

Compilation of Islamic Law Perspective on Divorce Lawsuit Against Husbands Who Disregard the Alimony with Compensation

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Abstract

The obligation of a husband to provide alimony (*nafaqah*) to his wife is a cornerstone of Islamic family law, emphasizing the husband's role as the financial provider. This obligation persists even in cases of the husband's incapacity, unlike other forms of maintenance, and unfulfilled alimony becomes a debt that must be settled. This study explores the legal remedies available to wives when husbands neglect their alimony responsibilities, focusing on the Compilation of Islamic Law (KHI) in Indonesia. This research was conducted using the literature research method, examining literature materials related to the research problem. This study suggests that a wife can take legal action against her husband for divorce if he fails to fulfil his responsibility to provide for their family. The Compilation of Islamic Law states that both spouses have the right to seek legal redress if they neglect their duties.

Keywords: Alimony, Compensation, Divorce Lawsuit

1. Introduction

Provision for the family is not just an obligation, but also the main foundation that illustrates responsibility, love, and harmonious continuity in the family environment. After the completion and validity of a marriage contract, a sacred and noble mandate and obligation arises on the shoulders of husband and wife together and in balance, namely jointly responsible for organising the needs of life together, fostering a prosperous and happy household, educating their beloved children, and protecting and maintaining the preservation of household life and their offspring (Hamid, 1978).

The obligation to provide maintenance by a husband to a wife cannot be cancelled even if the husband is unable to do so, which is different from providing maintenance to parents or children. In fact, the unfulfilled maintenance becomes a debt and remains the responsibility of the husband. This is because for a wife, it is like *mu'awadhah* (reciprocity), because she has served her husband well. Therefore, when the wife disobeys her husband, the obligation to provide *nafaqah* is automatically cancelled, because she did not provide good service to her husband (Syafaat, 2015).



In Islamic Law, the husband is considered the leader of the family (Bani & Pate, 2015) and is fully responsible for financially supporting his wife and children. This includes ensuring that his wife's needs are met (Hudaya, 2013).

According to Article 80 of the Compilation of Islamic Law, the husband's responsibilities are outlined in paragraph (4) based on his earnings:

- 1) Alimony, *kiswah* and residence of the wife.
- 2) Household expenses, maintenance and medical expenses for the wife and children.
- 3) Education expenses for the children.

The husband, being the head of the household, has the duty to fully provide for the financial needs of his children and wife according to Islamic Law. This includes the husband's responsibility to cover the wife's various expenses, as well as the option for the wife to exempt her husband from this duty or forfeit her right to financial support. According to Article 80 (4) of the Compilation of Islamic Law, the husband is required to cover the costs of accommodation, household expenses, healthcare, and education for the family based on his income (Hudaya, 2013).

However, there are still many cases of neglect of alimony by a husband towards his wife, highlighting the need for further action in upholding justice and responsibility in husband-wife relationships according to the principles of Islamic law. Several factors can cause husbands to neglect alimony, such as economic instability, lack of awareness of financial responsibility, conflict in the husband-wife relationship, and a less responsible attitude towards the role as husband and head of the household, causing divorce, due to indifference in meeting the financial needs of the family (Ellman, 1989; Özcan & Breen, 2012).

2. Methods

This writing is carried out using the library research method, namely by examining library/literature materials related to the research problem. Once the information has been gathered, it is scrutinised through the process of data editing, data reduction, data presentation, and drawing conclusions.

3. Results and Discussion

Filing for divorce in the Religious Court/Sharia Court is seen as a way for women to seek fairness and resolution in their marital issues (Nasla & Ambily, 2020). Both partners are equally entitled to initiate proceedings to end their marriage. Instances where the wife seeks divorce could stem from experiencing abuse, lack of financial support from the husband, disharmony in the relationship, leading to a wish to part ways and dissolve the marriage (Helmi, 2014).

As per the Compilation of Islamic Law, a wife can seek a divorce if her husband fails to fulfill his duty of providing financial support. The article 77 paragraph (5) of the Compilation of Islamic Law states that in case either the husband or wife neglects their responsibilities, they can take legal action in the religious court. This article is in line with the marriage law article 34 paragraph (3) which reads 'if the husband and wife neglect their obligations, each of them can file a lawsuit with the court'.

This article gives the aggrieved party (either husband or wife) the right to seek legal protection by filing a lawsuit with the Religious Court. This can be in the form of a lawsuit for the fulfilment of certain rights, such as maintenance, a divorce lawsuit if the conflict cannot be resolved properly.

