



**Women's Rights Protection Through *Taklik Talak*:
A Response to Missing Person Problem in Sukaati Village, Bogor, West Java**

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Abstract

This research discusses legal issues experienced by women as wives in Sukahati Village, Bogor, West Java. After marriage, their husbands left and never came back or disappeared. In most cases, they solve the problem by managing of what is colloquially called a "certificate of missing person," as a such kind of administrative legal procedure. However, the process of issuing the certificate is quite time-consuming, causing the wife who is left behind is increasingly experiencing losses, both materially and non-materially. The research discusses the facts how a woman as a wife tries to protect their rights when they were abandoned by their husband and stated legally as a missing person. Using non-doctrinal (empirical) legal research method based on both primary and secondary data, the research concludes that there are still many women as wives who do not understand how to solve problems when they are abandoned by their husbands as missing persons. There is a legal procedure, namely *taklik talak*, that can be used by women as wives when they experiencing problems with the loss of their husbands. Conceptually, *taklik talak* is intended to protect the interests of women as wives in a marriage bond.

Keywords: Administrative Legal Document; Missing Person; Religious Court; *Taklik Talak*

Abstrak

Penelitian ini membahas permasalahan hukum yang dialami oleh perempuan sebagai istri di Desa Sukahati, Bogor, Jawa Barat. Setelah menikah, suami mereka pergi dan tidak pernah kembali atau menghilang. Dalam kebanyakan kasus, mereka menyelesaikan masalah tersebut dengan mengurus apa yang secara umum disebut "surat keterangan orang hilang", sebagai salah satu prosedur hukum administratif. Namun, proses penerbitan surat keterangan tersebut cukup memakan waktu, menyebabkan istri yang ditinggalkan semakin mengalami kerugian, baik materiil maupun non-materiil. Penelitian ini membahas fakta bagaimana seorang perempuan sebagai istri berusaha melindungi hak-haknya ketika ditinggalkan oleh suami dan dinyatakan secara hukum sebagai orang hilang. Dengan menggunakan metode penelitian hukum non-doktrinal (empiris) yang berbasis pada data primer dan sekunder, penelitian ini menyimpulkan bahwa masih banyak perempuan sebagai istri yang belum memahami bagaimana menyelesaikan masalah ketika mereka ditinggalkan oleh suami mereka sebagai orang hilang. Terdapat prosedur hukum, yaitu taklik talak, yang dapat digunakan oleh perempuan sebagai istri ketika mereka mengalami masalah dengan kehilangan suami mereka. Secara konseptual, taklik talak bertujuan untuk melindungi kepentingan perempuan sebagai istri dalam ikatan perkawinan.

Kata Kunci: *Dokumen hukum administrasi, orang hilang, pengadilan agama, taklik talak*

Introduction

In daily life, women are sometimes subject to being vulnerable to actions that harm their rights as human beings. The cause of such condition can be emerged by several social and cultural factors in society's daily life.¹ One example of detrimental actions that can be experienced by women is when they are in a marital relationship. As study from Aditya and Waddington,² it explains that in Indonesian social system women are placed in poor or unlucky position rather than man. In marriage, many women as wives experience situations where their husbands leave and never return or disappear.

In general, the state of the absence of a person, apart from being commonly referred to as a missing person, can also be referred to as "gaib" person. In relation to the issue of the absence of a person or missing person, civil law expert J. Satrio argues that an absent person is a person who leaves his residence for a relatively long

¹ Fajri M Kasim, et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam* 22, No. 2 (2022). Yusna Zaidah and Raihanah Abdullah, "The Relevance of *Ihdad* Regulations as a Sign of Mourning and Human Rights Restriction," *Journal of Human Rights, Culture and Legal System* 4 no. 2 (2024), p. 436-434.

² Rizky Irfano Aditya and Lisa Waddington, "The Legal Protection Against Child Marriage in Indonesia," *Bestuur* 9 no. 2 (2021), p. 128.

time without appointing another person to represent and manage his interests.³ In the context of family law, the problem of missing people can be the cause of cases of neglect, both for abandoned husbands, wives and/or children. According to a study by Hanapi and Risma, that law problem is caused by several factors, namely: *first*, social and cultural structural conditions which in some places still discriminate against women; *second*, financial, economic conditions or poverty factors; *third*, in some places, neglect case that occurs in a family is considered as a private matter that does not need to be interfered with or known by other parties; and *fourth*, the performance of law enforcement is still weak in handling cases of neglect. These factors ultimately result in many cases of neglect occurring repeatedly in society, especially towards wives and children in the family.⁴ In connection with those factors, a study from Hariati and Salat also confirm that in several places or cultures in Indonesia is still often found practice that make wife economically dependent on her husband. This action will not only make the wife experience economic discrimination, but will also make her truly helpless when facing neglect by her husband.⁵

