

# Legal Implications of Divorce Without A Trial On The Rights of Divorced Couples

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## Article info

Received: March 24, 2025

Revised: Jul 15, 2025

Accepted: Ags 1, 2025

DOI: <https://doi.org/10.31599/krtha.v19i2.4011>

**Abstract :** *This study aims to examine the legal implications of the practice of divorce carried out without going through a formal hearing in a religious court, especially on the protection of the rights of divorced couples. A valid divorce according to Indonesia's positive law can only be carried out before a panel of judges through a judicial process, but in practice, there are still many people who impose talaq orally or through communication without submitting an official application to the court. This study uses normative juridical methods with a qualitative approach, as well as interviews in Cibitung District to understand the factors that cause this phenomenon. The results of the study show that divorce without a trial has an impact on the loss of legal protection for the rights of couples. In addition, legally invalid divorces hinder the registration of new marriages due to the absence of divorce certificates. The main factors that affect this phenomenon include low legal understanding. Therefore, systematic efforts are needed to increase public legal awareness and expand access to justice, so that the divorce process can be carried out in accordance with positive law and provide fair protection for all parties.*

**Keywords :** *Divorce, court hearings, legal implications, spouse rights.*

**Abstrak :** Penelitian ini bertujuan untuk mengkaji implikasi hukum dari praktik perceraian yang dilakukan tanpa melalui sidang resmi di pengadilan agama, khususnya terhadap perlindungan hak-hak pasangan yang bercerai. Perceraian yang sah menurut hukum positif Indonesia hanya dapat dilakukan di hadapan majelis hakim melalui proses peradilan, namun dalam praktiknya, masih banyak masyarakat yang menjatuhkan talak secara lisan atau melalui media komunikasi tanpa mengajukan permohonan resmi ke pengadilan. Studi ini menggunakan metode yuridis normatif dengan pendekatan kualitatif, serta wawancara di Kecamatan Cibitung untuk memahami faktor-faktor penyebab fenomena tersebut. Hasil penelitian menunjukkan bahwa perceraian tanpa sidang berdampak pada hilangnya perlindungan hukum bagi hak-hak pasangan. Selain itu, perceraian yang tidak sah secara hukum menghambat pencatatan pernikahan baru karena ketiadaan akta cerai. Faktor utama yang memengaruhi fenomena ini antara lain rendahnya pemahaman hukum. Oleh karena itu, diperlukan upaya sistematis dalam meningkatkan kesadaran hukum masyarakat dan memperluas akses terhadap keadilan, agar proses perceraian dapat dilaksanakan sesuai hukum positif dan memberikan perlindungan yang adil bagi semua pihak.

**Kata kunci :** Perceraian, sidang pengadilan, implikasi hukum, hak pasangan.



## I. INTRODUCTION

When the marriage contract has been carried out between a man and a woman by fulfilling all the conditions and harmony as stipulated in Islamic law and legislation, then the marriage bond cannot be broken easily. Such a marriage cannot simply end just because of reasons that are not strong or contrived by one of the parties. The termination of the marital relationship can only be done if there is a strong reason and in accordance with the provisions of sharia and applicable law. In addition, the decision to separate must be based on the fact that there is no other way to maintain the integrity of the household in order to last forever.<sup>1</sup>

Divorce is an act to stop the marriage bond between husband and wife, so that all rights and obligations attached to the relationship are also released. If the marriage has been decided then the two parties are completely separated and are no longer allowed to have the same marital relationship as before. Although it is religiously permissible, its implementation often leaves a feeling of pain and leaves a mark of hatred before God Almighty.<sup>2</sup>

