

Ratio Decidendi of Judges toward Divorce Cases Due to Domestic Violence (KDRT) at the Jember Religious Court

Lailia Nailur Rahma Dani*

KH Achmad Siddiq Jember State Islamic University, Indonesia

Dwi Hastuti

KH Achmad Siddiq Jember State Islamic University, Indonesia

*Corresponding Author's Email: rahmalaila869@gmail.com

Article	Abstract
<p>How to cite: Lailia Nailur Rahma Dani & Dwi Hastuti, 'Ratio Decidendi of Judges toward Divorce Cases Due to Domestic Violence (KDRT) at the Jember Religious Court' (2023) Vol. 4 No. 1 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p>DOI: 10.35719/rch.v4i1.228</p> <p>Article History: Submitted: 13/12/2022 Reviewed: 10/02/2023 Revised: 07/03/2023 Accepted: 25/04/2023</p> <p>ISSN: 2723-0406 (printed) E-ISSN: 2775-5304 (online)</p>	<p>The Jember Religious Court accepts quite a number of divorce cases and the divorce rate is getting higher. Until 2021, there were 1,544 divorce cases and 4,289 cases of divorce. Related to this, there are 31 cases of divorce caused by domestic violence (KDRT) in 2021. The number of divorce cases caused by domestic violence, the author is interested in analyzing how the judges consider (ratio decidendi) in deciding divorce cases due to domestic violence at the Jember Religious Court. This research is a type of empirical legal research. The results of this study are: 1. Judges' considerations in deciding divorce cases caused by domestic violence at the Jember Religious Court are in accordance with applicable legal provisions; 2. The legal consequence of the Jember Religious Court judge's decision in the divorce case against the domestic violence case was dropping <i>raj'i</i> divorce, with the condition that the defendant must be responsible for providing maintenance in the form of living <i>iddah</i> to the ex-wife and living for the children.</p> <p>Keywords: <i>Ratio Decidendi, Domestic Violence, Jember.</i></p> <p>Abstrak</p> <p>Pengadilan Agama Jember menerima kasus perceraian yang cukup banyak dan semakin tinggi angka perceraian. Tercatat hingga tahun 2021 terdapat perkara cerai talak sebanyak 1.544 kasus dan cerai gugat sebanyak 4.289 kasus. Terkait demikian, adanya kasus perceraian yang diakibatkan oleh kekerasan dalam rumah tangga (KDRT) terdapat sebanyak 31 kasus di tahun 2021. Banyaknya perkara perceraian yang diakibatkan oleh KDRT, maka penulis tertarik untuk menganalisis bagaimana pertimbangan (<i>ratio decidendi</i>) hakim dalam memutuskan perkara cerai akibat KDRT di Pengadilan Agama Jember. Penelitian ini merupakan jenis penelitian hukum empiris. Adapun hasil penelitian ini yaitu: 1. Pertimbangan hakim untuk memutuskan perkara perceraian yang diakibatkan KDRT di Pengadilan Agama Jember telah sesuai dengan ketentuan hukum yang berlaku; 2. Akibat hukum putusan hakim Pengadilan Agama Jember dalam perkara perceraian terhadap kasus KDRT yaitu menjatuhkan <i>talak raj'i</i>, dengan syarat pihak tergugat harus bertanggung jawab dengan memberikan nafkah berupa nafkah <i>iddah</i> kepada mantan istri dan nafkah untuk anak.</p> <p>Kata Kunci: <i>Pertimbangan Hakim, KDRT, Jember.</i></p>

Introduction

The family is the household along with the first shelter as well as a group of people who are blood related by marriage, which aims to create and maintain a common culture,

social and emotional members, and promote mental and physical development. ¹The most important element in a household is a legal marriage. ²Every marriage has a goal to be achieved, one of which is to create a household life that is *sakinah*, *mawaddah* and *warahmah*.³A *sakinah* family can be realized if there is a high emotional bond between husband, wife and other family members, ⁴but along with changes in lifestyle and moral values in today's society, maintaining the household is no longer a priority. Married life between husband and wife, it is very possible for a misunderstanding to occur between the two, such as one or both of them not carrying out their obligations in the household. This is what can then lead to divorce.

Islam does not forbid its people to divorce, but that does not mean that Islam opens the widest way to divorce, and it also does not mean that Islam allows its people to divorce as they please, anytime and anywhere. Islam provides boundaries between husband and wife. These limitations include that every divorce must be based on strong reasons and is the last resort taken by husband and wife, after other efforts have been unable to restore the integrity of their household life.⁵

The causes of the dissolution of a marriage and its consequences, based on Article 38 of Law Number 1 of 1974 concerning Marriage (*Hereinafter referred to as the Marriage Law*), states that:

" Marriage can be broken because of the first death, the second is divorce, and the third is based on a court decision."

