



Divorcing Husbands as a Solution to Protect Women’s Dignity: A Case Study of Domestic Violence at Madura Religious Court

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Abstract: This present study concerned with the domestic violence settlements in divorce cases at religious courts. The study aimed to investigate the underlying reasons behind filing a divorce to religious courts, the women’s position in the trial process, and the women’s access to justice, as well as the women’s acceptance of the decisions of domestic violence cases. This case study collected the primary data through documents and interviews. The documents were court decisions concerning domestic violence, and the interviewees consisted of the judges and domestic violence victims. The findings of the study found that resolving domestic violence through a judicial divorce in a religious court has been more practical and less complicated, which only involves limited parties, as an aim to preserve the family’s reputation (*marwah*) and children’s psychology. Further, women have the same legal standing as the husbands during the trial process, but this does not guarantee post-divorce justice because the husbands rarely attend court hearings (i.e., *verstek* decision). Women, the victims of domestic violence who resolve the violence through a divorce, accept the decision of the panel of judges even though the judges only grant the primary lawsuit to terminate the marriage bond. For these women, the decision is seen as a solution that can break the chain of violence and tyrannical behavior of their husbands. The urge to be immediately free of the snares of violence causes them to overlook the various risks of divorce, such as becoming widows and bearing all of the obligations that are not theirs, e.g., caring for and fulfilling all of their children’s needs on their own.

Keywords: Divorce, domestic violence, religious courts

Abstrak: Penelitian ini membahas penyelesaian kekerasan dalam rumah tangga dalam kasus perceraian di Pengadilan Agama. Penelitian ini bertujuan untuk mengetahui alasan yang melatarbelakangi pengajuan cerai ke Pengadilan Agama, posisi perempuan dalam proses persidangan, dan akses perempuan terhadap keadilan, serta penerimaan perempuan terhadap putusan kasus kekerasan dalam rumah tangga. Studi kasus ini mengumpulkan data primer melalui dokumen dan wawancara. Dokumen tersebut adalah putusan pengadilan tentang kekerasan dalam rumah tangga, dan narasumber terdiri dari para hakim dan korban kekerasan dalam rumah tangga. Temuan penelitian ini menemukan bahwa penyelesaian KDRT melalui perceraian yudisial di Pengadilan Agama lebih praktis dan tidak berbelit-belit yang hanya melibatkan pihak-pihak terbatas, dengan tujuan untuk menjaga nama baik keluarga (marwah) dan psikologi anak. Selain itu, perempuan memiliki kedudukan hukum yang sama dengan suami selama proses persidangan, namun hal ini tidak menjamin keadilan pasca perceraian karena suami jarang menghadiri sidang pengadilan (yaitu keputusan *verstek*). Perempuan korban kekerasan dalam rumah tangga yang menyelesaikan kekerasan tersebut melalui perceraian, menerima putusan majelis hakim meskipun hakim hanya mengabulkan gugatan primer pemutusan ikatan perkawinan. Bagi para perempuan ini, keputusan tersebut dipandang sebagai solusi yang dapat memutus mata rantai kekerasan dan perilaku tirani suami mereka. Desakan untuk segera lepas dari jerat kekerasan menyebabkan mereka mengabaikan berbagai resiko perceraian, seperti menjadi janda dan menanggung semua kewajiban yang bukan menjadi tanggung jawabnya, misalnya mengasuh dan memenuhi kebutuhan anaknya sendiri.

Kata Kunci: Perceraian, KDRT, Pengadilan Agama

Introduction

The Indonesian government's commitment to eliminating domestic violence has been marked by the promulgation of the UU-PKDRT 17 years ago; however, it is yet to show the expected results. Women have been experiencing violence in an increasingly high level of intensity and an increasingly complex scale of violence. The 2014 National Commission Annual Records (*Catatan Tahunan/CATAHU*) reported that there have been 293,220 cases of violence against women, with 280,710 cases of violence experienced by the wives. About 191 service partner institutions have reported no less than 12,510 cases (4%) of violence cases. As such, these experiences have become the basis for contested divorces by women. However, most divorce proceedings are carried out in religious courts for practical reasons and to protect women's dignity. However, the increasing number of women filing for divorce is a fairly complex issue that occurs in the religious courts. The issue of contested divorce has become an

important research issue because it involves women's rights and gender inequality.¹

As reported in the CATAHU in previous years, violence occurring in the personal sphere, or known as domestic violence, has been the most cases recorded. A total of 280,710 cases of religious courts were all domestic violence against the wives. Of the 12,510 cases recorded in the service partner agencies, 8,626 cases or 68% were of domestic violence, 3,860 cases or 29% were in the community domain, and 24 cases or less than 1% were in the state domain. In addition, cases of physical violence still ranked the highest in the type of domestic violence in 2014, reaching 3,410 (40%), followed by psychological violence in the second place with 2,444 (28%), sexual violence with 2,274 cases (26%), and economic violence with 496 cases (6%). These ranks were also the same as those in the CATAHU of 2013.²

Here, these data can be interpreted that, *first*, the domestic violence experienced by women today is still a threat that continues to “haunt” them wherever they are, even though in reality men are also not completely free from threats and suffering due to violence. *Second*, cases of domestic violence, especially against the wives, reflect that the institution of marriage has not become a safe place for women. As victims, these women have sought a solution through a divorce institution even though they are aware that the religious courts do not have the authority to conduct trial on acts of violence perpetrated by their husbands. Hence, it is in this domain that impunity (omission) is getting stronger because the perpetrators are free from criminal charges.

The “difficult decisions” made by women affected by domestic violence problems, i.e., resolving them by filing for divorce in court, are actually an alternative from various choices available, so that they can have a solution to their complicated and mounting domestic crisis. In the Madura region, settlement of domestic violence cases through divorce institutions, for example, can be seen in

¹ Mazroatus Saadah, “Perempuan dan Perceraian: Kajian Tentang Cerai Gugat di Pengadilan Agama Bekasi,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, No. 2 (2020), p. 116–32. Dodon Alfiander, “Disparity in the Considerations of Judges in Deciding Divorce Disputes in Religious Courts and District Courts,” *Juris (Jurnal Ilmiah Syari'ah)* 21, No. 1 (2022).

² CATAHU 2013, there were 263,285 cases of religious court data all recorded in domestic violence that occurred against wives. On the other hand, of the 16,403 cases that came from service partner agencies, 71% or 11,719 cases of domestic violence were recorded, 64% or 7,548 cases were in the form of violence against wives, 21% or 2,507 cases of dating violence, 7% or 844 cases of violence against daughters, and 6% or 667 cases of violence in other personal relationships. In addition, physical violence still ranks the highest, reaching 4,631 (39%), followed by psychological violence with 3,344 (29%), sexual violence with 2,995 (26%), and economic violence with 749 (6%).

the 2014 Pamekasan Religious Court annual report, wherein 1,800 cases were decided, 496 cases were divorce by *thalaq*, and 766 cases were divorce by litigation. In other words, divorce issues have dominated 70.12% of cases accepted to be handled by Pamekasan Religious Court, whereas the remaining 29.28% was a case of application or legal determination.

From this annual report, there is a dominance in the quantity of divorce cases which can be used as a justifiable basis as an argument about the importance of this study; that female victims of domestic violence in Pamekasan have chosen to resolve their cases to the religious court (civil). It is interesting to examine whether their choice suggests that the religious court guarantees more access to justice for female victims of domestic violence or whether there are other reasons.

