

# **Legal Analysis of Ghaib Divorce Based on Law Number 1 of 1974 Concerning Marriage (Study Decision Number 73/Pdt.G/2024 Court Religion Binjai)**

**Satya Eka Putri K, Hasdiana Juwita Bintang, Aulia Rahman Hakim Hasibuan**

## **Abstract**

The essence of marriage in Islam has the aim of creating a life of *sakinah, mawahdah* and *warahmah* in human life, a husband leaving his wife for a long time is a violation of *taklik talak*, supernatural divorce is a case where the wife files for divorce to her husband whose whereabouts are unknown. This study explains the rules of procedure and implementation of supernatural divorce in Indonesia and also the legal analysis of supernatural divorce based on decision Number 73 / Pdt.G / 2024 of the Binjai Religious Court. There is no significant difference in supernatural court divorce cases with ordinary court divorce cases, the only difference is in the stage of summoning the Defendant and the Right to file a supernatural lawsuit, the Wife must explain in detail the reasons for filing a lawsuit supported by a certificate of supernatural husband, evidence and strong witnesses. In the right to obtain a living from the supernatural husband, the rights of the ex-wife still apply, especially the right to support the child which is the responsibility of the husband if the husband suddenly returns home at an unspecified time. The nature of the research in this writing uses descriptive analysis, the type of research uses Normative law while the data collection method uses Library Research, and the type of data in this research uses Primary and Secondary Legal Materials. The results of this study are that, in accordance with Government Regulation Article 27 Number 9 of 1975, the Court has summoned the Defendant by announcing the radio, but the Defendant did not attend. Therefore, the Defendant cannot be questioned because he was not present at the trial and did not notify others to attend. The Plaintiff submitted written evidence and witnesses. The Panel of Judges granted the Plaintiff's lawsuit by default based on Article 119 paragraph (2) letter (c) of the Compilation of Islamic Law that the divorce between the Plaintiff and the Defendant occurred with one *ba'in shughra talaq*.

**Keywords:** Legal Analysis, Marriage, Divorce, Supernatural

Satya Eka Putri K

Legal Studies Study Program, University of Pembangunan Panca Budi, Indonesia

e-mail: [satyaeka1404@gmail.com](mailto:satyaeka1404@gmail.com)

Hasdiana Juwita Bintang, Aulia Rahman Hakim Hasibuan

Legal Studies Study Program, University of Pembangunan Panca Budi, Indonesia

e-mail: [hasdiana\\_juwita@yahoo.co.id](mailto:hasdiana_juwita@yahoo.co.id), [auliabuan@gmail.com](mailto:auliabuan@gmail.com)

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## Introduction

According to Article 1 Paragraph 1 of Law Number 16 of 2019 concerning Marriage, which is an amendment to Law Number 1 of 1974, 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 or household, based on the Almighty God. In the Islamic view, marriage is a bond that must be maintained and preserved. However, if the marriage bond has become inhumane, then the situation is different. Conflicts that occur in marriage often end in divorce, in some cases, divorce can be considered necessary to break the bond, because its continuation will bring harm. Although divorce is permitted by law, this is the act most hated by sharia, because it can eliminate the benefits for both parties in the husband and wife relationship.

Divorce is regulated in Article 39 paragraph (1) and (2) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Divorce, which states:

- a. Divorce can only be carried out before a court hearing after the court fails to reconcile the two parties.
- b. Divorce must have a strong enough reason to make the relationship between husband and wife no longer harmonious.

Legally, divorce can end the marriage bond between husband and wife. Based on Article 41 letter c of Law Number 16 of 2019 concerning Marriage, which is an amendment to Law Number 1 of 1974, "The court may order the ex-husband to provide living expenses and/or determine certain obligations for the ex-wife." Therefore, ex-husbands and wives have different rights and obligations after divorce.

There are three types of divorce, namely:

- a. Divorce Life:  
Divorce is a divorce that signifies the separation of a husband and wife or the end of the marriage bond according to law.
- b. Divorce by Death:  
Divorce by death is a divorce that occurs when one of the partners dies and the surviving party has to live alone.
- c. Mystical Divorce:  
A supernatural divorce is where one of the partners is unknown for more than six months or even years.

