. Muta'ah Rights

In the Islamic Law Provisions (KHI), it is explained in 3 articles regarding the practice of mut'ah, which are Articles 158, 159, and 160. These three articles regulate the husband's duty to provide mut'ah to his wife as long as the dowry for the wife has not been determined before the marriage, and the husband can divorce unilaterally. The regulation emphasizes the importance for the husband to fulfill his obligations in providing mut'ah rights to his wife in accordance with the provisions contained in the KHI. Mut'ah maintenance is the wife's right which is a form of compensation given after a divorce as a sign of replacement. This provision can be in the form of money or goods, and the amount is adjusted to the husband's ability. According to the majority of scholars, mut'ah maintenance is only given in divorces caused by the husband's will (talak).

## 3. Dowry

KHI article 32 explains "dowry given directly to the prospective bride and groom and can be a personal right". It is obligatory for men to give a dowry to the prospective bride as a result of marriage. It can be called a dowry if an item has value, benefits and is valuable. The dowry is a special right from God to the prospective bride in order to improve the welfare of women. Article 35 paragraph (1) states "a husband who divorces his wife qabla al-dukhul waib pays half the dowry that has been determined in the contract" this article exists to protect the rights of the wife for example if something undesirable happens (divorce).

## 4. Hadhanah Fees

This hadhanah fee is an obligatory right for parents who have children from marriage, this fee includes material and immaterial costs. Article 105 is the legal basis that custody of children who are not yet mumayyiz or 12 years old is given to their mother, however, if the child is mumayyiz or 12 years old then the child has the right to choose the guardian over him. This right must be given to the child when a divorce occurs between the parents. Both husband and wife have the same obligation to support and care for their children even if a court decision awards custody to one party.

## 5. Marital Property

Marital property is a term that refers to joint property acquired during a marriage. In a legal context, this property is usually divided between husband and wife in the event of a divorce. Regarding marital property according to the

<sup>13</sup> Mardani, Hukum Keluarga Islam di Indonesia, (Jakarta: Prenada Media Group, 2016), h.174

Marriage Law, it is regulated in Chapter VII, namely Articles 35, 36, 37. In Article 35 of Law Number 1 of 1974 concerning Marriage. In this case, the ex-wife has the right to property acquired during the marriage, even if she does not work.

Article 41 letter c of the Marriage Law strictly regulates the obligation to provide maintenance to the ex-wife after a divorce. The provision states that in cases of divorce resulting in the termination of the marriage, the ex-husband is required to bear the living expenses of the ex-wife and/or make certain decisions that benefit the ex-wife. Thus, the court's decision plays a very important role in determining the obligation of the ex-husband to provide maintenance to the ex-wife. The Compilation of Islamic Law (KHI) also explains the legal consequences of divorce, a father must still be responsible for the costs of *hadlanah* and child maintenance until the child is independent or at least 21 years old.<sup>14</sup> There will be a severe sanction for husbands, especially those who work as Civil Servants (PNS), this disciplinary sanction is in the form of dishonorable dismissal (PDTH) if the husband is negligent in not providing the *hadlanah* costs which should be an obligation, this is based on PP No. 10/1983 article 16.

Circular of the Supreme Court No. 2 of 2019 and Regulation of the Supreme Court (PERMA) No. 3 of 2017 concerning Guidelines for Trial of Cases of Women in Conflict with the Law, thus judges are expected to have expertise in exploring legal values and norms, local wisdom, and principles of justice that exist in society. The goal is to ensure gender equality, fair protection, and the elimination of discrimination.<sup>15</sup> Therefore, the judge hereby grants the wife the right in a divorce case to apply for her rights which are submitted in writing in the *posita* and *petitum* by writing the sentence "which is paid before the defendant takes the divorce certificate".<sup>16</sup>

Steps in resolving a case where the ex-husband does not implement the decision as regulated in Article 196 of the *Herzien Inlandsch Reglement* (HIR) and Article 207 *Rechtreglement voor de Buitengewesten* (RBg), there are two options for resolving the implementation of the decision.<sup>17</sup> The first option is if the losing party voluntarily carries out the decision without pressure. The second option

is through the execution process carried out by the court to force the losing party to carry out the decision.

An ex-husband who is reluctant to fulfill his obligation to provide the rights of his ex-wife after being required by the court, then the ex-husband is considered to have violated the court decision. Article 196 HIR states that if the ex-husband is reluctant to carry out a court decision that has permanent legal force, the ex-wife has the right to submit an application to the Head of the Court to force the ex-husband to carry out the decision (execution). The Head of the Court will summon the ex-husband and give him a warning to comply with the decision within 8 (eight) days. The execution is carried out by the Clerk or Bailiff based on the instructions of the Head of the relevant District Court, which is recorded in the form of a decision letter. Execution without formal requirements in the form of a decision letter will not be sufficient, in accordance with Article 197 paragraph (1) HIR, execution must be accompanied by a decision letter, it is not permitted verbally and this is an absolute requirement.<sup>18</sup> This regulation clearly regulates the steps that can be taken by the ex-wife if the ex-husband does not fulfill his obligations.