Regarding this, divorce requires a valid legal basis and cannot be completed without the consent of both parties. Provisions regarding the reasons for divorce are limitedly regulated in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage as PP 9/1975, it has been stated that the reasons or causes for divorce arise from the following six reasons:

1. If one of the parties commits adultery, gets drunk, is a connoisseur, gamblers, and other things that are difficult to treat;
2. If one party leaves the other party for more or less two years without a definite reason;
3. After marriage, one of the parties shall be punished with a maximum imprisonment of five years or more;
4. If one party commits cruelty or serious abuse that endangers the other party's life;
5. If one of the parties suffers from an incurable disorder/illness which prevents them from fulfilling their obligations as husband/wife; And

¹ Mufatihatus Taubah, "Pendidikan Anak Dalam Keluarga Perspektif Islam" *Journal of Islamic Education Studies* Vol. 3 No. 1 (2015), 109-136.

² See Article 1 of Law Number 1 of 1974 concerning Marriage which states that: *" Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happily ever after family based on the One Godhead. "*

³ Hamdi Abdul Karim, "Manajemen Pengelolaan Bimbingan Pranikah Dalam Mewujudkan Keluarga Sakinah Mawaddah Wa Rahmah" *Jurnal Bimbingan Penyuluhan Islam*, Vol. 1, No. 2, (2020), 321-336.

⁴ Ahmad Sholehuddin Zuhri, Ahmad Sholehuddin Zuhri, "Konsep Keluarga Sakinah Perspektif Fiqih Munakahat dan Pandangan Pakar Psikologi Dadang Hawari", *Rechtenstudent Journal*, Vol 2, No. 3, (2021), 256.

⁵ Muhammad Abdul Aziz, Abdul Wahab Sayyed Hawwas, *Fiqh Munakahat, Khitbah Nikah dan Talak*, (Jakarta: Amzah 2009), 14.

6. always fights and there are disputes between husband and wife with no hope of return.⁶

Divorce cases in Islam are categorized into 2 types, namely: divorce and contested divorce. Divorce talak is to break (dissolve) the couple's relationship between husband and wife from a legal marriage bond according to Islamic religious law, where the breakup of a marriage relationship is at the will of the husband. Meanwhile, a contested divorce is a divorce filed by a wife. Applications for divorce from Muslims are submitted to the Religious Court, while non-Muslims are submitted to the District Court. Regarding talak divorce in Article 117 of the Compilation of Islamic Law (KHI) it is stated that:

*"Talak is a husband's pledge before a religious court, which is one of the causes of breaking up a marriage."*⁷

Meanwhile, the lawsuit for divorce is contained in Article 132, which reads:

*"A lawsuit for divorce is filed by the wife or her representative in a religious court, which has authority over the domicile of the plaintiff, unless the wife leaves the domicile together without the husband's consent."*⁸

One of the causes of divorce as referred to in Article 116 (d) and (f) of the KHI is domestic violence (KDRT).⁹ The act of domestic violence is certainly contrary to the purpose of marriage because in domestic life it should be the first place of refuge, the safest and most comfortable place for all members in the family, but in reality many bad things have happened and even become a place of suffering or torture due to domestic violence. The legal basis for the prohibition of domestic violence is regulated in Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence which states that:

*"Everyone is strictly prohibited from committing acts of domestic violence against members of their family, in the form of physical, psychological, sexual or neglect of the family."*¹⁰

At present domestic violence cases are a serious problem and receive less attention in society for several reasons:¹¹

1. The scope of domestic violence is relatively limited (*private*) and privacy is protected if problems occur in the household.
2. Domestic violence is often taken for granted because of the husband's right to treat his wife as he wishes, as the head of the household is in control.
3. The occurrence of domestic violence within the marriage bond.

Related to this, of the many divorce cases in the Jember Religious Court, several in Some of them are caused by domestic violence. Based on preliminary data, there are 117,000

⁶ See Article 19 of Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage.

⁷ Article 117 Compilation of Islamic Law.

⁸ Article 132 Compilation of Islamic Law.

⁹ See Article 116 letter d and f of the Compilation of Islamic Law which states that: "*Cruelty/abuse by a party whose category is severe for the victim, there are constant disputes and fights between spouses, and there is no hope to live harmoniously again in the family.*"

¹⁰ See Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

¹¹ Afriendi, "Perspektif Hukum Pidana Islam Mengenai Kekerasan Fisik Terhadap Istri dalam Undang-Undang RI Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga", (Program Studi Ilmu Hukum: Program Pascasarjana Universitas Andalas Padang), 2011.

widows with divorce status, but this has increased to 118,000 people. This is of course the focus of DP3AKB Jember because in 2021 there will be an additional 1,000 widows.¹² More clearly regarding the number of divorces caused by domestic violence can be seen in the following table:

Table 1.1
Divorce Case Data at the Jember Religious Court in 2021

Divorce Divorce	Divorce	Divorce Due to Domestic Violence
1,544	4,289	13

*Source: Documentation 2021 Jember Religious Court Archives.*¹³

Based on these data, there are still many cases of domestic violence that end in divorce that are submitted to the Jember Religious Court, strengthening the allegation that there are still many domestic violence polemics out there that must be resolved legally. Related to this, the author is interested in researching the basis for judges' considerations in deciding cases for divorce due to domestic violence and the legal consequences for the parties involved.