This phenomenon is a “challenge” for the religious court institution to strengthen its position as a justice-oriented case decision-making and settlement agency. There has been an assumption that husbands or wives who experience or become victims of domestic violence resolve their cases through civil law procedures (divorce institutions in religious courts) because in the context of domestic violence, divorce is “still” believed to be “sharp scissors” to break the chain/cycle of violence that befalls the household. Therefore, this paper intended to describe the results of the study on the reasons underlying the resolution of domestic violence cases through legal (juridical) channels in the religious courts of Madura region, the position of women in the trial process, and the contribution of decisions to access to justice for women as victims, as well as the women's acceptance of decisions cases of domestic violence in the religious courts of Madura region. The paper aimed to provide beneficial values in the form of a clear mindset and insight into some critical problems and domestic crises, especially for legal practitioners, community leaders, and institutional decision makers. The values are also expected to be useful for the academics, researchers, and observers of socio-juridical problems so that they can participate in improving the order of life in social relations.

To date, studies on violence against women tend to look at three problems. First, violence against women is seen from the perspective of social relations where violence is a statement of gender inequality.³ Second, violence against women is viewed from a legal perspective in which violence is a violation of

³Concepción Fernández Villanueva and Joyce Mary Adam, “Violencias En La Escuela: Protagonismo, Género Y Desigualdad,” *Cadernos CEDES* 40, no. 110 (2020), p. 58–73. Justin Lusasi and Dismas Mwaseba, “Gender Inequality and Symbolic Violence in Women's Access to Family Land in the Southern Highlands of Tanzania,” *Land* 9, no. 11 (2020), p. 468. Charlotte Watts and Janet Seeley, “Addressing Gender Inequality and Intimate Partner Violence as Critical Barriers to an Effective HIV Response in Sub-Saharan Africa,” *Journal of the International AIDS Society* 17, no. 1 (2014), p. 19849.

human rights.⁴ Third, violence against women is seen as a cultural problem as violence is legitimized by various cultures.⁵ From these three trends, it appears that the studies of violence ignore the position of women as subjects because they place women as objects of violence, objects of law, and objects of culture. Research that positions women as active subjects, especially in seeking justice for themselves, is urgently needed. With this in mind, this study sought to fill the gap to discuss this issue.

This study carried out several activities as follows: (1) an in-depth study of 50 copies of the panel of judges' decisions regarding the settlement of domestic violence cases that manifested in divorce cases, and (2) interviews with 10 respondents consisting of female victims of domestic violence who filed their cases through the divorce institutions and members of the panel of judges who have decided/tried divorce cases caused by domestic violence as clarifications on the decision materials issued. The research locations were in four religious courts throughout the Madura region, namely Bangkalan Religious Court, Sampang Religious Court, Pamekasan Religious Court, and Sumenep Religious Court. In accordance with the type of sociolegal study,⁶ the data sources in this study were the religious court decision documents regarding the settlement of domestic violence cases, which manifested in divorce cases, and the field notes from interviews with the respondents, namely judges and litigants. Data analysis was done according to the principles of qualitative data analysis and gender

⁴Valery V. Chernikov and Olga K. Goncharenko, "The Problems of Violence against Women in International Law," *Vestnik of Saint Petersburg University, Law* 12, no. 3 (2021), p. 803-819. Evan Stark and Marianne Hester, "Coercive Control: Update and Review," *Violence Against Women* 25, no. 1 (2019), p. 81-104. Sanjay Deshpande, "Sociocultural and Legal Aspects of Violence Against Men," *Journal of Psychosexual Health* 1, no. 3-4 (2019), p. 246-49. Oleg Gribunov, et al., "Problems of the Criminal Law Assessment of Involvement in Prostitution and the Organization of This Activity Through the Use or the Threat of Violence," *Russian Journal of Criminology* 13, no. 6 (2020), p. 941-950.

⁵Linda Mshweshwe, "Understanding Domestic Violence: Masculinity, Culture, Traditions," *Heliyon* 6, No. 10 (2020), p. e05334. Namir Ghanim Al-Tawil, "Association of Violence against Women with Religion and Culture in Erbil Iraq: A Cross-Sectional Study," *BMC Public Health* 12, no. 1 (2012), p. 800. Fransiska Novita Eleanora and Edy Supriyanto, "Violence against Women and Patriarkhi Culture in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 7, no. 9 (2020), p. 44. Erwin Jans, "The Violence of Culture," *Documenta* 22, no. 4 (2019), p. 414-425.

⁶Sulistiyowati Irianto, *Metode Penelitian Hukum Konstelasi dan Refleksi* (2nd Ed.). (Jakarta: Yayasan Pustaka Obor Indonesia, 2011), p. 177-178. According to Soetandyo Wignjosoebroto, this sociological legal research is intended to reveal, describe, and empirically evaluate the working process of law in the praxis of social life, as well as formulate substantive theories as research findings. See Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode Dan Dinamika Masalahnya* (2nd Ed.), (Jakarta: ELSAM dan HUMA, 2002), p. 34.

mainstreaming analysis,⁷ carried out during and after the collection of research data in the field.

Domestic Violence, Divorce, and Paradigm Problems

There are several definitions of domestic violence formulated based on/in accordance with various perspectives, including domestic violence defined by Faqihuddin Abdul Kodir as a form of gender-based violence, i.e., violence that occurs because of gender assumptions in the relations of men and women that are constructed by society.⁸ This definition implies that domestic violence is not just ordinary bickering or disputes that occur between husband and wife, as disputes between them are commonplace and are a consequence of the meeting of two individuals with different desires and expectations. Thus, domestic violence can befall and occur to anyone living in the household, be it the wives, husbands, mothers, children, siblings or domestic workers who live in there. Still, in reality more women become victims of domestic violence because of the patriarchal construction of a society.⁹

Another definition of domestic violence as described under the law is any act committed by a person against another person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere.¹⁰

It is on this basis that several forms of domestic violence are identified as follows: *first*, physical violence, which refers to actions that result in pain, falling ill, or serious injuries; *second*, psychic violence, such as acts that cause fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering to someone; *third*, sexual violence, consisting of (a) coercion of sexual intercourse perpetrated against a person who lives within the household sphere, and (b) coercion of sexual intercourse against one person within the scope of the household with another person for commercial purposes and/or certain purposes; and *fourth*, household neglect, which includes (a) neglect of one's obligations to provide life, care, or maintenance to the family, and (b) the

⁷Mansour Fakih, *Analisis Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2016).

⁸Faqihuddin Abdul Kodir and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim Pengadilan Agama Tentang Kekerasan Dalam Rumah Tangga* (Jakarta: Komnas Perempuan, 2009), p. 31.

⁹Faqihuddin Abdul Kodir and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim....*, p. 31.