Divorce is the last resort that can be taken by husband and wife when problems in the household have reached a point that is difficult to solve and happiness in marriage can no longer be felt, but instead causes constant suffering. In an Islamic perspective, divorce is permissible and permissible when it is considered better than defending a conflictive marriage. Divorce becomes valid according to religious law when the husband has pronounced talaq. However, in the context of the applicable law in Indonesia, divorce is not considered legally valid if it does not go through a court trial. Therefore, in order for divorce to have legal force and be recognized by the state, it must be pursued through a legal mechanism, starting with the filing of a lawsuit or divorce application to the court.<sup>3</sup>

Laws and regulations in the field of family law, especially those regulating divorce, act as the main legal framework that oversees various provisions related to the rights of married couples. The regulation not only directs the legal process formally through the courts, but also aims to integrate various regulations so that the implementation and protection of the rights of each party in the divorce can be optimally enforced. Article 38 of Law Number 1 of 1974 concerning Marriage explains that the breakdown of a marriage is caused by three main causes, namely, death, divorce and a court decision.

Although divorce is allowed in Islamic teachings, the practice is fundamentally disliked by Allah SWT. Islam allows for divorce only as a last resort if domestic conflicts cannot be resolved through deliberation and peace. In practice, the community shows a variety of understandings about the implementation of divorce. One of the common views is that the husband has the right to impose talaq anytime and anywhere, as long as it has been preceded by careful consideration and joint settlement efforts from both parties to the family. These provisions are regulated in the study of fiqh, especially in the

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<sup>1</sup> Desminar, *Introductory Textbook of Family Law*, (West Sumatra: UMSB Press: 2021), 32.

<sup>2</sup> Muhammad Irfanudin, Reasons For Divorce in The Compilation of Islamic Law: An Overview of Islamic Legal Psychology, *Krtha Bhayangkara*, Vol.17, No.3, Year 2023, 497.

<sup>3</sup> Hasmiah Hamid, Divorce and Its Handling, *Scientific Journal of Education Forum*, Vol.4, No. 4, 24.

Shafi'i School which is one of the important references in Islamic law regarding divorce procedures.<sup>4</sup>

Based on article 39 paragraph (1) of the Marriage Law, it is stipulated that Divorce can only be carried out in front of the Court Session after the Court concerned has tried and failed to reconcile both parties. Because to get a divorce, a sufficient reason is needed that the husband and wife can no longer live together as a married couple. In accordance with Article 115 of the Compilation of Islamic Law, divorce can only be carried out in front of the Religious Court session after the Religious Court has tried and failed to reconcile the two parties. Conversely, if there are no grounds in favor of a divorce, the court may deny the application.

One of the main impacts of divorce that is carried out without going through a trial in court is the lack of protection of the rights of both parties, both husband and wife. In a legally valid divorce, there are mechanisms that regulate and protect important rights such as the division of joint property, the provision of alimony, and the determination of child custody. For men, the legal process provides certainty regarding obligations and protection of their rights as fathers and ex-husbands. Meanwhile, for women, the process is important to ensure the right to maintenance, child protection, and clarity of legal status. Without going through the courts, these rights are often ignored or not recognized, which can cause injustice and harm to both parties.

If the divorce occurs through an official hearing in court, then after the divorce there are legal consequences that must be fulfilled by the ex-husband against the ex-wife. One of these obligations is to provide iddah and mut'ah sustenance.<sup>5</sup> This is expressly stated in Article 149 of the Compilation of Islamic Law, this article stipulates that if the marriage is broken up due to talaq, then the ex-husband must:

- a. Giving proper mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is qobla al dukhul;
- b. Giving maintenance, maskan and kiswah to the ex-wife during iddah, unless the ex-wife has been sentenced to talak ba'in or nusyur and is not pregnant;
- c. Paying off the dowry that is still owed in full, and half if qobla al dukhul;
- d. Providing hadhanan fees for children who have not reached the age of 21.