Research Methods

This research uses empirical research or what is commonly called field research.¹⁴ This field research was designed to analyze judges' considerations in cases of domestic violence resulting in divorce based on the Compilation of Islamic Law (KHI), by collecting data through documentation and interviews with 3 (three) judges of the Jember Religious Court. This study uses a descriptive method using a qualitative approach.¹⁵

This study uses two data sources, namely primary data sources and secondary data sources. Primary data sources are data sources that contain the main data, namely from data obtained directly in the field. Meanwhile, secondary data sources are additional data sources that are taken not directly in the field, but from sources that have been made by other people. For example, there are books, articles, journals, theses, thesis, marriage law and KHI, documents and photos, which are related to discussions that support primary data sources or related to fiqh munakahat as well as related magazines or *news*. with cases of domestic violence resulting in divorce based on KHI. The data collection techniques used in the form of interviews and documentation. The validity of the data the author also uses source triangulation and technique triangulation, as a test for the validity of the data obtained.¹⁶

¹² Gempur Magazine, "Faktor-faktor Penyebab Masih Tingginya Angka Perceraian di Jember". September 23 2021. <https://www.majalah-gempur.com/2021/09/faktor-faktor-penyebab-masih-tingginya.html>.

¹³ Jember Religious Court Archives.

¹⁴ Sugiyono, *Metode Penelitian Kualitatif*, (Bandung: Alfabeta CV, 2018), 3.

¹⁵ Muhammad Rijal Fadli, "Memahami desain metode penelitian kualitatif." *Humanika, Kajian Ilmiah Mata Kuliah Umum*, Vol 21, No. 1, 2021:33-54.

¹⁶ M. Syahrar, "Membangun Kepercayaan Data dalam Penelitian Kualitatif", *Primary Education Journal (Pej)*, Vol. 4, No. 2, 2020:19-23.

Result and Discussion

Considerations of Judges in Deciding Divorce Cases Due to Domestic Violence (KDRT) at the Jember Religious Court

The judge is the personification of the judiciary that carries out a large mandate. When making decisions, judges are not only required to have intellectual abilities, but are also expected to have high morals and integrity, even at a certain point, judges must also have a level of faith and piety, be able to communicate well, and be able to maintain their role, authority and status before society. The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's consideration must be addressed carefully, both, and careful.¹⁷

The legal basis that is used as a reference for judges' considerations is regulated by 4 (four) provisions, namely: (1) certain articles in statutory regulations, (2) customary law; (3) jurisprudence; and (4) legal doctrine. Furthermore, from a methodological point of view, religious court judges must go through the following steps when making decisions in cases that are being examined and awaiting trial, namely:¹⁸

1. formulation of the problem or subject matter;
2. data collection in the verification process;
3. data analysis to find facts;
4. discovery of law and its application, and finally the fifth decision making.

Judges' considerations in deciding divorce cases caused by domestic violence at the Jember Religious Court, are based on finding facts and discovering and applying the law. Related to this, the basis for judges in making decisions is to find facts and apply the law, so that it is based on finding facts and applying appropriate and valid laws that can be applied to certain events.

1. Fact Consideration

Consideration of facts is something that is very basic and important in a judge's decision because it considers human actions, events and circumstances which are the main focus in the judicial process. ¹⁹Legal considerations, namely a stage of the panel of judges considering the facts revealed during the trial, starting from the lawsuit, answers, exceptions from the defendant connected with evidence that meets the formal and material requirements that reach the minimum limit of proof.²⁰

Based on the results of interviews that have been conducted regarding judges' considerations in deciding divorce cases caused by domestic violence at the Jember

¹⁷ A. Mukti Arto, *Praktik Perkara Perdata Dalam Pengadilan Agama* (Yogyakarta: Pustaka Pelajar, 2004), 141.

¹⁸ Qaidatul Ummah, "Pertimbangan Hakim dalam Memutuskan Perceraian (Analisis Putusan Perkara Nomor 1061/Pdt.G/2016/PA.Bwi di Pengadilan Agama Banyuwangi) Menurut Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam", Thesis, IAIN Jember, 2016, 30-33.

¹⁹ M. Guntur Hamzah, "Hubungan Antara Fakta, Norma, Moral dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim," Faculty of Law-Hasanuddin University, Makassar: 3.

²⁰ Damang, *Definisi Pertimbangan Hukum*, December 17, 2011, see http://www.damang.web.id/2011/12/definisi-pertimbangan-hukum_17.html.

Religious Court, in terms of finding facts and rules or law. Which, if based on these facts, must be related to the witness and the evidence is consistent, what is often used/used is on the basis of Article 19 (d) and (f) PP No. 9 of 1975 concerning the implementation of Law no. 1 of 1974 concerning Marriage, the same is the case in Article 116 (d) and (f) KHI. When the witness proves that there was an argument, abuse, or violence, the witness must actually see first-hand the occurrence of domestic violence and testify honestly in court.

This the author strengthens with an example of data on the results of the Jember Religious Court decision with case number 3766/Pdt.G/2021/PA.Jr, the issue of divorce caused by domestic violence. An explanation of legal considerations based on facts in making a divorce decision because of the frequent occurrence of disputes and quarrels in the household of the applicant and the respondent, which quarrels are sometimes accompanied by violence which injures the respondent resulting in the applicant leaving the residence together for 5 months. Related to this, the applicant committed acts of violence against the respondent in the form of an argument with a hard object in the form of a helmet, disputes and quarrels often occurred between the applicants and the respondents. This was corroborated and justified by the witnesses who were presented at the trial so that cases of domestic violence actually occurred which led to divorce.