¹⁰Article 5, Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, (2004).

act of a person causing economic dependence by limiting and/or prohibiting him from working properly inside or outside the home so that the victim is under his control.¹¹

Many efforts have been made to eradicate domestic violence, yet the results have not been as expected. Research by Faqihuddin has found that the problem of eliminating domestic violence does not originate in the process of socializing the law, but instead it begins with the attitude of the community that has not taken sides with victims of domestic violence, and thus it often creates an attitude that turns the blame on the victim. As a result, perpetrators can freely continue to commit violence without feeling guilty, whereas the women who become victims will encounter difficulty to obtain justice, both in the community and in court.¹² The community's attitude is also often reinforced by the belief that problems within the family are internal ones. As a result, cases of violence against women continue to be ignored and women are usually asked to be more patient, be steadfast and keep praying. As such, it makes it difficult for women to escape the cycle of violence that befalls them and their children.¹³

Faqihuddin and Mukarnawati in the book "*Referensi bagi Hakim Pengadilan Agama tentang Kekerasan dalam Rumah Tangga* (References for Religious Court Judges on Domestic Violence)" have identified several factors contributing to preserving domestic violence and making it difficult for victims to obtain support and assistance from the community.¹⁴ The first factor is an imbalance in the relationship between men and women, both within the household and in public life. Such inequality forces women and men to assume certain gender roles, which ultimately leads to discrimination and violence. For example, the position of the husband as the head of the family and the wife as the housewife as regulated in UUP Article 31 paragraph (3) and KHI Article 79 paragraph (1) can be interpreted as the affirmation and legitimacy of the unequal relationship between husband and wife in household life. Thus, society positions the husband as a leader¹⁵ and even the ruler of the family; on the other hand, the wife is

¹¹Article 5 to Article 9, Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, (2004).

¹² Faqihuddin Abdul Kodir and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim....*, 33.

¹³Faqihuddin Abdul Kodir and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim....*, p. 33.

¹⁴Faqihuddin Abdul Kodir and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim....*, p. 33.

¹⁵ The position of the husband as the head of the family is actually based on the provisions in the text of the Surah An-Nisâ' 34), *Al-Qur'an dan Terjemahan* (Jakarta: Departemen Agama RI, 2021); Article 79 Paragraph (1) Compilation of Islamic Law; Article 79 Paragraph (1) Marriage Law (1974).

positioned as the full property of the husband who is under the husband's control and supervision. Hence, whatever the wife does must be permitted or known by the husband, yet it does not apply otherwise since the husband is free to do whatever he wants regardless of his wife. The legal implication is that if a mistake is made by the wife from the husband's point of view, the wife must face supervision and control from the husband. The husband feels obligated to educate his wife and put her back on the right track according to the husband's perspective. Such a control, more often than not, ultimately leads to violence.¹⁶ Ideally, family harmony should be fostered by giving mutual control, and if necessary, using a third party who is considered successful in fostering a *sakinah* family.¹⁷

The second factor is the wife's full dependence on her husband, especially for economic problems, makes the wife completely under the power of her husband.¹⁸ This dependence is also due to the wife's lack of knowledge, since the formation of a good household is also greatly influenced by the wife's proper knowledge.¹⁹ If the wife is very dependent on her husband, then the husband will use the wife's economic dependence to threaten her if she does not follow what he wants and fulfill what he needs. The husband may threaten her not to provide a living, not to leave the house for any business, not to communicate with anyone, and even threaten her to divorce. The third factor is the attitude of most people towards domestic violence tends to be negligent because they consider it not their business. The people tend to view domestic violence as an internal family affair

¹⁶ A husband beating his wife is interpreted as a right and a way of educating his wife which is legalized based on the textual understanding of the Surah An-Nisâ' (4:34), Departemen Agama RI, *Al-Qur'an dan Terjemahan*.

¹⁷ Mhd Rasidin, et.al., "The Impact of Unequal Marriage on Household Harmony (Case Study in Sungai Penuh City, Jambi)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (2020), p. 313–36. Mursyid Djawas, et.al., "Creating Family Resilience in Indonesia: A Study of "Marriage Guidance" Program in Aceh and South Sumatera," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 1 (2022), p. 299-324.

¹⁸ In many cases, wives who are victims of domestic violence do not report their husbands to law enforcement (to the police) and continue to survive in the cycle of violence solely because of their dependence on their husband's economy. In general, they consider the sustainability of their lives and their offspring. If they really cannot stand it they will go to the religious court to file for divorce. The choice of settlement of domestic violence through religious courts (civil) was deliberately chosen by the wives of victims of domestic violence because husbands who had been "imprisoned" as perpetrators of domestic violence by their wives would retaliate against their wives after being released from prison by filing for divorce to religious courts. Instead of being divorced by the husband, it is better to divorce the husband.

¹⁹ Izzah Nur Aida Zur Raffar, et al., "Parenting Skills According to The Islamic Perspective Towards Family Well-Being," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021), p. 552-578.

which only concerns the husband and wife. The fourth factor is there are some beliefs that develop in society, including those that may originate from religious interpretations. Male perpetrators of domestic violence always seek justification from their understanding of the truth of the text of An-Nisâ' (4:34) which reads:

“Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with. And if you sense ill-conduct from your women, advise them (first), (if they persist) do not share their beds, (but if they still persist) then discipline them (gently). But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great.”²⁰

Understanding of the verse is often used as legitimacy/justification for the husband's “deviant” behavior to beat his wife. Not infrequently in the examination of cases of domestic violence in court, the husband states that beating his wife is part of his responsibility to educate his wife.²¹ The question is whether the husband understands the responsibility that makes the wife feel miserable. This is the problem of text interpretation, which still affects and has the potential to “damage” the relations of the lives of some married couples.

The above description emphasizes that domestic violence is not merely an act of violence against women, but also a crime against human dignity as it originates from a perspective that demeans human dignity and unequal relations and the standardization of gender roles in a person, in both men and women. While it is true that the household is a private domain whose authority belongs to the family, the family itself is part of society. Therefore, family and household affairs should also be included in society, and if any violence occurs, it becomes part of the public domain, as it is a form of crime against humanity. In other words, the public or society also has an obligation to get involved in handling domestic violence.

Faqihuddin describes that such a reality has become the basis for the issuance of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. It has also become the state legitimacy to stipulate that domestic violence can no longer be considered as an authority in the domestic or private domain that cannot be contested, but has become a problem in the public domain, and it is the responsibility of society and the state to be involved in stopping it.²²

²⁰Departemen Agama RI, *Al-Qur'an dan Terjemahan...*, p. 123.

²¹ Sulistyowati Irianto and Antonius Cahyadi, *Runtuhnya Sekat Perdata dan Pidana: Studi Peradilan Kasus Kekerasan Terhadap Perempuan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2008), p. 322-324.

²²Faqihuddin Abdul Kodir and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim...*, p. 39.

In the Islamic perspective, domestic violence actually threatens and destroys the values established on religious teachings, such as justice, equality, benefit, and mercy. Thus, domestic violence not only violates the principles of human rights, applicable laws and regulations, norms and ethics, but it also violates the principles, values and laws of Islamic teachings. Islam does not condone violence committed by anyone in the household, in any form and for any reason.²³

However, the reality is that numerous violence occurs among Muslim communities, and not a few even legitimize violence under the pretext of religious texts and teachings (e.g., the understanding that it is permissible to beat a wife who commits *nusyuz* (disobedience)).

In the explanation of the Marriage Law, there are several marriage principles that husbands and wives shall understand and strive for so that they can realize them in every entity of domestic life, i.e., free from domestic violence. These principles are the foundations in the formation of family and household life, established according to the perspective of Islamic marriage law in Indonesia. These principles include:²⁴ (1) the aim of the marriage is to form a happy and eternal family and household based on religious values and norms; (2) the marriage is carried out according to the law of the religion one adheres to; (3) the marriage is a legal act that must be recorded or documented by the Marriage Registrar of the Office of Religious Affairs; (4) the marriage adheres to the principle of monogamy, namely a husband marries one wife; (5) the prospective husband and wife are physically and psychologically mature, and the minimum age for marriage is 19 years for the prospective husband and 16 years for the prospective wife;²⁵ (6) divorce shall be made difficult to take place; and (7) there is a balance of position and rights of the husband and wife individually. In this case, the balance means that (a) husband and wife can live in an atmosphere of harmony, equity, and equilibrium; (b) husband and wife share duties and functions, authority and responsibility, as well as individual obligations and rights in collegiality; and (c) husband and wife should complement each other, i.e., joint with giving and receiving together in carrying out various activities. The balance

²³ Islam teaches the rights and obligations of husband and wife fairly, they (wives) have equal rights with their obligations in a *ma'ruf* manner, see surah al-Baqarah (2:228), *Al-Qur'an dan Terjemahan*. The concept of *ma'ruf* includes four criteria, namely: nature, religion, habit, and noble personality.

