

## **The Juridical Review for Husbands Who Do Household Abandonment**

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### *Abstract.*

*As citizens have the right to form a family and continue their generations. The State of Indonesia mandates this matter through Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Through this article, Act No. 1 of 1974 concerning Marriage regulates various matters relating to marriage. Although everyone's hope is to create a harmonious family, a marriage can also lead to divorce. Economic reasons are the second highest reason for a divorce in Indonesia. In fact, the law has provided rules relating to the rights and obligations of each husband and wife. The research method used in this article is the normative juridical method, where a problem is studied through applicable laws such as Act No. 1 of 1974, the Compilation of Islamic Law, and Act No. 23 of 2004 concerning the Elimination of Domestic Violence.*

*Keywords: Divorce; Maintenance; Marriage; Obligations; Rights.*

### **1. Introduction**

The State of Indonesia through the 1945 Constitution of the Republic of Indonesia provides the right for its people to start a prosperous family and continue their offspring through legal marriage. This is stated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This article has the meaning that every Indonesian as a human being who needs affection has the right to choose his own partner to marry, which then, because of a legal marriage, can produce a child to continue the offspring so as to create a family. It is everyone's desire to have a harmonious family.

Before starting a family, of course, it begins with the implementation of a legal marriage. Marriage is carried out by a pair of men and women who love and care for each other. Indonesia itself already has laws and regulations related to marriage, namely the promulgation of Act No. 1 of 1974 which was later updated with Act No. 16 of 2019.

In Act No. 1 of 1974 it is explained that marriage is a physical and spiritual bond that occurs between a man and a woman to become husband and wife to build a household. The marriage is considered valid if it is carried out based on religious law and the beliefs of the parties. Meanwhile, Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage states that the minimum age limit for a man and a woman to enter into a marriage is 19 years.

To have a harmonious family is a goal that is coveted by many people. A harmonious family can start with a harmonious marriage between husband and wife which then continues with the relationship between the husband and wife and their children. Many factors are needed to create a harmonious family, which can be either psychological factors or economic factors. Psychological factors mean emotional management between each family member, the ability to communicate between family members, and the role of each family member to love and protect other family members. While the economic factor means to provide a living which is the obligation of men as a husband and father to support their family.

In Act No. 1 of 1974 concerning Marriage, it has been stated regarding the rights and obligations between husband and wife. The articles regarding this matter are certainly not without purpose. These articles are made for prospective husbands and wives as well as for husbands and wives to understand their respective rights and obligations in order to create a harmonious marriage and family.

Unfortunately, even though the law has explained the rights and obligations between husband and wife, there are still many who are negligent with these obligations and duties so that the rights of one of the parties are not fulfilled. Things like this can make a marriage disharmonious and result in this marriage ending in divorce.

The divorce rate in Indonesia is quite high. In 2020 there were 291,677 divorce cases recorded at the Directorate General of the Religious Courts, the Supreme Court (not including divorce cases in the Provinces of West Nusa Tenggara, Riau, South Sulawesi, East Kalimantan) and also the divorce data is data on divorce cases that occurred in couples who Muslim.<sup>1</sup>

In this data, economic factors rank second as the cause of divorce during 2018, 2019 and 2020. Economic factors themselves consist of many problems, one of which is husbands who do not provide a living for their families. Many wives file for divorce from their husbands on the grounds that they are not provided with a

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<sup>1</sup>Anindhita Maharani. Ini Sejumlah Alasan Pasangan Indonesia Bercerai. Accessed from <http://lokadata.id/artikel/ini-sejumlah-alasan-pasangan-indonesia-bercerai/> accessed on 12 February 2022 at 10.58 WIB

living, thus requiring the wife to earn a living to support her family. Besides that, economic factors can also lead to continuous strife which is the first rank cause of divorce.<sup>2</sup>

Then in 2021 the divorce rate will still be high compared to previous years. *Komnas Perempuan* from April to May 2021 conducted a survey related to household dynamics during the Covid-19 period, which resulted in the Covid-19 pandemic also being a factor in changes in household workload and caregiving.<sup>3</sup>

The most common causes of divorce in 2021 were ongoing disputes and quarrels, disagreements that occurred continuously, namely 279,205 cases. The second most common cause of divorce in 2021 was due to economic reasons, namely 113,343 cases.

