

Legal Study Of Family Resilience:

Domestic Violence As Cause For Women For Divorce In Purwokerto

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Abstract- This article is focusing on the legal study and discussing in the area of Acts: the women's rights and social stigma related to divorce cases because of domestic violence in Purwokerto. The objective of this research is to find out the legal study of victims' rights especially women's rights in the family's conflict -domestic violencein Purwokerto. This research is conducted by using the mixed-research method. It explored data through five elements in Purwokerto. Such as two courts (14 divorce cases) and government institutions, non-government organizations (NGOs), and 100 participants randomly. There was a tendency for women who sue their partners to prefer other reasons than domestic violence. Such a phenomenon is certainly captured as a failure in the concept of domestic violence in families in our societies and Indonesia's regulations of marriage. Finally, the result of this research is to enhance and enlighten the concept of family to be able to have strengthened resilience in a family and awareness the right of members of the family especially the rights of women in the family.

Keywords- Domestic Violence; Family; Legal Study; Purwokerto; Woman's Rights.

I. INTRODUCTION

The family is a unity in the state structure. It is the fundamental resilience of a country. Making family with a character as a container in the making process of personality and national identity. Otherwise, the state will not be perfect. [1]

Family is also one of the most important things in nurturing a nation's generation. The care of children is created in order not only to raise but also to educate in the family. Parents become role models and mirrors for their children. Thus, couples who decide to have a family have an understanding of the meaning of marriage and the realization of the family itself.

Marrying and forming a family is one of the characteristics of humans. This is also an individual right.[2] The roles in the nuclear family, namely father, mother, and children, must be a highly synergistic strength to be complemented one another. Each member should understand their obligations and rights to mutually reinforce, respect, and appreciate each other in achieving the goal-dreamed of the family.

Purwokerto is a small semi-modern city in central Java, Indonesia. It has four sub-districts like South,

North, East, and West Purwokerto. Moreover, the lifestyle and kinship relationship in Purwokerto as the same as most of the other areas in Java. It is a patriarchal rationality kinship. A man's position is higher than a woman's position.

A family is the smallest unit as a fortress in a country. All members of a family have to synergize each other in some conditions of their lives. However, related to data of Religious Court Purwokerto the adjuration of divorce has reached approximately 3000 cases throughout 2019. It increased compared to the previous year.

Furthermore, some experts suggest that the term "family" refers to a sense of security and protection. A private condition and a place of shelter from outside pressures and difficulties. A place where a family can feel its existence in a state of peace, safety, and serenity, but ironically, there have been many studies that show that the family can become the "cradle of violence" where family members can become targets of domestic violence. [3]

There are some causes of divorce. One of the triggers for divorce is domestic violence. However, only a few of the women who sue her partners by considering and declaring in the domestic violence area. Some stigmas are involved in their decisions. The majority the women would sue their spouse because of continuous quarrels and fights

This research was conducted on understanding the family and the role of each family member is having resilience of the family. By targeting the youth, the women, and the men communities to see the level of legal awareness and the prevention from violence in family formation. Subsequently, this article discussed The Women Rights of Domestic Violence as Divorce Cause in Purwokerto.

II. PROBLEMS

Based on what has been described above, there are at least two issues that will be raised. First, how the harmonization of the provision of marriage in Indonesia to examine the women's rights in the case of domestic violence divorce to her spouse. Second,



how far the impacts of that social stigma involved of that woman's before and aftermath of divorce.

III. RESEARCH METHOD

The research method in this study utilizes empirical legal research with primary and secondary data. The literature study focuses on legal study comparison on harmonization Acts of marriage state laws. Especially the Act of marriage and the Act of Domestic violence.

Interviews and observations were used to reveal data on the forms of domestic violence in a family. Triangulation techniques[4] and methods of data sources are used to analyze the data validity. The data sources are the form of deep-interviews, observations, documents among them. Furthermore, the data from around 100 participants randomly as a husband, a wife, and an adolescent's perspective. Additionally, data collection of court decision documents with 14 cases of divorces from two courts in Purwokerto, DPPKBP3A: PPT-PKBGA as government institutions and three of Non-government organizations working in a crisis center or consulting of family. Subsequently, they were analyzed by a technique of interactive model of data analysis. It means the data analysis was done interactively until the data was completed among the stages which are data collection, data reductions, data display, and conclusion drawing or verification.