In the legal system in Indonesia, in the context of marriage law, the situation in which one of the married couples disappears is mentioned in the Elucidation of Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage. The provision mentions a situation where one of the married couples disappears with the sentence "One party leaves the other for 2 (two) consecutive years without the permission of other party and without a valid reason or for other reasons against his will." This situation then can be used as one of the reasons to cut off the marriage bond legally.⁶ In the human rights perspective, that provision also reflects that Indonesian marriage law based on Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 concerning Amendment to Law Number 1 of 1974 concerning Marriage gives guarantee and attention to human rights matter, especially for women as wife and children, in line with The 1945 Constitution of the Republic of Indonesia.⁷ In addition, Article 44 paragraph (4) of Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration also regulates the issue of missing person by stating, "In the event that it is unclear where a person is because he is missing or dead but his body is not

³ Muhammad Yasin, "Bahasa Hukum: Orang yang Dinyatakan Hilang," <<https://www.hukumonline.com/berita/baca/lt5b5ef4fdc511e/bahasa-hukum--orang-yang-dinyatakan-hilang>>, (2018), accessed: 20 June 2024; Yulia, *Hukum Perdata* (Lhokseumawe: CV. Biena Edukasi, 2015), p. 55-56.

⁴ Agustin Hanapi and Bina Risma, "Penelantaran Isteri oleh Suami sebagai Sebab Perceraian (Studi Kasus di Mahkamah Syar'iyah Tapaktuan)," *Samarah* 2 no. 2 (2018), p. 407-408.

⁵ Sri Hariati and Musakir Salat, "Ketidakadilan Pembagian Harta Gono Gini pada Kasus Perceraian," *Jurnal Ius Kajian Hukum dan Keadilan* 1 no. 3 (2013), p. 450.

⁶ Sheila Fakhria, "Konsep Talak: Versus Situs www.darussalaf.or.id dan Undang-Undang Perkawinan di Indonesia," *Jurnal Al-Ahwal* 7 no. 1 (2014), p. 48-54.

⁷ Peter Jeremiah Setiawan, et al., "Juridical Implications of Unregistered Marriage Against Legal Protection in the Domestic Violence Law," *Media Iuris* 6 no. 3 (2023), p. 457-458.

found, registration by the Civil Registration Officer is carried out after the decision of the Court."

In principle, when viewed in the context of marriage law in Indonesia, the above arrangements have the same goal, namely to provide protection for husbands or wives who experience a situation where the spouse they marry has disappeared. Uncertainty about the existence of one partner can cause losses, both psychologically and economically, for the abandoned partner, including harming the children. Likewise, a spouse who disappears without a reasonable reason is a form of violation of the obligations that arise for couples who are bound by a legal marriage relationship, giving rise to the right for the abandoned partner to defend their interests through a legitimate institution or mechanism.⁸

In practice, efforts to overcome the problem of missing person have not been able to run smoothly and without obstacles. Although the legislation was there, in practice there are still obstacles, among others, when dealing with the problem of missing person, not everyone understands what actions they should take in accordance with applicable law. For a wife or husband who is left behind by a missing spouse, he or she does not know what to do to properly address the problem so that losses can be minimized. And for authorized officials in formal institutions, such as the government, especially the organizational apparatus of the Regional Government as well as the Police and the Courts, they still do not have uniformity in acting to deal with or resolve the problem of missing person. As a result, individuals who directly experience the problem of missing persons also feel more disadvantaged considering that the problem cannot be resolved quickly.

Based on this background, the researchers conducted research on the legal issues of missing persons experienced by women as wives, and how they responded to these problems through several alternative mechanisms provided by Indonesian legal system. Regarding the issues of missing persons, there have not been many studies published in journals regarding this matter. Even if there are, such as studies conducted by Sutanto,⁹ Tanuwidjaja,¹⁰ Heriyani and Yuniarlin,¹¹ most of the studies are still related to the process of inheritance distribution, in which one of the parties in the inheritance process includes in the category of missing person. Other researchers have also provided explanations about husbands who disappeared and

⁸ Muchimah, "Komparasi Hak Istri pada KHI, HAM dan Mazhab," *Jurnal Al-Ahwal* 10 no. 2 (2017), p. 206-207. Bastiar, "Pemenuhan Hak dan Kewajiban Suami Istri Mewujudkan Rumah Tangga Sakinah: Analisis Disharmonisasi Pasangan Suami Istri di Kota Lhokseumawe," *Jurnal Jurisprudensi* 10 no. 1 (2018), p. 88.

