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## Divorce lawsuits with reasons for domestic violence (The decision analysis of the Shar'iyah court Jantho Aceh Besar)

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### Abstract

This study aims to identify and explain the factors causing the increase in divorce due to domestic violence, the forms of domestic violence accepted by the judge as the basis for the decision for divorce, and the judge's considerations in deciding divorce cases due to domestic violence at the Syar'ah Court. Yes, Jantho Aceh Besar. The research method used is normative legal research method and empirical legal research method, with the data source is primary data in the form of field data and secondary data in the form of library data. The data obtained will be analyzed using a statutory approach and a case approach. The results showed that first, the increase in divorce lawsuits at the Syar'iyah Court of Jantho Aceh Besar was caused by internal factors in the form of bad behavior of husband or wife and external factors in the form of economic factors. Second, the forms of domestic violence accepted by the judges of the Syar'iyah Court of Jantho Aceh Besar as the basis for the decision for divorce in the form of physical violence, psychological violence, sexual violence and neglect in the household. Third, the judge of the Syar'iyah Court of Jantho Aceh Besar decided the case for divorce due to domestic violence through legal considerations regarding the formal requirements of the lawsuit and legal considerations regarding the material requirements of the lawsuit.

**Keywords:** decision analysis, divorce

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### Introduction

Basically, a divorce is a personal matter between husband and wife, either on the willingness or desire of both parties or only the will of one of the parties, which can be resolved privately without involving family, other people, or the state. However, based on Article 115 Complications of Islamic Law, the state can be a forum for resolving these problems to obtain legal certainty, so that the divorce must be carried out in a religious court or the competent Syar'iyah Court. Marriage essentially has a goal to form a happy and eternal family based on the one and only God, therefore divorce must be avoided because it is contrary to the purpose of marriage. Based on this, every divorce must be carried out at the judicial institution that is authorized to handle it. This aims to avoid arbitrary actions in the occurrence of divorce in order to create legal certainty on the matter.

Overall, in 2021 divorce cases that occurred in Aceh Province amounted to 4,302 cases, consisting of 3,288 lawsuits filed by wives against their husbands and divorce cases filed by husbands against wives totaling 1,014 cases. The Syar'iyah Court of Jantho Aceh Besar is one of the judicial institutions authorized to examine and adjudicate divorce cases that occur within the jurisdiction of the Aceh Province. Divorce in Aceh Besar has increased from 2020 to 2021. This can be seen from the number of divorce cases registered with the Jantho Aceh Besar Syar'iyah Court. In 2020, divorce cases registered in the case register amounted to 261 cases, consisting of lawsuits filed by wives against their husbands totaling 177 cases and the remaining 84 cases of divorce divorces carried out by husbands against their wives.

Divorce cases registered with the Syar'iyah Court of Jantho Aceh Besar in 2021 experienced a significant increase compared to the number of cases in 2020. This can be seen from the number of divorce cases registered with the Syar'iyah Court of Jantho Aceh Besar to 416 cases. The case is still dominated by the divorce lawsuit filed by the wife against the husband as many as 315 cases (75.72%), while the divorce divorce filed by the husband against the wife is only 101 cases (24.28%).

A sued divorce application is a divorce application filed by the wife against her legal husband at the court of the jurisdiction where the plaintiff (wife) resides, except in the case of the wife leaving the joint residence without permission from her husband. A claim for divorce, which is also often referred to as a divorce suit, can be submitted by the wife to a religious court or syar'iyah court for reasons justified by the laws and regulations. One of the reasons for filing for a lawsuit that is permitted by legislation is stated in Article 116 letter d of the Compilation of Islamic Law (hereinafter abbreviated as KHI), namely because one of the parties (husband or wife) has committed cruelty or severe persecution that endangers the other party.

Based on Article 116 letter d of the KHI, it can be understood that it is the legal basis or basis for a wife to file a lawsuit against her legal husband if she has become a victim of cruelty and abuse (domestic violence) committed

by her husband. Therefore, it is legally valid and legally grounded the application for divorce is accepted and granted by the judge who hears and examines the case through a process of proof in accordance with the provisions of the legislation.

Victims who experience domestic violence are generally women who are considered weak and disadvantaged, so they must get protection from the state. Violence that occurs within the scope of the household includes an act that violates human rights and crimes against human dignity, so it is appropriate for the state to respond to this by establishing rules to overcome this, namely through the Law of the Republic of Indonesia Number 23 of 2004 concerning Elimination of Domestic Violence (hereinafter abbreviated as UU PKDRT). Domestic violence is an act that is contrary to the purpose of marriage, namely in an effort to form a *sakinah, mawaddah and warahmah* family as stated in the Al-Quran Surah Ar Ruum verse 21.

