

RESOLUTION OF CRIMINAL VIOLENCE IN THE HOME RESULTING IN DIVORCE FROM A HUMANISTIC LEGAL PERSPECTIVE

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Abstrak. *Currently, many divorces are caused by domestic violence. Domestic violence is a violation of human rights and a crime against human dignity that has a serious impact on family integrity. This study aims to analyse the resolution of DV crimes that lead to divorce from a humanistic legal perspective, namely a legal approach oriented towards human values, substantive justice, and the restoration of social relations. The research method used is normative juridical with a legislative, conceptual, and case approach. Data was obtained through literature study and interviews with law enforcement officials and victims of domestic violence who had undergone legal proceedings and divorce. Data analysis was conducted qualitatively with an emphasis on the interpretation of humanistic values in law enforcement practices. This study found that the application of humanistic law was carried out before the divorce proceedings began in the Religious Court, where the judge always asked whether domestic violence had been resolved. Indeed, domestic violence had been resolved through lawyers by bringing the husband and wife together, and they agreed not to proceed with legal action. All parties stated that the most important thing was the desire to divorce, to obtain a decision or to be immediately divorced by the judge at the Religious Court. This has provided protection for the human rights of victims, namely protection to obtain justice, protection of the right to feel safe, protection of the right to life, and protection from torture and cruel treatment.*

Keywords: *Violence, Divorce, Wife, Judgment, Human Rights*

A. INTRODUCTION

Domestic violence is a violation of human rights and a crime against human dignity, as well as a form of discrimination that must be eliminated, as stated in the 1945 Constitution of the Republic of Indonesia, Amendment IV, Article 28, paragraph (1), which states that:

“Everyone has the right to protection of their personal safety, family, honour, dignity and property under their control, and has the right to feel secure and protected from the threat of fear of doing or not doing something that is a fundamental right.”

In addition, another constitutional basis is that "The State of Indonesia is a state based on the rule of law as stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. As a consequence of being a state based on the rule of law, the state is founded on law and justice for its citizens, or state power is limited by law in the sense that all

attitudes, behaviours and actions, whether carried out by the authorities or state apparatus or by citizens, must be based on the law. (Asshiddiqie, 1999)

In this era of rapid progress, which demands increasingly complex living requirements, family life faces more and more new problems and challenges. Unmet living requirements become a major problem in families, from small to large issues. Over time, these problems become more acute, even leading to divorce.

Divorce occurs due to domestic violence, which is a frequent occurrence, with wives often being the victims. Regardless of the reason or form, domestic violence is a criminal act that cannot be justified. Therefore, any act of violence, no matter how minor, can be reported as a criminal offence that can be prosecuted. Pursuant to Article 5 of Law No. 23 of 2004 on the Elimination of Domestic Violence.

Violence is an act or attack against a person that may cause physical, psychological and mental harm, as well as suffering and distress. The elimination of domestic violence and violence against women in general requires more concrete guarantees of implementation and operationalisation so that the provisions in various laws and regulations protecting women do not become silent provisions that are unable to provide justice for women. It is the duty of law enforcement officials, police, prosecutors, judges, advocates and assistants to ensure that these laws are enforced. Although many laws and regulations include articles to protect women from violence, in reality, many of them have not been realised, especially those concerning victims of domestic violence. On the one hand, victims feel pressured and afraid, and on the other hand, there is the issue of family shame.

Various cases of domestic violence experienced by women consist of various forms of violence that have an impact on the physical and psychological condition of these women. Violence against women or wives can have several negative effects on victims, including physical health problems, decreased self-confidence, feelings of helplessness, and dependence on the husband who has abused them. Acts of domestic violence are certainly not acts as taught by religion or applicable laws and regulations. In addition, it also has a negative impact on the psychological development of their children if they find out about it. Based on the above statement, domestic violence can be referred to as a crime which is a form of crime against humanity and forms of discrimination that must be eliminated.

From a civil law perspective, domestic violence constitutes acts that violate the intent and purpose of marriage. Article 1 of Law No. 1 of 1974 on Marriage states that: Marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the One Almighty God. (Agama, 2014)

No one who marries or enters into a marriage wants a divorce; naturally, they want to live together until old age and death. Even if there is a divorce, they want it to be amicable. In essence, when someone enters into a marriage contract, they are making a mutual promise and commitment to help, respect and honour their partner so that they can achieve the happiness and goals desired in accordance with the objectives of marriage as stated in Law No. 1 of 1974 on Marriage. (Faqihuddin Abdul kodir, 2014) However, in the course of navigating married life, things do not always go smoothly and according to expectations. Sometimes problems arise that become obstacles in married life, which ultimately lead to arguments and even violence. Then they want to separate or divorce.