2. Legal Considerations

Legal norms are a guide to the propositions of a rule of law, because a rule of law must be carried out according to the contents of the norm.²¹Based on the results of the interviews, it is known: The reasons for the judge's considerations in determining the law in cases of domestic violence that lead to divorce, the judge's considerations are based on rules or laws in which the judge uses the legal basis of Article 19 (d) and (f) PP No. 9 of 1975 Jo. Article 116 (d) and (f) KHI which states that:

"One party commits cruelty or severe abuse that endangers the other & between husband and wife there are constant disputes and fights, and there is no hope of living in harmony in the household again."

This is in line with the provisions in Article 116 (d) and (f) KHI and from the existing evidence and proven domestic violence, which was used as a consideration by the Jember Religious Court judge. Furthermore, in carrying out the functions of the judiciary, judges must pay attention to justice, legal certainty and expediency. The decision must be fair, contain legal certainty, but the decision must also contain benefits for the person concerned and the community.²²It is indeed not easy to create a judge's decision that meets these three principles, especially regarding the demands of justice for a decision, because the concept of justice is not easy to find a benchmark for. Fair for one party does not necessarily feel the same for the other party. The judge must pay attention to legal considerations properly and carefully in determining the process of a case, because the quality of the judge's decision can be judged by the weight of the reasons and

²¹ M. Guntur Hamzah, "Hubungan Antara Fakta, Norma, Moral dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim," Faculty of Law-Hasanuddin University, Makassar: 4.

²² Sulardi, and Yohana Puspitasari Wardoyo, "Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak." Jurnal Yudisial, Vol. 8, No. 3, (2015), 251-268.

legal considerations used in deciding the case. Therefore, the judge's decision must stick to justice, legal certainty, and expediency. The author in terms of legal considerations refers to Gustav Radbruch's opinion which must be sequential regarding the legal principles as follows:²³

First, the principle of legal certainty, every decision must contain *equality*, which means giving equal opportunity to the litigants. This means that legal certainty must be accompanied by providing equal opportunities for all parties. In this case, the author's point is that legal certainty is based on the principle that law binds all people and provides equal opportunities for parties and society. So that the similarity referred to here consists of numerical similarity and proportional similarity. Numerical equality has the principle of equality before the law, while proportional equality means giving each person what is his/her rights and obligations.²⁴

Furthermore, every existing decision becomes an authoritative solution, namely as a way out of disputes to create stability. Criteria for legal certainty by providing an authoritative solution, namely as a way out of disputes to create stability, namely social order and public tranquility. ²⁵In this case the author interprets this view to mean that it regulates human actions in a way that can provide happiness for the whole community. So that it becomes a way out of a polemic that occurs in a society. That is the acknowledgment of the parties regarding the admissibility of the decision. Because the purpose of legal certainty is to create order and peace and avoid disputes.

Furthermore, it needs to be adjusted to the purpose of the Act which is used as the basis. Basically, the certainty in the law of each legal norm must be able to be formulated with sentences in it that do not contain different interpretations. While certainty because of the law is meant, that because of the law itself there is certainty. Judges are always required to always be able to interpret the meaning of laws and other regulations that are used as the basis for implementation. The application of the law must be in accordance with the case that occurred, so that the judge can try it in its entirety, wisely and objectively. Judge's decisions that contain elements of legal certainty will contribute to the development of knowledge in the field of law.

The second principle of justice, in Radbruch's view, is the need for equal rights and obligations for all people to be equal before the law (*equality before the law*). ²⁶The principle of applying justice based on equality means that the law is binding on all people, not one-sided. So that the justice to be achieved by law is understood in the context of equality. The similarity referred to here consists of numerical similarity and proportional similarity.

²³ Yahya Harahap, *Kedudukan Kewenangan dan Acara Peradilan Agama (Undang-undang Nomor 7 tahun 1989)*, (Jakarta: Pustaka Kartini, 1993), 305.

²⁴ Nurlindah, A. Sugirman, and Rosita. "Menakar Tujuan Hukum Di Balik Putusan MA No. 46 P/HUM/2018 yang Pro Korupsi", *Al-Adalah: Jurnal Hukum dan Politik Islam*, Vol. 4, No. 2, (2019), 99-134.

²⁵ M. Akbar, "Urgensi dan Strategi Konservasi Wibawa Hukum Dalam Masyarakat." *Jurnal Tahqiq: Jurnal Ilmiah Pemikiran Hukum Islam*, Vol. 13, No. 1, (2019), 51-61.

²⁶ Siti Barora, "Perlindungan Masyarakat Hukum Adat dalam Konstitusi sebagai Perwujudan Asas Equality Before the Law." *de Jure Jurnal Ilmiah Ilmu Hukum*, Vol. 1, No. 2, (2020), 153-169.

Numerical equality has the principle of equality before *the law*, while proportional equality means giving everyone what they have rights and obligations.

