



**Original Article**

**A LIVING CLAIM AS AN ALTERNATIVE TO SOLVING DIVORCE CASE IN  
THE BOJONEGORO**

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**ABSTRACT**

**Background.** Maintenance is one of the husband's obligations towards his wife, and if the husband does not want to provide for his wife's children when in fact he can according to his ability, then the wife can sue him at the Religious Court. This study aims to examine in-depth script lawsuits as an alternative settlement of divorce cases in Religious Courts, as well as to analyze the efforts of judges and the execution of Religious Court decisions in cases of livelihood claims.

**Research Method.** The method used is qualitative, while the type of research used was a juridical-empirical approach. A juridical review approach, using legal rules, books, and journals related to the research problem.

**Findings.** Claims for maintenance can stand alone without having to divorce. The judge as the case breaker always emphasizes that married couples who want to divorce cancel their intention. Therefore, if a divorce case is caused by a husband's negligence in supporting his wife and children, then a wife can file a claim for maintenance to the Court. So, claims for a living can be a solution to the occurrence of a divorce.

**Conclusion.** A claim for a living can be filed by bringing evidence of a lawsuit in the form of reasons why the wife sues her husband, accompanied by written documents such as a marriage certificate and husband's salary slip, and the amount of maintenance that must be given to his wife's children according to his ability.

**Keywords:** Judge's Decisions, Lawsuit for Living, Solution Other Than Divorce.

**BACKGROUND**

Every husband and wife who live together in a marriage bond definitely wants the family he fosters to be a family that is *sakinah, mawaddah, and rahmah*, and can walk in harmony and always be blessed by God Almighty. Marriage is continuing offspring to create good next generations. Marriage matters, the provisions in detail have been regulated in Law Number 1 of 1974 which is carried out by Government Regulation No. 9 of 1975.[1] The Marriage Law only regulates that if a husband neglects to provide maintenance to his wife, the wife can sue the court.[2] In carrying out a marriage several principles need to be considered so that a marriage is truly meaningful in human life. The principles are that a husband is fully responsible in the household. The husband is the head of the household and the wife is the housewife. The husband is given an obligation by law to protect his wife and provide everything necessary for household life according to the husband's ability. Domestic harmony refers to the principle of marriage because marriage is built by physical and mental bonds which according to the Marriage Law are related to the implementation of the rights and obligations of husband and wife.[3] The noble obligation of husband and wife for upholding the family has the consequence that between them there must be a balance of legal status so that each husband and wife is authorized to carry out legal actions, both inside and

outside the court.[4] In accordance with his dignity, the husband acts as the head of the family, while the wife is a housewife, thus Article 31 of the Marriage Law confirms this: The lump of obligation that is borne on the shoulders of each husband and wife which is full of noble nuances, must be fulfilled so that a prosperous life can be realized. A husband as the person in charge of the household has obligations, one of which is to provide maintenance for his children and wife as contained in Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states that: "The husband must protect his wife and provide all the necessities of married life according to his ability".

In this case, it means that the husband is fully obliged to provide a living for his family, especially his children, and wife. This provision is a consequence of the provisions which stipulate the husband as the head of the family and the wife as the housewife and housekeeper as stipulated in Article 31 paragraph (3) of Law Number 1 of 1974 concerning Marriage.[1] A living means everything that a person gives to his wife, relatives, and possessions as a basic need for them. What is meant by living in the household is the husband's obligation to his wife in material form.

From the description above, we know that maintenance is one of the husband's obligations towards his wife, and if the husband does not want to provide for his wife's children when in fact he can according to his ability, then the wife can sue him at the Religious Court.[5] Although in this case, the wife can release this obligation. We know that divorce is the last resort when a household can no longer be maintained. However, there is a solution other than divorce. From there, presumably, a living lawsuit can be an alternative solution besides divorce. Especially if the dispute between husband and wife occurs because of the husband's negligence regarding maintenance.