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Domestic violence is certainly not an act that is taught by religion or applicable laws and regulations. (Aziz, 2017) In addition, it also has a negative impact on the psychological development of children if they become aware of it. Based on the above statement, domestic violence can be considered a crime that constitutes a form of crime against humanity and a form of discrimination that must be eliminated. (Rosma Alimi, 2021)

From a civil law perspective, domestic violence constitutes acts that violate the intent and purpose of marriage. Article 1 of Law No. 1 of 1974 on Marriage states that: 'Marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on belief in God Almighty.'

No one who marries or enters into a marriage wants a divorce; naturally, they want to live together until old age and death. Even if there is a divorce, they want it to be amicable. In essence, when someone enters into a marriage contract, they are making a mutual promise and commitment to help, respect and honour their partner so that they can achieve the happiness and goals desired in accordance with the objectives of marriage as stated in Law No. 1 of 1974 on Marriage. However, in the course of navigating married life, things do not always go smoothly and according to expectations. Sometimes problems arise that become obstacles in married life, eventually leading to arguments and even violence. Then they want to separate or divorce.

Violence by husbands against wives, or vice versa, is clearly not the purpose of forming a family or marriage. The existence of such violence is one of the reasons for divorce. Divorce preceded by domestic violence is indeed becoming more common. As a result, divorce cases in the Religious Court are documented by KOMNAS Perempuan. However, the lawsuit filed by a wife against her husband as a victim of domestic violence in a documented case was not enough to persuade the panel of judges to look further into the lawsuit.

Another issue concerns the rights of his ex-wife and children whom he left behind after the divorce, who have no means of coercing their former husband to fulfil his obligations. (Perempuan, 2025) So how can humanistic law be applied in cases of domestic violence (KDRT) in order to protect the human rights of victims of KDRT ? This is an interesting topic for research because judges, in making their decisions, do not look further or consider the impact of the violence on the rights of his ex-wife and children.

B. RESEARCH METHODOLOGY

This study uses a qualitative approach (Patton, 2003) because it aims to understand and describe the phenomenon of the high number of divorces caused by domestic violence. The qualitative approach allows researchers to collect more detailed and in-depth data about the experiences of lawyers in several divorce cases caused by domestic violence. This type of research is normative legal research, which is legal research conducted by examining reference materials or secondary data, (Mamuji, 2013) also known as doctrinal research, where the law is often conceptualised as what is written in legislation (law in books) or conceptualised as rules or norms that are benchmarks for human behaviour that is considered appropriate. (Asikin, 2006)

Data collection was carried out through direct questioning of sources by researchers, which took place verbally between two or more people who met face to face to listen directly to information or explanations related to the research problem formulation. Respondents in this study were required to provide clear information and knowledge related to the issues in the study.

After data collection and management are complete, data analysis and testing are carried out. The data obtained through qualitative analysis means that the results of this study

are described in the form of explanations and descriptions in sentences that are easy to read and understand for interpretation and drawing conclusions about the forms of violence committed by a husband against his wife and the resolution of criminal acts of violence that result in divorce through humane legal means.

C. RESEARCH FINDINGS AND DISCUSSION

a. Obstacles to the Enforcement of Domestic Violence Laws in Divorce Proceedings

In 2024, the number of divorces in Cirebon Regency increased from the previous year to 6,981 cases. Of these, 5,143 were contested divorces. (Labibinajib, 2025) Meanwhile, 1,838 were divorces initiated by the husband. In 2023, the divorce rate was 6,636, consisting of 4,803 contested divorces and 1,833 divorces initiated by the husband. Thus, it can be said that in 2024 there was an increase of 345 cases.

The divorces that occurred in Cirebon Regency were caused by economic problems, which reached 5,044 cases, followed by disputes and frequent or continuous arguments, which reached 1,671 cases. Additionally, other cases were related to domestic violence (DV) and repressive husband dominance. However, interestingly, 74% of the cases were divorce by lawsuit, indicating an increase in legal awareness and women's autonomy over unhealthy family life. (Mohammad Agni Ariyanto, Kosim, Abdul Aziz, 2025)

Looking at the list of divorces from the Cirebon District Religious Court, it shows that there were 13 cases of divorce caused by domestic violence in 2024, and 2 cases in 2015. The researcher only examined several decisions, namely: Decision Number 5049/Pdt.G/2024/PA.Sbr, Number 1260/Pdt.G/2025/PA. Sbr and Decision 1646/Pdt.G/2025/PA.Sbr. Based on the decisions examined, namely Decision Number 5049/Pdt.G/2024/PA.Sbr, Number 1260/Pdt.G/2025/PA. Sbr and No. 1646/Pdt.G/2025/PA.Sbr, it appears that there is an inconsistency in the decision, namely that the cause of the divorce was constant arguments between the husband and wife, accompanied by physical and psychological violence. This violence is what is meant by domestic violence.