⁹ Haryadi Sutanto & Henny Tanuwidjaja, "Kedudukan Ahli Waris Terhadap Harta Warisan Seseorang yang Diduga Meninggal Dunia (Keadaan Tidak Hadir)," *Jurnal Perspektif* 22 no. 3 (2017), p. 236-237.

¹⁰ Tan Henny Tanuwidjaja, "Akibat Hukum Pewarisan Karena *Afwezigheid* Terhadap Ahli Waris Menurut Hukum Perdata Barat (B.W.)," *Jurnal Hukum Bisnis* 3 no. 1 (2019): 32-33.

¹¹ Endang Heriyani and Prihati Yuniarlin, "Perlindungan Hukum Bagi Ahli Waris yang Tidak Hadir (*Afwezig*) Dalam Pembagian Harta Warisan di DIY," *Jurnal Transparansi Hukum* 2 no. 1 (2019), p. 27-28.

abandoned their wives, for example through a study by Nelly and Lubis,¹² but the explanation is still brief. The explanation from Nelly and Lubis is also only in the context of revealing that the condition of a husband who abandons his wife is the third most common reason for divorce after reasons for living or family economy and domestic violence.

From this study, the researchers hope that community members and Government Officials as well as Courts can take appropriate and effective steps when they face the problem of missing persons, so that the problem can be responded to appropriately. In addition, this study is also expected to be able to complement the studies of several previous researchers who have discussed the issues of missing persons but from different perspectives, as described above.

To discuss the main topic of the research, this research uses non-doctrinal (empirical) legal research method. The data or information analyzed in this study comes from several primary legal materials, such as Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (*Kompilasi Hukum Islam*). Then, secondary legal materials derived from previous researches are also used in this study.

Researchers also collect and process information obtained through interviews with several relevant sources or informants. The interviews were conducted by the researchers on December last year, and took place at the Sukahati Village office, Cibinong District, Bogor Regency, West Java Province (hereinafter referred to as Sukahati Village). Between the research and the publication of this study as an article, a certain grace period is intentionally given to protect the interests and maintain the confidentiality of the sources or informants, considering that this study reveals matters that constitute the domestic privacy of certain parties. The data or information obtained by the researchers were then analyzed qualitatively by using the statutory and conceptual approach.¹³

The Authority of the Religious Courts

As regulated in Article 2 of Law Number 1 of 1974 concerning Marriage, it is emphasized that in the context of marriage law, 2 (two) legal bases apply simultaneously, namely national law or state law and religious law. Religious law regulates various aspects of marriage that are not covered by statutes or state law. In its concrete and formal form, Islamic religious law in the context of marriage law is formalized in the Compilation of Islamic Law (KHI) which specifically regulates several provisions of Islamic Law relating to marriage. These two laws also regulate mechanisms for resolving marital disputes.¹⁴

¹² Jumni Nelly and Sobhan Lubis, "Community Support for Divorced Women: A Study in Riau Province," *Samarah* 6 no. 1 (2022), p. 414.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2009), p. 96-137.

¹⁴ Muhammad Luthfi, et.al., "The Existence of 'Urf' in the Resolution of Marriage Disputes in Islamic Law: A Living Law Perspective," *Jurnal Ius Kajian Hukum dan Keadilan* 12 no. 1 (2024), p. 146-147.

As a legal relationship formed by both parties, namely husband and wife, marriage has the potential to give rise to various disputes that need to be anticipated and resolved in accordance with legal provisions. In relation to disputes in the context of marriage, the Indonesian legal system has provided a mechanism for resolving marital disputes which is institutionalized in the form of Religious Courts. Moreover, the existing Islamic Law in Indonesia still provides opportunities for Muslims to resolve marital disputes using customary mechanisms that have been practiced for generations. This dispute resolution mechanism using hereditary customs is also called '*urf*'.¹⁵

The Religious Courts in Indonesia are regulated in Law Number 7 of 1989 concerning Religious Courts, which later revised through Law Number 3 of 2006 and Law Number 50 of 2009. Religious Courts, based on Article 49 of Law Number 3 of 2006, is an institution that has the authority to adjudicate and settle cases that arise between parties who are Muslim in the fields of marriage, inheritance, wills, grants, *waqf*, *zakat*, *infaq*, *shadaqah*, and shari'ah economics. In relation to the context of marital legal problems that arise between husband and wife, as the focus of this study, Law Number 3 of 2006 through the Elucidation of Article 49 provides further details regarding the problems in the field of marriage law which can become an object of dispute for the Religious Courts to examine and adjudicate it. Based on the Elucidation of Article 49, it is emphasized that the Religious Courts have the authority to examine and adjudicate, including legal disputes regarding claims for negligence on the obligations of husband and wife, divorce due to *talak*, and divorce claims.¹⁶