The presence of the PKDRT Law is expected to be able to become a legal umbrella and a forum for protection for people who experience domestic violence. The law provides a definition of domestic violence as an act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty in household scope.

Domestic violence is often experienced by women (wives) as victims, thus making the lives of wives who experience domestic violence feel uneasy and uncomfortable in living their married lives. This can trigger and become a strong reason for the wife who experiences domestic violence by her husband to file a lawsuit for divorce at the religious court where she is domiciled. The submission of a claim for divorce in Aceh Province can be submitted through the *syar'iyah* court of the legal area where the husband and wife are domiciled who are experiencing the problem.

The problems contained in this article are what are the factors causing the increase in divorce due to domestic violence at the *Syar'iyah* Court of Jantho Aceh Besar, what forms of domestic violence are accepted by the judge as the basis for the decision for divorce in the *Syar'iyah* Court of Jantho Aceh Besar, and what was the basis for the consideration of the judges of the Jantho Aceh Besar *Syar'iyah* Court in deciding on divorce due to domestic violence.

### Materials and Methods

The method in this study uses 2 (two) methods, namely normative juridical research methods and empirical juridical research methods. Normative juridical research is legal research in which data collection is carried out by examining secondary data or library materials. Normative juridical research is also known as doctrinal legal research.

The data in this study were obtained by conducting library research and field research. This method is expected to make it easier for the author to get a conception of existing doctrines or theories, thoughts or conceptual opinions related to the problem under study. The data sources in this study used primary data and secondary data. Primary data is data obtained directly from the field (field research). While secondary data is a collection of library data that aims to obtain initial data or information on the thing to be researched, obtain a legal basis or theoretical basis in research and to obtain limits on the understanding of a term used in research (Burhan Ashshofa, 1996) <sup>[19]</sup>. Secondary data is also data that comes from primary data that has been described by researchers or other parties. Secondary data consists of primary legal materials and secondary legal materials, which are as follows:

- a. Primary legal materials, namely legal materials that have binding power in the form of statutory provisions (Bambang Sunggono, 2003). The primary legal materials that will be used in this research are mainly as follows:
  1. the 1945 Constitution of the Republic of Indonesia;
  2. Law Number 1 of 1974 concerning Marriage;
  3. Law Number 23 of 2004 concerning Elimination of Domestic Violence;
  4. Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage;
  5. Compilation of Islamic Law;
  6. The decision of the *Syar'iyah* Court of Jantho Aceh Besar regarding the divorce case;
- b. Secondary legal materials, namely legal materials that provide an explanation of primary legal materials, in the form of the results of scientific works of legal experts, books, magazines and journals, or other literature related to the problems discussed in this research.
- c. Tertiary legal materials, namely legal materials in the form of written works that can provide instructions or explanations of primary legal materials and secondary materials, such as general dictionaries, encyclopedias and so on that can be used to complete research data as supporting data. and supports that can be used in this research.
- d. Non-legal legal materials, namely, legal materials that can be used in this research such as the Big Indonesian Dictionary (KBBI) and the results of research from other disciplines that support the research of this article.

## **Results and Discussion**

### **A. Factors Causing the Increase in Divorce Lawsuits with the Reason of Domestic Violence at the Syar'iyah Court of Jantho Aceh Besar**

Domestic violence which is the reason for filing a lawsuit for divorce at the Jantho Syar'iyah Court is caused by several reasons and causes. Some of them start from economic problems, religion or belief, infidelity or the presence of other ideal women, excessive jealousy, low levels of education to interference from parents of one party in the household. Based on the results of the study, it was found that several things were the cause of the increase in divorce applications on the grounds of domestic violence, namely as follows:

#### **1. Internal Factor**

Internal factors that cause domestic violence are actions related to bad behavior in each individual (both husband and wife). The behavior of each family member in a household will affect the comfort and tranquility in the family. Good behavior in interacting with each family member can make the household in good condition, and vice versa bad behavior in interacting between family members can create discomfort in the household. As for bad behavior in the family, such as having a selfish attitude and getting angry (emotional), having excessive jealousy towards a partner. Bad behavior is usually caused by bad habits in living life (associating with a bad environment) such as the influence of alcohol and also occurs because someone who behaves badly is someone who rarely performs worship. Therefore, every family member must get closer to the creator and carry out all his orders and stay away from all the prohibitions so that he becomes an obedient person far from bad things.