²⁴See Marriage Law; Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 1998), p. 72-73.

²⁵Article 15, Compilation of Islamic Law, 2011; and Articles 6-7 of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage.

of life can be actualized in household relations and social relations so that it can overcome various problems that might shake the family.²⁶

Divorce events may occur due to various problems, as they are triggers that are unable to be muffled and resolved jointly by the husbands and wives, their relatives, other parties as peacemakers, as well as judges at the Religious Courts. Therefore, a divorce can be declared legal if it is done in front of a court and there must be sufficient reasons that the husband and wife will not be able to live in harmony as spouses.²⁷

Marriages that break up, e.g., due to divorce, death, or court decisions, have legal consequences as stipulated in the Marriage Law; ex-wives and ex-husbands are still obliged to care for and educate their children solely based on the interests of the child's life. If there is a dispute over the rights of childcare, the court will decide: the ex-husbands remain responsible for all the maintenance and education costs needed by their children. If in reality the ex-husbands are unable to fulfill their obligations, the court may decide that the ex-wives can share the costs, and the court may oblige the ex-husbands to bear living expenses and/or determine an obligation for their ex-wives.²⁸

The provisions of the Marriage Law are described in more detail in the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) Article 149. In that article, it is explained that marriages that break up due to *thalaq* (divorce) oblige the ex-husbands to give an appropriate *mut'ah* (amenity) to the ex-wives in the form of money or property, unless the ex-wives are in a condition of *qabla al-dukhul* (marriage not consummated). The ex-husbands should also provide a living, a place to live (*maskan*), and clothes (*kiswah*) for the ex-wives during the *'iddah* (waiting period) unless the ex-wives have been divorced by *bain* or *nusyuz* and are not pregnant. The ex-husbands should also pay off dowry owed in full to the ex-wives, or half the value of the dowry if the ex-wives are in a condition of *qabla al-dukhul*. Further, the ex-husbands should pay childcare costs (*hadhanah*) as long as the children are not yet 21 years of age.²⁹

According to A. Mukti Arto, as a law enforcement institution, religious court institutions including the judges have the authority to be involved in efforts to eliminate domestic violence. For this reason, religious court judges are required

²⁶ Article 38, Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage; Article 113 Agung, Compilation of Islamic Law; Ahmad Rofiq, *Hukum Islam di Indonesia....*, p. 274.

²⁷ Article 39 Paragraphs (1) and (2) of the Marriage Law.

²⁸ Article 41 of the Marriage Law; and Ahmad Rofiq, *Hukum Islam di Indonesia....*, p. 282.

²⁹ Article 14, Compilation of Islamic Law; and Ahmad Rofiq, *Hukum Islam di Indonesia....*, p. 283.

to respond to current issues including those on the enforcement of the Elimination of Domestic Violence Law through the civil court process by carrying out legal reforms in several policies. First, the judges shall review the understanding of legal texts through a comprehensive and progressive method of interpretation to find the law and enforce *maqasid al-sharia* (objectives of the Islamic law). This method can be used to review the understanding of legal texts (verses of the Qur'an) regarding procedures for dealing with a wife who commits *nusyuz*, as it has been used as justification for the abusive treatment of husbands towards their wives. Second, the judges shall develop and apply the *maslahah* (benefit) theory in every legal decision-making. This policy is the ultimate goal of establishing a legal decision and is no exception to the religious court's decision on divorce with cases of domestic violence or caused by domestic violence. Third, the judges shall be encouraged to make legal breakthroughs through *ijtihad* (independent reasoning) in accordance with their authority.³⁰

Settlement of Domestic Violence through the Religious Courts in Madura

The shift in settlement of domestic violence from district courts to religious courts also occurs among the (women) community in Madura. In general, women (wives) who are victims of domestic violence seek a solution to solving domestic violence cases through religious courts, as the "final choice", although it is later understood that religious court's authority is only limited to handling domestic violence cases from a civil aspect. However, solving cases of domestic violence from a civil aspect in religious courts is claimed to be more practical.³¹ On the contrary, from the criminal aspect, it requires a long, convoluted process in the district courts, which "hardly" solves the problem because during the examination process it is not uncommon for women to be blamed for triggering the occurrence of domestic violence.

In addition, after serving a criminal sentence decided by the district court, the perpetrators of domestic violence (husbands) will not hesitate to respond to

³⁰A. Mukti Arto, *Pembaruan Hukum Islam Melalui Putusan Pengadilan* (1st Ed.). (Yogyakarta: Pustaka Pelajar, 2015), p. 203-304.

³¹Excerpts from an interview with one of the informants, Rahayu (not her real name), a housewife, on 3 October 2015: "The reason I resolved domestic violence cases through divorce was because I wanted something practical, I didn't want the business to be prolonged and complicated. If domestic violence is reported to the police, it will proceed to the Attorney General's Office, continue to the District Court and finally got to prison. This means that if domestic violence can be proven, it will definitely end up in prison, and once the husband gets out of prison, he will respond with a divorce from the religious court. Instead of going around and around and ending up getting divorced, in my opinion, it was more practical to report directly to the PA. In this way, my children and I can be freed from domestic violence that has been entangling me and my children's lives for so long.

the wives' actions by filing for divorce to the religious court. Therefore, wives who are victims of domestic violence will think hard about convicting their husbands who become the perpetrators of domestic violence because the husbands will "certainly" continue by filing for divorce to religious courts, as shown in the following decision:

Decision Number: 0209/Pdt.G/2014/PA.Pmk is a decision on a divorce case filed by a 41-year-old applicant, a Muslim, a civil servant, residing in Pamekasan District with a 35-year-old respondent, a Muslim, a housewife, residing in Pamekasan District. After being married for 18 years and having 3 children, her husband filed for divorce at Pamekasan Religious Court. According to her husband, the cause was because her wife was very jealous. Every time he left the house, he was always suspected and accused of having an affair with another woman. Finally, her husband could not stand it and left the house leaving his wife and children. However still according to the husband, after that it was his wife who had an affair with another man until she became pregnant and then had an abortion.

During the trial, all of the husband's accusations were denied by the wife because the problem was the husband himself. The wife even stated that they had actually been divorced and terminated until the cassation decision was made. Unfortunately, the decision was invalid because her husband did not carry out the contents of the cassation decision until the deadline for reading the divorce pledge. When traced back, their household life has, in fact, long been troubled. The wife once reported her husband to the police because of a case of domestic violence (economic neglect). The report was subsequently withdrawn because there was an amicable agreement with the husband and compensation money.

However, being released from criminal punishment does not make a husband deterred and stop committing violence against his wife. Instead, the husband said goodbye to go home to his parents leaving his wife and children without providing a living physically and spiritually. As a result, they lived separately for five years until the divorce application was filed. Thus, the amicable agreement made by the husband to his wife to withdraw the report at the police station actually ended in filing for divorce. The husband preferred to live with the wife whom he married in an unregistered manner and left his first wife and three children.