It is an interesting matter to be used as research material by the author here if you do not want a divorce in the household caused by the husband's negligence in supporting his family, then there is a solution other than divorce, namely by claiming alimony. Previously it had been stated in the journal "Lite for Livelihoods Without Divorce", the type of research used is normative legal research which examines the meaning contained in Article 34 paragraphs (1) and (3) of Law number 1 of 1974 concerning Marriage.[6] This is necessary so that there are clear boundaries between the concept of maintenance meant by a husband and the concept of living meant by a wife. The difference from this study lies in the focus of the study or formulation of the problem offered. The journal above examines legal protection for wives who do not get material support from their husbands. Related to the legal remedies that must be taken by the wife in suing the maintenance of household needs is to file a claim for maintenance to the Religious Court. In this case, a judge can decide on a lawsuit for maintenance on the condition that a husband who neglects the maintenance obligation can be used as a husband's debt to his wife if indeed the wife has not been able to support her own life.

There are general terms related to the title of this research to understand the contents of the thesis and avoid misunderstandings. So, a claim for maintenance is a claim on the rights of a wife against her husband for not meeting the needs of her family. Alternative Dispute Resolution is a form of settlement of an issue out of court based on an agreement by the troubled parties, either without or with the assistance of neutral parties. The Religious Court is a first-level body or institution that has the task of examining, decoding, and settling cases against people who are Muslim in the areas of marriage, inheritance, wills, grants, as well as endowments and *sadaqah* which are carried out based on Islamic law.[7]

Based on the background above, the formulation of the problem is needed to make writing this research more practical and systematic. For researchers, the formulation of the title

guides in determining the direction of research, variables, and research methods. This research discusses the efforts of judges at the Bojonegoro Religious Court in handling income claims cases as an alternative to divorce cases.

## **RESEARCH METHOD**

The type of research used by the author in this thesis is Juridical-Empirical, namely an attempt to approach the problem under study with a real legal nature or in accordance with the reality in society.[8] While the type of research used is a Juridical- Empirical approach. a juridical review approach, using legal rules,[1, 7, 9] books, and journals related to the research problem. The formulation of the problem in this study is as follows: 1) How is the concept of a Living Lawsuit as an Alternative to the Settlement of Divorce Cases?, 2) What are the efforts to settle a livelihood lawsuit in the Bojonegoro Religious Court?

## **FINDINGS**

### **1. THE CONCEPT OF A LIVING LAWSUIT AS AN ALTERNATIVE TO SETTLEMENT OF DIVORCE LAWSUIT CASES**

The concept is the main element of research. Determining and detailing the concept is very important so that the problems to be studied do not become blurred. The explanation of the meaning of the title of this thesis includes:

#### **a. Income Claim**

Maintenance is a gift from the husband given to the wife after a marriage contract. Living is obligatory because there is a valid contract, the wife surrenders to her husband and allows for fun to occur. Not fulfilling a living is a factor in the occurrence of divorce cases. Shari'at obliges the maintenance of the husband to his wife. A living is only obligatory on the husband because of the demands of the marriage contract and because of continuing to have fun as a wife must obey her husband, always accompany him, manage the household, and educate his children.

The lawsuit is a letter filed by the plaintiff to the head of the competent court, which according to the claims contains rights that contain a dispute and is the basis for examining the proof thof e truth of a right. Another understanding of the lawsuit is a lawsuit filed by the plaintiff against the defendant through the court. Lawsuits in civil procedural law generally have 2 (two) or more parties, namely between the plaintiff and the defendant, in which case the lawsuit generally occurs because the defendant has violated the rights and obligations that harm the plaintiff.[10] The lawsuit generally occurs after the defendant violates the rights and obligations that harm the plaintiff and does not want to voluntarily fulfill the rights and obligations requested by the plaintiff so that a dispute will arise between the plaintiff and the defendant. Disputes faced by parties if they cannot be resolved peacefully outside the courtroom are generally cases resolved by the parties through court proceedings to obtain justice. The lawsuit is a lawsuit filed by the plaintiff against the defendant through the court. So, a living claim is a wife's claim against her husband for not meeting the needs of her family. This result differences with the previous research that the emotional factors of a wife who has a sense of pity towards her husband, has owned a business or has had a work contract to continue the ideals that a wife has pioneered since she was young and continue the efforts of existing parents. Positive impacts include lightening the husband's burden, self-reliance on the children and by working can relieve stress.[11]