Bad behavior in the household does not only happen to men or husbands but can occur to all family members, so that every family member must be able to take care of each other and respect each other among family members. Bad behavior can also be carried out by a wife who has an excessive jealousy that creates a sense of suspicion towards her husband to issue words that are inappropriate for a wife to say to her husband, namely hurtful words that contain insults and insults to their husbands. This happens because the husband has made a mistake and has apologized to his wife, but his wife is still tough so that the husband is unable to hold and control emotions which can lead to unwanted things in the form of domestic violence.

#### **2. External Factors**

The causes of domestic violence are not only caused by internal factors from individual family members but can also occur with causes from outside each family member. External factors that influence the occurrence of domestic violence are due to economic factors. This is not only related to the economy of the lower class but also occurs to households that have an upper-middle economy. Basically, economic problems are the main obstacle in every household, especially in the conditions of the COVID-19 pandemic that hit the community so that people's activities and income are reduced. This is the main factor that causes commotion to occur in domestic violence. Most of the divorce cases filed at the Jantho Syar'iyah Court in 2021 were motivated by economic factors.

Although economic problems are problems related to income and finances in the household, the problems experienced by each family are different from other communities. One of the divorce claims filed at the Syar'iyah Court of Jantho Aceh Besar for reasons of economic factors, namely starting from the plaintiff as a wife unable to prepare food as usual because during 2021 the husband (defendant) did not provide sufficient spending money as usual. This caused the plaintiff's and the defendant's household to often experience commotions and fights until the defendant was beaten on the face and hands of the plaintiff. Living in a household condition that was always colored with commotion made the plaintiff unable to contain himself any longer, so with the advice of his family and close relatives he filed a divorce suit against his husband at the Jantho Syar'iyah Court of Aceh Besar.

This is also in accordance with the statement from Siti Salwa who stated that economic factors were the main cause of the divorce due to domestic violence. Economic factors that occur are not only for people who are in low economic conditions, but also for households with middle to upper economic conditions, namely husbands who neglect or leave the joint residence when they have a large income. This is also in accordance with what was expressed by Fadhila that economic factors are the most common reason for complaints in divorce lawsuits made by wives against their husbands through the Syar'iyah Court of Jantho Aceh Besar. This is due to increasingly difficult economic conditions during the COVID-19 pandemic, besides that it also occurs because the husband has another ideal woman as his mistress so that the wife does not get money or the money given by her husband is not as usual. This condition made the wife suspicious and questioned the issue which caused a commotion until domestic violence was committed by the husband against his wife. This prompted the wife to file for divorce at the Syar'iyah Court of Jantho Aceh Besar.

The wife is the member of the family who feels the most direct impact from the economic pressures in leaving. This is based on the fact that the wife has a central responsibility to manage family finances. If the finances provided by the husband for the daily needs of the family are not sufficient as usual, the wife will definitely ask for more spending money to meet the daily needs in the household. This often happens when the wife is a housewife who does not have a job and income to help the family economy. Conditions like this require the wife to ask for additional spending money from her husband which will usually cause a commotion making the husband angry and think negatively by assuming that the wife is too extravagant, wastes money and cannot manage family finances properly.

The result of bad wife behavior is also the reason for domestic violence. This happened because the wife did not hear the warning from her husband not to use the cellphone too often for non-essential purposes. However, this warning was ignored by the wife who secretly still uses her cellphone without her husband's knowledge. Basically a husband will not forbid his wife to use a cellphone for important things, but don't let it be misused, so that the husband will feel emotionally disobeyed when he finds his wife chatting via cellphone with another man. This made the husband's husband so angry that there was domestic violence in the form of beating his wife.

## **B. Forms of Domestic Violence Accepted by Judges as the Basis for Divorce Decisions**

Basically, the Unitary State of the Republic of Indonesia has specifically and firmly regulated the prohibition against domestic violence, namely that every person is prohibited from committing acts in the form of physical violence, psychological violence, sexual violence and neglect of the household against his family members, as has been formulated in the provisions Article 5 of the PKDRT Law. Although it clearly states the forms of violence that are included in domestic violence, the rules in the law do not clearly state the types of prohibited acts so that the prohibitions in the law are general in nature. This means that domestic violence is not determined by the act committed, but is seen from the effects or results caused by such an act, as formulated in Article 6, Article 7, Article 8 and Article 9 of the PKDRT Law. Based on these provisions, it can be concluded that there are several forms of domestic violence, namely as follows:

### **1. Physical Violence**

Domestic violence in the form of physical violence is the type of violence experienced by many women (wives) which is used as the basis for filing a divorce suit against her husband at the Syar'iyah Court of Jantho Aceh Besar. Basically there are no provisions that specifically explain the types of acts that are categorized as physical violence, but the focus on physical violence is related to the consequences of an act that can cause pain and injury to the victim. Based on this, it can be concluded that acts that can cause physical violence in the form of injuries and pain such as beatings, slapping, torture, both using the hands and using other objects that cause injury and cause pain to the victim.