Divorce that is carried out without going through formal procedures in court not only affects the wife, but also has legal consequences for the husband. One of the main impacts is the inability to legally remarry at the Office of Religious Affairs (KUA). This happens because there is no official document in the form of a divorce certificate issued by the court, which is an important requirement in the process of registering a new marriage at KUA. As a result, many individuals who divorce without going through a trial tend to choose to remarry informally or perform an under-the-hand marriage, which is

<sup>4</sup> Danil et al, Divorce Outside the Religious Court Session in North Padang Lawas Regency According to Law Number 1 of 1974 concerning Marriage, *Journal of Tambusai Education*, Vol.7, No.3, Year 2023, 30087.

<sup>5</sup> Ansar et al, Analysis of Judges' Considerations in Determining the Payment of Mut'ah and Iddah Maintenance Before the Talak Pledge (Case Study at the Bima Religious Court Class 1A), *Journal of Law and Shaira*, Vol.2, No.1, Year 2024, 66.

not recognized by state law. This practice raises various legal problems, including unclear marital status and potential violations of applicable laws and regulations.<sup>6</sup>

As such, it is important to emphasize that divorces that are carried out without going through a formal process in court not only ignore the provisions of the law, but also have the potential to cause various problems that are detrimental to both parties. Unclear legal status and unprotected rights can lead to prolonged conflicts, especially in terms of property division, child custody, and alimony. Therefore, an in-depth understanding of legal divorce procedures and the legal consequences that come with them is essential. This research aims to provide clearer insights into the juridical impact of divorce out of court, as well as to raise awareness of the importance of following existing legal mechanisms to protect individual rights and maintain justice in society.

## II. RESEARCH METHODS

This study uses normative juridical research methods with a qualitative approach. Normative juridical is an approach that focuses on the study of positive legal norms. This method relies on the study of legal documents as the primary source, including laws and regulations, court decisions, contracts or agreements, legal theories, and legal expert opinions.<sup>7</sup> The phenomenon that is the focus of this study is the practice of divorce that is carried out without going through a trial process in religious courts, which is often referred to as divorce under the hand. This practice refers to the termination of a marriage relationship by a married couple without obtaining an official decision from the competent judicial institution.

## III. RESULTS AND DISCUSSION

Divorce is an act to stop the marriage bond between husband and wife, so that all the rights and obligations attached to the relationship are also released. If the marriage has been decided then the two parties are completely separated and are no longer allowed to have the same marital relationship as before. Although talaq is religiously permissible, its implementation often leaves feelings of pain and leaving hatred before God Almighty.<sup>8</sup>

Divorce can only be legalized through the courts, and such decisions carry legal implications regulated by law. The ex-husband has the obligation to provide iddah, mut'ah, past and child support, as well as responsibility for the division of joint property. However, even in the event of divorce, both parents and fathers are still obliged to provide support for their children, including education, health, and maintenance costs, in accordance with Article 41 of Law No. 1 of 1974 concerning Marriage and Article 156 letter d of the Compilation of Islamic Law. If the ex-husband is incapacitated, the court can stipulate that the ex-wife also bear child support. In addition, if there is still a joint

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<sup>6</sup> Vivi Hayati, 'The Juridical Impact of Divorce Outside the Court (Research in the City of Langsa)', *Journal of Justice Ocean Law*, Vol.10, No.2, July 2015, 225.

<sup>7</sup> Wiwik Sri Widiarty, *Textbook of Legal Research Methods* (Dipenogoro: Publika Global Media: 2024). 27.

<sup>8</sup> Muhammad Irfanuddin, Reasons for Divorce in the Compilation of Islamic Law: An Overview of Islamic Legal Psychology, *Krtha Bhayangkara*, Vol.17, No.3, Year 2023, 497.

debt after divorce, the husband and wife are equally responsible for paying it off based on Article 121 of the Civil Code. The condition of children must be maintained so as not to become victims of divorce such as avoiding loss of alimony, custody, and negative stigma. Therefore, the role of religious courts is very important as an effective means to ensure the fair implementation of material and non-material rights and obligations for children and both ex-spouses, even if they have separated.<sup>9</sup>