## **b. Alternative Case Resolution**

What is meant by the alternative settlement of cases is a form of settlement of cases outside the court based on an agreement by the litigants, either without the assistance of a third party or with the assistance of a fair and neutral third party.[12] Alternative settlement cases are divided into several types, including Consultation, namely personal action, between a certain party and another party, or it can be called a client with a consultant, where the consultant gives his opinion to his client to meet the needs of his client. negotiation, a way to discuss the settlement of cases without involving a third party. Mediation, namely the method of settling a case out of court through negotiations involving a third party called a mediator, but the mediator here is only a facilitator or is tasked with bridging the litigants without giving their opinions.[13] Conciliation is done with the help of a third party, either through a person or body (conciliation commission). The conciliator actively participates in providing solutions to the problems handled.

Each non-litigation or litigation Each settlement of a non-litigation and litigation case has different characteristics or characteristics. Each method also has its advantages and disadvantages, it's just that this can be adjusted by choosing a method of settling cases that is beneficial to all parties.

## **2. EFFORTS TO SETTLE A LIVING LAWSUIT AT THE BOJONEGORO RELIGIOUS COURT**

### **1. Authority of the Religious Courts in Alms Claims**

If a wife has filed a claim for maintenance to the Religious Court, then the lawsuit has been decided inkrach or has permanent legal force from the Court that decided the case, then legal remedies can be taken by submitting a request for execution to the Court. In executing cases that fall under the authority of the Religious Courts, in general, 5 stages must be followed. The stages are as follows: 1. Application from the wife or child, 2. Estimating the cost of execution, 3. Carrying out a warning (Aan meaning), 4. Issuing an execution order.

If the time specified in the warning to the defendant has passed and it turns out that the defendant does not carry out the decision, and also does not want to attend the summons for the memorial without any justified and valid reason, then the Head of the Religious Court issues an execution order with the following provisions: First, order execution is in the form of determination. Second, the order is addressed to the Registrar or Bailiff. Third, it must clearly state the case number to be executed and the object of the item to be executed. Fourth, the execution order is carried out at the location of the goods. Fifth, namely the contents of the executive order so that it is carried out by the verdict. The implementation of the executive order made by the Chairperson of the Religious Court, Registrar, or if he is unable to do so can be represented by the Bailiff as stipulated in Article 197 paragraph (1) HIR and Article 2009 R.Bg. In carrying out the execution, the Registrar or Bailiff was assisted by two 21-year-old, honest, and trustworthy witnesses whose function was to assist the Registrar or Bailiff who carried out the execution.[14]

If on the day of the first hearing, the defendant does not file a counterclaim (exception) regarding the relative authority to try, the religious court may not declare itself incompetent. Exceptions regarding relative authority can be submitted at the first hearing, and if submitted after the defendant submits an answer, then the judge will not pay attention to the exception.

### **2. The process of submitting a living in the Religious Courts**

As explained above, all processes for filing civil cases in Religious Courts are the same as other civil cases. Claims for maintenance can be granted by the Panel of Judges of the Religious Courts if the claim is proven to be true and can be proven by certain evidence, and if the defendant is not satisfied with the granting of the claim, the defendant can file an appeal through the Religious Courts.[7] And if the lawsuit is rejected by the Panel of Judges of the Religious Courts, because it is not proven, then the plaintiff can appeal through the Religious Courts. And if the lawsuit is not accepted by the Panel of Judges of the Religious Courts, because the lawsuit is considered vague, then the plaintiff can submit a new application.