In a supernatural divorce, a spouse leaves their spouse without a clear and valid reason. Their whereabouts are also unknown or whether they are still alive or deceased. Article 20 Paragraph 2 of Government Regulation Number 9 of 1975 concerning marriage states that, "If the defendant's residence is unknown or it is not clear whether he has a permanent residence, then a divorce suit can be filed with the Court in the defendant's domicile."

According to the Compilation of Islamic Law (KHI), one of the reasons for divorce can be filed is when one party leaves the partner without permission for two consecutive years without giving a clear reason to the abandoned partner. This reason is explained in Article 116 of the KHI, Paragraph b, which refers to the term "Mafqud." It states that a couple can file for divorce to the religious court by using talaq or through a divorce lawsuit if they are abandoned for two consecutive years without clear information about their whereabouts. The Constitution of Islamic Law sets a two-year deadline for someone who is abandoned by their partner. If this time limit has passed, a person is considered entitled to file for divorce. However, the main problem with the

article is how long it takes before someone can file for divorce.

One example of a case of invisible divorce that has been decided by a judge at the Binjai Religious Court is in Decision number 73/Pdt.G/2024 of the Binjai Religious Court. The decision explains that the Plaintiff is 31 years old, Muslim, works as an honorary employee and lives in Binjai City, North Sumatra. And the Defendant is 30 years old, Muslim, high school education, former TNI AD job, former residence in Riau Province. However, now the clear and definite address in the territory of the Republic of Indonesia (GHOIB) is no longer known since 2023 as stated in the Letter of Statement PB Selayang II Subdistrict with Number 470/115/SK/I/2024 (Ghoib/address unknown throughout Indonesia), Riau.

The case of the Binjai Religious Court number 73/Pdt.G/2024 stipulates that the Plaintiff filed a divorce suit against the Defendant on January 25, 2024, which was registered at the Binjai Religious Court clerk's office based on the following arguments:

- a. The Plaintiff and Defendant were married at the Religious Affairs Office (KUA) of Medan Selayang District, Medan City, on December 1, 2018, as recorded by the Marriage Registrar on December 3, 2018, in accordance with Marriage Certificate Extract Number 384/04/XII/2018.
- b. That the Plaintiff and Defendant lived in the Defendant's official residence after getting married until the Defendant left them and had no children.
- c. That since October 2022 there has been a dispute between the plaintiff and the defendant, which caused the dispute was that the defendant had another woman (WIL) and did not return home together for one month. As a result, the defendant ran away with the other woman (WIL). On April 10, 2023, the plaintiff asked the defendant's superior to find out the defendant's whereabouts and his whereabouts were known, namely in Kisaran, and then brought back to the official residence. As a result, the plaintiff and defendant were in front of seniors to be advised by their families. That the defendant left home two weeks later, precisely on April 19, 2023, and until now his whereabouts are unknown.

Article 116 of the Compilation of Islamic Law point b, and Article 1 of Law Number 1 of 1974 point b, regulate the time limit for occultation. Based on these provisions, a person is considered occulted if he leaves his partner for two consecutive years. However, this is different from the decision of the Binjai Religious Court Number 73/Pdt.G/2024, where the Defendant left the plaintiff without a clear address for less than two years, namely one year and one month.

This shows that the defendant left his spouse for less than two years, which is the time limit required to be considered absent under the law. Although the defendant left without a clear address for more than one year, this does not meet the criteria for the time of absence set out in the law. Therefore, there is a difference between the actual circumstances in the case and the provisions of the time of absence applicable in the marriage law.

In this case, the author is interested in conducting research related to Invisible Divorce with the title "Legal Analysis of Invisible Divorce Based on Law Number 1 of 1974 Concerning Marriage (Study of Decision Number 73/Pdt.G/2024 of the Binjai Religious Court)".

