

**SETTLEMENT OF DIVORCE CASES CAUSED BY DOMESTIC VIOLENCE IN THE
PALEMBANG RELIGIOUS COURT (Ruling Number 280/Pdt.G/2022/Pa.Plg)****Rendy William Cahya Pratama**

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ABSTRACT

Marriage is a marriage carried out based on statutory regulations and religious teachings. Every person in this world certainly wants to have a family with the person they love, leave a legacy to continue the family lineage, and continue to protect their religion and country. Everyone dreams of a happy marriage full of love that can only end in death. The test must be done at home, so it must be done at your own pace. The current problem is domestic violence, which leads to deteriorating marital relations and divorce. The research used is empirical and legal research. And it includes the resolution of divorce cases based on domestic violence at the Palembang Religious Court (Decision No. 280/Pdt.G/2022/Pa.Plg). Findings: The process for resolving domestic divorce cases at the Palembang Religious Court is the same as the process for resolving other divorce cases, there are only slight differences. If the form of domestic violence is psychological, the evidence provided is in the form of a doctor's certificate, but in cases of physical violence, the evidence provided is not only in writing but must also be through statements from witnesses and victims. The process of resolving cases in court must use a trial agenda: reading of the complaint, mediation, answers and answers, evidence, conclusions, deliberation by the panel, and then reading of the verdict.

Keywords: domestic violence; case resolution; Palembang Religious Court.

I. INTRODUCTION

Allah created all creatures on this earth in such a way that men and women always live in pairs, just like humans. In time, a man and a woman are destined to build a happy family together. Not just fulfilling biological needs and producing children and grandchildren. Next, the families that are built must be the

Sakina, Mawadda and Warahmah families¹. In the 21st verse of the Koran, Surah Al-Ram is explained: "And one of the signs of His power is that He created for you women who are like you, so that you like them and feel comfortable with them. And He will, develop love and compassion between you². Indeed, in this case there are clear signs of wise people. Because

¹ Abd Jalil, 'Nusyuz for Resolving Family Conflicts in Islamic Law (Theory and Practice in

Indonesia)', JURISY: Sharia Scientific Journal, 1.2 (2021), 15–32

² Jalil.

humans basically do not have the ability to own anything, humans always try to create a form of communal life in society. The desire to continue to gather and communicate is an unspoken religious law and is determined by a sacred and powerful agreement. To build a happy and eternal family, people are more familiar with marriage contracts. Marriage is a new chapter in a person's life³. According to the KBBI, marriage is a marriage vow (contract) carried out in accordance with statutory regulations and religious teachings; Everyone in this world certainly wants to have a family with the person they love, leave offspring to continue the family lineage, and continue to protect their religion and country⁴.

Everyone dreams of a happy marriage full of love which can only end in death. Therefore, for most people, the decision to marry requires a long and mature consideration process. Since everyone wants to get married once in their life, they can spend quality time with their future partner every day, and they can also choose not to get married. Not only do they choose the wrong person as a life partner, they also avoid the word they fear most, couples in this world divorce. Because, the fear of divorce for couples in this world is "divorce" Divorce has many negative impacts

on the entire family united by marriage, especially on children. Allah SWT ordained marriage and made it a strong foundation in human life. Because marriage has several high values and several main goals that are good for humans. Marriage determines offspring and has a big influence in educating the next generation⁵.

Basically, people who enter into a marriage contract promise and promise to respect and respect each other in order to achieve the desired happiness and goals. The purpose of marriage is to create a family life consisting of Sakina, Mawada and Warahma⁶. The family is the smallest social unit in society which has an important role and influence on the social development and personality of each family member. Then the strength and weakness of a marriage that is fostered and cherished by men and women actually depends on the will and intentions of the married man and woman. The difference is, married couples will face various obstacles and challenges in the future, and there is a possibility that their marriage will end or they will divorce because of their inability to make efforts to overcome the problems that exist within them, namely overcoming existing problems. and solve the problem, meaning there is an even number.

