

Juridical Analysis Domestic Violence As A Reason For Divorce

Kusnadi¹⁾ & Gunarto²⁾

¹⁾ Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail: 13kerja13@gmail.com

²⁾ Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail: gunarto@unissula.ac.id

Abstract. Acts of violence in the household generally involve perpetrators and victims among family members in the household, while forms of violence can take the form of physical violence and verbal violence (threats of violence). In marriage between husband and wife, disputes often occur which are often accompanied by violence by one of the parties and result in divorce. One of the reasons that causes divorce in Article 19 of Government Regulation Number 9 of 1975 is that one of the parties commits cruelty or serious abuse that endangers other people, when one of the parties victims of domestic violence can provide strong evidence in court and husband and wife can no longer live together in a household, then divorce can be carried out in a court session based on Article 39 paragraph (1) of the Law No. 16 of 2019.

Keywords: Divorce; Domestic; Violence.

1. Introduction

A household is formed from a marriage between a man and a woman as husband and wife, harmonious domestic life and being happy is everyone's dream, as is stated in Article 1 number 1 of Law No. 16 of 2019 above amendment to Law No. 1 of 1974 concerning Marriage, which (hereinafter referred to as the Marriage Law) determines that "Marriage is inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and happy family or household eternal based on the Almighty Godhead." The meaning of a happy family and eternal is that both husband and wife work together and complement each other each lacks to achieve a good prosperous life material and spiritual. From the formulation of the article, it shows that A marriage is not only aimed at realizing physical happiness only but

also aims to realize inner happiness, because marriage is not only seen as a physical relationship, but also is an inner connection.¹

But in reality, not every marriage can be successful realize the purpose of marriage itself. in domestic life various forms of bonds are formed, both physical, sociological and psychological along the way, it is very possible that differences will occur opinions and understandings or frictions that can cause it there are disputes or disputes and quarrels that spread to the house the stairs are not harmonious and shaky or what is called Shiqaq. If a husband and wife relationship is not harmonious, if it is allowed to continue late and not resolved immediately or if in attitude or in self-control cannot be controlled properly, which can eventually occur physical violence or destructive behavior that can be carried out by either party. According to Sarwono, an unhealthy family atmosphere, among others due to lack of interaction within the family, lack of acceptance, lack of happiness in the family, lack of love and support emotions make violence easy to emerge.²

2. Research Methods

The research method in making this journal is normative juridical namely an approach that uses analysis based on existing legal regulations with the aim of examining regulations related to acts of domestic violence household as a reason for filing a divorce which is reviewed from various perspectives legal rules of a formal nature as well as some literature of a formal nature theoretical. Apart from that, the source of legal material that the author uses is: primary legal materials obtained from several statutory regulations invitations, including laws, government regulations. Writer too using secondary legal materials obtained from several literatures in the form of books and journals which are sources of reference in making while completing this article.

3. Results and Discussion.

3.1. The concept of domestic violence, which can be a reason occurrence of divorce according to Law No. 16 of 2019 regarding changes to Law No. 1 of 1974, and Compilation Islamic law.

Conceptually, UU-PDKRT has laid down and provided a more progressive understanding of domestic violence, because of the characteristics of domestic violence cases, it is related closely related to the family, then indirectly the Religious Courts too become one of the legal institutions that has a strategic role

¹. Amiur Nurudin and Azhari Akmal Tarigan. 2004. Islamic Civil Law in Indonesia, Kencana, Jakarta, p. 206

². E. Koswara, 1998, Human Aggression, Rosda Offset, Bandung, p. 95.

participate in resolving cases involving domestic violence. S. Miyenti in his book *Violence Against Women in the Household*, believes that these forms of violence against women in the household includes: a. psychological violence, b. physical abuse, and c. sexual violence.³

Domestic violence, namely any act against someone especially against women which results in misery or physical, sexual, psychological suffering and/or home neglect steps that include threats to commit acts of coercion, or unlawful deprivation of liberty within the scope household. Non-physical violence or mental violence is violence which leads to mental attacks, a person's psyche is often occurs in cases reported by institutions companion. Non-physical violence can take the form of hurtful words, dirty words, shouting, insults, or threats, women be targeted impingement, it could be due to factors outside the home ladder.⁴

The form of domestic violence in Article 5 of the Domestic Violence Law is explicitly explained, that: every person is prohibited from committing domestic violence within the scope of the home steps, in the manner contained in Article 15 of the PDKRT Law, namely:

(a) Physical violence, (b). Psychological violence, (c). Sexual violence, and (d) Domestic violence, neglect, is substantially the concept of domestic violence

In UU-PDKR, there are reasons that can be used to carry out a divorce, as regulated in the Explanation Article 39 paragraph (2) of the Marriage Law as mentioned above above, and republished in Article 116 of the Compilation of Islamic Law, with added are:

- a. Husband violates his divorce agreement;
- b. Change of religion (apostasy) which causes internal disharmony household

From the definition of domestic violence above, forms of internal violence can be formulated household, namely:

- a. Physical abuse;
- b. Psychological violence;

³. S.Miyenti, 1999, *Violence Against Women in the Household*, Research Center UGM Population, Yogyakarta, p. 37

⁴. <http://www.komnasperempuan.com>, National Commission on Violence Against Women, Reference for Judges p. 32

c. Sexual violence; And

d. Household neglect.