## Formulation problem

From the background explained above, the author formulates the problem as follows:

- 1) What are the Rules of Procedure and Implementation of Invisible Divorce in Indonesia?
- 2) How is the Legal Analysis of Invisible Divorce Based on Decision Number 73/Pdt.G/2024 of the Binjai Religious Court?

## Method Study

This study uses a normative legal research method. The data sources obtained in this study are obtained from secondary data, namely data collected through literature studies on the research materials used and the secondary data is divided into several parts, namely, primary legal materials, secondary legal materials and tertiary legal materials.

Primary legal materials are data that have legal force such as laws and regulations, secondary legal materials provide explanations regarding primary legal materials such as books, journals, the internet and tertiary legal materials are legal materials that provide important instructions or explanations related to primary and secondary legal materials, such as dictionaries.

## Results and Discussion

### 1. Rules of Procedure and Implementation of Invisible Divorce in Indonesia

#### a. Definition, Purpose of Marriage and Legal Basis for Marriage

##### 1). Definition of Marriage

According to Article 1 of Law Number 1 of 1974 concerning Marriage, 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 or household, based on the Almighty God. Meanwhile, according to Article 2 of the Compilation of Islamic Law, marriage is a strong contract (*mistaqan ghalidan*) which aims to obey the commandments of Allah, and its implementation is considered as worship.

Marriage comes from the word "kawin", which means forming a family with the opposite sex, having sexual intercourse, or having sex, and from the word "an-nikah", which means gathering, entering each other, and wathi or having sex. However, Sayid Sabiq stated that marriage is "a *sunnatullah* that applies to all of God's creatures, both humans, animals and plants".

##### 2). Purpose of Marriage

Based on Law Number 1 of 1974, the purpose of marriage is to build a happy and eternal family based on the Almighty God, which means that marriage must last a lifetime and cannot be broken off just like that. Meanwhile, according to the Compilation of Islamic Law, the purpose of marriage is to create a household life that is *sakinah*, *mawaddah*, and *rahmah*.

In Islam, the purpose of marriage is to follow religious guidance by forming a harmonious, prosperous, and happy family. A harmonious family means that each member carries out their rights and obligations, while a prosperous family is a family that achieves physical and spiritual peace because the physical and spiritual needs of life are met, resulting in happiness in the form of affection between family members.

### 3). Legal Basis for Marriage

According to Law Number 1 of 1974 concerning Marriage, Article 2 paragraph (1) and Article 2 paragraph (2), "A marriage is valid if it is carried out according to the laws of each religion and belief." All marriages are recorded in accordance with the Law. However, the Compilation of Islamic Law states that the legal basis for marriage is: "Marriage according to Islamic Law is marriage, namely a very strong contract or *miitsaaqan ghalizhan* to obey Allah's command and carrying it out is worship." The purpose of marriage is to build a household that is *sakinah*, *mawaddah*, and *rahmah*.

### b. Forms and Types of Divorce

There are two types of supernatural divorce, namely supernatural divorce and supernatural divorce. Where in supernatural divorce, the divorce suit is filed by the wife against her husband to the Religious Court, where the husband's address or whereabouts are unknown, while supernatural divorce is a divorce suit filed by the husband against his wife where the wife's address or whereabouts are unknown.

The forms and types of divorce in Indonesia, viewed from the perspective of procedures and proceedings in the Religious Court, have been regulated in Government Regulation Number 9 of 1975, which is divided into 2 parts, namely:

#### 1). Divorce Based on Talaq.

Article 117 of the Compilation of Islamic Law in Indonesia Chapter XVI states that divorce is a promise made by the husband before a religious court if it is one of the reasons for the dissolution of the marriage. In the Compilation of Islamic Law, there are two types of divorce based on talak, namely talak raj'i and talak ba'in. The differences between talak raj'i and talak ba'in are:

##### a). Talak Raj'i

As stated in the Al-Quran surah Al-Baqarah verse 229, the husband can perform talaq raj'i three times, and if the husband says it again after three times, The husband can no longer ask his wife to reconcile.