³ Fikri Hadi and Rosa Ristawati, 'The Move of Indonesia's Capital City and the Power of the President in a Constitutional Perspective', *Constitutional Journal*, 17.3 (2020), 530–57

⁴ Wardah Nuroniyah, Wardah Nuroniyah, 2023.

⁵ Akbar Ahmed Fadhl, 'Islamic Law Analysis of the Concept of the Sakinah Family in the Book Foundation of the Sakinah Family, Independent Reading for Prospective Brides', 2019

⁶ Ahmad Atabik and Koridatul Mudhiiah, 'Marriage and its Wisdom from an Islamic Legal Perspective', *Yudisia*, 5.2 (2014), 293–94.

This situation is no longer tenable, because in many cases it is better for a couple to end a marriage than to continue it. The issue of domestic violence is one of the central topics that is widely discussed. According to the provisions of Article 1 Paragraph 1 of Law Number 3 of 2004, it is regulated as follows: or ignore you," including threats at the door⁷.

More specifically, Article 5 of Law no. 23 of 2004 states: No one is prohibited from committing domestic violence by: (a) Physical violence (b) Psychological violence (c) Sexual violence (d) Domestic neglect.

From the explanation above, it is clear that this law not only serves the interests of women, but also the interests of women's subordinate groups. This means both adults and children, including adult women and children, but also men. The facts so far only show that women are victims of domestic violence. This is important for everyone to understand. Because, there is still an opinion among most people that the above regulations are cynical, as if the demands on women are too unrealistic. Breaking the cycle of violence is a complex issue that not only concerns the effectiveness of existing laws and regulations, but also the culture of society that is ingrained and can become the basis of human behavior. Gender equality is not yet fully established in

society, coupled with a patriarchal culture that is still strong, making women from subordinate groups more vulnerable to violence⁸. Here men are in a dominant or dominant position over women. The belief that women belong to their husbands and that men have more power than other family members increases the possibility of men committing violence. Patriarchal cultural background and gender ideology also influence the content of legislation. For example, Article 31 Paragraph 3 of Law Number 1 of 1974 concerning Marriage states: "The husband is the head of the household, and the wife is the housewife. Therefore, society is led to believe that a man's power as a husband is so great that he can enforce whatever he wishes, including using violence. Influenced by societal values that always seek harmony, there is a tendency to always blame the victim. Despite reports of such incidents, efforts to protect victims and punish perpetrators often fail because domestic violence, especially against women, has never been considered a human rights violation⁹.

As a result of domestic violence, women experience various negative impacts, including suffering, loss of trust in their husbands, loss of self-confidence, and withdrawal. Physically, domestic violence can cause women to suffer from certain diseases,

⁷ Supratiningsih, Islamic Community Development Doctoral Program Postgraduate Program (PPS) Raden Intan Lampung State Islamic University 1442 H / 2020 AD, 2020.

⁸ Dimiyati Huda, Rethinking Women and Gender Justice, 2020.

⁹ Saifuddin Zuhri and Diana Amalia, 'Gender Injustice and Patriarchal Culture in Indonesian Community Life', *Murabbi: Scientific Journal in the Field of Education*, 5.1 (2022), 17–41

damage to reproductive organs, and even sexually transmitted diseases¹⁰. Domestic violence also impacts children. Children who are used to being abused by their fathers towards their mothers tend to consider violent behavior as normal. The factors that seem to influence family breakdown are in ourselves and others. Usually abuse of wives by husbands is based on selfishness and occurs when the wife's economic dependence is not enough to meet her living needs, or vice versa when the wife's income is higher than the husband's income. Husbands may humiliate or attack their wives for various reasons. It is interesting to study and analyze the above in order to successfully overcome the negative side and find the best solution.

Formulation Of The Problem

How are divorce cases resulting from domestic violence resolved at the Palembang Religious Court (Decision Number 280/Pdt.G/2022/PA.PLG)

II. RESEARCH METHODS

This research is a type of field research, namely empirical legal research that investigates applicable laws and regulations and social reality. Empirical legal research is legal research that aims to announce and enforce normative legislation regarding

individual legal events that occur in society. In other words, research aims to investigate the actual situation and conditions of society and find out and discover the necessary facts and data. Once the necessary data is collected, it will lead to the identification of the problem and ultimately produce a solution that solves the problem¹¹.