In examining and adjudicating divorce cases, the Religious Courts are bound by several conditions which are the reasons for the termination of the marital relationship between husband and wife, as regulated in Law Number 1 of 1974 concerning Marriage. Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Compilation of Islamic Law. Through those laws and regulations, it can be specified that the reasons for divorce are:¹⁷ (1) one of the parties commits adultery or becomes a drunkard, gambler, etc. which is difficult to cure; (2) one of the parties leaves the other for 2 (two) consecutive years without the permission to the other party and without any valid or proper reason or because there are other things beyond his or her control; (3) one of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place; (4) one of the parties commits cruelty or serious mistreatment that endangers the other party; (5) one of the parties suffers from a disability or disease which causes them to be unable to carry out their obligations as

¹⁵ Muhammad Luthfi, et.al., "The Existence of '*Urf*' in the Resolution of Marriage Disputes in Islamic Law.

¹⁶ Dodon Alfianer, "Disparity in the Considerations of Judges in Deciding Divorce Disputes in Religious Courts and District Courts," *Juris* 21 no. 1 (2022): 110.

¹⁷ Dodon Alfianer, "Disparity in the Considerations of Judges, p. 110-111.

husband or wife; (6) between husband and wife there are constant disputes and quarrels and can no longer be reconciled. These reasons were then added with 2 (two) more reasons, as stated in Article 116 of the Compilation of Islamic Law, namely: the husband committed an infringement against *taklik talak*, and one of the parties changed religion (apostate or *murtad*) causing disharmony in their marital relationship.¹⁸

Legal Issues for Missing Persons in Sukahati Village

A study from Mulyana, Sumadi and Chaerunnisa explains that Ibn Hazm once emphasized that, "A husband is obliged to provide sustenance for his wife from the completion of the marriage acceptance, whether the wife conducts *nusyuz* or not, rich or poor, still has parents or orphan, still a virgin or a widow, a free person or a slave, according to his abilities (as a husband)."¹⁹ Imam Ahmad also answered and explained the question of how long a husband can travel leaving his wife. Regarding this question, Imam Ahmad answered, "It was determined for him 6 (six) months. If he refuses to come home, then the judge may separate them (as husband and wife)."²⁰ From several Islamic scholars' opinions it is very clear that Islam strives to protect the sanctity and strength of the bond or sacred relationship between husband and wife as a family. Moreover, Islam also always tries to prevent neglect, especially for women as wives in the family. So, it is also clear too that Islam has provided legal protection for the human rights or interests of women.

But different from what it already stated in Islamic Law, factually some people of Sukahati Village are still experiencing legal problems with a condition of missing person, or what is also known as the state of a person who is absent, missing, *gaib* or *afwezigheid*. In the context of Islamic Law, missing person is also called as "*mafqud*." Hafifi's study, citing *Ensiklopedi Hukum Islam*, explains that a *mafqud* is a person who has disappeared from his country for a long time and his existence is unknown whether he is still alive or dead.²¹

Regarding the characteristic of missing people (*mafqud*), several scholars have given their opinions. According to Imam Syafi'i, the characteristic of a missing person is that his traces (*atsar*) have disappeared and his information has been cut off, so it is strongly suspected that he has died. Imam Syafi'i defines *mafqud* as the disappearance of a person from a place, the exact information about him and his existence is not known, and it is not known also whether he is still alive or dead.²²

¹⁸Dodon Alfianer, "Disparity in the Considerations of Judges, p. 110-111.

¹⁹ Ibnu Taufan Mulyana, et.al., "Hukum dan Dampak Psikologis Penelantaran Isteri oleh Suami Menurut Ulama Desa Ciherang Kecamatan Banjarsari Kabupaten Ciamis," *Istinbath* 13 no. 2 (2018), p. 67-68.

²⁰Ibnu Taufan Mulyana, et. al., "Hukum dan Dampak Psikologis Penelantaran Isteri.

²¹Ikmal Hafifi, "Status Istri *Mafqud* dalam Pandangan Imam Syafi'i dan Ibnu Qudamah (Studi Komparatif Pendapat Imam Syafi'i dan Ibnu Qudamah)," *El-USrah: Jurnal Hukum Keluarga* 4 no. 2 (2021), p. 530.

²²Ikmal Hafifi, "Status Istri *Mafqud* dalam Pandangan Imam Syafi'i.

