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LEGAL STUDY OF DIVORCE LAWSUIT MECHANISM AGAINST ABSENT HUSBAND ACCORDING TO INDONESIAN MARRIAGE LAW

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Abstrak

Gugatan perceraian ghaib merupakan upaya hukum bagi istri yang ditinggalkan suami tanpa kejelasan tempat tinggal. Penelitian ini menganalisis mekanisme hukum gugatan cerai ghaib berdasarkan UU No. 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam. Metode penelitian menggunakan yuridis normatif dengan data sekunder bersifat deskriptif. Hasil menunjukkan bahwa prosedur cerai ghaib diatur dalam Pasal 20 ayat (2) PP No. 9 Tahun 1975 dan Pasal 138 KHI, dengan panggilan melalui pengumuman di papan pengadilan dan media massa. Pelaksanaannya mengikuti prosedur gugatan perceraian biasa dengan persyaratan tambahan berupa surat keterangan kelurahan tentang ketidakjelasan domisili tergugat.

Kata Kunci: Gugatan Cerai Ghaib, Suami Ghaib, Hukum Perkawinan Indonesia.

Abstract

Divorce lawsuit against absent husband is a legal remedy for wives abandoned by their husbands without clear residence information. This research analyzes the legal mechanism of divorce lawsuits against absent husbands based on Law No. 1 of 1974 on Marriage and Islamic Law Compilation. The research method uses normative juridical approach with secondary data of descriptive nature. Results show that absent husband divorce procedures are regulated in Article 20 paragraph (2) of Government Regulation No. 9 of 1975 and Article 138 of Islamic Law Compilation, with summons through announcements on court bulletin boards and mass media. Implementation follows ordinary divorce lawsuit procedures with additional requirements including village certificate stating the unclear domicile of the defendant.

Keywords: Absent Husband Divorce Lawsuit, Absent Husband, Indonesian Marriage Law

INTRODUCTION

Marriage is a family agreement. This family agreement is not like any ordinary agreement, but has certain characteristics.¹ Marriage is also a sunnatullah that applies to all of God's creatures, both humans, animals and plants.² Marriage according to Islam is an agreement (*contract*) to live together between a man and a woman as husband and wife in order to obtain peace and love in life.³

Marriage is a religious commandment; every religious commandment is part of the worship of every creature of Allah SWT to their Creator. A command from Allah SWT to His servants is certainly not just a command; it has a noble purpose. The noble purpose of marriage is to create a happy family. A happy family is a family that achieves...*sakinah, mawaddah, and grace*, these three things are an inevitability that should be achieved.⁴

The provisions of Article 28B of the 1945 Constitution of the Republic of Indonesia state that every person has the right to form a family and continue their lineage through a legal marriage and the State guarantees the rights of children to survival, growth and development and the right to protection from violence and discrimination.⁵

Marriage or marriage in literature *fiqh* Arabic is called by two words, namely *marry* and *marriage*. These two words are used in the daily life of Arabs and are widely found in the Qur'an and the hadith of the Prophet. Islamic law stipulates that the marriage is done with a contract or legal bond between the parties concerned and witnessed by two men. Marriage according to Islam is a strong and solid sacred agreement to live together legally between a man and a woman to form a family that is eternal, polite, loving, peaceful, happy and eternal.

A marriage is annulled upon the death of one party. It is also annulled if one party remarries after obtaining a judge's permission, or if the other party leaves their residence for up to ten years without determining their fate. Finally, a marriage can be annulled through divorce. Just as a divorce is the annulment of a marriage by a judge's decision, the demands of a marriage can be extinguished through divorce.⁶ Although basically the aim of marriage is to last forever, sometimes there are certain reasons that result in the marriage not being able to continue so it has to be decided midway or is forced to end by itself, or in other words, a divorce occurs between husband and wife.

Article 113 of the Compilation of Islamic Law states that a marriage can be dissolved by death, divorce, or a court decision. Meanwhile, Law Number 1 of 1974 concerning marriage states in Article 38 that a marriage can be dissolved by death,

¹Harumiati Natadimaja, *Civil Law concerning Personal Law and Property Law*, Yogyakarta: Graha Ilmu, 2009, page 22.

²Siska Lis Sulistiani, *Islamic Civil Law; Application of Islamic Family Law and Islamic Business Law in Indonesia*, Jakarta: Sinar Grafika, 2018, page 23.