III. DISCUSSION AND RESULTS

3.1 Settlement of divorce cases resulting from domestic violence at the Palembang Religious Court (Decision Number 280/Pdt.G/2022/PA.PLG)

The steps and procedures for resolving domestic violence divorce cases in religious courts are the same as other divorce cases, but the stages of proof are slightly different in domestic violence divorce cases¹².

The steps for handling divorce cases based on domestic violence are as follows: People seeking justice submit a report to the religious court to submit the case for further processing. The next steps are Table I, Table II, and Table III. The format is determined by the Technical Implementation Group and requires the case to pass through a religious court from the time it is received until it is resolved.

¹⁰ Sutrisminah, 'The Impact of Domestic Violence on Wives on Reproductive Health | Sutrisminah | Sultan Agung Scientific Magazine', *Sultan Agung Scientific Magazine*, 50.127 (2018), 23–34

¹¹ Handi Chandra, 'Effective Legal Research Methods in Lectures', *Journal of Law*, 2002, 37–44.

¹² Nurazki Aslamiah, Sherina Ramadhianisha, and Siski Jasmine Azahra, 'Domestic Violence as a Reason for Divorce in Class 1A Bandung Religious Courts', *Al-Mashlahah: Journal of Islamic Law and Islamic Social Institutions*, 2022, 223–38.

1. Table I

The goal The first is to accept demands or written request and verbal from the parties searcher justice.

- a. Identity the parties covers Name, age, work, religion, residence of the plaintiff and defendant;
- b. Posita (fact events and legal facts);
- c. Petitum (assigned on the basis of Posita).

Power of Attorney for Payment (SKUM) is then prepared, attorney's fees are estimated, and forwarded to the Department of Finance. The fund owner is part of the First Department and is responsible for receiving advances for cases listed in the SKUM. The fund holder signs the SKUM and attaches the file serial number and date of receipt to the SKUM as well as the process or request described in the log related to file submission.

2. Table II

The mission of Desk II is to receive the first copy of the SKUM from a prospective claimant or applicant and register the issuance or application in the appropriate register, and Assign a registration number to the issue or application. A copy of the case or application is then returned to the plaintiff or applicant.

Original lawsuit or application is submitted to the Registrar in a special folder for further submission of the lawsuit or application file to the Chairman of the Religious Court, accompanied by the first copy

of the SKUM and letters relating to the lawsuit or application. No later than one day after the Registrar receives the complaint, the Registrar must submit it to the Chief Justice, who will then include it in the inspection list for consideration.

The case files will then be returned to the Registrar and a decision regarding the appointment of a Judge (PMH) will be taken within 10 days of the hearing or application for registration. The judge must receive the case file from the chief judge or deputy chief judge and set a trial date (PHS). The plaintiff and defendant were then summoned to court for comment. Subpoenas must be formal and appropriate. Officials mean meeting the person in person or, failing that, calling the village or local road management. The defendant did not appear at the first summons, the trial was postponed, and a second summons was served. At the second trial, the defendant did not appear and was summoned, and at the third trial, the defendant did not appear and was sentenced to death. The Verstek decision was taken without the presence of the defendant. However, if the trial is held without the presence of the plaintiff, the lawsuit or petition will fail.

A trial is then held in which the parties participate, and in the first trial the judge attempts to reconcile the parties. If it is unsuccessful, the judge must first carry out mediation based on the role of mediator

(PERMA No. 2 of 2003 and PERMA No. 1 of 2008).

In other words, to instruct or encourage smooth communication and support understanding of the parties involved. Entire dispute This allows the parties to make an objective assessment and negotiate a resolution of the dispute with the support and guidance of a mediator. Mediation was unsuccessful and the parties could not reach an agreement, so the case continued with the reading of the complaint. After the complaint has been read, the next task is to answer questions and give the defendant an opportunity to answer.