Furthermore, Imam Malik and Imam Syafi'i in *qaul qadim* do not differentiate between people who are missing because their information has been cut off due to something that according to their death and missing people who according to their existence are still life and safe.²³

Based on the questions posed by the researchers to several residents and also the staff of the Sukahati Village Office, it can be seen that in Sukahati Village there have been cases of missing persons. The missing people are mostly men as husbands who then leave their wives and never come back. This situation is certainly detrimental to the wife who is left behind.²⁴ In practice, the wife left behind by her husband processing her legal problems, which are usually referred to managing the "missing person certificate," starting from the *Rukun Tetangga* (RT), *Rukun Warga* (RW), *Kelurahan* (Village Office), Police, Court and even the Civil Registry Office. All these processes must be passed to clarify the legal status of the person who is considered missing, which in this case is the husband, so the abandoned wife can process her divorce in Court, especially when they need to marry again.

Regarding the series of processes that must be followed by a person experiencing legal problems with the disappearance of a person, *Lurah* (The Village Chief) Sukahati explained as follows, "As for the missing persons, they need to make a statement directly. Known by two witnesses, known by the RT/RW, then continue to be signed by *Lurah* ... also attach a report from the Police stating that someone is missing ... as we have contacted the Police officer from the Cibinong Police."²⁵ In this regard, the Sukahati Village has collaborated with the Office of Religious Affairs and the Cibinong Sector Police to provide an explanation on how to process a missing person certificate. The explanation effort is intended to create communication that is expected to be effective for adding insight, both for government officials and local communities who are experiencing the problem of missing persons or those who have not experienced it. Certainly, a good and continuous communication is an important basis for the running of institutions and programs intended for the community.²⁶

However, by some parties, processing legal problems related to the condition of the missing persons considered as tough process, including by local government officials, in this case the Sukahati Village officials and staff who provide daily services to the community. They sometimes still feel confused in dealing with or resolving legal problems regarding the situation of missing persons.²⁷

In Sukahati Village, most of the parties who suffered losses from the legal problems of the missing persons were women as wives who were abandoned by their

²³Ikmal Hafifi, "Status Istri *Mafqud* dalam Pandangan Imam Syafi'i.

²⁴ Interview with Suka Hati Village Officer, 2024.

²⁵ Interview with *Lurah* Sukahati (a Village Official), 2024.

²⁶Ngatouatu Rohmani & Dewi Utari, "Pemberdayaan Masyarakat Melalui Pelatihan Komunikasi Efektif Bagi Kader Posyandu," *Jurnal Pengabdian Pada Masyarakat* 5 no. 1 (2020): 168-173.

²⁷ Interview with *Lurah* Sukahati (a Village Official), 2024.

husbands.²⁸ In such a situation, she needs to immediately clarify the status of her husband's whereabouts, and if he really doesn't come back, the process of making a missing person certificate can be carried out and divorce through the Court can be taken, so that the woman can marry again. In practice, the woman as the wife finds it difficult to get married immediately, because the process to get remarried is quite long. Whereas the issue of remarriage for women as wives who were abandoned by their husbands turned out to be a need needed to be met immediately, considering the fact that many women who were victims of abandonment already had children need to be supported.²⁹

The situation of abandoned wives and children in the context of child protection law can be categorized as a form of violence against children beside violence against women. In connection with this problem, a study from Harijanto et.al., emphasizes the need to maximize enforcement and synergy between laws regarding marriage and laws regarding the protection of women's and children's rights. Such effort also means the need for synergy between private law mechanisms and public law mechanism to protect the interests of women and children in Indonesia.³⁰

Several Legal Procedures

Looking at several studies made by other researchers, for the jurisdiction of the Bandung Religious Court,³¹ Medan Religious Court³² and Lubuklinggau Religious Court,³³ divorce cases caused by one spouse leaving, missing person and/or abandoning the other spouse are still the third largest number of cases recorded often occurs which results in divorce proceedings through the Religious Courts. This reflects that missing person cases that are closely related to domestic neglect are serious matters that need to be responded to or addressed seriously including when such kind of legal problem occurs in Sukahati Village.

Referring to the aforementioned study, based on observations, field data, and analysis, the Sukahati Village community still lacks adequate knowledge about how to resolve legal issues related to missing persons. In connection with this situation, the researchers put forward several critical notes as follows:

²⁸Interview with *Lurah* Sukahati (a Village Official), 2024.

²⁹Interview with a wife who was abandoned by a resident of Sukahati Village, 2024

³⁰ Andry Harijanto, et.al., "The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice," *Journal of Human Rights, Culture and Legal System* 2 no. 2, (2022), p. 101-102.

³¹ Intan Saziqil Fitri, "Faktor Penyebab Tingginya Angka Cerai Gugat di Pengadilan Agama Bandung," *Al-Ahwal Al-Syakhshiyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3 no. 1 (2022), p. 110-112.

³² Masniari Munthe & Heri Firmansyah, "Analisis Penyebab Meningkatnya Angka Perkara Cerai Gugat Tahun 2020-2022 di Pengadilan Agama Medan Kelas IA," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 4 no. 2 (2022), p. 683-688.