³Moh. Ali Wafa, *Marriage Law in Indonesia: A Study of Islamic Law and Substantive Law*, South Tangerang: YASMI (Indonesia Modern Asy-Syari'ah Foundation), 2018, page 32.

⁴Umar Haris Sanjaya and Aunur Rahim Faqih, *Islamic Marriage Law*, Yogyakarta: Gama Media, 2017, hal 17.

⁵Nurhilmiyah, *Civil law*, Medan: CV. Multi Global Makmur, 2020, p. 31.

⁶Subekti, *Principles of Civil Law*, Jakarta: PT. Internusa, 2004, p. 42.

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divorce, or a court decision. Dissolution of a marriage due to the death of one of the husband or wife means that if one of the husband and wife dies, the marriage is dissolved by that death. Or, the marriage is annulled if one of the parties dies.

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This divorce can occur immediately or with tempo by using words *talaq* or other similar words. The dissolution of a marriage due to divorce can occur because *talaq* or based on a divorce suit, as stipulated in Article 114 of the Compilation of Islamic Law. While a marriage can be dissolved by a court decision due to annulment, the marriage must meet the requirements stipulated in Law Number 1 of 1974.

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If the conditions of a marriage are not met, the marriage can be annulled. Divorce, as stipulated in Article 116 of the Compilation of Islamic Law, can occur due to:

- 1
1. One of the parties commits adultery or becomes a drunkard, drunkard, gambler, etc. which is difficult to cure;
 2. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her control;
 3. One party is sentenced to 5 (five) years in prison or a heavier sentence after the marriage takes place;
 4. One of the parties commits cruelty or severe persecution that harms the other party;
 5. One party suffers from a physical disability or illness resulting in him/her being unable to carry out his/her obligations as husband or wife;
 6. Between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household;
 7. Husband violates taklik talaq;
 8. Conversion to religion or apostasy which causes disharmony in the household.

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Choosing divorce means facing the courts. A legally valid divorce filing process can only be pursued through the courts. The problem is that many couples' experience confusion and difficulties when navigating the divorce process. The primary factor, of course, is legal issues. Furthermore, the divorce filing process is inherently complicated. It's not uncommon for complicated divorce proceedings to be costly.⁷When filing for divorce, the reason for the divorce is a crucial consideration for the court in proceeding with the divorce petition. Therefore, the plaintiff must choose a legally justifiable and valid reason for the divorce. Furthermore, the reason for the divorce is also a consideration or benchmark for the court in deciding a number of other issues closely related to the divorce process itself.

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One of the divorces that occurs in society is a supernatural divorce, Islamic law recommends that wives file for divorce in court as stated in the Compilation of Islamic Law relating to missing husbands (*ghaib/mafqud*) in Article 116 letter b states: "one party leaves the other party for 2 consecutive years without the other

⁷Veronica Velia Johannis, "Administrative Process as a Requirement for Divorce Lawsuits in District Courts," *Lex Administratum*, Vol. VIII/No. 4/Oct-Dec/2020, p. 159.

party's permission and without a valid reason or for other reasons beyond his/her ability."⁸

RESEARCH METHOD

This study uses a normative legal research method with a descriptive nature that aims to describe and illustrate the legal provisions regarding supernatural divorce suits based on applicable laws and regulations. Data sources are secondary data consisting of primary legal materials (Law No. 1 of 1974 concerning Marriage, Compilation of Islamic Law, Civil Code), secondary legal materials (scientific journals, textbooks, articles), and tertiary legal materials (legal dictionaries, encyclopedias). Data collection techniques are carried out through library research (*library research*) by reviewing various sources of literature relevant to the problem of supernatural divorce lawsuits, then the collected data is analyzed qualitatively to understand the normative aspects and implementation of the provisions of supernatural divorce law in the Indonesian legal system.