If the divorce is carried out outside the court, then the rights and obligations that have been regulated by law such as the obligation of the ex-husband to provide for iddah, mut'ah, child support, division of joint property, and the joint obligation of parents to provide for the child and pay off joint debts will not receive clear legal protection and cannot be enforced. Without an official divorce certificate from the religious court. As a result, the aggrieved party, namely the ex-husband, wife, or children, will have difficulty demanding their rights, such as the division of property, the determination of alimony, or the settlement of joint debts. Therefore, the divorce process must go through the official channels of the court, so that all rights and obligations get legal certainty and so that the child does not become a victim in a legally invalid process.

The breakdown of the marital bond that occurs at the will of one party or both parties, caused by disharmony in the household, is known as divorce. This disharmony often arises due to the non-fulfillment of their respective rights and obligations as husband and wife in accordance with the provisions of applicable marriage law. This disharmony can be reflected in behaviors such as a lack of mutual respect between spouses, not maintaining privacy or confidentiality, an insecure and unstable domestic atmosphere, and the existence of fundamental disputes or differences of opinion that are difficult to reconcile.<sup>10</sup>

When each party in the household no longer carries out their rights and obligations properly, quarrels become inevitable. In many cases, divorce arises due to a lack of mutual respect, a loss of trust, or even due to unfair treatment such as violence and neglect. This reflects that the marriage bond requires not only emotional commitment, but also legal awareness and moral responsibility on both sides.

Although ideally marriages are meant to last a lifetime and only end due to the death of one of the parties, the reality is that many marriages end for various other reasons involving the will or actions of both husband and wife. Divorce can occur for several reasons, such as infidelity, domestic violence, prolonged disharmony, or one party leaving their partner without a valid reason. It should be noted that both husband and wife have the same right to file for divorce if they feel that the continuation of the marriage is no longer possible. Thus, although marriage is expected to be a lasting bond, various internal and external factors can lead to the termination of the relationship through a legally valid divorce.<sup>11</sup>

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<sup>9</sup> Indi Wahyunintyas et al, Legal Protection of the Rights of Parties Involved in the Divorce Process Based on Law No. 1 of 1974, *Journal of Community Service*, Vol.2, No.2, Year 2025, 47.

<sup>10</sup> Muhammad Syaifuddin et al, *Divorce Law*, (East Jakarta: Sinar Grafika: 2022), 6.

<sup>11</sup> Kumedi Ja'far, *Islamic Family Law in Indonesia*, (Bandar Lampung: Arjasa Pratama: 2020), 100.

In a society that has experienced changes in social values, awareness of rights and obligations in marriage is increasing, both among women and men. Women, as wives, now better understand and fight for their rights when facing unfair treatment in the household, including by filing a divorce lawsuit with a religious court. However, it is important to note that rights and obligations in marriage do not only apply to the wife, but also to the husband. The husband has the right to be treated with respect and fairness by the wife, and has the right to the fulfillment of his wife's obligations in accordance with the provisions of the applicable law. If the husband feels aggrieved or treated unfairly by his wife, he also has the right to file for divorce with a religious court.<sup>12</sup>

Not only does the wife have the right to file a divorce lawsuit when she experiences injustice, but the husband also has the same rights if he feels that his rights are violated. It is important to understand that in marriage law, justice applies to both parties, and the divorce process should be a solution that can save both of them from a detrimental situation on an ongoing basis. Thus, divorce is not only about the end of the bond, but also about rediscovering calm, justice, and a life more worthy of each individual.