Another reason is that the wives wanted to cover up their husbands' disgrace from their extended family. A wife who does not want to solve domestic violence criminally intends to avoid the spotlight or let the whole family know that her husband has treated her unjustly. This reason was stated by one of the respondents, Mrs. Lina (not her real name), an employee at the Local Government

of Pamekasan District who filed for divorce after having been married for 3 years and 2 months and already had a child aged 2 years and 2 months.³²

Furthermore, the wives wanted to respect the *marwah* or good name of their husbands' family and most importantly not to take the criminal route to protect the child's psychology. They do not wish their children to be embarrassed because the fathers were reported as the perpetrators of domestic violence and would go to jail according to the court's decision. A wife does not want her children to label herself as someone who has imprisoned their father. This statement was conveyed by Mrs. Istianah (not her real name), an employee of a tertiary institution in Pamekasan who filed for divorce after 14 years of marriage and already had a 12-year-old child. She described that her choice to resolve domestic violence cases through a divorce institution was also based on considerations of protecting her extended family's reputation. The previous respondent resolved domestic violence cases through a divorce agency in religious courts to cover up the husband's disgrace from his extended family; however, the following wanted to protect the family's good reputation from the husband's behavior. She believed that resolving domestic violence cases to the police and being processed criminally would tarnish the name and prestige of the husband's family since the family would bear a stigma that the family members have been the perpetrators of domestic violence and received prison sentences. Apart from that, she was very protective of her child's psychology from feeling ashamed due to having a father who was the perpetrator of domestic violence and had to serve a prison sentence. More than that, she also did not want her only child to have the impression that the father had been "imprisoned" by the mother.³³

³²Excerpt of the interview with Mrs. Lina (not her real name), October 7, 2015: "Actually, I have been holding back my husband for quite a long time, which can be categorized as domestic violence. I just realized that my husband has a violent temper. He liked to hit, scratch, pull my hair and even kick when I have a problem, even if it's just a trivial matter. At first I was patient, I considered it a normal household problem and could still be fixed, but over time I could not tolerate the harsh treatment from my husband and especially since I got married my husband rarely provided a living. My son and I lived off my salary as civil servants at the Local Government Office. Based on that, I wanted to immediately end my problem and chose to resolve it through a divorce institution — not reporting it to the police in a criminal manner because I didn't want to be "busy" and let all the extended family know about my husband's treatment of me. I was ashamed of my extended family because the husband of my choice was not the type of husband who loved his wife and treated his wife well like when he was in a relatively long dating relationship of 8 years."

³³Excerpts of the interview with Mrs. Istianah (not her real name), October 10, 2015: "I have been trying to survive living a less harmonious household life for many years, but in the last 2 years I have had no power anymore. Quarrels and misunderstandings inevitably colored the relationship in domestic life and never found a solution or way out. Husband often used violence in the form of beatings accompanied by threats that resulted in physical and psychological

In other words, under any circumstances, even though they are in the position of being a victim, women will still have time to think about other people's circumstances. They are able to survive for months or even years just to survive for the sake of others, and only if they are really forced, they will make rescue efforts. Likewise, women who are victims of domestic violence come to religious courts to find a solution to solving domestic violence cases. This is the "final choice" after failing to take various ways of resolution, even though they later realize that religious court's authority is only limited to handling domestic violence cases from a civil aspect.

The aforementioned are the reasons women come to religious courts to resolve domestic violence cases through divorce law institutions (divorce by litigation). In other words, behind the divorce suit there are reasons for women to release themselves and their children from domestic violence that have ensnared them. When the wife is in the position of plaintiff in the settlement of a divorce case, the form/type of violence perpetrated by the husband against the wife is generally not a stand-alone deviant behavior, but rather a combination or accumulation of several other forms of violence. It is therefore understandable that the women (wives) victims of domestic violence eventually choose to resolve their cases through religious courts.

Another finding showed that the judges in Madura religious courts have never discriminated against the process of settling divorce cases. Whatever the cause is and whether it is domestic violence or not, the settlement process is treated the same starting from the examination process, the mediation process, the verification process, to the case decision process. The judges are not too enthusiastic about the causes of disputes and quarrels between the spouses which lead to them filing for divorce. For the panel of judges, the most important aspect is to figure out the consequences of disputes and quarrels that have made the

pressure. He also often directly said divorce words such as "divorce you from me" almost every time a fight occurred. In addition, during marriage, my husband rarely carried out the obligation to provide for the family and even in the last two years, my husband had not provided any physical and spiritual support at all. To make ends meet and the cost of my child's education I had to bear alone. For my husband's treatment, I did not bring it into the realm of criminal law, but I preferred to settle it through or civilly by filing for divorce. In fact, if I wanted to reciprocate my husband's treatment, my husband would definitely be charged with criminal penalties because he had committed multiple layers of domestic violence, namely physical, psychological violence and economic neglect. Why didn't I do it? The answer is because I wanted to protect the reputation and dignity of my husband's family. I didn't want them to feel ashamed because a family member became the perpetrator of domestic violence and had to serve a prison sentence. Apart from that — this is the most important thing, I wanted to protect the child's psychology so that he didn't feel ashamed to have a father who was a perpetrator of domestic violence and had to serve a prison sentence, let alone had the notion/impression that his mother had imprisoned his father."

household far from the purpose of marriage, which is to form a happy and eternal household or a household filled with *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (compassion).

In the perspective of fair law enforcement, if the judge only focuses on the consequences arising from disputes and quarrels in the household, and does not carefully examine the legal facts in the trial related to the causes of disputes and quarrels, which lead to filing for divorce, then the judge's decision will only serve to "decide cases". The decision has not yet reached the stage of "solving the cases" even though the main task of the judge is to help justice seekers overcome all obstacles to manifest a simple, fast, and low-cost trial.³⁴

The tasks are further clarified in detail in Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power that judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society. The quote of this article suggests that judges are not only required to comply with the written laws, but also make legal discoveries (*rechtsvinding*) in deciding a case by exploring every dynamic that develops in society, including the main issue which is the actual event of the existence of a matter. Thus, the task of the judge is not merely to decide the case, but also to resolve the dispute completely and ultimately.

As previously explained, as a law enforcement institution, religious court institutions, including the judges, have the authority to be involved in efforts to eliminate domestic violence. This legal mandate is now gaining momentum because the findings of this study indicated that there has been a shift in the resolution of domestic violence cases. Female victims of domestic violence currently prefer to resolve domestic violence cases through divorce institutions (civil) in religious courts rather than criminal settlements in district courts. Therefore, *ex officio* religious court judges are required to perfect their decisions so that they are oriented towards benefit, i.e., providing certainty and legal protection, fulfilling a sense of justice, restoring victims' rights, stopping tyranny, and being able to execute. For this reason, the judges shall have the data about the facts of events that are complete and accurate for each case that occurs. These data can be obtained through case examination (*konstatiring*) so that the obtained legal facts are complete, chronological, systematic, and accountable for based on the law of evidence. Furthermore, the legal facts are considered by the judges to answer the *petitum* or demands of the parties.

³⁴Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Powers "The court helps justice seekers and tries to overcome all obstacles and hindrances in order to achieve a simple, fast and low-cost trial."