RESEARCH RESULTS AND DISCUSSION

Legal Regulations Regarding Invisible Divorce Lawsuits According to Indonesian Marriage Law

A divorce lawsuit due to a ghost husband is a divorce filed by a wife because the husband left her without a valid reason and his whereabouts are unknown and it is not known whether the husband is still alive or has died. The definition of a ghost husband is a husband who cannot attend the trial to resolve the case in court, when the address or whereabouts of the defendant are unknown/unclear. Therefore, this case is called a ghost divorce lawsuit. In other words, the condition of the ghost husband is caused by the husband's absence from the trial. Where in the trial, the ghost husband/absent from the trial is due to *mafqud* is included as a case of invisible divorce. In marriage, the term "ghaib" is defined as a husband or wife who leaves their partner without a clear and valid reason and without any news of their disappearance, and it is unknown whether they are still alive or deceased. Meanwhile, in Arabic, a person who disappears is literally called *mafqud*.⁹

Definition *mafqud* is a person who has no news, whose whereabouts are unknown, whether he is still alive or has died. *Mafqud* is one of the reasons for divorce based on a court decision as stated in Article 116 letter b of the Compilation of Islamic Law (KHI). The correlation between *mafqud* and *ghoib* is *ghoib* taken in Islamic law, divorce lawsuits because the husband is *ghoib* are included in the category of *fasakh* because the husband is a ghost (*mafqud*). *Fasakh* which is caused by *mafqud* from several sources means:

1. Husband leaves wife without news for forty years in a row.
2. The husband left his wife without any news consecutively even though the time limit could not be determined.

⁸Abdurrahman, *Compilation of Islamic Law in Indonesia*, Jakarta: Akademika Pressindo, 2008, p. 141.

⁹ Ahmad Dahlan, Riska Purnamasari, Masyhari, Sitti Nur Suraya Ishak, "Ghoib Claim Divorce in the Perspective of Islamic Law (Analysis of Ghoib Claim Divorce Year 2021 in the Religious Court Source Class 1A)", Scientific Journal of the Cirebon Islamic Religious Institute, p. 85.

3. Gone without any news of his whereabouts, his residence, his life and death for quite a long time.¹⁰

Specifically, the law in Indonesia regulates divorce proceedings because the husband is invisible, namely Article 19 letter (b) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage in conjunction with Article 116 letter (b) of the Compilation of Islamic Law "One party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her control."

This article will be elaborated upon in the discussion of the reasons. This article indicates that a divorce is filed because the husband has disappeared, meaning he has left his wife without a legally justifiable reason. It clearly and unequivocally indicates that the husband has failed to properly fulfill his obligations as a husband to his wife, both physically and mentally. Therefore, there is no hope of continuing the marriage because of the loss of affection and love, leading to his cruel neglect of the wife he has left behind.¹¹ If connected with an unseen husband or *mafqud*, it can be concluded that the husband has left or disappeared from his home, his whereabouts unknown, and no return date known. Husbands typically leave home for a variety of reasons, such as escaping their physical and mental responsibilities as head of the household, financial difficulties, differences in principles, ongoing arguments, death, and so on.

These factors are important to understand before deciding to divorce, as a mature consideration and to ensure that harmony in the household is difficult to achieve and that the household has no hope of being maintained. The permissible grounds for divorce are not exempt from the values of formal legal sources applied in Indonesia, including Islamic law and customary law. Islamic law is defined as part of and derived from the Islamic religion, inseparable from Islamic faith and morals, which include sharia and fiqh (Islamic jurisprudence) applied in worship and transactions.¹²

In Islam, Abdul Kadir Muhammad stated that a divorce lawsuit (*khuluk*) indicates a perceived disagreement between husband and wife. Divorce law must be based on valid and fundamental grounds so that the authorized institution, namely the court, can decide whether the divorce is appropriate or not.¹³ The requirement to include legal reasons for divorce is stipulated in Article 39 paragraph (2) of Law No. 1 of 1974: to carry out a divorce there must be sufficient reason, that the husband and wife will not be able to live in harmony as husband and wife.

The reasons referred to in this article have been outlined in the form of various valid reasons in divorce law in Indonesia in Article 19 of PP No. 9 of 1975, namely:

¹⁰ Mizatul Khaula, "Analysis of Judge's Decision on Divorce Lawsuit (Study Decision Number: 2127/Pdt.G./2019/PA.Kab.Mlg)", Scientific Journal of the Islamic University of Malang, Ainul Yaqin Campus Islamic Boarding School, p. 208.

¹¹ Abdul Rahman Ghazali. *Fiqh Munakahat*, Jakarta: Kencana, 2002, p. 115.

¹² Sayyid Sabiq, *Summary of Sunnah Jurisprudence*, Depok: Senja Media Utama, 2017, p. 84.

¹³ Muhammad Syaifuddin and Sri Turatmiyah, *Divorce Law*, East Jakarta: Sinar Grafika, 2013, p. 176.