According to some jurists, divorce does not have to go through the court because, as long as the pillars of talaq are fulfilled, talaq pronounced outside the court is still valid according to Islamic law. They emphasize that sharia that comes directly from Allah is fixed, while fiqh is the result of human ijtihad that over time can develop as long as it does not contradict Islamic law. Since the Qur'an and hadith do not detail the procedural procedure of talaq in court, the interpretation of scholars varies, and most consider talaq outside court to be as valid as talaq carried out in court. As a result, many people consider divorce without a court to be normal, because it is considered responsive and easy to do, without violating the teachings of Islam.<sup>13</sup>

Some Muslims in Indonesia feel that the divorce rules from the law feel contrary to the classical fiqh law that they have been understanding. In fiqh, talaq can be imposed by the husband, or even on the initiative of the wife, without having to go through the court, as long as the pillars of talaq are fulfilled. So that it can develop with the times as long as it does not contradict religious principles. Because of this diversity of interpretations, out-of-court divorce has become commonplace in society which makes many Muslim couples consider it legal and easy to do, even though the rules in the Marriage Law require legal protection through proceedings in the Religious Courts. This difference in understanding creates a gap between modern legal awareness and fiqh traditions, and ultimately creates practical difficulties when divorce is carried out without legal clarity.<sup>14</sup>

As a result, talaq that is often done informally and quickly becomes a habit, although legally positive is not recognized and poses practical difficulties. This difference causes tension between religious legal beliefs and state lawsuits, and raises problems in the field because many people prefer to follow fiqh and then undergo divorce outside the

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<sup>12</sup> Syarifuddin Op.cit,10.

<sup>13</sup> Yulisa Fitri et al, Juridical Analysis of Divorce Outside the Court According to Law Number 1 of 1974 concerning Marriage and According to the Opinion of Islamic Fiqh Experts, *Journal of the Faculty of Law, Malikussaleh University*, Vol. 7, No. 1, Year 2019, 33.

<sup>14</sup> Ibid, 33-34.

court according to old customs. This makes the divorce process common and easy, when in fact the law requires legal protection so that the goal of justice and legal certainty is achieved.<sup>15</sup>

Divorce carried out outside the court causes losses for both parties, for the rights of the wife, because the husband often casually and as if carelessly decrees a divorce, this is considered natural because the public considers the opinions of jurisprudence as representations of Islamic teachings, so such actions are not considered wrong. As a result, out-of-court divorces have become commonplace. Husbands who do not like their wives may look for a simple excuse to divorce without careful consideration, because it is considered easy and without legal consequences. In addition to the wife's rights that are not protected by law, the husband's rights as a victim of divorce outside the court are also neglected, she can lose the opportunity to obtain her legal rights according to positive law, such as inheritance rights, limited custody, or even the right to share common property. This condition shows that although it may be legal in *fiqh*, legally the state has the potential to hurt and oppress both parties, not only the wife, but also the husband.

In Cibitung District, there were cases where divorce was only carried out based on an informal understanding of Islamic law without going through a trial process in the Religious Court. Although religiously *talaq* is considered valid because it fulfills the pillars of *talaq*, the divorce is not officially recognized by the state because it is not recorded in the divorce certificate from the court. As a result, the divorce was considered invalid under state law.

In order to obtain comprehensive information about the impact of divorce without going through a trial process in a religious court, the author conducted in-depth interviews with several resource persons consisting of ex-husbands and ex-wives who have experienced oral divorce in Cibitung District.

In the interview conducted with the community as a resource person, it was known that there were several people who divorced without going through legal processes in court, In the interview conducted with Kusdayan as the community as the resource person, it was known that he got a divorce without going through legal processes in court, and stated the following:

"I have been divorced from my wife since a few years ago. Our marriage lasted for four years and was officially registered at the Office of Religious Affairs (KUA). The divorce happened over the phone, because at that time it was my own wife who asked me to think about it immediately. I don't take the divorce to court because I live in a devout Muslim environment, where many people consider *talaq* pronounced over the phone to be religiously valid. I also believe that. On the other hand, I felt troubled if I had to take care of going to court because the distance from my house to the Cibadak Religious Court was quite far and I didn't have the money to go back and forth there. In addition, I also don't understand how the process works. At that time, the only savings we had was actually brought by my ex-wife, because during the wedding all my salary money while working in Jakarta went into my wife's account so I was really struggling economically."