There are many similar cases encountered, namely the loss of men's responsibilities as husband and head of the household. Even though the Marriage Law has stated the responsibilities of husband and wife where the law explains that the husband is obliged to provide for his family. The husband's irresponsibility apart from not providing a living is neglecting his wife by not giving attention or protection to his family. Usually in some cases, the husband disappears without his family knowing about him. This is also one of the causes of divorce in Indonesia.

One such case occurred in Pematang Regency, where the case was contained in the Religious Court Decision Number 3961/Pdt.G/2021/PA.PML. In this case, the divorce suit was filed by the wife as the plaintiff and the husband as the defendant. This divorce lawsuit was caused because the Defendant rarely provided maintenance to the Plaintiff, even though the Defendant had income where he should have provided the income he gave as maintenance to his family. However, instead of providing a living for his family, the Defendant used his income for his own interests.

Then there was also a divorce case that occurred in Pematang Regency, where the case was contained in the Decision of the Religious Court Number 3390/Pdt.G/2018/PA.PML where the divorce case was caused because the Defendant was sentenced to imprisonment for six years so that between The Defendant and the Plaintiff were unable to continue their household life so they have been separated for 2 years and 8 months leaving four children, two of whom are still being cared for by the Plaintiff.

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<sup>2</sup> Ibid.

<sup>3</sup> Vika Azkiya Dihni. Kasus Perceraian di Indonesia Masih Marak, Ini Penyebabnya. Accessed from <https://databoks.katadata.co.id/datapublish/2022/06/21/kasus-perceraian-di-indonesia-masih-marak-ini-penyebabnya/> accessed on 12 February 2022 at 11.15 WIB

## **2. Research Methods**

The research method in this article is normative juridical, namely research that places law as a building system of norms. This research uses an approach that is carried out by examining the literature and literature as well as laws and regulations related to the problems that will be discussed in this research. The normative juridical research in this article is research that examines the issue of husband neglect in a household by using the laws and regulations that apply in Indonesia as primary data.

## **3. Research and Discussion**

### **3.1. Legal Provisions Concerning Husbands Abandoning Their Households**

According to Article 1 of Law no. 1 of 1974 the definition of 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 (household) based on Belief in the One Almighty God". This means that marriage occurs because of an inner and outer bond between a man and a woman. The desire to form inner and outer bonds develops into the desire to form a happy family.

Apart from that, the Compilation of Islamic Law also explains the meaning of marriage. Article 2 of the Compilation of Islamic Law defines marriage as "marriage, namely a very strong contract or *mitsaqan ghalimidzan* to obey Allah's commands and carry them out in the form of worship".

Experts also have opinions regarding the definition of marriage, one of which is Prof. Subekti, SH who argues that "marriage is a legal relationship between a man and a woman that lasts for a long time."

In addition, there is an opinion from K. Wantjik Saleh, namely "marriage is not just a physical and spiritual bond, but both of them work together, the outer bond reveals things that are based on the formal only and the inner bond reveals things that are not formal or not visible."<sup>4</sup>

Carrying out a marriage certainly has a goal, the purpose of marriage when viewed based on Act No. 1 of 1974 has been formulated ideally because in this law it is not only seen from an external perspective but also from an internal perspective which is in the form of an inner bond between the husband and the

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<sup>4</sup> Wantjik, S. K. (1976). *Hukum Perkawinan Indonesia*. Jakarta: PT. Ghalia Indonesia. p.14-15

wife who aims to have and foster a happy family and based on the provisions of God Almighty.<sup>5</sup>

Then in line with what was previously described in Article 1 of the Marriage Law, husband and wife in realizing the goals of marriage can be done in several ways, namely:<sup>6</sup>

1. Sacrifices made by husband and wife are necessary to achieve the goals of the marriage itself.
2. In building a household, character capital is needed, namely morals, ethics, and also morals.