1. One of the parties committed adultery or became drunk, stuffy, gambler, etc. which is difficult to cure;
2. One party leaves the other party for two consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her control;
3. One party receives a 5-year prison sentence or a heavier sentence after the marriage takes place;
4. One of the parties commits cruelty or severe persecution that harms the other party;
5. One party has a physical disability or illness resulting in him/her being unable to carry out his/her obligations as husband and wife;
6. Between husband and wife there are continuous disputes or arguments and there is no hope of living in harmony again in the household.

Divorce law is stated in Indonesian law that this law is explained comparatively with various reasons according to Islamic law and customary law, including the following:

1. Adultery, drunkenness, gambling, and other bad habits that are difficult to cure;
2. leaving another party without permission and valid reason;
3. 5 years imprisonment or other severe punishment;
4. cruel and serious behavior that is dangerous;
5. Physical disability or illness that prevents the performance of obligations.¹⁴

The reasons for the dissolution of a marriage are also explained in the Compilation of Islamic Law in Article 116: divorce can occur for the following reasons or reasons:

1. One of the parties commits adultery or becomes a drunkard, drunkard, gambler, etc. which is difficult to cure;
2. One party abandons the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her control;
3. One party is sentenced to 5 (five) years in prison or a heavier sentence after the marriage takes place;
4. One of the parties commits cruelty or severe persecution that harms the other party;
5. One of the parties suffers a physical disability or illness as a result of which he is unable to fulfill his obligations as a husband or wife;
6. Between husband and wife there are continuous disagreements and arguments and there is no hope of living in harmony again in the household;
7. Husband violates taklik talaq;
8. Conversion to religion or apostasy which causes disharmony in the household.

Divorce Law also includes divorce lawsuits due to a ghost husband, which requires a divorce suit to have a valid reason in law. In this context, divorce lawsuits due to a ghost husband have specific reasons. The reasons for divorce lawsuits due to a ghost husband are specifically stated in Article 116 (b) of the Compilation of Islamic Law in Article 19 of Government Regulation No. 9 of 1945. These two

¹⁴ Ahmad Dahlan, Riska Purnamasari, Masyhari, Sitti Nur Suraya Ishak, *Op. Cit.*, p. 82.

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articles explain that a wife may sue for divorce from her husband who leaves the house for two consecutive years without the wife's permission and without a valid reason or for other reasons beyond her ability.

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Based on this, the legal regulations for filing a supernatural divorce suit are guided by Article 20 paragraph (2) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage as stated that in the event that the defendant's residence is unclear or unknown or does not have a permanent residence, the divorce suit is submitted to the Court at the plaintiff's residence. In addition, Article 138 paragraph (1) of the Compilation of Islamic Law also stipulates that if the defendant's residence is unclear or the defendant does not have a permanent residence, the summons is made by posting the lawsuit on the notice board at the Religious Court and announcing it through one or several newspapers or other mass media determined by the Religious Court.

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Divorce due to a husband leaving his wife without a legally recognized reason must be filed in court before a panel of judges at the Religious Court from the wife's residence, as the requesting party, after two years of no news from the husband. This claim can only be filed if the husband leaves his wife without a legally recognized reason and remains reluctant to reconcile with the abandoned party.

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In Indonesian law, the reason for divorce is permitted in the form of "one party leaves the other party for two consecutive years without permission and without a valid reason", in this case the one leaving is the husband, must be submitted before the Religious Court from the wife's residence as the person or party seeking divorce after the passage of two years from the time the husband left the residence when he was with his wife. This lawsuit can only be filed if the husband leaves his wife without a valid reason and remains reluctant to reunite with the abandoned party or husband.¹⁵

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In PP No. 9 of 1975 there is no explanation regarding the meaning of the term or criteria used in the law regarding "without valid reasons", so it can be concluded that there are problems in the household of husband and wife in a bad state that is considered appropriate to divorce, then in this case there is no reason for the husband to do so against his wife. In practice, it is also considered a similar thing "husband abandons his wife", if the husband throws his wife out of the husband and wife's residence without trying to call her back for two years.

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Or if there is a legitimate reason for the husband to leave his wife until that reason disappears, then the wife must return to the husband and wife's home. If the wife does not return, then the two-year period from the disappearance of the legitimate reason or cause is counted as two years, after which the wife can sue her husband for divorce.