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<sup>15</sup> Ibid, 34.

It is known that Suminar filed for divorce without going through legal proceedings in court, and stated the following:

"I have been married for seven years and our marriage is officially recorded at the Office of Religious Affairs (KUA). When the marriage age entered two years and four months, after seven years together, I chose to end the marriage through a long-distance conversation, because I myself felt unable to guarantee when I could return to Indonesia and give a full presence as a wife. Divorce happened when I was still abroad, I didn't take care of the divorce through the courts because I didn't know how the procedure was from abroad, while in my neighborhood in my village, divorce through conversation or distance talaq is still considered legal according to the Islamic religious view. In addition, the divorce process through the courts was considered complicated, requiring money, time, and my physical presence in Indonesia, which was impossible for me at that time. For that reason, I find it easier and faster to resolve a divorce on the basis of religion alone without a formal process in court."

It is known that Dinar filed for divorce without going through legal proceedings in court, and stated the following:

"I was legally married, registered at the Religious Affairs Office (KUA), and our household lasted for three years. However, when the divorce occurred, my husband imposed talaq directly in front of me without going through the trial process at the Religious Court. I chose to divorce because I was constantly subjected to verbal abuse from my husband who was proven to have committed infidelity several times until I felt my mental and self-esteem were destroyed. I did not take this matter to court because at that time I was in a very depressed mental state and felt that I could not face the long and tiring legal process. I also don't have enough knowledge of the formal divorce procedures in court and there is no financial or legal support to accompany it. In my environment, talaq from my husband is often considered enough to declare a separation, so I accepted the situation and chose to focus on raising my child without involving further legal proceedings."

It is known that Kumin filed for divorce without going through legal proceedings in court, and stated the following:

"I was legally married and registered with the Office of Religious Affairs (KUA) for seven years, but at the age of marriage, my wife went secretly to work abroad without my knowledge or consent. I divorced her via WhatsApp text message to the last number I had. From our marriage, I did not take care of the divorce through the courts because in addition to the limited costs, I also did not know the legal procedures. The distance to the religious court was quite far from where I lived, and I didn't have enough time and energy because I had to work and take care of my child alone. After all, in the neighborhood where I live, many people believe that talaq imposed by a husband, even through text messages, is considered religiously valid. Therefore, I consider our separation to be enough religiously without having to go through a trial process that I find complicated and burdensome."

The phenomenon of divorce without going through a religious court hearing, as experienced by the resource persons in this study, is a form of practice that is not in accordance with the provisions of Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage that Divorce can only be carried out in front of the Court Session after the Court concerned has tried and failed to reconcile the two parties, this provision is strengthened by article 115 of the Compilation of Islamic Law that divorce can only be carried out was carried out in front of the Religious Court session after the Religious Court tried and did not succeed in reconciling the two parties. Thus, talaq that is imposed orally without involving judicial institutions, even though it is religiously believed to have been legally imposed, has no legal force in the eyes of the state and is considered administratively invalid.

Based on the results of interviews with the interviewees who carried out divorces outside the Religious Court in Cibitung District, several main factors were identified that influenced their decision not to file for divorce officially through the judicial institution, namely:

1. Many Cibitung people still hold to the understanding that talaq spoken orally, either directly or through media such as telephone or text messages, is considered legal according to Islamic law, even though it is not recognized by the state
2. The public admitted that they did not understand the official divorce procedure in religious courts, so they felt confused or reluctant to take care of legal processes that were considered complicated.
3. The cost factor is one of the main reasons, where people feel unable to bear transportation costs, administrative costs, or other expenses related to the trial process in religious courts.
4. The long distance between the residence and the Religious Court office is an obstacle in itself, especially for those who live in rural areas or have to work outside the city/abroad.
5. People experience mental distress, trauma, or emotional exhaustion due to domestic conflicts, so they are unable to face long and tiring legal processes.