Mentioned in the Marriage Law, both the husband and the wife have an equal position in carrying out the household ark. This means that husband and wife have the same or parallel rights and obligations in a marriage relationship. With regard to the rights and obligations of husband and wife, they have been described in the articles contained in the Marriage Law, namely Article 30 to Article 34 of the Marriage Law.

Article 30 of the Marriage Law states that:

"Husband and wife bear a noble obligation to uphold the household which is the basis of the structure of society."

The purpose of this article is that each party, namely the husband and wife, has equal obligations in upholding their household.

Then it is reaffirmed in Article 31 regarding the equality of position between husband and wife in terms of their rights and obligations, where in Article 31 it reads:

- (1) The rights and position of the wife are in balance with the rights and position of the husband in domestic life and social life together in society.
- (2) Each party has the right to take legal action
- (3) The husband is the head of the family and the wife is the housewife.

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<sup>5</sup> Subekti, T. (2010). Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Ditinjau Dari Hukum Perjanjian. *Jurnal Dinamika Hukum*, 10(3), 329-338.

<sup>6</sup> Cahyani, T. D. (2020). *Hukum Perkawinan* (Vol. 1). UMMPress. p.7

The provisions contained in Article 31 eliminate the opinions contained in the Civil Code, that a woman, if she is to carry out a legal act, must be represented or obtain assistance from her husband.<sup>7</sup>

In Article 32 it is explained that a husband and wife must have a permanent residence, in this Article what is meant by a permanent residence is a house. Meanwhile, to determine where to live for his family is the choice and agreement of both parties.

Then in Articles 33 to 34 of the Marriage Law it is stated regarding the duties between husband and wife in managing a household.

In Article 33 of the Marriage Law it is explained that: "husband and wife must love each other, respect, be loyal and provide physical and spiritual assistance to one another."

Then in Article 34 explains the obligations and duties of each husband and wife, namely:

- (1) The husband is obliged to protect his wife and provide everything necessary for household life according to his ability.
- (2) The wife is obliged to manage household affairs as well as possible.
- (3) If a husband or wife neglects their respective obligations, they can file a lawsuit with the Court.

In the teachings of Islam, marriage is considered as a means of fulfilling divine purposes, because marriage will give birth to a broad and complex human relationship, in which the parties involved in the marriage are mutually binding.<sup>8</sup> In line with what is stated in the Marriage Law, the Compilation of Islamic Law also provides equal position for husband and wife in upholding their household to achieve a *sakinah, mawaddah, and warohmah* family.

In a marriage relationship, the position between husband and wife is the same, if there is a difference then it is only the result of the main functions and duties that have been given by Allah to both of them so that the advantages that exist on one side do not cause the other party to feel lacking and vice versa so that

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<sup>7</sup> Ahmadi, W. (2008). Hak Dan Kewajiban Keluarga Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. *Jurnal Hukum Pro Justitia*, 26(4). p.382

<sup>8</sup> Amri, M. S., & Tulab, T. (2018). Tauhid: Prinsip Keluarga Dalam Islam (Problem Keluarga Di Barat). *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*, 1(2), 95-134.

between husband and wife complement each other.<sup>9</sup>Arrangements regarding the rights and obligations of husbands and wives in the Compilation of Islamic Law are mentioned in Articles 77 to 84 of the Compilation of Islamic Law. Specifically regarding the husband's obligations are mentioned in Article 80 of the Compilation of Islamic Law, which includes:

(1)The husband is the guide, for his wife and household, but regarding matters of household affairs that are important to be decided by the husband and wife together.

(2)The husband is obliged to protect his wife and provide everything necessary for household life according to his ability.

(3)The husband is obliged to provide religious education to his wife, and provide opportunities to learn knowledge that is beneficial to religion, homeland and nation.