##### b). Talak Ba'in.

According to Article 119 of the Compilation of Islamic Law, the provisions of divorce ba'in which originate from the provisions of Islamic law are distinguished from the provisions of divorce ba'in, which originate from the concept of marriage *fasakh*, as divorce (does not reduce the number of divorces). Thus, the man does not have the possibility of reconciling after pronouncing divorce.

#### 2). Divorce Based on Lawsuit

According to K. Wantjik Saleh, a divorce suit is what is meant because there was a previous lawsuit from one of the parties to the Court that had been decided by the Court. In Islamic law, a divorce suit is called *khulu'*, derived from the word *khal'u al saub*, which means taking off clothes, because women are men's clothes and men are women's guards. Allowing *Khulu'* is based on verse 229 of Surat Albaqarah.

### c. Ta'liq Talaq

According to Sajuti Thalib, because the husband has the right to pronounce a divorce, then the *taklik talak* shows that the husband has the authority to pronounce a divorce on his wife. According to the legal understanding in Indonesia, *taklik talak* is a kind of promise that the husband will

pronounce a divorce on his wife, if the husband violates one of the promises. Because the husband violates one of the conditions of the taklik talak, the wife can file for divorce to the Religious Court if the household situation makes her depressed.

The elements of ta'liq talaq are:

- a). Husband leaves wife.
- b). Husband not providing for his wife.
- c). Husband hurt wife.
- d). Husband doesn't care about wife.
- e). Wife not pleased.
- f). Wife reports this problem to the Religious Court.
- g). Wife pays i'wadh money.
- h). Husband pronounces divorce.
- i). Money The husband's inheritance was handed over to the court and then given for the benefit of social worship.

If a husband leaves his wife and children for a long time without providing physical support, such as living expenses, and without giving news for years, then the husband is considered to have neglected his wife and children according to the law. A wife who feels dissatisfied with being neglected by her husband has the right to file a complaint at the Religious Court, and the taklik talak can be enforced in their marriage.

#### **d. Procedures Implementing Divorce Ghaib in Indonesia**

Divorce according to Article 73 of Law Number 7 of 1989 concerning Religious Courts, namely:

- 1). A divorce suit can be filed by the wife or her attorney to the court whose jurisdiction includes the plaintiff's place of residence, unless the plaintiff intentionally leaves the shared residence without permission from the defendant.
- 2). If the plaintiff lives abroad, the divorce suit is filed with the court whose jurisdiction includes the defendant's residence.
- 3). If both parties, the plaintiff and the defendant, live abroad, the divorce suit is filed in the Court whose jurisdiction covers the place where their marriage took place.

In the Religious Courts Law, as well as Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI), it is regulated in Article 132 paragraph 1 that a divorce suit can be filed by the wife or her attorney to the Religious Court whose jurisdiction covers the Plaintiff's residence, unless the wife leaves the residence without the husband's permission. Therefore, even though the Defendant is in another place or his whereabouts are unknown, the Religious Courts Law and KHI have stipulated that a divorce suit is filed with the Religious Court whose jurisdiction covers the Plaintiff's (wife's) residence.

The conditions that must be met by the wife (plaintiff) to file a supernatural divorce suit at the Religious Court are:

- 1) The plaintiff must take care of certificate of invisibility in the sub-district where the Defendant resides according to his KTP (Resident Identity Card).
- 2) The applicant submits an application for supernatural divorce or supernatural talaq by the applicant to the Religious Court.
- 3) The applicant pays the down payment for the case as stipulated in the religious court.
- 4) The applicant must wait for the supernatural divorce process which can take up to 4 months.

- 5) The summons for a defendant whose whereabouts are unknown (ghaib) is carried out through the mass media, newspapers or radio for approximately 3 months.
- 6) After the plaintiff files a supernatural divorce lawsuit at the Religious Court, the next step is the examination of the divorce lawsuit. Every time a hearing is held, the Religious Court that examines the divorce lawsuit, both the plaintiff and the defendant, or their attorneys will be called to attend the hearing.
- 7) Next, the applicant will be summoned by the religious court to attend a joint trial with two witnesses present.
- 8) After that, the Religious Court will issue a ruling regarding the supernatural divorce trial.
- 9) For supernatural divorce, the applicant will pronounce the divorce vow. If the supernatural divorce suit is accepted, the clerk will issue a divorce certificate to the plaintiff.