The objective of this research would be a good input in the harmonizing Act of marriage No.1 of 1974 and Act of domestic Violence No. 23 of 2004 and protecting economic and social aspects especially for a widow because of domestic violence divorce. Furthermore, it would be wracking the negative stigma in society

Thus, the result demonstrated significant main effects of domestic violence myths or stigma in society and the victim's relationship status and decision to return.

IV. DISCUSSION

1.Legal Study: Harmonization of the women rights in family conflict

1.1.) Definition of Domestic Violence

Building a family is usually accompanied by realizing the dreams in the family. With the main purpose of marriage is to create a *sakinah*, *mawadah*, and *rahmah* (samara) household. It refers to the Islamic religion. In other words, the embodiment of marriage is to create a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family based on the One Godhead. It showed that the majority of 100 respondents answered they had a family goal before their marriages.

Forming a family should be built by a religious approach as same as an isosceles triangle. It has two sides of equal length that representative of a husband and a wife. Both of them are going in one direction which is to God.

In the compilation of Islamic law (as KHI: rules of marriage for Muslim Indonesian residents) in Article 2 of the KHI which states that:

"Marriage according to Islamic law is a very strong contract or *miitsaaqan ghalizhan t*o obey Allah's orders and do it is worship."

The family has the meaning of an environment that can protect people in its shade. Besides, the family is also a place to devote love, to get a proper education, as well as healthy growth both physically and mentally, to accept each other in the family for the various shortcomings they have.

Meanwhile, the word violence contains something contradictory in the embodiment of a happy family. Something contrary to the word happy itself. Violence means destructive, dangerous, and frightening.

Etymologically, the term violence is a combination of "vis" which means power or strength, and "latus" which comes from the word "ferre" which means to carry. Thus, it can be interpreted that violence is an act that brings the power to exert physical or non-physical coercion or pressure.

In narrow definition of violence is a physical assault against someone or attacks to destroy feelings that are very harsh, cruel, and vicious. [5]

The definition of domestic violence itself is revealed in Article 1 point 1 of the Act. No.23 of 2004 concerning the Elimination of Domestic Violence (UUPKDRT). Domestic violence is any act against a person, especially against a woman that results in suffering or physical suffering. sexual, psychological, and/or domestic swallowing including threats to commit acts, coercion or illegally depriving someone of one's liberty in the household

The scope of households based on Article 2 of this law includes:

- a) Husband, wife, and children
- People who have family relations, whether due to blood relations, marriage, breastfeeding, care and guardianship who live in the household and,
- People who work to help household and live in the household concerned

Women position in households that are economically helpless (because they do not have sufficient knowledge and skills) tend to be more resigned and "nrimo: accept in Javanese words" to their situation. This is what often triggers or increases the presence of violence. Even worse, violence is carried out in a household in a marriage bond. While in most cases of divorce, women do not wish to report their partners to the authorities. Because in Indonesia domestic violence is included in the offense of



complaint. So that the police will only act if there is a report from the victim.

This condition not only affects the life and mental development of the spouse but also affects the psyche and development of the children in the family environment. Sometimes verbal violence is felt to be enough to hurt a partner. However, for many reasons that are considered domestic violence is only physical violence.

Women's rights such as financial strength should be able to do before and after marriage and also the rights of reproductive health. Reproductive health is a state of complete physical mental and social wellbeing and not merely the absence of disease or infirmity. In all matters relating to the reproductive system, its functions, and processes [6]

In summary, based on the judge's experiences in court which were religious or district court of Purwokerto showed in many cases of divorce should have an enlightened perspective of a family. Sometime, humanity approach treatment should be used by the judges for giving the solution to spouse problems. Such as the judges share knowledge about the globalization era to depicts how changed the world is. Involved the changing of the rule of games in a family. Sometimes, it allows the husband to take care of children at home and the wife has to do something with her work in the office. Women's rights such as her rights to be existed-work in family and society should behave into consideration every decision in a family.

Those things need to do a harmonization and perceptual equalization by a person in charges such as judges, leaders of community or religious leader due to many of spouses and societies have different perspectives in the implementation of the meaning a family or domestic violence.