(4)According to his income, the husband bears:

- a. Livelihood, *kiswah*, and residence for the wife.
- b. Household expenses, maintenance costs and medical expenses for wife and children.
- c. Education Costs for children.

(5)The husband's obligation to his wife as referred to in paragraph (4) letters a and b above comes into force after the wife's perfect appearance.

(6)The wife can release her husband from the obligation towards herself as referred to in paragraph (4) letters a and b.

(7)The husband's obligations as referred to in paragraph (5) fall if the wife is *nusyuz*.

Then regarding the wife's obligations it is stated in Article 83 KHI which reads:

(1)The main obligation for a wife is to be physically and mentally devoted to her husband in what is justified by Islamic law.

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<sup>9</sup> Ahmad, A., & Rozihan, R. (2021). Analisis Metode Mafhum Mubadalah Faqihuddin Abdul Kodir Terhadap Masalah Nusyuz Suami. *BUDAI: MULTIDISCIPLINARY JOURNAL OF ISLAMIC STUDIES*, 1(1), 13-23.

(2) The wife organizes and manages daily household needs as well as possible.

In Article 84 KHI it is stated about *nusyuz*, it is when the wife does not want to carry out all her obligations in the household as stated in Article 83 paragraph (1) except for valid reasons.

There are several laws and regulations that regulate marriage or households, even though the issue of marriage is a private matter or in this case it is included in a civil case, the state still facilitates regulations with the hope that its citizens will have a harmonious and happy family life.

First, the regulation that will be discussed is Act No. 1 of 1974 concerning Marriage. Where in this law explained the husband's obligations in the household. In Article 34 paragraph (1) of the Marriage Law, it is explained that the husband is obliged to provide and fulfill the necessities of life for his household according to his ability. This means that the husband is obliged to provide a living for his family to meet the needs of his household, the most important household needs are, of course, the need for housing (board), proper clothing (clothing), and also nutritious food (food). These three things are the main things that must be fulfilled by a husband who is also the head of the family. This law also states that fulfilling household needs is done according to the ability of the husband, which means that everyone has a standard of ability to fulfill their household life and does not need or is not required to do so in a luxurious way. In terms of managing the household, it is carried out by the wife to help group expenses according to the needs of the household. As we know that marriage and household is also a long term cooperation. Husband and wife together help and complement each other to create a harmonious family.

In addition to the Marriage Law, there are other laws and regulations that regulate married life, for example, the Compilation of Islamic Law. In line with the regulations in the Marriage Law, the KHI also states that the husband as the head of the family also has the obligation to provide a living for his family to meet the needs of his household. However, the KHI explains in more detail what things a family head must fulfill in married life. Mentioned in KHI Article 80 paragraph (4), the husband is obliged to provide household needs in the form of:

- Livelihood, *kiswa*, and residence;
- Household expenses, maintenance and treatment of wife and children, and;
- Child Education Costs.

In KHI, it is also stated that the cost of educating children is also the obligation of the husband or head of the family, this needs to be underlined because

education can create the next generation of the nation and a family head is obliged to provide educational facilities for his descendants.

Even though the Marriage Law does not explain the cost of education for children, it is also necessary to consider that the head of the family should provide educational facilities for their children. Some families have indeed determined how they provide education for their children, remembering that education is also a right that must be obtained by a person based on the mandate of the 1945 Constitution of the Republic of Indonesia.

Apart from these two laws, there are also provisions in Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2007 concerning Child Protection. This law also states that both parents are obliged to provide education to their children. So it can be concluded that the obligation to provide education to children is actually the responsibility of both parents, but when viewed from the Marriage Law and KHI, where it is stated that both of them have their respective household maintenance duties, it can be concluded that maintenance is carried out by the husband as the head of the family is the provision of income and expenses in the livelihood of his household including financing the education of his children,<sup>10</sup>

Another law that discusses the obligations of husbands and wives is Act No. 23 of 2004 concerning the Elimination of Domestic Violence, in Article 9 paragraph (1) of this Law it states that: "Every person is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care or maintenance to that person." Then it continues in Article 9 paragraph (2) which reads: "Abandonment as referred to in paragraph (1) also applies to everyone who results in economic dependence by limiting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person."