The doctrine gives an equal position of women in resolving domestic violence cases through divorce institutions and in general (divorces that are not caused by domestic violence), that is, the position of women is equivalent to that of men as husbands since domestic violence is only considered as one of the causes of divorce. Similarly, the results of interviews with a number of religious court judges, the results of observations in the trial process for divorce cases, and the analysis of a number of decisions in this study indicated that in resolving domestic violence cases through divorce institutions women have been positioned on an equal footing with men, or their husbands. Divorce measures taken by women have also been triggered by the changes in the society's view that divorce is not only the right of the husbands: Divorce is also a woman's right.³⁵

The following is a statement from the respondent, Mr. Ilham (not his real name), a judge of Sampang Religious Court. He remarks that all people who have litigation in religious courts are in an equal position because judges are guided by the legal principle of equality, or more precisely, the legal principle of equality before the law which states that all people are equally protected by the law. There is no difference between individuals based on gender and position in court, either as Plaintiff or as Defendant.³⁶ In fact, from the mediation process the positions of women and men have been equal. This means that all parties in a lawsuit in religious courts, both husband and wife, if they are both present at the first trial, they must take part in the mediation process before the next trial process is held, which is the case examination trial."³⁷

³⁵ Jumni Nelli and Sobhan Lubis, "Community Support for Divorced Women: A Study in Riau Province," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (2022), p. 407-422.

³⁶The following is an excerpt from an interview with Ilham (not his real name), on 23 October 2015: "In my opinion, the position of women in the trial process for domestic violence cases in the religious court is the same as that of men because judges have never treated divorce proceedings specifically as a basis for domestic violence. The panel of judges has never looked for who is at fault or looks for the cause of the dispute, as the most important thing is that their marital relationship has faltered and experienced cracks so that it is far from achieving the goal of marriage. If the judges are sure that the household situation cannot be saved, then the solution is for their lawsuit to be granted, namely divorce. Even so, all parties, both as Plaintiffs and Defendants, are equally obliged to submit evidence to strengthen their arguments. It is important to note that proof in a civil court is sufficient with formal proof. That is, if the divorce filed is based on a domestic violence case, for example, the victim does not need to bother showing the parts of his body that are bruised as a result of the beating. This is the difference between litigation in civil court and litigation in criminal justice."

³⁷Excerpts of an interview with Mr. Syahrul (not his real name), a judge at Bangkalan Religious Court on October 30, 2015 "Since the issuance of PERMA No.1 of 2008 concerning mediation procedures in court, all parties to a case in religious courts must undergo a mediation process. This obligation applies equally to husbands and wives before proceeding with the next

Unfortunately, this equal position does not guarantee the proportional justice that they should get after the divorce because the decisions in domestic violence cases that manifest in divorce verdicts are generally decided by *verstek*, i.e., the husband does not attend court and does not send his representative or attorney. In this present study, of the 50 decisions examined, 48 decisions were declared *verstek* and only two decisions were not *verstek*. The *verstek* decisions only contain fulfilling the wife's principal claim (*primary petitum*) as the plaintiff, e.g., granting the demand to break the marriage bond. In other words, women as the wives, who are victims of domestic violence, settle their own cases through the contested divorce institutions. On the one hand, the wives have received the same position as men as the husbands, but on the other hand, they still have not.

The equality of position is only related to the legal opportunity to make independent decisions regarding the continuation of the marital relationship. These women have come to the religious courts to find a solution to solving domestic violence cases as it is the "final choice" they make after failing to take various methods of resolution. However, they realize that the religious court's authority is only limited to handling domestic violence cases from a civil aspect. Still, these women have not received proper equality because there is no guarantee of justice that they should get after their divorce because the decision is made by *verstek*, without the presence of the Defendant. It is in this realm that impunity is increasing because the perpetrators of domestic violence are free from any responsibility.

However, if the Defendant is also present in the trial process, then such as equal position will yield proper results. The Plaintiff and Defendant can mutually defend their rights, present witnesses, and show other evidence. Thus, an equal position in the trial process requires the presence of both the Plaintiff and the Defendant. In addition, if there is a change in claim (addition or subtraction) to the primary lawsuit, it must be submitted before the reading of the duplicate (answer) from the Defendant. If submitted afterward, the change in claim must be with the consent of the Defendant. This provision is based on the 2013-revised

court process and applies equally to all types of cases regardless of the cause, domestic violence or not. If at the first trial both parties are present they are required to go through a mediation process, namely the opportunity to consult with the mediator to find a solution to the problems that are entangling them. I mean, in the mediation process they get the same opportunity to *mahasabah* or consider their decision to divorce, especially if in that marriage they have been blessed with offspring. If the husband and wife manage to find a solution and agree to make peace, the mediator will draw up a deed of reconciliation and will report it to the panel of judges as a basis for withdrawing the case. If the reconciliation is not successful, a letter will also be issued stating that the mediation has failed to find a solution and becomes the basis for the judge to continue the next trial process, namely the case examination process."

edition of the Guidelines for the Implementation of Duties and Administration of the Religious Courts.³⁸

Further, the fulfillment of the basic rights of wives and children post-divorce for female victims of domestic violence who file for divorce will be fulfilled if the Defendant attends the entire trial process. If the Defendant is not present or is only present at the first trial, then the demand for the fulfillment of the rights of the wife and children after the divorce will not be granted. According to Mr. Ilham (not his real name), the deputy chairman of Pamekasan Religious Court, the Defendant's absence becomes the basis for the wife's demands not being granted. The absence of the Defendant in the trial process makes the Defendant's approval unable to obtain to fulfill the demands of the rights of wives and children post-divorce.³⁹

³⁸The following is an excerpt from the description of her explanation during the opportunity to interview her: "Initially I had no intention of filing an additional lawsuit because when I filed for divorce to the religious court I only wanted to divorce my husband and got custody of the children. However, at the time of reading the duplic (answers to the demands) my husband actually filed a lawsuit that I had never expected before, he filed a lawsuit over the assets in the form of IDR 100,000,000 (one hundred million) which was used to pay the down payment for the purchase of a house and also demanded the division of assets together in the form of cars, motorcycles and all household furniture. What I didn't accept was because he never mentioned about unpaid mortgage payments for houses and cars. Without thinking about the procedure, I filed several additional lawsuits, including: monthly *madliyah* maintenance of IDR. 3,000,000.00 (three million rupiahs), *mut'ah* maintenance in the form of money of IDR 25,000,000.00 (twenty-five million rupiahs), *'iddah* maintenance of IDR 10,000,000.00 (ten million rupiahs), a child's monthly living of IDR 2,000,000.00 (two million rupiahs), debt to the 1st PARTY of IDR 11,500,000.00 (eleven million five hundred thousand rupiahs), payable to the 2nd PARTY in the amount of IDR 17,250,000.00 (seventeen million two hundred and fifty thousand rupiahs), payable to UD. Of IDR 4,000,000.00 (four million rupiahs) and debt to the 3rd PARTY of IDR 8,725,000.00 (eight million seven hundred and twenty-five thousand rupiahs). I never knew that when the additional lawsuit was filed the time was not right because it was filed after the answering process. I just thought that if my husband could file several lawsuits, why not me?. Beyond that, the husband actually got a decision on the distribution of joint assets even though he has never participated in paying the installments. Never mind paying the debt installments, just providing a living my husband has long ignored it. Even so, I have surrendered to whatever court decision as the important thing is I can be free from my husband and am able to focus on continuing my life with my child."