1.2) Forms of domestic violence

Based on various literary sources and Article 5 of the PKDRT Law, it is revealed that there are at least four types of domestic violence. Namely:

a) Physical Violence

Physical Violence is an act that causes pain, falls ill, or is seriously injured. It shows that the injuries caused by violence are not due to accidents but there is physical violence due to beatings, pinching, slapping, stepping on, ironing or being stabbed with knives, and so on. Which is usually proven by *visum et repertum* after the incident of violence. In reality, not many wives are willing to do this. Due to limited understanding, economy and still wanting to keep the family together.

b) Psychic Abuse

Psychic violence is an act that results in fear, loss of self-confidence, loss of ability to act, feeling helpless, and severe psychological suffering for a person based on Article 7 of the Law on Domestic Violence.

c) Sexual Violence and

Sexual Violence includes forced sexual relations between people who live in the household; Forcing sexual relations between one person within the scope of his household with another for commercial and/or specific purposes.

d) Abandonment in the family

Based on Article 9 paragraph (1) UUPKDRT, it stated that the actions of every person who neglects a person within the scope of his household, even though the applicable law is obliged to provide life, care, or education to that person. Continued in Article 9 paragraph (2) UUPKDRT. By limiting or prohibiting proper work in or outside the home, one of the parties especially the woman becomes a dependent person in financial to other party in a family.

Under Article 38 of Law No.1 of 1974, at least there are three conditions, which cause a married couple in a family to be called divorce, namely:

- 1. Death
- 2. Divorce or
- 3. Based on court decisions.

Tabel 1.1

Purwokerto Religious Court Divorce Data
Period January 2018 - June 2020

No	Causing Factors of	YEAR		
	Divorce	2018	2019	Juni 2020
1	Adultery	13	2	2
2	Drunk	16	2	-
3	Opium	-	10	2
4	Gambling	6	7	2
5	Leaving one of the parties	723	796	324
6	In Prison	2	1	1
7	Polygamy	6	6	-
8	Domestic Violence	8	11	3
9	Disability	-	6	1
10	Continuous quarrels and fights	884	981	513
11	Forced Marriage	27	7	7
12	Apostate	-	9	2
13	Economy	867	1052	307
	Total		2890	1364

Source: Religious Court of Purwokerto, 2020

Based on the data of religious court in Purwokerto. The divorce cases were almost three thousand cases from 2018 to June 2020. The divorce cases because of domestic violence were 22 cases within those three years.



Tabel 1.2

YEAR	2016	2017	2018	2019	2020
Domestic					
Violence	2	2	4	5	2
Other					
reasons	24	29	28	29	16
Total cases	26	31	32	34	18

Source: DC. Purwokerto,2020

Meanwhile, the data from the District Court of Purwokerto depicts the domestic cases were around 15 cases within 5 years or around 7-14% every year.

In practice, when a woman wants to divorce her husband or vice versa. Thus, the filing of a lawsuit that is filed must be adjusted to the six points contained in Article 19 of Government Regulation No.9 of 1975. The basis for claims filing a lawsuit for divorce in positive law is regulated in a limited manner in that article. It means that only those six reasons can be used as a basis for filing a divorce lawsuit outside of these reasons which cannot be accepted by the court. Either the religious court or the district court. The reason for claim divorce, such as:

- a) One of the parties commits adultery or becomes a drunkard, a convict, gambler, and others who are difficult to cure;
- b) One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and valid reasons or for other reasons beyond its capabilities;
- c) One of the parties is sentenced to 5 (five) years imprisonment or a heavier sentence after the marriage takes place;
- d) One party commits cruelty or serious maltreatment that endangers the other party;
- e) One of the parties gets a physical disability or illness resulting in not being able to carry out his obligations as husband/wife;
- f) Between husband and wife, there are constant quarrels and fights and there is no hope of living in harmony again in the household.

According to Article 116 KHI [7], divorce can occur for reasons:

- a. One party commits adultery or becomes a drunkard,
 a prostitute, a gambler, and others that are difficult
 to cure.
- b. One party leaves the other party for 2 consecutive years without the permission of the other party and valid reasons or for other reasons beyond its capabilities.
- c. One of the parties is sentenced to 5 (five) years imprisonment or a heavier sentence after the marriage takes place
- d. One party commits cruelty or serious persecution that endangers the other

- e. One of the parties has a disability or illness as a result of not being able to carry out his obligations as husband or wife
- f. Between husband and wife, there are constant quarrels and fights and there is no hope of living in harmony again in the household
- g. The husband violates divorce taklik
- h. Conversion or apostasy which causes harmony in the household.

In brief, based on the data above which comes from Purwokerto Religious and The District courts depict only a few people who can sue their spouses according to domestic violence. Even though, it could also be if they sued their spouse by suing directly to claim divorce because of domestic violence. Thus, the cause of divorce in the household due to domestic violence is only mentioned in the section in Article 19 of Government Regulation No.9 of 1975 letter d.

1.3) Causes of violence.