When compared between the formulations of domestic violence contained in Article 1 paragraph (1) of the PKDRT Law with reasons which can be used to carry out divorce in the Marriage Law then the reasons are substantially in accordance with the formulation of internal violence household, these reasons are:

a. One of the parties commits adultery or becomes a drunkard, gamblers and others who are difficult to cure (Explanation Article 39 paragraph (2) of the Marriage Law in conjunction with Article 19 letter a of the Regulations Government Number 9 of 1975 in conjunction with Article 116 letter a KHI);

b. One party leaves the other party for 2 (two) years consecutively without the permission of the other party and without a valid reason or because of things beyond his ability;

c. One of the parties commits serious cruelty or abuse endanger other parties;

d. Between husband and wife there are constant disputes and quarrels and no hope of living in harmony household;

The above shows that the concept of violence within households contained in the Marriage Law and KHI, are

as follows :

a. Psychological Violence;

Psychological violence is any direct good deed or indirectly results in suffering or misery psychological/mental burden on a person.

In the Marriage Law and KHI the concept of violence in the home stairs as above can be found in the Explanation to Article 39 paragraph (2) in conjunction with Article 116 letter KHI, namely "One of the parties commits adultery or become a drunkard, addict, gambler, etc difficult to cure."

Then in Article 116 letter f KHI, namely "Between the husband and a wife with whom there are constant disputes and quarrels and there is no hope of living in harmony in the household."

These two reasons are included in internal psychological violence households either directly or indirectly can causes mental stress and can cause suffering psychological/mental weight on someone (husband/wife)

b. Physical abuse;

Physical violence is any action a person can commit resulting in pain, illness or serious injury. Types of violence is more directed to a person's body or body.

The concept of physical violence mentioned above can be found in the Elucidation of Article 39 paragraph (2) in conjunction with Article 116 letter d KHI which contains the reasons for divorce "One of the parties committed cruelty or serious abuse that endangers other parties."

c. Household neglect.

Household neglect is the act of someone who in the form of neglect or abandoning someone within the scope household while according to the applicable provisions, that he is obliged to provide livelihood, care for that person.

Violence with an economic dimension occurs in many cases domestic violence. Even though the construction of society in Indonesia places men as heads of households obliged to earn and provide for his wife, but he doesn't a few abandoned their wives and children, some even deliberately controlling his wife's income, and prohibiting her from working but does not provide sufficient income for the family.

Domestic neglect, although in a different editorial with the PKDRT Law, but clearly in the Elucidation of Article 39 paragraph (2) of the Marriage Law in conjunction with Article 116 letter b KHI.

4. Conclusion

The concept of domestic violence is the reason divorce according to Law No. 16 of 2019 regarding amendments Law No. 1 of 1974 and the Compilation of Islamic Law, namely: a. Psychological violence, which is contained in the provisions of Article 39 paragraph (2) of the Law No. 16 of 2019 regarding amendments to Law No. 1 of 1974 and the following explanation in conjunction with Article 116 letters a and f Compilation Islamic law; b. Physical violence, which is contained in the provisions of Article 39 paragraph (2) of the Law No. 16 of 2019 regarding amendments to Law No. 1 of 1974 following explanation in conjunction with Article 116 letter d Compilation Islamic law. c. Economic neglect, which is contained in the provisions of Article 39 paragraph (2) Law No. 16 of 2019

regarding changes to the Law No. 1 of 1974 along with the explanation in conjunction with Article 116 letter b Compilation of Islamic Law,

5. References

Amiur Nurudin and Azhari Akmal Tarigan. 2004. Islamic Civil Law in Indonesia, Kencana, Jakarta.

E. Koswara, 1998, Human Aggression, Rosda Offset, Bandung.

Government Regulation Number 9 of 1975 concerning the Implementation of Laws

<http://www.komnasperempuan.com>

<https://komnasperempuan.go.id/dataan-tahunan-detail/catahu2023>

Law No. 1 of 1974

Law No. 1 of 1974 concerning Marriage

Law No. 1 of 1974 concerning Marriage.

Law No. 16 of 2019 concerning Amendments to Laws

Law No. 3 of 2006 concerning Amendments to Laws

Law No. 7 of 1989 concerning Religious Courts

M. Yahya Harahap, 2005. Position of Authority and Religious Court Procedures Law No. 7 of 1989, Second Edition, Sinar Graphics, Jakarta.

Presidential Instruction 1 of 1991 Concerning the Compilation of Islamic Law

Riduan Syahrani, 1986. Marriage and Divorce for Civil Servants. First Edition. Media Sarana Press. Jakarta.

Soerjono Soekanto, 2002, Sociology An Introduction, PT. Raja Grafindo Persada, Jakarta.