³³ Muhammad Sholeh, "Peningkatan Angka Perceraian di Indonesia: Faktor Penyebab *Khulu'* dan Akibatnya," *Qonuni: Jurnal Hukum dan Pengkajian Islam* 1 no. 1 (2021), p. 32-33.

First, it is true that if there is a woman as a wife who is abandoned by her husband and feels aggrieved, then she has the right to file a marriage termination (divorce) through the Court as the husband is not attending. However, the application to terminate the marriage on the basis of the absence is a long process due to the terms and conditions shall pass a certain period of time, which is 2 (two) years from the starting of missing person leaves the house. After that, the files began to be processed from the RT level to the Court and even to the Civil Registry (Elucidation of Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 19 letter b jis. Article 21 Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage jis. Article 116 Compilation of Islamic Law).

In general, and in normal situation, when the husband is present or his address is known, divorce can only be conducted before the Court session after the Court has tried, and but failed to reconcile the two parties (husband and wife), as regulated in Article 39 paragraph (1) of Law Number 1 of 1974. In the *fiqh* books, divorce (*talak*) is considered to be valid (legitimate or occur) when a husband pronounces it in front of his wife, wherever and whenever.³⁴

Second, as an alternative way to immediately legally terminate her marriage, a wife who is left behind by her husband can actually use the legal procedure of *taklik talak*. *Taklik talak* according to Article 1 letter (e) of the Compilation of Islamic Law is "an agreement pronounced by the prospective groom after the marriage contract which is included in the Marriage Certificate in the form of a promise of divorce which is hung on a certain condition that may occur in the future." This *taklik talak* agreement is not mandatory to be held in every marriage, but if once *taklik talak* has been agreed, then the promise cannot be revoked.³⁵

In Indonesia, marriage termination due to divorce can be resolved using the *taklik talak* procedure (*talak* divorce). This mechanism has a legal basis in Article 116 letter g of the Compilation of Islamic Law which confirms that divorce can occur because the husband violates *taklik talak*. Law Number 1 of 1974 concerning Marriage does not explicitly regulate *taklik talak*.³⁶

The institution or procedure of *taklik talak* in Indonesia has existed since ancient times, and this institution continues to exist until now. Nugroho's study explains that *taklik talak* as a legal institution has existed since the reign of Sultan

³⁴ Ansori, "Qawā'id Fiqhiyyah as Islamic Epistemology and Its Application at Marriage Law in Indonesia," *Juris* 21 no. 1 (2022), p. 75.

³⁵ Hibnu Nugroho, "Kedudukan *Taklik Talak* Menurut Hukum Fikih dan Kompilasi Hukum Islam," *Al-Bayyinah* 2 no. 1 (2018), p. 84-88. Nastangin & Muhammad Chairul Huda, "Urgensi *Sighat Taklik Talak* dalam Perkawinan Sebagai Upaya Perlindungan Hukum Bagi Perempuan Perspektif *Maqasid Syari'ah*," *Jurnal Mahkamah* 4 no. 2 (2019), p. 168-169.

³⁶ Syaefuddin Haris, "Kedudukan *Taklik Talak* Dalam Perkawinan Islam Ditinjau dari Hukum Perjanjian," *Arena Hukum* 6 no. 3 (2013): 339. Hasanudin, "Kedudukan *Taklik Talak* dalam Perkawinan Ditinjau dari Hukum Islam dan Hukum Positif," *Medina-Te: Jurnal Studi Islam* 12 no. 1 (2016), p. 50.

Agung Hanyakrakusuma, King of Mataram, in 1630. The aim at that time was to make it easier for women as wife to terminate their marriage ties from husbands who left for a certain period of time.³⁷ Until now, marriage practices in Indonesia which are carried out according to the Islamic religion are always followed by the husband saying *sighat taklik*. Even though it is voluntary, reading the divorce agreement (*taklik talak*) "as if" is an obligation that must be carried out by the husband. Based on the Ministry of Religion's Decree Number 3 of 1953, previously the Ministry of Religion recommended to regional officials that the *taklik talak* should be read at weddings.

Sighat taklik, as the husband's promise, was formulated to protect the wife from the husband's arbitrary actions. If the wife is not willing to accept her husband's treatment, then the wife can file for divorce based on the terms of the *taklik talak* stated in the *sighat taklik*.³⁸ In daily life, it is possible to happen when husband acts arbitrarily by deliberately leaving his wife or deliberately "disappearing" himself so that he can eschew from take responsibility for supporting his wife, children or family. Such conditions can be anticipated through the divorce agreement (*taklik talak*) mechanism.