Low legal awareness, limited access, and the psychological condition of the community are the main causes of the rampant practice of divorce outside the judicial channels in Cibitung District. The habit of people who prioritize traditional religious understanding without paying attention to formal legal aspects indicates that there is still a weak integration between religious norms and the national legal system. On the other hand, the lack of socialization regarding official divorce procedures and the lack of legal assistance from related parties, such as legal counselors, religious leaders, and government agencies, further strengthen the public's disinterest in carrying out divorce in court.

Economic and geographical factors also worsen the situation, as the costly and time-consuming trial process is considered burdensome, especially for families from the lower middle economic class. Meanwhile, the unstable mental state due to domestic conflicts makes most individuals choose a quick settlement even though it is not legal by the state. This creates a gap that is detrimental to the parties, especially women and children, whose rights are often neglected due to the absence of an official decision from

the court. Therefore, serious efforts are needed from various parties to improve legal literacy and expand access to justice, so that divorces that occur can be resolved legally, fairly, and protect the rights of all parties involved.

If there is no official decision from the court, then the marital status of the husband is still recorded as valid in state documents. This condition can be an obstacle for a husband who wants to remarry legally, because legally he is still considered to be bound in the previous marriage bond. In addition, without going through legal proceedings in court, there is no formal mechanism that regulates the equitable distribution of common property. As a result, this has the potential to cause prolonged disputes between ex-spouses regarding the ownership and division of assets that were previously jointly owned.

Divorce that takes place without going through a process in court does not provide a clear legal basis regarding the determination of alimony obligations from the husband to the ex-wife and children. The absence of an official decision causes the status of financial responsibility to be blurred, because there are no provisions that expressly regulate the amount, duration, or mechanism of alimony. This condition is prone to causing disputes in the future, especially when the wife feels that she does not get her rights, while the husband feels that he no longer has obligations. This ambiguity not only impacts relationships between individuals, but can also worsen the social and economic conditions of the family after divorce.<sup>16</sup>

Divorce carried out without going through the official channels of the court not only injures the principles of justice in the law, but also opens up space for inequality of rights and obligations between parties, especially in the aspects of alimony, child custody, and division of common property. This irregularity creates legal uncertainty that is detrimental to ex-husbands, wives, and children who are victims of administratively invalid divorce proceedings.

Therefore, it is important for the public to understand that the divorce process is not just a personal or religious matter, but also a state legal issue that has long-term consequences for legal status, social justice, and the protection of the rights of all family members. The government, through related institutions, needs to be more aggressive in conducting legal education and providing access to affordable assistance, so that the public, especially in areas such as Cibitung District, can make the religious court the main and legitimate route in resolving divorce cases. That way, the legal goals of justice, certainty, and usefulness can be truly realized in every process of domestic separation.

#### IV. CONCLUSION

The importance of the legal process in divorce is especially in the context of family law in Indonesia. Although divorce is allowed in Islamic teachings, its implementation must go through formal channels in the courts to ensure the protection of the rights of both parties. Divorce that is carried out without going through the court process has the

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<sup>16</sup> Vivi Hayati, Op cit, 226.

potential to cause injustice, both for the ex-husband and wife, as well as the children from the marriage. In the absence of a formal divorce certificate, rights such as alimony, child custody, and division of joint property are not legally protected, which can lead to prolonged conflicts and losses for all parties.

The phenomenon of divorce outside the court in Cibitung District shows that there is a gap between the understanding of religious law and positive law in Indonesia. People who still consider talaq spoken orally as legitimate without legal process creates challenges in the enforcement of justice. Therefore, efforts are needed to improve legal literacy and access to justice, so that the public understands the importance of following official procedures in divorce. Thus, it is hoped that every divorce process can be carried out legally, fairly, and protects the rights of all parties involved, as well as preventing negative impacts that can arise due to legal uncertainty.

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