Furthermore, based on objectivity and each case must be weighed separately. Every judge's decision has a direct effect on the social life of the community, it must be seen from the point of view of the purpose of the law, the law is made to regulate the order of society in a peaceful and fair manner, in other words that the law is made with the aim of safeguarding the interests of every human being so that his interests cannot be disturbed. Because the law is made to protect the interests of the needs of human life, the application of the law as outlined in the judge's decision must reflect the values of justice and truth based on law so that it can be accepted by the litigants and society, because this will have a good social impact on society, to increase public legal awareness

The three principles of expediency, basically the judge's decision will reflect expediency, when the judge does not only apply the law purely textually and only pursues justice, but also directs it to benefit the interests of the litigants and the interests of society in general.²⁷ That is, the judge in applying the law, should consider the end result later, whether the judge's decision brings benefits or uses for all parties. Basically, the principle of expediency moves between the points of justice and legal certainty, where judges look more at the purpose or usefulness of the law for society. In essence, the purpose of law is made for the benefit of humans.²⁸

The author also strengthens this with an example of data on the results of the Jember Religious Court decision with case number 3766/Pdt.G/2021/PA.Jr, a case regarding divorce caused by domestic violence. An explanation of the judge's considerations based on rules or law in making a divorce decision because disputes and fights often occur in the household of the applicant and the respondent. *First*, the judge weighs based on Law no. 7 of 1989 concerning the Religious Courts as amended by Law no. 3 of 2006 and the second Amendment to Law no. 50 of 2009, as mediation is regulated in PERMA No. 1 of 2016. *Second*, based on the two witnesses of the applicant who have fulfilled the provisions of Article 22 PP No. 9 of 1975 concerning the implementation of Law no. 1 of 1974 and Article 76 of Law no. 7 of 1989, Article 147 HIR, Article 171 paragraph (1), and Article 172 HIR. *Third*, the judge weighs based on electronic evidence, as stipulated in Article 5 of Law no. 11 in 2008 *Joe*. Law No. 19 of 2016 concerning Information and Electronic Transactions, which is in accordance with the material requirements of the testimony.

3. Law Judge's Habit

The customary law of judges is unwritten law, or law outside the law, that a judge has an important role in enforcing the law as stated in Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, thus judges as enforcers of law and justice have the

²⁷ Fence M Wantu, "Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan dalam Putusan Hakim di Peradilan Perdata." *Jurnal Dinamika Hukum*, Vol. 12, No. 3, (2012), 479-489.

²⁸ Carto Nuryanto, "Penegakan Hukum Oleh Hakim dalam Putusannya antara Kepastian Hukum dan Keadilan." *Jurnal Hukum Khaira Ummah*, Vol. 13, No. 1, (2018), 71-84.

power to use unwritten law as a basis for judges' considerations as stated in article 50 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power.²⁹

4. Factors and Criteria

Divorce is one of the causes of breaking up a marriage bond, which has been regulated in Article 39 paragraph (2) of the Marriage Law which reads: "In order to carry out a *divorce there must be sufficient reasons, that the husband and wife will not be able to live in harmony again.*"³⁰ thus the reasons referred to are contained in Article 19 PP No. 9 in 1975 Jo. Article 116 KHI. In relation to domestic violence, the reasons are in line with points (d) and (f) which read:

*"One party commits cruelty or severe abuse that endangers the other & between husband and wife there are constant disputes and fights, and there is no hope of living in harmony in the household again."*³¹

Factors and criteria that influence legal custom in deciding a case, judges usually decide based on evidence. Meanwhile, if the criteria for domestic violence are psychological violence which is difficult to prove, this will also affect the judge's decision under consideration. Therefore, the judge's decision is that more divorces result from physical violence. The factor that became the reason for divorce due to domestic violence in the Jember Religious Court was because of household disputes and the second place was economic factors, because the husband did not work or had a mediocre income. The court tries to reconcile the couple who are about to divorce either during trial or mediation, but the success rate of the peace efforts is very minimal.³²

The Legal Consequences of Post-Divorce Judge's Decisions Against Domestic Violence (KDRT) Cases in the Jember Religious Court

Violence experienced by women can be a traumatic event which, if not resolved in a healthy manner, will become a psychological trauma disorder.³³ Therefore it is important for victims of domestic violence to receive legal, medical and psychological assistance. Many parties will be involved in the management of victims of violence. In essence, all activities or programs will be directed at strengthening the resilience of women victims of violence so that they can solve their problems independently and constructively. That the unpleasant experience will continue, and women must realize that they don't deserve to experience (violence) again.³⁴

²⁹ Dimas Hutomo, "Bolehkah Hakim Menggunakan Hukum Tidak Tertulis Sebagai Dasar Mengadili," Friday, 15 February 2019, <https://www.hukumonline.com/klinik/a/bolehkah-hakim-menggunakan-hukum-tidak-tertulis-sebagai-dasar-mengadili-lt5c63ce515e72b>.

³⁰ Doortje D. Turangan, "Kekerasan Dalam Rumah Tangga Sebagai Alasan Perceraian," Jurnal Karya Tulis, (October, 2011), 16.

³¹ See Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage.