³⁹The following is an excerpt of an interview with Mr. Ilham (not his real name), October 23, 2015, "Throughout my experience as a judge, starting from being a member of the panel until now, I was given the mandate to become deputy chairman and almost always chaired the panel of divorce proceedings (divorce contest), I has never granted the wife's demand that complies with the fulfillment of post-divorce rights both for herself and for her children without the presence of the Defendant. The plaintiff may submit all demands, but if the Defendant is not present, to whom are the demands requested? That is the reason the judge do not comply with the demands complied if the Defendant is not present at the hearing".

If the contested divorce decision is analyzed based on the legal reform by A. Mukti Arto, the decision to settle domestic violence cases submitted by the female victims through the divorce institutions in the religious courts of Madura region is still not fully oriented towards victim protection. This is because there has not been a legal breakthrough, especially on the legal protection for female victims as the wives along with their children, in the following:

First, the wife who files for divorce because she wanted to get rid of the domestic violence that has ensnared her only receives justice in the form of breaking her marriage bond. In fact, if the judge aims for a legal breakthrough, then *ex officio*, the judge can also stipulate the obligation of the ex-husband (Defendant) to provide 'iddah maintenance for the ex-wife (Plaintiff). The legal breakthrough policy is an analogy with the widow's rights in divorce by *thalaq*, based on several legal considerations, including the provisions in Article 41 letter (c) of the Marriage Law.

Second, if the judge has granted child custody on the mother, the judge *ex-officio* can also oblige the ex-husband to bear the child's maintenance as a result of divorce even though there is no request from the mother in the *petitum*.⁴⁰ Likewise, if there is a dispute regarding childcare (*hadlanah*) and the judge determines that the child must follow the mother for the best interests of the child, the court may oblige the ex-husband to bear the costs of raising and educating the child who follows the mother.⁴¹ This legal breakthrough measure is based on the fact that in the context of domestic violence the victim (wife) will always try to defend the right to care for the child by considering the child's growth and development because children who are raised in an environment full of violence will cause the child to grow physically and spiritually unhealthy.

Women (wives) who are victims of domestic violence and resolve their cases through divorce institutions in religious courts usually resort to the "final choice" after they fail to take various settlements. Therefore, if they only generally file/demand the primary lawsuit—the termination of the marriage bond without demanding any other rights—then their decision is understandable. These women do not demand other rights apart from terminating the marriage bond because of the following considerations. First, the attitude of the wives who only wanted to be immediately free from the domestic crisis implies that they are experiencing

⁴⁰Article 41 letter (b) of Marriage Law: As a result of the dissolution of a marriage due to divorce, the father is responsible for all the necessary maintenance and education costs for the child, if in fact the father cannot fulfill these obligations, the court may determine that the mother must share these obligations.

⁴¹Article 156 letter (f) of the Compilation of Islamic Law states "The court can also, bearing in mind the ability of the father, determine the amount of costs for the maintenance and education of children who do not follow him".

great suffering. Thus, she does not think to apply for any basic rights other than the acceptance of the dissolution of marriage as a mental and physical liberation from domestic violence. Second, not many wives have an access to information related to religious laws and legislations that are crucial to family life, such as the Marriage Law, Government Regulations, Compilation of Islamic Law, Child Protection Law, and Law on the Elimination of Domestic Violence. As a result, they seem to have difficulty fighting for their own interests and those of their children in the event of a divorce. The lack of such information is also the initial cause of irregularities in the governance of household life. Similarly, husbands also experience this condition in leading, nurturing, and guiding the orientation of their household life. Third, the wives do not know or do not understand that they and their children have basic rights that can be requested (contested) to the panel of judges by filing their divorce suit. Fourth, a number of husbands do not have sufficient income to meet the necessities of life in their household because, among other things, they do not have a stable job. Even though the religious court's decision orders (sentences) the ex-husband to fulfill the demands for a living or fulfillment of other material rights for his ex-wife and children, they are unable to pay for it, and so the execution of the judicial decision becomes useless. These are some of the arguments that have not been resolved yet and have contributed to the difficulty for women's empowerment in fighting for their rights and the rights of their children after their marriages are declared dissolved by the religious courts.

The findings of this study also found that of the decisions compiled here; only one decision did the plaintiff consider not being in favor of the justice of the female victim and her children, which is the decision Number: 0539/Pdt.G/2014/PA.Pmk. The plaintiff was disappointed with the decision of the panel of judges since the claim for maintenance rights for her children was rejected. The refusal was based on the provisions in the procedural law, which states that any changes to claims (addition or reduction of claims) filed after the reading of the defendant's duplication must be with the defendant's permission. Even so, she did not exercise her right to file an appeal on the grounds that she no longer wanted anything to do with her ex-husband as she had left her responsibilities for too long and the ex-husband also did not have a steady income. Thus, in general, female victims of domestic violence who resolve their cases through a divorce lawsuit willingly "accept" the decision of the panel of judges that has granted their lawsuit to terminate their marriage bond because they believe that the divorce decision is a solution that can free them from their husbands' tyrannical behavior. Their strong desire to be immediately free from the snares of violence makes them less anxious to think about the various risks after the divorce decision, that they will become widows and will have to bear all

the obligations that are not theirs, such as taking care of and providing for all the needs of their children on their own. Their willingness to accept all the risks after the divorce decision is a consequence of their intention not to file any other lawsuit besides the lawsuit for termination of the marriage bond. Therefore, it is understandable if there is no document found on any appeals in this study, let alone the cassation filed by the wives as the victims of domestic violence after the divorce decisions were contested. Supposed any party is dissatisfied with the first level decision, there should at least be filing of appeals and cassation by female victims of domestic violence who filed for divorce.

So far, the efforts to appeal or cassation have only been filed by a wife after a divorce decision to fight for her rights and (including) the rights of her children was not granted at the first level decision or the appeal level. One evidence is the decision Number: 0016/Pdt.G/ 2015/PTA.Sby, which was an appeal decision against the first level decision Number: 0773/Pdt.G/2014/PA.Pmk. The appeal decision annulled the first level decision, which stipulated that the departure of the Respondent from the Petitioner's house without his permission was sentenced as *nusyuz* and therefore the wife was not entitled to post-divorce rights. On the other hand, the appeal decision stipulated that the departure of the Respondent from the Petitioner's house could not necessarily be sentenced as *nusyuz* as long as the Petitioner could not prove it and the Petitioner had not fulfilled his obligations to provide a living for the Respondent. Therefore, the Respondent earned the right to post-divorce claims such as *madliyah*, *iddah*, and *mut'ah* maintenance. The decision Number: 559K/AG/2012 was a cassation decision on the decision Number: 0233/211/PA.Pmk that granted the post-divorce claims for the Respondent and the children. Unfortunately, the Petitioner did not pronounce the pledge of divorce (*thalaq*) on the day of the trial as determined by the panel of judges, and therefore this made the decision null and void. However, two years later, in 2014, to be precise, the applicant filed for divorce again and it was decided by the decision Number: 0209/2014/PA.Pmk. For the persistence of a wife to fight for her rights and the rights of her children, the first level decision fulfilled all the wife's claims as decided in the cassation decision on the first divorce decision.