The plaintiff submits his complaint orally or in writing. Once the defendant responds, the next task is to give the plaintiff an opportunity to file a copy. After the question and answer process is complete, the next step is the evidentiary stage. The plaintiff first has the opportunity to submit evidence, both written evidence and witness evidence, and once the plaintiff's evidence has been submitted, then that is sufficient. In accordance with the evidence provided owned by the defendant. After both parties are given the same opportunity to present evidence, the next order of business is the conclusion, which is then discussed in a general meeting, a decision is made, and finally the decision is read out. A deputy court reporter records all legal events that occur during the trial. Next is the original decision or report of the judge who helped

adjudicate the case with the Registrar, which is presented at Table III.

3. Table III

The third table is responsible for sending copies of decisions to interested parties and compiling, combining or preparing files. The problem in this case was that the defendant had experienced domestic violence to the point that he was no longer able to take care of his household.

The court tried to provide a solution during the trial by advising the plaintiff to be patient and maintain family unity with the defendant, but to no avail. Meanwhile, peace efforts through the mediation process could not be implemented because the defendants did not appear in court;

That further investigation into this case will be carried out in private, and the plaintiff's complaint will be read first, the content and intent of which will be guarded by the plaintiff;

This means that the judge tries to resolve the dispute through mediation between the parties. However, the defendant did not appear at the trial and mediation was not carried out properly. Apart from that, the plaintiff's strong determination to divorce the defendant means that dispute resolution still ends at the negotiation table, namely divorce.

3.2 Judge's Considerations in Making Decisions in Case Decision Number 280/Pdt.G/2022/Pa.Plg

With the divorce case, the judge with all his considerations granted the divorce. The legal considerations in this case are:

Considering that the panel of judges was unable to reach a settlement with the plaintiff by providing the necessary advice, the trial of this case is subject to Article 82 of the Religious Courts Law Number 7 of 1989 as amended by Article 154 read in conjunction. Based on Law Number 3 of 2006 and the second amendment to Law Number 50 of 2009, mediation efforts based on PERMA Number 1 of 2016 cannot be carried out because the defendant is not present in court;

Considering that the defendant did not attend the trial and did not appoint anyone other than the defendant's representative/lawyer to attend the trial, even though the defendant did not attend the trial. Even if the defendant is not present, the defendant's absence is not for a legally justifiable reason. summoned legally and appropriately according to the meaning of Article 26 of Government Regulation Number 9 of 1975, the defendant must be declared absent, the case must be tried without the presence of the defendant, and the decision on the case can be taken in *verstek* (see Articles 149 and 150). This is also in accordance with the opinion of the following scholars. The book "Al-Anwar", Juz II, 149 pages, was then adopted by the DPR as its own opinion.

This means: "If the Defendant is unable to appear because he is hiding or is reluctant,

then the judge may examine the lawsuit and the instruments submitted and make a decision".

Considering, the plaintiff alleged that there were frequent fights and arguments between the plaintiff and the defendant, the defendant often said rude things to the plaintiff and the defendant, and the plaintiff no longer had any hope of living in harmony. no support, maternity support and living expenses are no longer available. Previous thoughts about the plaintiff.

Considering this in accordance with the provisions of Article 149 paragraph (1) and Article 150 R.Bg. This means that decisions taken without the presence of the defendant, as long as they are based on law and are reasonable, can be supported. Because marriage cases are special civil cases, the panel also places the burden of proof on the plaintiff to prove their case;

Considering that based on the plaintiff's statement, documentary evidence and the plaintiff's witnesses, the panel of judges can find facts that can be concluded as follows:

- 1) The plaintiff and defendant are legally bound by marriage.
- 2) Since May 2021, there have been frequent arguments and quarrels between the plaintiff and the defendant, sometimes I continue. The defendant did not mention any further services provided to the plaintiff or any

previous psychological support, whether physical or otherwise.