If the ex-husband does not fulfill his obligations within the specified time limit, he will face legal consequences according to Article 197 paragraph (1) HIR. The court chairman will properly summon the ex-husband. If the ex-husband is reluctant to come, the court will issue a warrant to seize all of the ex-husband's assets, including movable and immovable property. If the assets seized are deemed insufficient, the court will continue to seize the ex-husband's assets until they are sufficient for the amount desired in the *alimony* decision for the ex-wife, plus the costs of implementing the decision.

Actually, forced efforts (execution) are the last option if the ex-husband carries out the decision voluntarily. This voluntariness can be realized if legal awareness in society is a reflection of the legal culture that should be continuously instilled to increase the level of legal compliance among the community.<sup>19</sup> This awareness is closely related to the responsibility of providing support to the ex-wife after divorce. It is important for the ex-husband to be aware and carry out his obligations fully so that there is no negligence in the implementation of support. The absence of continuous supervision from authorized institutions is one of the factors why ex-husbands do not fulfill the obligations that should be their responsibility. This situation is very detrimental to ex-wives who have to care for their children independently after divorce. In addition, the lack of regulations that strictly regulate the supervision of ex-husbands in providing support to ex-wives also creates legal uncertainty.<sup>20</sup> This results in

<sup>14</sup> Ni Wayan Sintia Darma Putri (2020). PENGAWASAN TERHADAP KEWAJIBAN PEMBERIAN NAFKAH OLEH MANTAN SUAMI KEPADA MANTAN ISTRI PASCA PERCERAIAN. *Jurnal Kertha Semaya*, Vol. 8 No. 10 Tahun 2020

<sup>15</sup> Nurhilmayah, 2019, Perlindungan Hukum terhadap Perempuan Berhadapan dengan Hukum sebelum dan sesudah lahirnya PERMA No.3 Tahun 2017, *Jurnal Ilmu Hukum*, Volume 4, Nomor 2, UMSU, Medan, hlm, 218, <http://jurnal.umsu.ac.id/index.php/delegalat>

<sup>16</sup> Reny Istiqomah dkk (2022). PEMENUHAN HAK PEREMPUAN PASCA CERAI GUGAT (Eksistensi SEMA Nomor 2 Tahun 2019 di Pengadilan Agama Nganjuk). *SAMAWA: Jurnal Hukum Keluarga Islam* Volume 2, No.2. Juli 2022, Hlm. 010-024 DOI: <https://doi.org/10.53948/samawa.v2i2.48>

<sup>17</sup> Erick Sambuari Lie dkk (2023) IMPLIKASI HUKUM PIHAK YANG TIDAK MELAKSANAKAN PUTUSAN PENGADILAN DALAM PERKARA PERDATA. *Lex Privatum* Vol.XI/No.3/Mar/2023

<sup>18</sup> Evelyn Lumentut dkk (2022). SUATU TINJAUAN TERHADAP PUTUSAN PENGADILAN BERKEKUATAN HUKUM TETAP. *Lex Administratum*, Vol. X/No. 1/Jan-Mar/2022

<sup>19</sup> Rosana, Ellya. "Kepatuhan Hukum Sebagai Wujud Kesadaran Hukum Masyarakat." *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 10, No. 1 (2014): 61-84. DOI: <https://doi.org/10.24042/tps.v10i1.1600>

<sup>20</sup> Hartanto, Wenda. "Kesadaran Hukum Sebagai Aspek Dasar Politik Hukum Legislasi: Suatu Tinjauan Filsafat." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4, No. 3 (2015): 469-483.

the ex-husband neglecting his obligations towards his ex-wife on a regular basis.

## 4. Closing

### 4.1 Conclusion

Marriage is a life bond between a man and a woman that is legally recognized by state and religious law, and aims to build a household in accordance with the provisions of the law. According to R. Subekti, marriage is a legal relationship between a man and a woman for the long term. Positive law views marriage from a civil aspect, where marriage is only recognized if it meets legal requirements, without taking into account religious requirements. The objectives of marriage according to Law No. 1 of 1974 include:

1. Complementing and helping each other between husband and wife.
2. Development of each individual's personality.
3. Achieving a happy and prosperous family, both materially and immaterially.

However, divorce still occurs for various reasons regulated in the law and religious law. Divorce causes the termination of the husband and wife relationship, and there are several main reasons that cause divorce, including the death of one of the partners, the decision of the husband or wife to end the marriage, or the judge's decision based on problems in the household. The rights that can be requested by the ex-wife after divorce include maintenance, muta'ah, mahar, hadhanah costs, and division of marital property. Law No. 1 of 1974 concerning Marriage attempts to complicate divorce because it considers marriage to be a noble and sacred bond. If the ex-husband does not fulfill his obligations, the ex-wife has the right to file an execution application to the court to force the ex-husband to carry out the decision. Public legal awareness and the responsibility of the ex-husband to provide full maintenance are very important to ensure justice and compliance with court decisions. Top of Form.

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