A wife can also file a criminal complaint against her husband based on the provisions of Article 304 of the Criminal Code (KUHP): 'Any person who with deliberate intent places or leaves a person in a state of distress, whereas according to the law applicable to him or by virtue of an agreement he is obliged to provide that person with life, care or maintenance, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred Rupiahs.' This article sets a limit of two years and eight months as the highest punishment for individuals who intentionally neglect or abandon someone in a state of distress, even if they are obligated by law or agreement to provide that person with necessities like food, health care, or shelter. Individuals seeking assistance with this matter might consider reaching out to the Legal Aid Organization or consulting with a solicitor.

The presence of the wife's ability to request a divorce puts her on the same level as the husband, who also has the power to initiate a divorce (Arendell, 2023). In essence, the wife is allowed to seek a divorce without the requirement of compensating the husband to return the dowry (Nuroniayah, 2016).

In the matter of receiving payment from the wife, the Islamic Legal Compilation (KHI) sets apart divorce lawsuits from *khulu'*. Unlike divorce complaints, *khulu'* does not always involve payment, as the ransom is used as the foundation for *khulu'*. Both divorce lawsuits and *khulu'* share the similarity of being initiated by the wife's desire for divorce.

The differences between ordinary divorce and *khulu'* are:

a) Ordinary divorce

There must be valid grounds in an ordinary divorce petition, the wife must present grounds that are recognised by law. These reasons must be clear, logical, and can be proven in court. These reasons are regulated in Article 116 of the Compilation of Islamic Law (KHI):

- 1) one of the parties commits adultery or becomes a drunkard, junkie, gambler and so forth.
- 2) one of the parties leaves the other party for 2 (two) consecutive years without the other party's permission and without valid reasons or for other reasons, beyond his/her capacity.
- 3) one of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage has taken place.
- 4) one of the parties commits cruelty or serious maltreatment that endangers the other party.
- 5) one of the parties becomes physically disabled or sick with the result that he/she is unable to fulfil his/her obligations as husband or wife.
- 6) there are continuous disputes and quarrels between husband and wife and there is no expectation that they will live together again in the household.

If these reasons are not proven in court, the wife's lawsuit may be rejected.

b) *Khulu'*

Khulu' does not require a formal reason, but there must be a subjective inability of the wife (Ramadhita et al., 2023). In *khulu'*, the wife's subjective reasons for not being able to continue the household are sufficient, without the need to prove fault or offence on the part of the husband. For example:

- 1) The wife feels uncomfortable or incompatible with the husband.
- 2) The wife does not wish to continue the domestic relationship without specific reasons that need to be proven.

However, in *khulu'*, the wife must be willing to give compensation (ransom) to the husband, usually in the form of a return of the mahr or other agreed form. Divorce only takes place if the husband agrees to the *khulu'* request and accepts the compensation.

4. Conclusion

According to the explanation provided, it is inferred by the writer that a wife can seek a divorce from her husband if he fails to provide maintenance, as it is outlined in article 77 of the Compilation of Islamic Law. In situations where a husband neglects maintenance and the wife decides to divorce him, she is not obligated to pay any compensation to him, as she has a legitimate reason to end the marriage. It is essential for both spouses to understand their rights and responsibilities in a marriage, particularly for the husband who should be aware of the types of support he should provide to his wife. This is to avoid the occurrence of quarrels that create disharmony in the household, because many divorces are found based on the wife's lawsuit which includes the problem of the wife's rights and obligations not being fulfilled, including neglect of maintenance.

To address the issue of alimony neglect and its legal implications, several measures can be taken. First, legal awareness campaigns should be intensified to educate both husbands and wives about their rights and responsibilities under Islamic law. Strengthening legal frameworks to impose stricter penalties on neglectful husbands and establishing support systems for financially dependent women, such as legal aid and counseling services, are also essential. Additionally, introducing mandatory mediation services before court proceedings could help resolve disputes amicably, while economic empowerment programs for women can reduce their dependency on alimony. Further research is needed to evaluate the effectiveness of current enforcement mechanisms and identify areas for improvement.

However, this study has certain limitations. It relies on a review of existing literature, which may not encompass all perspectives or recent developments. The focus on Indonesian Islamic law may not account for cultural and regional variations in its application. The lack of empirical data limits the ability to draw concrete conclusions about real-world effectiveness, and the study does not explore alternative dispute resolution methods or social support systems in depth. Addressing these limitations in future research and policy initiatives will be crucial to better support women in asserting their rights and achieving justice.

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