The meaning of this article is that a person in a household is prohibited from abandoning his partner because based on applicable law he is obliged to provide a living which is used for the life of his household. This neglect also includes prohibiting their partner from working both inside and outside the home, which means that the perpetrator exercises control over the victim in the form of a work ban.

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<sup>10</sup> Nayara Advocacy. Bisakah Mengajukan Gugatan Nafkah Tanpa Cerai?. Accessed from <http://www.hukumonline.com/klinik/a/bisakah-mengajukan-gugatan-nafkah-tanpa-cerai-lt54dc068b67d8e> accessed on 7 July 2022 at 21.07 WIB

However, in the context of a husband abandoning his household, of course there are limitations in which a husband can be considered as having abandoned his household. Limitations regarding household neglect have been elaborated through Article 9 Jo. Article 49 of the PKDRT Law, namely as follows:<sup>11</sup>

- a. Does not finance household life or does not provide economic support to the family.
- b. Does not provide maintenance or housekeeping.
- c. Abandonment in the form of forbidding his wife from working.

If during the course of the marriage it has been proven that there has been neglect in the household then as a result there is a breakup of a marriage or divorce, then this does not result in the elimination of the crime. The limitation of this criminal act as a complaint offense in the PKDRT Law has a limitative nature, which means it only applies to certain articles, such as physical violence in Article 44 paragraph (4), psychological violence included in Article 45 paragraph (2) and violence sexual intercourse listed in Article 46 committed by a husband against his wife or vice versa, other than that is an ordinary offense.<sup>12</sup>

Another limitation is regarding the period of time a husband leaves his wife, mentioned in Article 19 letter b of Government Regulation No. 19 of 1975 which states, "If one party leaves the other party for two consecutive years without permission from the other party and without valid reasons or for other reasons beyond his control. Limitations regarding this period are important as a benchmark and also a judge's consideration in deciding a divorce suit filed by a wife, that a husband who has left and abandoned his household for two years or more in a row and without valid reasons, a wife can file for divorce. towards her husband.

Then if the husband is sentenced to imprisonment for five years or more after the marriage takes place, causing the husband and wife to be separated for more than two years and unable to support their family, the wife can also file for divorce. However, this also applies if the wife is sentenced to imprisonment for five years or more after the marriage takes place which causes the wife to be unable to carry out her obligations in household, the husband can also file for divorce or divorce suit against his wife. Regarding these provisions can be seen in Article 19 letter c PP No. 19 of 1975.

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<sup>11</sup> Irawan, A. (2019). Batasan penelantaran rumah tangga dalam perspektif hukum kekerasan dalam rumah tangga dan hukum perkawinan Indonesia. *JURNAL Hukum Responsif*, 7(2), 100-109.

<sup>12</sup> Ibid. p.108

### 3.2. Wife's Rights after Suing Husband for Divorce

Arrangements regarding the husband's obligations have been explained previously, where most of the husband's obligations in law are to provide maintenance to his wife and family, which the wife then manages this income in running a household.

Want a harmonious family, where each member performs their respective roles. So that a harmonious family can be created that helps and complements each other. However, there are many facts that not all marriages go the way most people want. There are many other factors that can affect married life, such as when one party does not carry out its respective obligations so that a husband and wife feel worried about things that can happen in the household that can lead to divorce.<sup>13</sup>

If a husband cannot carry out his obligations in the household by abandoning his family members, the PKDRT Law also stipulates criminal sanctions that can be given to that person, in accordance with the provisions of Article 49 of the PKDRT Law, namely if someone neglects other people in the household as referred to in Article 9 paragraph (1) and paragraph (2) of the PKDRT Law, shall be subject to imprisonment for a maximum of three years or a fine of a maximum of IDR 15,000,000.00 (fifteen million rupiah).