As legal bases for the implementation of the pledge of *sighat taklik talak* to make it more uniform and orderly, the Government issued several regulations, namely: Regulation of the Minister of Religion Number 3 of 1975 concerning the Obligations of Marriage Registration Officer and the Work Procedures of Religious Courts in Implementing Marriage Legislation for Muslim; Regulation of the Minister of Religion Number 11 of 2007 concerning Marriage Registration; and Decree of the Minister of Religion Number 99 of 2013 concerning Determination of Forms for Marriage Examination Lists, Marriage Certificates, Marriage Books, Duplicates of Marriage Books, Reconciliation Registration Books, and Excerpts from Reconciliation Registration Books.³⁹

Taklik talak procedure is a common thing in the Islamic marriage process, even in the practice of the marriage process explicitly it is often said shortly after the marriage contract and the promise sentence is also listed in the Marriage Book in the section entitled "*Sighat Taklik*."⁴⁰ However, not many people understand and realize that the *taklik talak* procedure actually has its potential alternative of solution for the legal problems of the missing persons, especially for women as wives who have been abandoned by their husbands.

³⁷Hibnu Nugroho, "Kedudukan *Taklik Talak* Menurut Hukum Fikih, p. 78-80.

³⁸Syaefuddin Haris, "Kedudukan *Taklik Talak* Dalam Perkawinan Islam, p. 339.

³⁹Muhamad Abduh and Tutik Hamidah, "Tinjauan *Mashlahah* Imam Al-Ghazali terhadap *Taklik Talak* dalam Hukum Positif Indonesia," *Dikum: Jurnal Syariah dan Hukum* 19 no. 2 (2021), p. 143.

⁴⁰Nur Mujib, "Ketika Suami Melanggar *Taklik Talak*," <<https://www.pajakartaselatan.go.id/artikel/260-ketika-suami-melanggar-taklik-talak>>, (2018), accessed: 20 June 2024.

In this regard, a study by Nastangin and Huda⁴¹ has even explained that the *taklik talak* procedure is one of the institutions allowed in Islam that functions as a guarantee of protection for women as wives when she marries and is very in line with the *maqasid al-Shari'ah* principle which has the aim of protecting religion, protecting life, protecting reason, preserving property and maintaining the descendants. Even such protections will also protect the family entity, which in Islamic teachings is considered as the fundamental basis for the establishment of Muslim communities and societies.⁴²

Third, in terms of time, by utilizing the legal procedure of *taklik talak*, the marriage termination process can be shorter and tend to be less long-winded. In *taklik talak*, a husband who does not provide obligatory support for only 3 (three) months, then the wife can file a lawsuit through the Religious Court and then the lawsuit will be tried until it reaches a decision. It will no need to wait for 2 (two) years as in the missing person procedures. The trial process of the case will also be relatively shorter, because of course the husband will not be present to carry out the verification process, nor will he even come when the final decision is made. Certainly, the decision will be handed down without the presence of the husband (*verstek*).

In contrast to the process of applying for a missing person certificate, which must meet the requirements 2 (two) years have passed since the missing person left the house, the process of terminating a marriage within *taklik talak* procedure does not need to wait that long. The *taklik talak* procedure provides an alternative time requirement for a woman as a wife if she wants to file a lawsuit with the Religious Court, which is 3 (three) months, as stated in the Marriage Book document. With the provisions contained in the Marriage Book that "At any time I (husband): ... do not provide obligatory support to her for 3 (three) months, ... thereupon my wife is unhappy and complains about those matters to the Religious Court and her complaint is justified and accepted by the Court ..., then I impose her the first phase of *talak* (divorce)." It is, then, a sufficient reason or initial basis for filing a divorce lawsuit to the Religious Court, considering that it is very unlikely that the missing person is still willing to provide obligatory support to his wife. The provisions of 3 (three) months period will certainly help women as wives who are victims of being abandoned by their husbands. In other words, the provisions of the time stated in the *sighat taklik talak* are actually able to cover the legal problem regarding the condition of the missing person faced by a woman as a wife.

Fourth, after the Court's decision handed down and has permanent legal force (binding), legally the woman as the plaintiff no longer has marital ties to the missing man (ex-husband). The woman can marry again, but still by waiting for the *iddah*

⁴¹Nastangin and Muhammad Chairul Huda, "Urgensi *Sighat Taklik Talak* dalam Perkawinan, p. 175-176.

⁴² Afroz Ahmad Bisati, "Parenting is Counselling: The Relationship of the Parent-Child in Islam," *Hamdard Islamicus* XLIV no. 2 (2021), p. 65.

period to pass.⁴³ So, the *taklik talak* procedure is clearly more able to provide protection for the rights or interests of the woman as a wife than to process the termination of a marriage by relying on a missing person certificate or the absence of a husband. Based on the explanation above, the comparison between the process to break a marriage using the missing person certificate and *taklik talak* can be presented as listed in table 1.

