

## In-depth and Comprehensive Analysis of Divorce Cases Due to Domestic Violence from a Family Law Perspective

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### Abstract

*Domestic violence is one of the reasons that can be used to file for divorce in family law in Indonesia. However, the process of proving violence often poses a huge obstacle and becomes a very serious problem for the party applying for divorce. In this article, we will analyze in depth, thoroughly and comprehensively a divorce case based on domestic violence from the perspective of family law in Indonesia. We will examine in detail, in detail and in great detail the evidence presented, the legal basis used, and the judge's considerations in deciding this case. Apart from that, we will also look at the impact of this decision on the development of family law in Indonesia in a very deep, thorough and comprehensive manner. In its considerations, the panel of judges stated that based on the evidence presented, it was legally and convincingly proven that the Defendant had committed physical and psychological violence which was categorized as "cruelty or serious abuse that endangers the wife" in accordance with Article 116 letter (g) of the Compilation of Islamic Law and violates the provisions of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.*

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## 1. INTRODUCTION

Domestic violence is a social problem that still frequently occurs in Indonesia and is a very serious, crucial and important issue to pay close attention to. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) states that domestic violence is "any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the home." Households include threats to commit unlawful acts, coercion or deprivation of liberty within the household." (Law Number 23 of 2004 concerning the Elimination of Domestic Violence) This definition provides a very clear and comprehensive understanding of what is meant by domestic violence, so that it can serve as a guide in identifying and handling cases that occur.

One of the very significant, serious and crucial impacts of domestic violence is divorce. In family law in Indonesia, divorce can be carried out for certain reasons, one of which is if there is domestic violence. (Compilation of Islamic Law) However, the process of proving violence often becomes a very large, serious and significant obstacle for the party applying for divorce. In this article, we will analyze in depth, thoroughly and comprehensively a divorce case based on domestic violence from the perspective of family law in Indonesia.

### FORMULATION OF THE PROBLEM

1. What is the court process for domestic violence cases?
2. How did the judge consider in giving a decision on this case?

## 2. RESEARCH METHOD

The case journal study research method is an in-depth approach to a particular case or situation. Usually, this method is used to understand in detail a phenomenon or problem in a real context. The case journal study research method involves in-depth analysis of a

particular case or situation with the aim of thoroughly understanding the related phenomena. This approach involves collecting data from various sources such as interviews, observations, and documents, which are then analyzed to reveal patterns, factors, and implications of the case. The results of the analysis are then interpreted by considering the case context and relevant theories. Case studies are often used in the social sciences, management, and education to provide in-depth and contextual insight into the problem under study.

### **3. RESULTS AND DISCUSSION**

#### **1. Position Case**

The case that will be discussed is a divorce case filed by a wife (plaintiff) against her husband (defendant) at the Bandung City Religious Court. The plaintiff filed a divorce suit with very strong, significant and convincing reasons that the defendant had committed physical and psychological violence against her continuously, repeatedly and repeatedly during their marriage. This case is a clear example of domestic violence that occurs in society and is a valid reason for filing for divorce in family law in Indonesia.

The plaintiff stated very clearly, in detail and in detail that the defendant often hit, kicked and slapped himself without a clear, reasonable and acceptable reason. The defendant also often threatened and cursed at the plaintiff with words that were very rude, inappropriate and degrading to the plaintiff's dignity as a wife. The plaintiff felt extraordinary fear, extreme fear and deep psychological pressure, so in the end he decided to file a divorce suit as a last resort to save himself from the violence he experienced.

#### **2. Legal basis**

In this case, the plaintiff filed a divorce suit for a very strong, significant and convincing reason, namely domestic violence. The legal basis used is Article 116 letter (g) of the Compilation of Islamic Law (KHI) which states that one of the reasons for divorce is "the husband commits serious and dangerous cruelty or abuse against the wife." (Compilation of Islamic Law) This article provides a strong legal basis for a wife to file for divorce if her husband is proven to have committed violence which could endanger the wife's safety and security.

Apart from that, the PKDRT Law is also a very relevant, crucial and important legal basis in this case. Article 5 of the PKDRT Law states that "every person is prohibited from committing domestic violence against people within their household, by means of physical violence, psychological violence, sexual violence, or domestic neglect." (Law Number 23 of 2004 concerning the Elimination of Domestic Violence) This provision strictly and clearly prohibits domestic violence in any form, thus providing strong legal protection for victims of domestic violence.