In the context of a divorce lawsuit due to the husband's absence, the explanation of "other factors beyond his ability" is also not found in Government Regulation No. 9 of 1975 or other legislation such as the Compilation of Islamic Law. Therefore, the phrase "other factors beyond his ability" has the opportunity to be interpreted as a factor causing the husband to leave his wife for two consecutive

¹⁵ Sayyid Sabiq, *Op. Cit.*, p. 302.

years, whether for a legally valid reason or not. Suppose the husband disappears without a trace, despite maximum search efforts and using all available resources such as assistance from the mass media, police officers, and community members.

16 Sudarsono said that in Islamic law the basic reasons for divorce are due to *tonusyuz*. *Nusyuz*, that is, a husband or wife abandons their husband-wife obligations, which causes a strain on the relationship. In this case, the invisible husband is included of *nusyuz* from the husband's side, namely the husband does not give the rights that should be given to the wife, for example physical and spiritual support.¹⁶

58 Apart from that, it also means that the husband is not obedient to high *taklik* divorce in Article 19 (g) PP No. 9 of 1975. *Taklik talaq* is a statement of the husband's agreement at the time of marriage. However, not everyone pronounces *taklik talaq* when getting married. As for the contents or *shighat* The *taklik talaq* (divorce agreement) includes several conditions. The first relates to an event in which the divorce is a promise that can be made to the wife to guarantee her safety from her husband. For example, it reads like "If the husband leaves his wife for 6 months without news and does not provide physical and spiritual support or the husband promises that he will not beat his wife again." Second, regarding "the issue of the wife's unwillingness if it turns out that the husband has beaten his wife, and the wife is not willing. Third, if the wife is no longer willing, then she may go to the official authorized to handle this matter. Fourth, the wife pays a ransom as a statement of displeasure with the husband's behavior."

20 This is balanced as a practice of the provisions in Q.S. An-Nisa verse 128; And if a woman fears from her husband ill-treatment or desertion, there is no blame upon them if they make terms of settlement between themselves - and settlement is best, while souls are inclined to be stingy. But if you do good and fear Allah - then indeed, Allah is ever, with what you do, Acquainted.

31 It means:

If a woman sees the fault of her husband or has turned away from him, then there is no sin for both of them, if they make peace between them. Reconciliation is better (than divorce). (It is true) that man behaves very miserly. If you are good (to your wife) and pious, indeed Allah knows best what you do.

Taklik talaq is often used in marriage as a form of agreement between the bride and the wife in guaranteeing her safety with her husband as a right that must be fulfilled. In Indonesia *Taklik talaq* is not mandatory but is usually agreed upon where it is said by the groom after saying acceptance. The vow of *taklik talaq* sounds like this: "If I (husband) leave my wife for 6 (six) months in a row, without informing and giving maintenance to my wife", or "When I (husband) beat/hurt my wife beyond the limit and leave scars", or "If I (husband) mine my wife, then if my wife is not pleased to come to me or the authorities or the Office of Religious Affairs

¹⁶Rifqi Munadi, "Legal Analysis of the Legal Consequences of Ghost Divorce from the Perspective of Islamic Law and Marriage Law (Study on Decision Number: 130/Pdt.G/2013/PA.MTR)", Scientific Journal of the Faculty of Law, University of Mataram, p. 14.

or the mosque and pay money *iwad* has much as determined, then my (husband) will be divorced once".¹⁷

According to Soemiyati, taklik talak should not be read, but only the husband's willingness. However, in general in Indonesia, the husband pronounces taklik talaq after performing the marriage contract. Taklik talaq is held with the aim of protecting the wife's interests and protecting the wife's dignity so that she is not abused by her husband. A single divorce that the husband gives based on taklik, results in the husband staying twice, when both of them go back to remarry.¹⁸

The legal basis for a divorce lawsuit based on a ghost husband is the legal basis used by Religious Court judges in deciding cases. In this case, several judges use more or less the same legal basis in deciding divorce cases based on a ghost husband. Because it still falls within the realm of divorce, the most common, definitive regulation is the legal basis for divorce.

Article 114 of the Compilation of Islamic Law explains that the dissolution of a marriage due to divorce can occur due to talaq or based on a divorce suit.

1. Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage: "To carry out a divorce there must be sufficient grounds, that the husband and wife will not be able to live in harmony as husband and wife.";
2. Article 19 letter (b) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage: "One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his/her ability";
3. Article 116 letter (b) of the Compilation of Islamic Law: "One party abandons the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her ability."