In essence, the decision of the Religious Courts is sometimes granted if the claim submitted to the court can be proven correct and all the arguments for the lawsuit are clear, but if only part of the argument for the lawsuit is proven true, then the lawsuit is partially granted. Rejected if a lawsuit is filed by the plaintiff to court and before the trial court the plaintiff cannot submit proof of the truth and the arguments for the lawsuit. The refusal can be wholly or partly dependent on whether the plaintiff can submit evidence of his claim and be rejected if it is not proven, and cannot be accepted if the claim is blurred. Blurred means that the *posita* and *petite* in the lawsuit do not support each other or the litigation is contradictory, it is also possible that the object in dispute is not clear, and it is also possible that the *petite* is not clear or does not specify what is requested. Then once the verdict is rendered, the plaintiff can immediately take the remaining down payment of the court fee if there is still any. After the decision is passed and has legal force, a decision letter is made from the Religious Court on the case filed.

Claims for maintenance can be filed with a lawsuit containing the facts and reasons why a wife sues her husband in court, including evidence of a marriage certificate to prove that they are legally husband and wife in a marriage bond, as well as evidence related to the husband's income including husband's pay slip. Regarding the proof of a marriage certificate, if the marriage certificate is in the hands of the husband, then a wife can request a duplicate or a copy of it at the civil registry office where the marriage was carried out. Proof of a living claim includes the amount of the husband's income and the maintenance needed to be given to his wife's children. The wife can submit evidence in the form of statements from 2 (two) witnesses, the husband's salary slip, and other evidence, which shows that the husband can provide for his wife's children properly, according to his ability, and the amount of income needed to be given to his children and wife.

In principle, the examination of cases in the Religious Courts refers to Civil Procedure Law in general, except for those specifically regulated.[9, 15] An example is the examination of marital disputes, namely regarding claims for maintenance. This kind of thing only applies in the Religious Courts. The process for filing a living claim is as follows:

1. The plaintiff or applicant submits a lawsuit in writing or orally to the Religious Courts. We need to know in advance that everything demanded by a plaintiff is called a lawsuit, while everything requested by the applicant is called a request. It can also be called a letter of claim and a letter of application.
2. The lawsuit contains the identity of the Plaintiff, including the name, age, occupation, and place of residence of the Plaintiff, then *posita*, namely the facts of the incident and legal facts, and *petite*, namely the things claimed by the plaintiff based on the *posita*.
3. After the case is registered at the Religious Court, then the two parties to the case, namely the Plaintiff and the Defendant are summoned to attend the trial, in this case at least 3 working days before the trial is held, the summons is delivered by the bailiff and delivered to the addresses of the plaintiff and the defendant.

4. To intensify peace efforts as referred to in Article 130 HIR/Article 154 RBg, the judge requires both parties to undergo mediation

After the mediation process was carried out, and it turned out that it ended peacefully, a peace certificate was made which was confirmed in the decision of the panel of judges concerned. However, if it does not end amicably, the examination of the lawsuit is continued with the reading of the lawsuit, the defendant's response, the plaintiff's replica, the defendant's duplication, and evidence which is continued with a local examination, and conclusions, assembly deliberations, and a decision

## **DISCUSSION**

### **THE FORMS OF EFFORTS MADE TO RESOLVE A LIVELIHOOD LAWSUIT AT THE BOJONEGORO RELIGIOUS COURT**

#### **1. Legal Efforts for the Wife who does not receive Maintenance from the Husband**

A husband has an important role in fulfilling household expenses, therefore a husband should be able to realize a living without any burden or pressure because all of these are logical consequences. From the existence of a legal marriage relationship. However, if it turns out that the husband neglects his obligations in fulfilling his wife's maintenance, then a wife can take legal action, namely by filing a lawsuit to the court, so that the fulfillment of the wife's maintenance is still carried out, one of which is by carrying out a living claim and a request for execution. Execution can be carried out if the husband does not want to carry out the decision voluntarily.