³² Karmin, interviewed by the Author, Jember Religious Court, 06 June 2022.

³³ Surni Kadir and Muh Rizal Masdul, "Peran Aparat Desa dalam Menanggulangi Kekerasan di masyarakat di Desa Pomayagon Ditinjau dari Pendidikan Islam." Jurnal Kolaboratif Sains, Vol. 3, No. 6, (2020), 277-282.

³⁴ Komnas Perempuan, *Korban KDRT Jangan Malu Untuk Melapor*, via www.perempuan.or.id, accessed Wednesday 9 November 2022.

Since 2019 the number of cases of violence against women in the city of Jember is still relatively high, which has reached 2,100 cases, although in 2020 it has decreased to 2,010 cases.³⁵ However, the Integrated Service Center and the Office of Women's Empowerment, Child Protection and Family Planning in the city of Jember have recorded around 195 cases of violence against women in 2020, one of which is domestic violence. Meanwhile, in the 3-month period from January to March 2021, there were around 55 cases and 28 victims and 21 were cases of sexual violence, the rest were psychological violence.³⁶

Domestic violence is one of the reasons for divorce, even though divorce in Islamic law is a disgraceful act because it is not in accordance with the purpose of marriage which expects that marriage as a form of one goal is to form an eternally happy family based on Belief in One Almighty God.³⁷ Related to this, if one's household is no longer able to continue, Islam allows a husband to give divorce to his wife up to three times. At that time the husband had a position as a person who gave the right to support his wife, this was comparable to the right of divorce against his wife, namely reconciliation. Then the second divorce has the same implications as the first divorce, while the third divorce statement does not provide an opportunity for reconciliation with his wife. Ex-wives who have received divorce statements up to three times are unlawful to be reconciled unless they are involved in another marriage.³⁸

The results of research related to domestic violence cases that resulted in divorce handled by a judge were in accordance with Article 116 (d) and (f) KHI namely that divorce cases caused by domestic violence cases did occur according to the reasons stated in Article 116 (d) and (f) , KHI, however, during the trial the judges rarely found cases of domestic violence for the reason: *"there was cruelty or severe abuse that endangered"*, what often happened was for the reason: *"husband and wife are constantly having disputes and fights and there is no hope of returning"* , there are disputes and fights that occur continuously, namely due to a number of economic problems, frustration over not being able to fulfill obligations and responsibilities towards the family, as a result of a lack of responsibility because they cannot meet their daily needs, due to economic dependency by husbands against wives, occurs due to factors of competition for positions and education. If there is a persecution that leads to disputes and fights continuously resulting in no hope of reconciliation.

The author also strengthens with examples of data on the results of the Jember Religious Court decision with case number 3766/Pdt.G/2021/PA.Jr, the issue of divorce caused by domestic violence. An explanation of the judge's considerations regarding domestic violence cases which resulted in a divorce handled by a judge based on the KHI in passing a divorce decision because disputes and quarrels often occur in the applicant's household with the respondent, which quarrels are sometimes accompanied by violence which injures the respondent resulting in the applicant leaving the residence together for 5 months. Whereas the judge weighed based on the provisions of Article 19 (f) of the Government Regulation of the

³⁵ <https://perceraianonline.com/perceraian-diatur-dalam-pasal-39-41-uu-nomor-1-tahun-1974/>).

³⁶ Portal Jember 04, "PPT Jember Catat Kasus Kekerasan di Jember Tinggi", April 9 2021. <https://portaljember.mind-rakyat.com/jemberan/pr-161747537/pptjember-catat-cases-keKerasaan-di-jember-tinggi>.

³⁷ Abdul Kholik, ""Konsep Keluarga Sakinah dalam Perspektif Quraish Shihab." INKLUSIF (Jurnal Pengkajian Penelitian Ekonomi dan Hukum Islam, Vol. 2, No. 2, (2017): 17-32.

³⁸ Badrut Tamam, *Pengantar Hukum Adat* (Depok: Pustaka Radja, 2022), 105-106.

Republic of Indonesia No. 9 of 1975 *jo.* Article 116 (f) KHI which emphasizes that one of the reasons for divorce is that there are constant disputes and fights between husband and wife and there is no hope of living in harmony in the household again.

There are three elements in divorce cases caused by domestic violence which are the strong consideration of the judges to then grant the divorce case filed by the applicant, namely: there are continuous disputes and quarrels, disputes and quarrels cause the husband and wife to have no hope of getting along again, and the Court has attempted to reconcile the husband and wife but without success. So that the court judge decides the divorce case as fairly as possible. Before deciding on a divorce case, the judge has considered 3 legal principles as mentioned in the literature review above, namely by using the principle of legal certainty, the principle of justice and the principle of expediency. For example, the judge's considerations in the divorce decision due to domestic violence at the Jember Religious Court with case number 3766/Pdt.G/2021/PA.Jr. resulted in several decisions, including:

- a. Imparting one *raj'i* divorce to the respondent
- b. Punish the counterclaim defendant to pay the counterclaim plaintiff in the form of *iddah maintenance* each month in the amount of Rp. 2,500,000 during the *iddah* period so that it amounts to Rp. 7,500,000, - and *mut'ah* in the form of money of Rp. 15,000,000, - which will be paid at the time before pronouncing the divorce vow.
- c. Stipulates that CHILD I and CHILD II are under the plaintiff's care, with the obligation to provide an opportunity for the Reconvension defendant to meet and devote love to the two children.
- d. Sentenced the defendant Reconvension to pay maintenance for the two children in the amount of Rp. 1.500.000, - every month with an increase of 10% per year excluding health and education costs.
- e. Charge the petitioner/defendant in the Reconvension to pay the costs of this case in the amount of Rp. 445.000, -.