Several models of violence are:[8]

- Psychodynamic model, the occurrence of violence is caused by a lack of "mothering". A person who has never been properly cared for or cared for by a mother, she cannot become a mother and take care of her child;
- 2) Personality trait model. This model is almost similar to the psychodynamic model, but in this case, there is little attention to what parents experienced as perpetrators of violence. But assume that this is due to the child's parents who are not mature enough, aggressive, frustrated/bad character. And this too happens a lot in our society. Especially for couples with high school education or the equivalent. From the results of field research, it is illustrated that both from the experience of the case handlers of the judges and also from the respondents who filed for divorce. That many violence occurs due to a lack of education and insight related to the household. Plus, the lack of maturity on the part of the parties in dealing with family conflicts. So that the participation of third parties in the pair's decisions becomes very dominant.
- 3) Social learning model, lack of social skills as indicated by feeling dissatisfied with being a parent, feeling very disturbed by the presence of children, telling children to behave like adults.
- 4) Family structure model, which shows the dynamics between families that have a causal relationship with violence. A model like this is still a role model. However, with the many shifts in value due to globalization and digitization, it also makes the family structure model. At this level, male dominance in a family begins to shift to create a partnership between husband and wife. But many also end up being too dominant wives.



- 5) Environmental Stress model, which sees children and women as a multidimensional problem and places "pressure" as the main cause. If there are changes in the factors that shape the human environment, such as welfare, low education, absence of work, then these things become a trigger for violence against children or partners.
- 6)Social-psychological Model, in this case, "frustration" and "stress" are the main factors in causing violence to children and partners. Stress occurs for various reasons, such as domestic conflicts, social isolation.
- Mental Illness Model, violence between spouses and children occurs due to neurological disorders, or mental illness.

Post-traumatic stress order (PTSD) is a complex psychiatric disorder that can affect all ages. It can interfere with someone's social function. Adolescents and women are the groups most vulnerable to experiencing this disorder.[9]

In the way of knowing this kind of the causes of violence in the family. It is necessary to have and to do education and socialization of marriage-education based on the person's religion. In other words, premarriage education. It is mandatory to study it within 3 months. Pre-marriage education should be one of the requirements for the young spouse of doing marriage. These activities aim to reduce domestic abuse in society.

- 1.4) Case Study 5 cases out of 14 divorce cases:
- a. Religious Court Decision No. 32x / Pdt.G / 2020 / PA.PWT

Description Y1 (36 years) dan X1(38 years). Their educational background is undergraduates. The reason for divorce was economic problems, harsh words which then lead to physical violence with proof of *visum et repertum*. However, X1 never appeared in court. Thus, Submission of Lawsuit State the reasons for domestic violence by threatening the life of Y1.

b. Religious Court Decision No. 88x / Pdt.G / 2018 / PA.PWT

Description: Y2 (42 years old) vs X2 (44 years old). Educational background in Junior high school education. Reasons for Divorce Economic problems that then lead to physical violence without proof of *visum et repertum*. However, X2 never appeared in court. Y2 submission of Lawsuit Complies with Article 1 (1) and Article 5 (4) of Law No.23 of 2004 regarding domestic violence.

c. District Court Decision No. XX/ Pdt.G/ 2016/PN PWT.

Description: Y3 vs X3. They were Cristian. The wife as a housewife and the husband as an employee in a company. Reasons for divorce was an affair of the husband. Then lead to physical violence with proof of *visum et repertum*. After 14 years of marriage.

d. District Court Decision No. XX/ Pdt.G/ 2018/PN PWT.

Description: Y4 (31 years old) vs X4 (33 years old). They were Cristian. However, the husband had been changed his religion. Both of them were work as an employee. After 8 years of marriage. The reason for divorce was envious of the wife's wages. Then lead to verbal and psychic abuse without proof of *visum et repertum*.

e. District Court Decision No. XX/ Pdt.G/ 2020/PN PWT.

Description: Y5 (36 years old) vs X5 (41 years old). They were Cristian. A husband as a tailor. After having three children. The reason for divorce was an affair. Then lead to physical violence without proof of *visum et repertum*.

Indonesia's legal system is civil law. It means the judge in the court of private cases should be using a passive method in judging. The judge needs to decide according to the claims of parties. (result interview of judge Purwokerto district court).

Women should prove their marriage are legal. By using the marriage certificate. It shows that she has legal standing as a party that has the right to claim her spouse. Under Article 2 (1) jo article 6(1) jo and Article 7(1) of Act No. 1/1974.