### **2. Psychic Violence**

Domestic violence in the form of psychological violence is one of the most dangerous forms of violence because it can cause trauma to the victim and healing can take a long time. This psychological violence can be in the form of swearing, humiliation of dignity that lowers the victim's self-esteem, threats that create a sense of fear in the victim which can result in psychological disturbance of the victim.

### **3. Sexual Violence**

Domestic violence in the form of sexual violence usually occurs against women in a household, both against daughters, wives and maids who live and settle in the family. Sexual violence can be in the form of coercion to have sexual relations with either the perpetrator or coercion to have sexual relations with other people outside the household, either for commercial purposes or for certain other purposes.

### **4. Abandonment in the Household**

Domestic violence in the form of neglect in the household is carried out by a husband who is the head of the family who has the responsibility and obligation to provide for the family. Abandonment in the household can occur if a husband neglects (does not carry out) his obligations to provide a living for his family.

## **C. Basis for Judges' Consideration in Deciding Divorce Cases Due to Domestic Violence**

The basis of legal considerations formulated by the judge in a decision must be based on applicable legal provisions, whether in the form of laws and regulations or implementing regulations for certain laws and regulations, customary law that lives and develops in a certain society, which is also supported by jurisprudence. or doctrines that are in accordance with the problems to be decided (R. Soeparmono, 2005). The use of these legal sources in the consideration of a decision is expected to be in accordance with people's lives so as to create justice and legal certainty for the community.

The results of the research on the issue of divorce filed by the wife against her husband at the Syar'iyah Jantho Aceh Besar Court found that several basic things that became the basis for the judge's consideration in examining and deciding the case included considerations regarding the lawsuit filed by the plaintiff, consideration of the facts proven in the trial and considerations regarding the benefit.

The provisions taken by the judges of the Syari'yah Court of Jantho Aceh Besar in deciding the divorce case filed on the grounds of domestic violence through material legal considerations and formal law do not discuss legal rules relating to domestic violence, such as the provisions in Article 116 letter (d) KHI, Article 19 letter (d) Law Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage and other provisions in Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Meanwhile, the provisions taken by the judge of the Jantho Syar'iyah Court decided on the divorce case filed on the grounds of domestic violence through consideration of the facts that occurred in the trial, often there was no rebuttal to the arguments put forward by the plaintiff. This happened because the defendant was not present and did not use the services of an advocate to represent him in the trial, therefore the judge in his legal considerations

considered that the defendant did not exercise his right to defend himself against the lawsuit filed. This condition requires the judge to give a *verstek* decision.

The provisions taken by the judge of the Syar'iyah Court of Jantho Aceh Besar decided the divorce case which was filed on the grounds of domestic violence through considerations of benefit, it can be seen from the condition of the household that often commotions and fights occur so that the judge chooses to avoid harm if the marriage persists. Maintained, it is feared that other, more serious things will happen. The basis for these considerations is because there is an assumption that with such household conditions it will be difficult to create a marriage in accordance with the purpose of marriage.

### Conclusions

Divorce due to domestic violence at the Jantho Syar'iyah Court in Aceh Besar is increasing due to internal factors, namely factors caused from within family members in the form of bad behavior (both bad behavior owned by the wife and bad behavior owned by the husband) and external factors, namely factors caused from outside of family members in the form of economic factors (both for families with lower middle

The forms of domestic violence accepted by the judges of the Syar'iyah Court of Jantho Aceh Besar as the basis for the divorce decision were physical violence (in the form of hitting, kicking, strangling), psychological violence (in the form of threats, both verbal and threats using sharp weapons), sexual violence (in the form of coercion to have sexual relations when the wife is sick and unable to fulfill it) and neglect in the family (in the form of husband leaving the joint residence and not giving news to his wife so that he does not provide physical and spiritual support for his wife).

The basic considerations made by the judges of the Syar'iyah Court of Jantho Aceh Besar in deciding a divorce due to domestic violence were through legal considerations regarding the formal requirements of the lawsuit (in the form of considerations regarding the authority to try and considerations regarding mediation procedures) and legal considerations regarding the material requirements of the lawsuit (in the form of legal considerations on the reasons for filing for divorce, legal considerations on the evidence and witnesses presented in the trial and legal considerations on the subject matter requested in the lawsuit). Economic conditions and for families with upper middle economic conditions).

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