So far, there have been no cases of cruelty or serious persecution that have endangered and threatened lives as Article 116 (d) of the Compilation of Islamic Law. However, with only the second element regarding disputes and quarrels causing the husband and wife to have no hope of getting along again, the judge can grant the divorce case even though there is no first element. Furthermore, if in the household there is an act of violence committed by a husband against his wife, then the wife files a lawsuit called a divorce suit, followed by the Religious Court deciding the divorce case, then the legal consequences are regulated as in Article 156 KHI.

When paying attention to the legal consequences of the decision of the Religious Courts in divorce cases caused by domestic violence mentioned in Article 156 KHI, it can be concluded that there is a *hadanah problem*. Based on Article 105-point c of the Compilation of Islamic Law states: in the event of a divorce, the maintenance costs are borne by the father. As it is known that the obligations of parents to their children cover various aspects. However, when simplified, these aspects consist of two, namely moral obligations and material obligations. Basically, this obligation is the obligation of both parents, especially the father because according to Islamic teachings, men are the leaders and heads of the household. If the

father, for some reason, cannot carry out this obligation, the mother must shoulder it and try to do the best for her children. So, in essence, this obligation is a joint obligation of husband and wife when both are still living in a marriage bond.³⁹

Thus, basically the responsibility of caring for children is the responsibility of the parents, whether the parents still live in harmony or when their marriage fails due to divorce. The maintenance of children after a divorce in the language of *fiqh* is called *hadanah*. Etymologically, *hadanah* comes from the word "*hidhan*", meaning: stomach, and like the word: *Hadanah ath-thaairu baidhahu*, meaning that the bird holds the egg under its wings. Likewise, with women (mothers) who pinned their children.⁴⁰ Article 41 of the Marriage Law states that the consequences of breaking up a marriage due to divorce are:

- a. Both mother and father are still obliged to look after and educate their children, solely based on the interests of the child, if there is a dispute over the control of children, the court gives its decision.
- b. The father is responsible for all the costs of raising and educating the child: if the father is in fact unable to fulfill these obligations, the court may determine that the mother must share these costs.
- c. The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

Conclusion

Judges in deciding divorce cases caused by domestic violence at the Jember Religious Court are based on several considerations, namely by considering the facts and applicable law, in this case by paying attention to certainty, fairness and legal benefits for the divorced parties. As for the causes of divorce in cases of domestic violence at the Jember Religious Court, namely due to economic problems, competition between husband and wife, frustration over not being able to fulfill obligations and responsibilities towards the family, if there is a persecution that leads to disputes and fights continuously which results in no hope of return.

The legal consequences of divorce decisions caused by domestic violence are the need for assistance to victims of domestic violence in order to eliminate the trauma they have suffered. Furthermore, the impact on child custody and parental obligations, especially the man (husband) is responsible for providing maintenance for his wife and maintenance for his children.

Bibliography

Book

- Arto, Mukti. 2004. *Praktik Perkara Perdata Dalam Pengadilan Agama*. Yogyakarta: Pustaka Pelajar.
- Aziz, Muhammad Abdul, Abdul Wahab Sayyed Hawwas. 2009. *Fiqh Munakahat, Khitbah Nikah dan Talak*. Jakarta: Amzah.
- Hakim, Rahmat. 2000. *Hukum Pernikahan Islam Bandung*: Pustaka Setia.

³⁹ Rahmat Hakim, *Hukum Pernikahan Islam*, (Bandung: Pustaka Setia, 2000), 224.

⁴⁰ Sayyid Sabiq, *Fiqh al-Sunnah*, (Cairo: Maktabah Dar al-Turas, 1980), Juz II, 351.

- Harahap, M. Yahya. 2012. *Hukum Acara Perdata*. Jakarta: Sinar Grafika.
- Harahap, M. Yahya. 1990. *Kedudukan Kewenangan dan Acara Peradilan Agama UU Nomor 7 Tahun 1989*. Jakarta: PT. Garuda Metropolitan Press.
- Sabiq, Sayyid. 1980. *Fiqh al-Sunnah*. Kairo: Maktabah Dar al-Turas. Juz II.
- Sugiyono. 2018. *Metode Penelitian Kualitatif*. Bandung: Alfabeta CV.
- Tamam, Badrut. 2022. *Pengantar Hukum Adat*. Depok: Pustaka Radja.
- Tim Penyusun. 2021. *Pedoman Penulisan Karya Ilmiah*. Jember: Islamic State University of Kiai Haji Achmad Siddiq Jember.