Settlement of divorce cases through supernatural justice in the Religious Court does not have any significant differences compared to divorce through ordinary justice. The main difference lies in the stage of summoning the defendant, which is carried out in accordance with the provisions of Article 27 of Government Regulation Number 9 of 1975, namely by announcing it through newspapers or mass media. The announcement is made twice, with a one-month gap between the first and second summons. Meanwhile, between the second summons and the trial, a minimum time gap of three months is set.

The provisions in the Compilation of Islamic Law Article 139 are similar to the provisions contained in Government Regulation Article 27 Number 9 of 1975 concerning Marriage. In this case, if the court has summoned the invisible husband (Defendant) by posting the lawsuit on the notice board of the Religious Court and announcing it through the media, such as radio, but the Defendant is still not present, then the divorce suit filed by the wife can be accepted even though the Defendant is not present. This situation is called a default decision.

According to Article 126 HIR, the judge may decide a case with a default decision after the Defendant has been summoned and is absent without a valid reason. However, the Defendant has the right to challenge the default decision through a default legal remedy. In issuing a default decision, the Panel of Judges must ensure that the Defendant has been legally summoned and the trial process has been carried out in accordance with the applicable procedural law in Indonesia.

### **e. Rights and Obligations Husband and Wife If submit Divorce**

The rights and obligations between husband and wife are a reciprocal relationship regulated by Indonesian Law. The position of the rights and obligations of husband and wife is regulated in Law Number 1 of 1974 which has been amended by Law Number 16 of 2019 concerning Marriage, specifically in Articles 30 to 34. In addition, this is also regulated in the Compilation of Islamic Law, specifically in Articles 77 to 84. Marriage provides rights and obligations for husband and wife. One of the main obligations of a husband to his wife is to provide a living, which includes food, clothing (kiswah), and a place to live together. In addition, the husband must also provide physical and spiritual sustenance to his wife. The husband has the responsibility to lead the family and take care of his wife, provide protection, and meet household needs according to his abilities. Not only that, the husband must also give his wife the opportunity to learn about religion and knowledge that is useful for religion, the state, and society.

In an unseen divorce decision, the judge does not eliminate the husband's rights, including his obligation to support his wife. The wife still has the right to demand her rights by showing strong evidence, although in the case of a husband who is unseen or mafqud, support for the wife and children may not be met. However, if one day the husband returns, the wife's rights will still apply

in the eyes of the law. The wife's rights after divorce are maintained, including iddah living, mut'ah living, and madhiyah living. This provision remains in effect even if the husband who is being sued for divorce returns home. Regulations regarding the wife's rights after divorce are contained in Article 149 of the Compilation of Islamic Law.

## **2. Legal Analysis of Invisible Divorce Based on Decision Number 73/Pdt.G/2024 Binjai Religious Court**

Divorce unseen (or divorce mafqud) refers to a situation where one of the partners, especially the husband, is missing or unseen (mafqud) and his whereabouts are unknown, whether he is still alive or dead. In Arabic, "mafqud" means "lost". According to sharia terms, mafqud is a person who has left his place of residence and there is no information regarding his condition or whereabouts. In Islamic law, there are provisions for fasakh (annulment of marriage) due to the husband's unseen (al mafqud), namely when the husband leaves his residence for a long time without any news about where he has gone. This situation certainly makes the life of the abandoned wife more difficult, especially if the husband does not leave any support or support for his wife and children. This can cause the wife to experience difficulties in meeting her daily needs.

By considering several of these definitions, it can be concluded that the divorce referred to as "divorce ghaib" or "divorce mafqud" according to Islamic law is a type of divorce where one of the parties has left his residence for a long time and it is not known where he lives or whether he is still alive.