Execution in civil cases is a very tiring process, consuming energy, costs, and also thoughts. Civil decisions do not have any meaning when the defeated party is not willing to carry out the decision voluntarily.[15, 16] Real victory can only be achieved after going through a long process of execution to achieve this victory. The execution process can be longer and more complicated if the defeated party finds it difficult to accept the verdict and does not want to carry out the obligations imposed on him. The culmination of a civil case is when a judge's decision that has permanent legal force (*Eintracht van gewijsde*) can be implemented. There are almost similarities between the two, that is, all the efforts of the judges of the Religious Courts in dealing with cases of claims for alimony are terminated by inkraach or have permanent legal force from the Court which decides the case, then legal remedies for an execution request can be made to the Court.[7]

In carrying out the contents of the decision, there are 2 (two) ways, namely by way of voluntary and by way of execution. Execution as an act of coercion carries out a court decision that has permanent legal force and will be an option to be carried out if the losing party does not want to carry out or fulfill the contents of the decision voluntarily. Meanwhile, if the decision is carried out voluntarily, it means that the losing party wants to fully fulfill the contents of the court decision himself, without coercion from any party, and carry out the fulfillment of the legal relationship imposed on him. Voluntarily the losing party can fully fulfill all obligations and legal burdens listed in the verdict. With the implementation of the provisions of the decision by the losing party, coercive measures can no longer be applied to the losing party.

#### **2. Legal steps against children who do not get a living from the father**

By law, the husband is obliged to protect his wife and provide everything necessary for household life according to his means. Even for those who are Muslim, the husband's obligation to provide maintenance is regulated more specifically in Article 80 paragraph (4) Islamic Law Compilation (hereinafter referred to as KHI), which stipulates that according to his income, the husband bears: 1. Livelihood, kiswa, and residence for the wife; 2. Household expenses, maintenance costs, and medical expenses of wife and children; and 3. Education costs for children. This research similar with previous that stated implementation of child alimony in a divorce.[17] If pulled further back, the provisions in the KHI above originate from the Qur'an Surah An-Nisa verse 34, which is one of the sources of Islamic law, which reads: "Men (husbands) are protectors of women (wives), because Allah has made some of them (men) superior to some others (women), and because they (men) have provided maintenance from their wealth.... ”

Regarding the verse above, refer to the interpretation of the Qur'an of the Ministry of Religion, which can be accessed from the Ministry of Religion's Qur'an application or the website Al-Qur'an Kemenag, explained that men are leaders, caretakers, defenders, and providers, fully responsible for women who become wives and who become their families. So, for maintenance that is not provided by a husband to his wife and family, a claim for maintenance can also be filed in court so that this obligation can be given by the father to his child, on his income. In addition, fathers who leave their obligations to their families can also be charged with Article 9 paragraph (1) Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter abbreviated as PKDRT Law)[18] which regulates: "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 care for that person."

Those who violate these provisions are subject to imprisonment for a maximum of 3 years or a maximum fine of IDR 15 million. Not only criminal threats, if we look further from an Islamic perspective, but it is also obligatory for men to provide a living according to their legal capacity as fathers and husbands, so if it is not carried out, then the law is the sin of the father not providing for the child. This is by the rules of al ahkam al khamsah, which regulate 5 kinds of rules that evaluate objects and human behavior in Islam, one of which is mandatory, which is a rule of law that applies in the worldly legal environment. In the religious sphere which includes decency and worldly law, it is God who gives sanctions, both in this world and in the hereafter in the form of rewards and sins.

## **CONCLUSION**

Legally, the husband is obliged to protect his wife and provide everything necessary for household life according to his ability. The request for execution is the basis for the head of the Court to issue a warning or banning. Alimentasi action and effort made by the Chief Justice who decides a case in the form of a "reprimand" to the Defendant (who loses) so that he voluntarily carries out the contents of the decision within the allotted time after the Chief Justice receives the petition for execution from the Plaintiff. The losing party is given a period of 8 (eight) days to carry out the contents of the decision starting from the time the debtor is summoned to appear to be given a warning. After the amazing was carried out, it turned out that the losing party or the defendant did not also carry out the injunction from the judge's decision, so the Court carried out a confiscation of the execution of the losing party's assets based on the request of the winning party.

## **Conflict of Interest**

The authors declare no conflicts of interest in this work and publication of this paper.

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