Journal

- Afriendi. "Perspektif Hukum Pidana Islam Mengenai Kekerasan Fisik Terhadap Istri dalam Undang-Undang RI Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga". Law Study Program: Andalas University Postgraduate Program, Padang. 2011.
- Akbar, M. "Urgensi dan Strategi Konservasi Wibawa Hukum Dalam Masyarakat." *Jurnal Tahqiq: Jurnal Ilmiah Pemikiran Hukum Islam*, Vol. 13, No. 1, (2019): 51-61.
- Fadli, Muhammad Rijal. "Memahami Desain Metode Penelitian Kualitatif" *Humanika, Kajian Ilmiah Mata Kuliah Umum*, Vol. 21, No. 1, 2021: 33-54.
- Hamdi Abdul Karim, "Manajemen Pengelolaan Bimbingan Pranikah Dalam Mewujudkan Keluarga Sakinah Mawaddah Wa Rahmah." *Jurnal Bimbingan Penyuluhan Islam*, Vol 1, No. 2, 2020: 321-336.
- Hamzah, M. Guntur. "*Hubungan Antara Fakta, Norma, Moral dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim*." Faculty of Law-Hasanuddin University, Makassar.
- Kadir, Surni and Muh Rizal Masdul, "Peran Aparat Desa dalam Menanggulangi Kekerasan di masyarakat di Desa Pomayagon Ditinjau dari Pendidikan Islam." *Jurnal Kolaboratif Sains*, Vol. 3, No. 6, (2020): 277-282.
- Kholik, Abdul. "Konsep Keluarga Sakinah dalam Perspektif Quraish Shihab." *INKLUSIF (Jurnal Pengkajian Penelitian Ekonomi dan Hukum Islam)* 2.2 (2017): 17-32.
- Nurlindah, A. Sugirman, and Rosita. "Menakar Tujuan Hukum dibalik Putusan MA No. 46 P/HUM/2018 yang Pro Koruptor", *Al-Adalah: Jurnal Hukum dan Politik Islam*, Vol. 4, No. 2, 2019: 99-134.
- Nuryanto, Carto. "Penegakan Hukum Oleh Hakim dalam Putusannya antara Kepastian Hukum dan Keadilan." *Jurnal Hukum Khaira Ummah*, Vol. 13, No. 1, (2018): 71-84.
- Qaidatul, Ummah. "Pertimbangan Hakim Dalam Memutuskan Perceraian (Analisis Putusan Perkara Nomor 1061/Pdt.G/2016/PA.Bwi di Pengadilan Agama Banyuwangi) Menurut Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam". Thesis, Jember, IAIN Jember. 2016.
- Sulardi, Sulardi, and Yohana Puspitasari Wardoyo. "Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak." *Jurnal Yudisial*, 8.3 (2015): 251-268.
- Syahrar, M. (2020). Membangun Kepercayaan Data Dalam Penelitian Kualitatif. *Primary Education Journal (Pej)*, 4(2), 19-23.

- Taubah, Mufatihatur. "Pendidikan anak dalam keluarga perspektif Islam", *Jurnal Pendidikan Agama Islam (Journal of Islamic Education Studies)*, 3.1 (2015): 109-136.
- Turangan, Doortje D. "*Kekerasan Dalam Rumah Tangga Sebagai Alasan Perceraian.*" *Jurnal Karya Tulis*, (October 2011): 16.
- Wantu, Fence M. "Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan dalam Putusan Hakim di Peradilan Perdata." *Jurnal Dinamika Hukum*, Vol. 12, No. 3, (2012): 479-489.
- Zuhri, Ahmad Sholehuddin. "Konsep Keluarga Sakinah Perspektif Fiqih Munakahat dan Pandangan Pakar Psikologi Dadang Hawari", *Rechtenstudent Journal*, Vol 2, No. 3, 2021: 255-265.

Internet

- Damang, "Definisi Pertimbangan Hukum" December 17 2011. <http://www.damang.web.id/2011/12/defenisiperttanding Hukum17.html>.
- Dimas Hutomo, quoted from Hukum Online February 5, 2019. <https://www.Hukumonline.com/klinik/a/allowkah-hakim-gunakan-Hukum-Not-written-As-dasar-mengadili-lt5c63ce515e72b>.
- "Perceraian Diatur dalam Pasal 39-41 UU Nomor 1 Tahun 1974." December 2013, 2020. <https://perceraianonline.com/perceraian-diatur-dalam-pasal-39-41-uu-nomor-1-tahun-1974/>).
- Gempur Magazine, "Faktor-faktor Penyebab Masih Tingginya Angka Perceraian di Jember". September 23 2021. <https://www.majalah-gempur.com/2021/09/Factor-Jadibab-masihtingginya.html>.
- Portal Jember 04, "PPT Jember Catat Kasus Kekerasan di Jember Tinggi". April 9 2021. <https://portaljember.ikirrakyat.com/jemberan/pr16747537/pptjember-catat-kases-keKerasaan-di-jember-tinggi>.

Regulations

- Compilation of Islamic Law (KHI).
- Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage.
- Republic of Indonesia Government Regulation Number 9 of 1975 Concerning Marriage.
- Law of the Republic of Indonesia Number 23 of 2004 Concerning the Elimination of Domestic Violence.