In this case, the judge can determine a person's mafqud based on various opinions that he believes as a basis for determining whether the person is alive or dead. The term mafqud can be translated as al-ghoib. In language, this word means cursing, hiding, and being absent. Missing is divided into two categories, namely:

- 1). Continuous disappearance, where the whereabouts are known and there is news or information about it.
- 2). A missing person, whose whereabouts are completely unknown and there is no information about him.

The judge's legal considerations can be understood in two senses, namely broadly and narrowly. In a broad sense, the judge's legal considerations refer to the psychological process carried out by the judge in reaching a decision on a case, while in a narrow sense, the judge's legal considerations relate to the arguments underlying the decision, which include logical analysis of a decision, the relationship between considerations and decisions, and the accuracy of the reasons supporting the decision. Legal arguments are the basis and method for judges in finding the law, which is used as a consideration in decision making. Legal arguments are a series of explanations delivered in a clear and logical manner to strengthen or reject an opinion or idea, related to legal principles, legal norms, applicable legal regulations, and the legal system and legal discovery.

In the case of supernatural divorce, the trial process begins four (four) months after the lawsuit or application is registered or receives a case registration number. During this period, the husband or wife who has left the house will be announced through the Binjai Religious Court announcement. After four months have passed, there is no news or news about them anymore. After four months have passed, the trial process immediately presents witnesses. Based on article 119 paragraph 2 letter (c) of the Compilation of Islamic Law, the divorce between the Plaintiff and the Defendant occurs with one ba'in shughra talaq.

According to the decision of the Binjai Religious Court (Number 73/Pdt.G/2024/PA.Bji),



even though the defendant has been officially and properly summoned, and his absence is not caused by a legitimate obstacle, the default decision must be examined in default. This default decision meets the provisions of Article 125 HIR, which means that a decision made without the presence of the defendant can be granted in each case. The application must be submitted to the religious court that has jurisdiction over the mutually agreed place of residence, if the Applicant (Defendant) leaves the residence without permission. When the Defendant or her husband leaves one of the parties, this supernatural lawsuit is made. for several months and its whereabouts are unknown for sure, but it is estimated to be in the territory of the Unitary State of the Republic of Indonesia.

In Decision Number 73/Pdt.G/2024/PA.Bji, the Panel requires the Plaintiff to prove the claims of his lawsuit. The Plaintiff stated that the Plaintiff requested a punishment of one bain shugro against the Defendant because there had been a domestic dispute between the Plaintiff and the Defendant. The Plaintiff also submitted evidence, including letters P.1 and P.2, and two (or more) witnesses. The Plaintiff and Defendant's homes were initially harmonious and harmonious. However, since October 2022, their household has become disharmonious and there have been frequent disputes and quarrels because the Defendant has another woman (WIL). As a result of this dispute, the Plaintiff and Defendant have lived in separate residences until this decision letter was issued, because the statements of witnesses I and II meet the requirements of Articles 171 and 172 HIR. As a result, the Plaintiff and Defendant have lived in separate residences.

In my opinion based on these considerations, in decision Number 73/Pdt.G/2024/PA.Bji, it is of the opinion that according to the decision letter accompanied by the existing witnesses, it is true that because the dispute and quarrel have been proven and have resulted in them not being able to live in harmony as husband and wife, even though the family has tried to reconcile but has not succeeded, then maintaining the Plaintiff and Defendant's household is no longer effective. This is because it is no longer in accordance with the purpose of marriage itself, namely to form a happy family physically and mentally, which is *sakinah, mawaddah, and rahmah*, as explained in the Al-Qur'an Surah Ar-Ruum verse 21 and Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage.

The elements of the grounds for divorce based on Article 19 letter (b) of Government Regulation Number 9 of 1975, in conjunction with Article 116 letter (b) of the Compilation of Islamic Law, have been fulfilled and therefore in accordance with the evidence accompanied by 2 witnesses, it is concluded that the Plaintiff has sufficient grounds for divorce. Based on the provisions of Article 39 paragraph (2) of Law Number 1 of 1974, as amended by Law Number 16 of 2019, concerning Amendments to Law Number 1 of 1974, concerning Marriage, the Plaintiff's lawsuit a quo has been justified and is not against the law, so that the Plaintiff's lawsuit for divorce from the Defendant should be granted by imposing a divorce of one bain shughra on the Defendant.