If a husband does not carry out his obligations in the household based on the regulations in Article 34 paragraph (3) of the Marriage Law, a wife may file a lawsuit with the Court to ask for her rights as a wife, in accordance with the provisions of Article 34 paragraph (3) of the Marriage Law which reads: "If a husband or wife neglects their respective obligations, they can file a lawsuit with the Court".<sup>14</sup>

Even though the Marriage Law only mentions their obligations, they do not mention them in detail, but a wife can file a lawsuit regarding household living expenses because the husband's obligation as the head of the family is to provide expenses to his wife to meet his household needs.

If a household ark can no longer be fought for, then the way out that can be done is by divorce. Even though it is indeed burdensome for both parties, there

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<sup>13</sup> Susanti, D. O. (2018). Perjanjian Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syari'ah). *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam*, 1(2), 1-30.

<sup>14</sup> Nayara.Loc.cit

are also several considerations for husbands and wives that divorce is the best way.

However, before submitting a lawsuit to the Court, it is advisable to first conduct deliberations and mediation to resolve the matter. If through the mediation route there is no settlement, then the problem can be sued in court.

The stages in filing a claim for alimony to the court require a lawsuit containing the facts and reasons for the lawsuit, accompanied by a marriage certificate and other evidence relating to the husband's income such as a salary slip. Proof of a living claim also includes:<sup>15</sup>

- a) How much is the husband's income; and
- b) How much maintenance should be given to wife and children.

Although in Islamic law and positive law it is explained that a wife who has been neglected by her husband can claim the right to maintenance and is even allowed to imprison her husband and also ask for a divorce if the husband still does not want to improve his attitude, but in reality this is rarely found when a wife who wants to sue her husband for abandoning her in her household life. Ordinary people generally think that if you claim a living right it is usually followed by a divorce suit, even though in fact a wife can file a living claim without filing for divorce, unless the husband really doesn't change and continues to neglect his wife and family then the wife can file a lawsuit.<sup>16</sup>

If it still doesn't work or maybe the wife chooses a way of divorce, then the wife can file a divorce suit at the District Court or the Religious Court which later in the lawsuit can ask for a living for her child and also a living for the wife even though she is divorced.

The procedure for filing a divorce suit filed by a wife against her husband at the Religious Court is to make a letter of claim beforehand, in addition to making a letter of claim, the wife is also required to prepare the evidence and witnesses needed during the trial. These evidences include the following:<sup>17</sup>

1. Proof of Marriage in the form of a Marriage Book issued by the KUA

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<sup>15</sup> Ibid

<sup>16</sup> Africa. LIFE LAWSUIT BY WIFE TO HUSBAND ISLAMIC LAW AND POSITIVE LEGAL PERSPECTIVE. IAIN Curup Thesis. 2019. Pg. 62. Accessed via <http://e-theses.iaincurup.ac.id/662/> on August 31, 2022 at 21:49

<sup>17</sup> Cara Mengajukan Gugatan Cerai Isteri Kepada Suami di Pengadilan Agama. M. Gabriel Haryanto, S.H.,M.H. Accessed from <https://pa-depok.go.id/cara-mengajukan-gugatan-cerai-isteri-kepada-suami-di-pengadilan-agama/> accessed on 11 August 2022 at 11.46 WIB

2. Proof of Legal Domicile as the Plaintiff, namely the Plaintiff's KTP
3. Proof of the birth of their children is a Child's Birth Certificate issued by the Civil Registry Office
4. Family card
5. Supporting evidence that can show the reasons for the divorce
6. Proof of Husband's Income in the form of a husband's salary slip to demand a living from his husband.
7. Evidence relating to Joint Assets, if the wife also files a claim for the division of joint assets.