Implementation of a Lawsuit for Invisible Divorce According to Indonesian Marriage Law

Divorce lawsuits due to the husband being invisible are carried out in the Religious Court. If a wife wants to file for divorce, it must be based on the following reasons: The husband's departure caused the wife to feel physically and mentally disadvantaged. because their rights are not fulfilled.

The procedure for filing a supernatural divorce suit is the same as filing a regular divorce suit. The public must register their case by bringing the required documents, one of which is a certificate from the village office stating that the defendant's residence is no longer known and that they previously resided within the jurisdiction of that village head. The legal process for divorce in the Religious Court is regulated in Articles 132-148 of the Compilation of Islamic Law. This process begins with the filing of the suit and ends with the court decision; the explanation is as follows:

1. Filing a lawsuit

¹⁷Muhammad Syaifuddin and Sri Turatmiyah, *Op. Cit.*, p. 142.

¹⁸ *Ibid.*, p. 204.

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The lawsuit was filed by the wife or the wife's attorney to the court. Religion in the area where the wife lives, except for wives who leave place of residence without husband's permission is regulated in Article 132 paragraph 1 Compilation Islamic Law: "A divorce suit is filed by the wife or her attorney at the Religious Court whose jurisdiction covers the plaintiff's place of residence unless the wife leaves the joint residence without her husband's permission."

In the context of filing a lawsuit for the unseen, Article 133 paragraph 1 of the Compilation of Islamic Law regarding divorce lawsuits due to the unseen in Article 116 (b), states, "A lawsuit for divorce for the reasons mentioned in Article 116 letter b, can be filed after 2 (two) years have passed since the defendant left the house."

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In Article 116 letter (b) of the Compilation of Islamic Law, a divorce suit based on these grounds can be accepted if the defendant states or shows an attitude of no longer wanting to return to the shared residence. In addition, a divorce suit based on these grounds can be accepted and in accordance with Article 134 of the Compilation of Islamic Law is quite clear with the causes of the dispute and quarrel and after hearing from the family and those closest to the husband and wife.¹⁹ Ghoib is characterized by the completeness of a certificate from the sub-district that the husband's whereabouts are truly unknown in the territory of the Republic of Indonesia.

2. Court order on interim measures to protect the wife's rights.

The Religious Court determines guarantees, if necessary, in accordance with Article 136 paragraph (1) of the Compilation of Islamic Law, the Religious Court may permit a husband and wife not to live in the same house. Then, during the course of the lawsuit, according to Article 136 paragraph (2) of the Compilation of Islamic Law, the Religious Court may determine the maintenance that must be borne by the husband to guarantee the maintenance of the rights of the wife and children if any. However, in a divorce in absentia this cannot be implemented because the husband's whereabouts are no longer known.

3. Legal abortion

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According to Article 137 of the Compilation of Islamic Law, a divorce suit is dismissed if the husband or wife dies before a court decision is issued. In cases of supernatural divorce, the case is filed or registered as a supernatural case, so that the court proceedings continue in the presence of only the plaintiff or wife.

4. Summons for divorce suit hearing (*Story*)

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Article 138 of the Compilation of Islamic Law stipulates that a summons must be issued before each hearing by a Religious Court official. If the summons is not delivered to the intended home, it must be addressed to the sub-district office. The summons must be properly served and delivered, and must

¹⁹Wardah Nuronyah, *Islamic Marriage Law in Indonesia*, 1st ed., Yogyakarta: Teras, 2011, p. 11.

18 be received by the plaintiff no later than three days before the hearing begins. A copy of the lawsuit must be attached to the summons.²⁰

16 If the place of residence is unclear, according to Article 139 of the
27 Compilation of Islamic Law, this is done by posting the lawsuit on the notice
8 board at the Religious Court and announcing it in the mass media or several
8 newspapers determined by the Religious Court twice with a deadline of one
month between the first and second announcements. The deadline between the
final summons and the trial is set at a minimum of three months.

8 If the person resides abroad, the summons is delivered through the
8 Indonesian Representative (Article 140 of the Compilation of Islamic Law). If
4 the defendant and their attorney are not present, the lawsuit is accepted without
the defendant's presence, provided the lawsuit is acceptable on the grounds. This
type of summons is what our friends in the region call *invisible bi-relas* (after
being summoned according to the address in the lawsuit, unknown, unclear).
Regarding this matter, the Panel of Judges in the courtroom in order to provide
an explanation and understanding regarding the supernatural summons, namely
by postponing the trial for another 4 months, announcing it twice through the
media or withdrawing the case first, looking for a new address and so on.