Then the Defendant never came to appear in court and also the Defendant could not be asked for information because the Defendant was never present at the trial and did not order anyone else to attend the trial as his attorney. Even though he had been officially summoned, based on the provisions of Article 126 HIR, the Defendant was declared absent and the Plaintiff's lawsuit was granted by default. Because the divorce imposed by the Court is included in the category of *talak satu bain sughraa*, then according to the intent of Article 119 paragraph (1) and (2) of the Compilation of Islamic Law (KHI), the Plaintiff and Defendant are not allowed to reconcile, except with a new marriage contract, even though they are still in the *iddah* period.

Based on these considerations, the waiting period or *iddah* for the Plaintiff is set for at least 90 (ninety) days from the date the decision has permanent legal force as intended in Article 11 paragraph (1) and paragraph (3) of Law Number 1 of 1974 in conjunction with Article 39 of

Government Regulation Number 9 of 1975 paragraph (1) letter (b) in conjunction with Article 153 paragraph (2) letter (b) and Article 153 paragraph (4) of the Compilation of Islamic Law (KHI). Basically, in the judge's decision in a divorce case with an invisible husband, the basis for the judge's consideration is the absence of the defendant whose whereabouts are unknown and the issuance of a certificate of absence from the local sub-district office.

## Conclusion

Based on the results of related research **Legal Analysis of Invisible Divorce Based on Law Number 1 of 1974 Concerning Marriage (Study of Decision Number 73/Pdt.G/2024 of the Binjai Religious Court)** It can be concluded as follows:

1. Based on the Legal Basis for Invisible Divorce in Indonesia is Government Regulation (PP) Number 9 of 1975 regulating the implementation of Law Number 1 of 1974 concerning marriage related to provisions for invisible divorce based on Article 73 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts. The right to file a supernatural lawsuit, the wife must explain in detail the reasons for filing a lawsuit to the court with a certificate of the husband's invisibility along with strong evidence and witnesses. In the right to obtain maintenance from the invisible husband, the rights of the ex-wife remain valid, especially the right to provide for the child which is the responsibility of the husband if the husband suddenly returns home within an unspecified time.
2. The Panel of Judges' considerations granted the Plaintiff's lawsuit by default because the Defendant never attended the court summons at the Binjai Religious Court. In accordance with the Compilation of Islamic Law Article 139 as regulated in Government Regulation Article 27 Number 9 of 1975, the Court has summoned the Defendant by announcing it on the radio and the Defendant did not attend. The Defendant cannot be questioned because the Defendant never attended the trial and did not order anyone else to attend the trial as his attorney. The Defendant left his wife without providing for her physical support with strong evidence and witnesses it has been proven that the Defendant neglected his wife so that the Panel of Judges granted the Plaintiff's lawsuit by default, with the provisions of Article 124 HIR (Article 77 Rv) and Article 125 Paragraph (1) HIR (Article 73 Rv) the default system in procedural law is to encourage the parties to obey the rules of procedure, so that the examination process for the settlement of the case is free from anarchy or arbitrariness.

## Suggestion

1. ShouldIf there is a problem in the household, for example, if the husband has another woman, then it is best to discuss it properly with the wife that the husband wants to remarry (polygamy). If the wife objects and the husband insists, it is best to mediate in the Religious Court. The husband should not leave his wife for a long time, even years, without giving any news, which is very detrimental to the wife.
2. It is better to note again that the defendant's absence needs to be further ascertained, whether the absence was caused intentionally by the defendant and had received a proper summons, or was intentionally hidden by another party so that the defendant did not know about the

existence of the summons, so that the defendant did not come to attend the trial.

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### **Constitution**

- Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 perubahannya dalam Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan
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