Conclusion

Settlement of domestic violence cases through legal (juridical) channels in the religious courts in Madura region seems to be more practical and less complicated, which only involves limited parties to maintain the reputation or dignity of the extended family. In addition, if there are children, a wife will also consider the children's psychological state. Further, the position of a woman as a wife in the trial process for domestic violence cases in the religious courts of the

Madura region is equal to the position of her husband's. In fact, the equal position already begins from the mediation, examination, verification, and decision-making processes. However, such equality does not guarantee the proportional justice that the women should get after their divorce because the decisions on domestic violence cases that manifest in divorce decisions are generally decided in a *verstek* manner. Of the 50 lawsuits for divorce, the findings of this study revealed that first, there were only two decisions stating that the defendant attended the trial, while the rest of the defendants were not present nor represented by their attorneys. On the basis of the absence of the defendant and/or his representative, the panel of judges decided on the divorce case with a *verstek* decision. Second, the plaintiff generally only filed a principal lawsuit, i.e., a lawsuit to terminate the marriage bond. They did not demand anything except that they just wished to be immediately free from the chaos and crisis of their household since they have felt and experienced great and very heavy suffering. Thus, they did not even think about putting forward their basic rights other than accepting the dissolution of marriage as self-liberation from the shackle of domestic violence. They perceived divorce as the "sharp scissors" breaking the chain of violence. Third, the judges' decision regarding divorce by litigation generally only fulfilled the demands of the female plaintiff who was a victim of domestic violence, i.e., terminating the marriage bond. The implication for this was that women as the wives shall bear obligations which were actually not theirs, such as providing the maintenance of the children for their survival and education and also fulfilling all of the children's life needs, including being responsible for their health.

References

Journals and Books

- Alfiander, Dodon, "Disparity in the Considerations of Judges in Deciding Divorce Disputes in Religious Courts and District Courts," *Juris (Jurnal Ilmiah Syari'ah)* 21, No. 1 (2022).
- Al-Tawil, Namir Ghanim. "Association of Violence Against Women with Religion and Culture in Erbil Iraq: A Cross-Sectional Study." *BMC Public Health* 12, No. 1 (2012). <https://doi.org/10.1186/1471-2458-12-800>.
- Arto, A. Mukti, *Pembaruan Hukum Islam Melalui Putusan Pengadilan* (1st Ed). Yogyakarta: Pustaka Pelajar, 2015.
- Chernikov, Valery V., and Olga K. Goncharenko, "The Problems of Violence against Women in International Law." *Vestnik of Saint Petersburg University, Law* 12, No. 3 (2021). <https://doi.org/10.21638/spbu14.2021.319>.

- Departemen Agama, *Al-Qur'an Dan Terjemahan*. Jakarta: Departemen Agama RI, 2021.
- Deshpande, Sanjay, "Sociocultural and Legal Aspects of Violence Against Men." *Journal of Psychosexual Health* 1, No. 3–4 (2019). <https://doi.org/10.1177/2631831819894176>.
- Djawas, Mursyid, et.al., "Creating Family Resilience in Indonesia: A Study of "Marriage Guidance" Program in Aceh and South Sumatera," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 1 (2022). DOI: <http://doi.org/10.19105/al-Ihkam.v17i1.6150>.
- Eleanora, Fransiska Novita, and Edy Supriyanto, "Violence against Women and Patriarkhi Culture in Indonesia." *International Journal of Multicultural and Multireligious Understanding* 7, No. 9 (2020). <https://doi.org/10.18415/ijmmu.v7i9.1912>.
- Fakih, Mansour, *Analisis Gender Dan Transformasi Sosial*, Yogyakarta: Pustaka Pelajar, 2016.
- Gribunov, Oleg, et.al., "Problems of the Criminal Law Assessment of Involvement in Prostitution and the Organization of This Activity Through the Use or the Threat of Violence." *Russian Journal of Criminology* 13, No. 6 (2020). [https://doi.org/10.17150/2500-4255.2019.13\(6\).941-950](https://doi.org/10.17150/2500-4255.2019.13(6).941-950).
- Irianto, Sulistyowati, *Metode Penelitian Hukum Konstelasi Dan Refleksi* (2nd Ed). Jakarta: Yayasan Pustaka Obor Indonesia, 2011.
- Irianto, Sulistyowati, and Antonius Cahyadi, *Runtuhnya Sekat Perdatadan Pidana: Studi Peradilan Kasus Kekerasan Terhadap Perempuan*, Jakarta: Yayasan Pustaka Obor Indonesia, 2008.
- Jans, Erwin. "The Violence of Culture." *Documenta* 22, No. 4 (2019). <https://doi.org/10.21825/doc.v22i4.10340>.
- Kodir, Faqihuddin Abdul, and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim Pengadilan Agama Tentang Kekerasan Dalam Rumah Tangga*. Jakarta: Komnas Perempuan, 2009.
- Lusasi, Justin, and Dismas Mwaseba, "Gender Inequality and Symbolic Violence in Women's Access to Family Land in the Southern Highlands of Tanzania." *Land* 9, no. 11 (2020). <https://doi.org/10.3390/land9110468>.
- Mshweshwe, Linda. "Understanding Domestic Violence: Masculinity, Culture, Traditions." *Heliyon* 6, No. 10 (2020). <https://doi.org/10.1016/j.heliyon.2020.e05334>.
- Nelli, Jumni, and Sobhan Lubis. "Community Support for Divorced Women: A Study in Riau Province." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 1 (2022). <https://doi.org/10.22373/SJHK.V6I1.12467>.
- Raffar, Izzah Nur Aida Zur, et.al., "Parenting Skills According to The Islamic Perspective Towards Family Well-Being." *Samarah: Jurnal Hukum*

- Keluarga dan Hukum Islam* 5, No. 2 (2021).
<https://doi.org/10.22373/sjhk.v5i2.9576>.
- Rasidin, Mhd, et.al., "The Impact of Unequal Marriage on Household Harmony (Case Study in Sungai Penuh City, Jambi)." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 2 (2020).
<https://doi.org/10.22373/sjhk.v4i2.8083>.
- Rofiq, Ahmad, *Hukum Islam Di Indonesia*. Jakarta: Raja Grafindo Persada, 1998.
- Saadah, Mazroatus, "Perempuan Dan Perceraian: Kajian Tentang Cerai Gugat Di Pengadilan Agama Bekasi." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 2 (2020). <https://doi.org/10.14421/ahwal.2018.11202>.
- Stark, Evan, and Marianne Hester, "Coercive Control: Update and Review." *Violence Against Women* 25, No. 1 (2019).
<https://doi.org/10.1177/1077801218816191>.
- Villanueva, Concepción Fernández, and Joyce Mary Adam, "Violencias En La Escuela: Protagonismo, Género Y Desigualdad." *Cadernos CEDES* 40, No. 110 (2020). <https://doi.org/10.1590/cc220197>.
- Watts, Charlotte, and Janet Seeley. "Addressing Gender Inequality and Intimate Partner Violence as Critical Barriers to an Effective HIV Response in Sub-Saharan Africa." *Journal of the International AIDS Society* 17, No. 1 (January 2014): 19849. <https://doi.org/10.7448/IAS.17.1.19849>.
- Wignjosoebroto, Soetandyo. *Hukum: Paradigma, Metode Dan Dinamika Masalahnya* (2nd Ed.). Jakarta: ELSAM dan HUMA, 2002.

Laws and Legal Rules

- Indonesia, Republic, Law Number 48 of 2009 concerning Judicial Powers (2009).
- Indonesia, Republic, Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (1974).
- Indonesia, Republic, Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (2004).

Interviewes

- Interview with Ilham, Judge in Madura, 2015.
- Interview with Syahrul, Judge in Madura, 2015.
- Interview with Lina, a divorced wife, in Madura, 2015.
- Interview with Istianah, a divorced wife, in Madura, 2015.
- Interview with Rahayu, victim of domestic violence, in Madura, 2015.