8 Article 20 paragraph (2) PP. No. 9/75: "In the case where the
Defendant's place of residence is unclear or unknown or does not have a
permanent place of residence, the divorce suit is submitted to the Court at the
plaintiff's place of residence". While Article 27 paragraph (1) "When the
Defendant is in such a situation as Article 20 paragraph (2) summons is done
by posting the lawsuit on the notice board in the Court and announcing it
through one or more newspapers or other media specified by the court.

6 Article (2), the announcement as in paragraph (1) is made twice with a
one month gap between the first and second announcements. Article (3) The
time gap between the final summons as referred to in paragraph 2) and the trial
is set at least 3 (three) months. And paragraph (4) in the event that it has been
done as referred to in paragraph (2) and the defendant or his attorney is still not
present, the lawsuit is accepted without the presence of the defendant, unless
the lawsuit is without rights or without reason. If guided by Article 27 of PP.
No. 9 of 1975, it must be postponed for 4 months, however if based on HIR,
R.Bg, and RV, it does not have to be postponed for 4 months, in the author's
opinion the examining panel of judges can postpone less than 4 months, for
example 2 months or 1 month but the announcement must be made repeatedly
through several media.

5. Divorce lawsuit examination

14 Article 141 of the Compilation of Islamic Law contains regulations
26 regarding the examination of divorce suits, which states that "the examination
is carried out if the defendant leaves the defendant for two consecutive years
without a valid reason or for other reasons beyond his ability, then the

25 ²⁰Amiur Nuruddin and Ashari Akmal Tarigan, *Islamic Civil Law in Indonesia: A Critical Study of the Development of Islamic Law from Fiqh Law No. 1/1974 to KHI*, Jakarta: Penada Media, 2004, p. 117.

4 examination hearing will be carried out at least six months from the date the divorce suit was filed in court.

6. Court decisions regarding divorce suits and their recording by marriage registrars.

37 In Islamic law, the right to terminate a marriage (divorce) is only given to the husband with several supporting reasons, namely that the husband is the one who accepts the wife's ijab and qabul when the marriage contract is carried out, the husband is obliged to pay the dowry and mut'ah, and various other reasons, so in this case of divorce, the panel of judges allows the husband to divorce his wife by divorcing her. *no sughra*. When the defendant's panel is not present due to absence, the decision is made in default.

43 A certificate from the sub-district or village where the plaintiff resides must be provided, stating that the husband has left and his whereabouts are unknown within the Republic of Indonesia. This information is used as a consideration by the Panel of Judges in deciding the case in the Religious Court. Both parties must be present.

9 Article 39 paragraph of Law No. 1 of 1974:

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- a. Divorce can only be carried out before a court hearing after the relevant court has tried and failed to reconcile the two parties.
 - b. To get a divorce there must be sufficient grounds that the husband and wife will not be able to live in harmony as husband and wife.
 - c. The procedures for divorce before a court are regulated in separate laws and regulations.²¹

73 If so, the plaintiff can still file for divorce through a secret hearing. 22 Essentially, the secret hearing is filed with the competent Religious Court, and the defendant is then summoned three times through the local mayor's office (over approximately three months).

CLOSURE

3 The legal provisions regarding supernatural divorce suits have been 48 regulated in Article 20 paragraph (2) of PP No. 9 of 1975 which stipulates that a 26 divorce suit can be filed with the court at the plaintiff's residence if the defendant's residence is unclear or unknown, as well as Article 138 paragraph (1) of the Compilation of Islamic Law which regulates the procedure for summons via bulletin boards and mass media. The implementation of supernatural divorce suits follows the same procedure as ordinary divorce suits, where the plaintiff must register the case by completing the requirements including a certificate from the sub-district stating that the defendant's residence is truly no longer known and was previously domiciled in the jurisdiction.

63 To prevent supernatural divorce, it is crucial for husbands and wives in their households to improve communication and piety, as good communication can prevent misunderstandings and strengthen family ties. Furthermore, authorities in Religious Courts are expected to consistently render decisions and resolve cases

²¹ *Ibid.*, p. 331.

based on the principles of fairness and justice, in order to meet the needs of the public seeking justice through the legal process.

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