Furthermore, the party sued his/her spouse in court also need to prepare the proof of her/ his claims. Indonesia has ratified several international conventions on women. For example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEWAD: Convention on The Elimination of All Forms of Discrimination Against Women) which is contained in Law No.7 of 1984. This law has strategic issues in it, namely (1) shifting issues from space the private sector becomes a public issue (2) providing space for the state to intervene in the private space to provide optimal protection for minority citizens, especially women and children from acts of violence.

However, there is still a lot of rooms to improve, for example, the difficulty in giving information on the collision of one witness who is not a witness, even though in cases of violence against children and women, often the witness is only one person. [10] Even the regulation of marriage in Indonesia already covers these issues. However, women especially should prepare many considerations to do the claim of divorce because of domestic violence.



Even though the focus of violence on the husband is not much, it was around 7% of 14 court decisions related to domestic violence. This data obtained by the researcher from The District and Religious court in Purwokerto.

However, several women's considerations are about to open the family disgrace, her economy, social stigma, and also the education of her children. It also necessarily needs to do to heal the trauma of domestic abuse that happened to the victims.

To sum, the judge will issue the decision court based on Jurisprudence the Highest Court of Indonesia (*Mahkamah Agung RI*) No. 3180/Pdt/1985: The meaning of a continuous quarrel that cannot be reconciled. It is not emphasized on the cause of the continuous quarrel that must be proven but seeing the fact also that the quarrel indeed continues. Thus, the marriage cannot be reconciled.

2. Social Stigma

Consideration of gender in a family has centered almost exclusively on the vulnerability and capacities of women. This trend stems from a polarized society understanding of gender as a binary concept of man and woman.[11]

In the socio-cultural construction packaged by patriarchal rationality, placing women in a subordinate position, subject to various rules, as well as various other forms of control that place women in the "the other" position as the other.

Tabel 2.1
The important Element in a Family

No	criteria	Percentage
1	Assets	4,5 %
2	Affection	13,6 %
3	Commitment	4,5 %
4	Communication	63,9%
5	Vision and Mission in a	4,5%
	family	
6	Family rules	4,5%
7	Understanding of the	4,5%
	roles of each party in a	
	family	

Source: Field research 2020

The data illustrates many elements are compulsory in the area of managing a family. The first element is communication approximately 64%. Then, affection is the next element that should be involved in a family. A family consists of two big families with different social and educational backgrounds.

Some researchers identified several characteristics of a healthy partner relationship, namely, taste respect and feel valued trust and fidelity, good sexual relations, good communication, sharing, cooperation, mutual support, and togetherness, feeling spirituality, and their respective abilities to be flexible when faced with the atmosphere of transition and change. They also describe a characteristic strong family. It has a passion for promoting well-being and happiness respectively, showing appreciation for each other, have the ability good communication and talk to each other others, spending time together, have a sense of spirituality, and use the crisis as an opportunity to grow.

The majority of men and women stated causes of divorce, among other communication problems, incompatibility, changes in values and lifestyle, as well as an affair. Reason enough domination is also increasing expectations of self-satisfaction in marriage and decreased tolerance. Even though ending a marriage is not easy and maybe traumatic or detrimental to one or both partners and their children.

Mostly women and men, whatever the reason for their divorce, stated that feel they don't want to come back with their ex-partner. For women, the most compelling reason for divorce is the rude behavior of the partner.[12]

In this globalization era, many lifestyles have been changing. Including the flexible partnership and value in a marriage that can support each other to be a good person in their society.

One of the alternatives is by doing a PAR (Participatory Action Research) method and networking in their economic and social aspects for a woman who sues domestic violence of her partner to the court. Subsequently, NGOs, Law enforcers, and related officials in handling victims of domestic violence will be more sensitive and responsive to cases of domestic violence for prevention, protection, and enforcement of justice.

V. CONCLUSION

- Many cases of divorce should have an enlightened perspective of a family. Sometime, humanity approach treatment should be used by the judges for giving the solution to spouse problems. Involved the changing of the rule of games in a family. Subsequently, women's rights such as her rights to be existed-work in family and society should behave into consideration every decision in a family.
- It is mandatory to elevate education and socialization of marriage-education based on the person's religion. In other words, pre-marriage education within 3 months should be one of the requirements for the young spouse of doing marriage.
- 3. Empowering woman position by simulating a solution using the PAR (Participatory Action Research) method and networking in their



- economic and social aspects especially for a woman who sues domestic violence of her partner to the court.
- 4. Law enforcement and related officials in handling victims of domestic violence should be more sensitive and responsive to cases of domestic violence for prevention, protection, and enforcement of justice.

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