In addition to filing for divorce, the wife can also file a lawsuit regarding the wife's rights after suing her husband for divorce. The rights of the wife that can be requested in a divorce suit are:<sup>18</sup>

1. *Iddah* alimony, namely maintenance given during the wife's *iddah* for 3 (three) months.
2. *Mut'ah* alimony, in which the husband is asked to pay *mut'ah* (gift) to his ex-wife.
3. Claims for a living that is owed, namely maintenance that is not given by the husband to his wife during his marriage.
4. Child Custody Rights, the wife has the right to care for children under 12 years of age.
5. Child support, namely maintenance given to the child until he is 21 years old if the custody of the child falls into the hands of the wife.

With regard to the maintenance of the child provided by the father, the nominal amount is determined by the judge after the marriage is declared dissolved before the court, the determination of the nominal amount is adjusted according to the father's financial ability by taking into account the needs of his child in terms of the maintenance and education of his children.<sup>19</sup>

It should be underlined that divorce also has further legal consequences as stated in Article 41 of Law no. 1 of 1974 as follows:<sup>20</sup>

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<sup>18</sup>Ibid

<sup>19</sup>Razak, D. A., and Widia Sulastri. (2022). *Putusnya Perkawinan dan Akibat Hukumnya dalam Bingkai Islam*. Yogyakarta: Penerbit Bintang Pustaka Madani, p.99

<sup>20</sup>Muhammad Syaifuddin, S. H., Sri Turatmiyah, S. H., & Annalisa Yahanan, S. H. (2022). *Hukum perceraian*. Sinar Grafika. p. 349

- a. Both father and mother are still obliged to care for and educate their children, solely based on the interests of the child, if there is a dispute regarding the control of the children, the court shall give its decision.
- b. The father is responsible for all the maintenance and education costs needed by the child, if the father is in fact unable to provide these obligations. The court can determine that the mother shares these costs.
- c. The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

If the ex-husband does not carry out the obligations or orders in the judge's decision in the form of providing alimony to his ex-wife and children, then the ex-wife can ask the head of the religious court to summon and warn the ex-husband to comply with the contents of the decision and not by subpoena.<sup>21</sup> If the husband still does not fulfill the summons from the court without proper reasons, the Chief Justice will issue an execution to the Registrar or Bailiff. However, if the ex-husband arrives to fulfill a summons from the court, the Chief Justice will issue a Court warning directed against the ex-husband to fulfill his obligations. The duration of the warning shall not exceed eight days. If it has been more than eight days, the ex-husband does not carry out or fulfill the obligations stated in the court decision, then a stipulation letter will be issued by the Chief Justice giving an execution order to the Registrar or Bailiff.<sup>22</sup>

#### 4. Conclusion

The husband as the head of the household has the obligation to provide a living for his wife and children in order to support his household life such as providing good shelter and food for his family members and providing good education for his children. Of course, the good level for each family is different. The law also explains that these needs do not have to be luxurious, but sufficient to support their family. If the husband as the head of the household does not provide alimony or neglects his family, the wife can file a claim for maintenance against the husband without filing for divorce from the husband. This living claim is addressed to the Religious Court and the District Court where the husband and wife live. However, if after filing a claim for maintenance it still does not provide satisfactory results for both parties, the wife can file a divorce suit to the court, if mediation has also been carried out between the two parties to resolve this marriage problem. In addition to a lawsuit for divorce, the wife can also file

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<sup>21</sup>Bolehkah Tidak Menafkahi Mantan Istri Pasca Bercerai?. Tri Jata Ayu Pramesti, S.H. accessed from <https://www.hukumonline.com/klinik/a/bolehkah-tidak-menafkahi-mantan-istri-pasca-bercerai-1t5039b10572c4a> accessed on 11 August 2022 at 12.14 WIB

<sup>22</sup>Ernaningsih, W., & Samawati, P. (2006). Hukum Perkawinan Indonesia. Palembang: PT. Rambang Palembang. p. 372

several demands that are still her rights as an ex-wife, namely demands for alimony, *mut'ah* alimony, alimony owed, child custody, and child alimony.

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