Table 1: Comparison between Procedure of Certificate of Missing Person and *Taklik Talak* as a Basis in the Process of Termination of Marriage

| Matters | Missing Person Certificate (State of Missing or Absent Person) Procedure | <i>Taklik Talak</i> Procedure |
|----------------------|--|--|
| Grace Period | 2 (two) consecutive years since the person left the house. | Husband for 3 (three) months does not provide obligatory living. |
| Procedures and files | Create a statement letter and must be at least with 2 (two) witnesses, then the files are processed starting from the RT and RW, <i>Kelurahan</i> and Police. Then, the wife can file a divorce suit with the Court. The Civil Registration Officer shall register after the Court's decision. | Immediately file a divorce lawsuit to the Religious Court. |

In line with this, according to Arrisman, a Professor of Islamic Law at the National University, the role of the religious court system is already good. The weakness lies in the judges, whose decisions often fail to reflect efforts to protect women and children. Another factor that can influence the role of the religious court system is the economic conditions of the parties in a divorce case. For the protection of women in Indonesia, specifically wives, the need for state involvement after divorce and the death of their husbands, in terms of guarantees in the form of alimony or financial assistance for the wives and children they leave behind.⁴⁴

Yunan Prasetyo Kurniawan, a legal expert from Pancasila University, emphasized that neglect of women by husbands, which impacts children, is a form

⁴³ Arif Marsal, "Putusnya Perkawinan Karena Kematian Sebelum Terjadinya *al-Dukhūl*; Masa 'Iddah dan Kaitannya Dengan Kaedah *Taqdīm al-Našāla al-Qiyās*," *Jurnal Yudisia* 8 no. 2 (2017), p. 215-217.

⁴⁴ Interview with Prof. Arrisman, Profesor of Islamic law at the Universitas Nasional, Indonesia, 2025.

of structural and economic violence, not simply domestic conflict. Indonesian law has categorized it as part of domestic violence through Article 9 paragraph (1) of Law No. 23 of 2004, but implementation of this article is often ineffective because it is difficult to prove, especially if the victim does not have documents or proof of the perpetrator's income. In Indonesia's social context, many women lack the legal awareness or financial autonomy to demand their rights. In some developed countries, such as Canada or Germany, the legal system provides automatic social protection for victims of family neglect through state-intervened maintenance support, where the state covers temporary living expenses and then collects the costs back from the perpetrator. This model is effective because it separates the victim's right to social protection from the perpetrator's willingness to take responsibility.⁴⁵

Therefore, Yunan Prasetyo Kurniawan, that the steps that need to be taken in Indonesia include: 1) Encouraging the digitalization of integrated services and reporting through a national platform that makes it easier for victims to access legal and social assistance without physical or geographical barriers; 2) Strengthening local service institutions, such as P2TP2A and the Women and Children Protection unit in the Police, so that they are not merely symbolic but have resources, funds, and ongoing training; 3) Increasing community-based social support, for example safe houses managed jointly by local governments and religious communities; 4) Empowering women economically with training and access to small business capital, so that they have the option to leave abusive relationships; 5) Neglect is not only a violation of the law, but is a form of failure of the social system in ensuring the basic human right to a decent and safe livelihood, especially for women and children.⁴⁶

Conclusion

Some people in Sukahati Village, especially women, have experienced problems with the law of missing persons, which after she married her husband left for no reason and never came back. In dealing with these problems, women who are victims and including government officials in Sukahati Village are sometimes still unable to adequately resolve them. Some people still think that in order to overcome the problems of missing persons, the steps that must be taken are also to take or apply for a missing person certificate and then process it to the Court. In fact, such a process tends to be convoluted. As an alternative, the law problems of missing persons can actually be overcome by using a *taklik talak* legal procedure. This *taklik talak* is not a new mechanism, it's just that there are still many people who don't really understand that in fact *taklik talak* can actually be used by women as wives who are left behind by their husbands. In the process of *taklik talak*, there is an alternative 3 (three) months of grace period. Very different and much shorter than the grace period when applying for a missing person certificate at 2 (two) consecutive years. Thus,

⁴⁵Interview with Dr. Yunan Prasetyo Kurniawan, a legal expert Universitas Pancasila, 2025.

⁴⁶Interview with Dr. Yunan Prasetyo Kurniawan, a legal expert Universitas Pancasila, 2025.

the *taklik talak* procedure is much in line with efforts to protect the interests of women as wives who are vulnerable victims being abandoned by their husbands.

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Interviews

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- Interview with Dr. Yunan Prasetyo Kurniawan, a legal expert at Universitas Pancasila, 2025.
- Interview with Lurah Sukahati (a Village Official), 2024.
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