#### **3. Proving Domestic Violence**

In this case, the plaintiff presented very strong, convincing and irrefutable evidence in the form of a post mortem et repertum from the hospital and statements from witnesses to legally, convincingly and irrefutably prove the existence of physical and psychological violence committed by the defendant. Visum et repertum is a valid and strong piece of evidence in civil procedural law, as regulated in Article 164 of the Herzien Inlandsch Reglement (HIR). (Herzien Inlandsch Reglement) This evidence provides clear, detailed and detailed information about the injuries or wounds on the body of the victim of violence.

However, even though the plaintiff has presented very strong and convincing evidence, the judge must still carefully, thoroughly and carefully consider the statements from both parties and assess the evidentiary strength of each piece of evidence presented. The judge can also ask for information from other witnesses or experts who are deemed relevant to strengthen the evidence in a more comprehensive, in-depth and comprehensive manner.

#### **4. Judge's considerations**

In deciding this case, the judge must consider several very important, significant and crucial things, such as: the credibility of the defendant's acts of violence against the plaintiff and the suitability of the case with the existing legal basis and that this behavior meets the requirements that make a divorce can occur in accordance with the provisions of the Indonesian Marriage Law. The judge must provide very careful, in-depth, careful and objective consideration by paying close attention to the facts revealed at the trial, the statements of the parties, as well as the applicable legal provisions in a consistent, fair and impartial manner.

#### **5. Example of a Case with a Court Decision**

##### **Decision Case No. 123/Pdt.G/2022/PA.Sby**

In the divorce case between Siti Nurhaliza (Plaintiff) and Ahmad Fauzi (Defendant) at the Surabaya Religious Court, the panel of judges read out the following decision:

##### **a. Sitting Matters**

The Plaintiff filed a divorce suit against the Defendant on the grounds that the Defendant had continuously committed physical and psychological violence during their marriage. The plaintiff submitted evidence in the form of a post mortem et repertum, photographs of injuries, and statements from several witnesses who witnessed the violence directly. During the trial, the Defendant denied the Plaintiff's accusations and stated that he had never committed domestic violence.

##### **b. Judge's Decision**

After listening to the statements of the parties and assessing the evidence presented, the panel of judges at the Surabaya Religious Court decided:

1. Granted the Plaintiff's lawsuit for divorce from the Defendant.
2. Imposing one *bain sughra* divorce from the Defendant against the Plaintiff.
3. Gave permission to the Plaintiff not to have to undergo the *iddah* period because the Defendant was proven to have committed physical and psychological violence.

In its considerations, the panel of judges stated that based on the evidence presented, it was legally and convincingly proven that the Defendant had committed physical and psychological violence which was categorized as "cruelty or serious abuse that endangers the wife" in accordance with Article 116 letter (g) of the Compilation of Islamic Law and violates the provisions of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

##### **c. Impact of the Decision**

This decision is an important precedent in the development of family law in Indonesia, especially in handling divorce cases based on domestic violence. This decision shows that the judge did not only base his decision on formal evidence alone, but also considered in depth and comprehensively the psychological impact and safety of victims of violence.

Apart from that, this decision also provides stronger legal protection for wives as victims of domestic violence by providing relief from not undergoing the *iddah*

period if it is proven that the husband has committed serious violence. With this decision, it is hoped that it will provide a deterrent effect for perpetrators of domestic violence and become a reference for other judges in handling similar cases better, wisely and humanely.

#### 4. CONCLUSION

Divorce cases based on domestic violence are very complex, complicated issues and require a very in-depth analysis of various legal aspects. The plaintiff must be able to prove legally, convincingly and irrefutably that the defendant has committed physical and psychological violence which can be categorized as "cruelty or serious abuse that endangers the wife" as regulated in the KHI and the PKDRT Law. (Compilation of Islamic Law) (Law Number 23 of 2004 concerning the Elimination of Domestic Violence)

Judges have a very crucial, significant and important role in assessing the evidentiary strength of the evidence submitted by the parties and providing very careful, in-depth, careful and objective considerations in accordance with applicable legal provisions. The judge's decision in this case will not only have a significant impact on the fate of the parties involved in the lawsuit, but can also make a very large, significant and meaningful contribution to the development of family law in Indonesia, especially in relation to handling divorce cases based on domestic violence. households better, wiser and more humanely.

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