- 3) On the other hand, the Plaintiff and Defendant have been living separately since May 2021 and since then have no longer contacted each other and have not looked after each other as husband and wife.
- 4) The family tried to advise the plaintiff to get along with the defendant, but the plaintiff still stated that he wanted to divorce the defendant;

Based on the facts above, the panel of judges will first consider determining the legal basis for resolving this case.

Consider that if the facts indicate a family breakdown (marriage breakdown), then the divorce suit may be granted. There are at least two criteria for considering domestic arguments and fights to be considered marital breakdown. First, the dispute occurred between the plaintiff and the defendant, and second, the husband and wife were unable to resolve the dispute amicably.

Considering, considering that the main basis of disputes and disputes is between the plaintiff and the defendant, this means that the plaintiff and the defendant have shown an uncompromising attitude. Based on the facts above, the defendant often has disagreements with the plaintiff and the defendant, the plaintiff always fights, and the defendant is no longer able to provide for them physically and mentally, so there is always conflict between

the plaintiff and the defendant. There are frequent quarrels and quarrels. Available to plaintiffs. Until now, this shows that disputes and disputes occur between husband and wife (plaintiff and defendant).

Considering, based on the second criterion, it is unlikely that disputes between husband and wife can be resolved peacefully. This is proven by the fact that the plaintiff and defendant have been living separately since May 2021, and since then have not contacted each other and no longer care about each other as a couple. This means that the household between the plaintiff and the defendant has broken down (marriage is broken)

Considering, please refer to SEMA (Circular Letter of the Supreme Court of the Republic of Indonesia) Number 4 of 2014, bearing in mind that if the facts show that there is a family breakdown (marriage breakdown), then the divorce process may be permitted.

Considering, that the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 237 K/AG/1998 dated 17 March 1999 contains the legal rule, namely: "Bickering, living apart, not in the same residence, one party does not intend to continue living together with the other party, is a fact which is quite in accordance with the reasons for divorce in Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage jo. Article 19 letter (f) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974";

Considering, considering that the purpose of marriage is to create peace, inner and outer harmony between a man and a woman, marriage must be maintained, however, on the other hand, constant quarrels and quarrels can destroy a marriage. the goals are Sakina, Mawadda and Rama. To maintain such a family. The jury agreed with the rules of fiqh: Dangers should be avoided as much as possible because they do not bring benefits and actually cause anxiety and long-term losses for husband and wife: As much as possible, dangers must be avoided;

Considering, Based on these conditions, the court is of the opinion that the plaintiff's claim is reasonable and legally proven and that divorce is the only and best option for both parties, therefore: The plaintiff's allegations are as follows. (2) Petit Points have been awarded, so they must be awarded. achieve the intent of Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage read with Article 70 paragraph (1) of Law Number 7 of 1989 and amended by Law Number 16 of 2019; It has been amended by Law Number 3 of 2006, and in connection with the second amendment to Law Number 7 of 1989 concerning Religious Courts, by Law Number 50 of 2009. Letter 116 of 1975 (f) Islamic Law Book;

This is based on the provisions of Article 89 Paragraph 1 of Law Number 7 of 2009 which has been revised by Law Number 3 of 2006 and the second amendment to Law

Number 50 of 2009. In a religion-based case in July 1989, the costs of the lawsuit were borne by the plaintiff.

IV. CONCLUSION

The process for resolving divorce cases resulting from domestic violence at the Palembang Religious Court is the same as the process for resolving other divorce cases, only there are slight differences. If the form of domestic violence is psychological then the proof is in the form of a doctor's certificate, whereas if the domestic violence is physical then it is proven not only in writing, but also through statements and statements from the victim. The process of resolving cases at trial must implement a trial program, namely trial reading, mediation, response, evidence, discovery, deliberation panel, and then reading the verdict.

V. SUGGESTION

You must be clearly aware of this so that you no longer commit acts of domestic violence, especially against men (husbands), respect and love women (wives) more, because in the end the one who gives birth and who educates with all her heart is a great woman (Mother). Dispute resolution, including divorce due to domestic violence, requires good communication between husband and wife and their families before being resolved at the religious court level

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