In reality, domestic violence cases are never processed through the legal system. Instead, siblings, parents or lawyers bring the parties together to reach a settlement or reconcile them. When a judge hears a divorce case, they always ask the lawyer whether the domestic violence has been resolved. The answer is always yes, because the lawyers reconcile them or take a humanistic legal approach. The most important thing is that the victim's desire for a quick divorce is granted.

There are several obstacles why domestic violence cases are not processed legally or obstacles in law enforcement, namely:

1. Limitations as a complaint offence. Domestic violence is limited because it is a complaint offence, especially physical violence, which falls into the category of complaint offences, meaning that legal proceedings will only take place if there is an official report or complaint from the victim or their family. Without a complaint to the police, the case will not be processed.
2. Lack of reports from victims. Many wives or victims do not report domestic violence for various reasons, such as shame, family disgrace, dependence on their husband or perpetrator, or social conditions that do not support reporting.
3. Difficulties in proving the case.

Even if there are reports, proving domestic violence can be difficult, especially if there are no witnesses or strong physical evidence such as CCTV footage or a medical report. Victims find it difficult to gather evidence to convince law enforcement officials or the police.

4. Lack of gender sensitivity among law enforcement officials.

Law enforcement officials lack understanding or sensitivity to gender issues, whereby female victims are more vulnerable to violence than their husbands/male partners. Men consider domestic violence to be normal, which can hinder the prosecution of domestic violence cases.

5. Judicial Considerations and Family Impact

When considering sentences for perpetrators of violence, judges sometimes take into account the fate of the perpetrator's children if the husband or perpetrator of domestic violence is sentenced. This can influence the judge's decision in a case, even if the evidence of guilt is clear and strong.

Although Law No. 23 of 2004 on the Elimination of Domestic Violence provides clear and strict sanctions, the data above shows that cases of violence are not processed through legal channels because no one reports them to the police. Therefore, it can be said that the resolution is through a humane legal system.

b. Resolution of Domestic Violence Through Humanistic Law

Humanistic law is an approach to law enforcement that prioritises human values, such as justice, equality, and respect for human rights. This approach emphasises the importance of considering the social and cultural context and conscience in processing a case, rather than just rigidly applying the law.

Humanistic law itself is an analogy for the policies implemented by law enforcement officials in Indonesia to seek a form of justice for people who are entangled in legal problems. One of the products of the concept of humanistic law is Restorative Justice, which means that the process involves all related parties, considers the needs of victims, acknowledges losses and violence, reintegrates related parties into society, and motivates and encourages perpetrators to take responsibility.

The steps that have been taken in accordance with humanistic law in implementing restorative justice include

1. Separating the perpetrator, because they often commit physical or psychological violence, the husband and wife are separated, or live apart. The aim is to prevent the perpetrator from repeating acts of physical or psychological violence.
2. Bringing the perpetrator and victim together, with relatives and family members who are willing to act as mediators in resolving their domestic issues. The aim is to obtain the victim's voluntary agreement to accept and agree to a separation.
3. Seeking assistance, such as legal assistance from a solicitor or the Religious Court, as well as from neighbours, relatives, and parents. The aim is to provide support to the victim and obtain the rights to which they are entitled.
4. Document or save evidence of the effects of violence, such as injuries, or document psychological violence through photographs or recordings of conversations. The aim is to monitor and evaluate perpetrators of domestic violence. With evidence, the perpetrator can be reported if they commit further acts of violence against the victim.

With a humanistic legal approach to resolving domestic violence that results in divorce, the perpetrator is not subject to criminal sanctions or penalties. This prevents divorce from causing resentment between the parties. The most important thing is to maintain a good relationship, because during their life together in marriage, they were blessed with children who must be cared for together. Humanistic law guarantees the protection of human rights for all parties involved in the legal process, including the right to fair and equal treatment.

c. Protection of Human Rights in Divorce Settlement Through Humanitarian Law

In addition, the human rights that are protected from divorce caused by domestic violence are as follows

1. The Right to Justice

Victims or wives who wish to file for divorce due to domestic violence must receive protection in the form of the Right to Justice under Article 17 No. 39 of 1999 on Human Rights, which states that:

“Every person, without discrimination, has the right to obtain justice by filing petitions, complaints and lawsuits, whether in criminal, civil or administrative cases, and to be tried through a free and impartial judicial process, in accordance with procedural laws that guarantee an objective examination by honest and fair judges in order to obtain a fair and just verdict.”

For victims or wives who wish to divorce, because they all state that they can no longer tolerate the situation and that disputes and arguments often occur, which ultimately lead to physical and psychological violence that sometimes endangers the victim's life.

2. Right to Safety

Victims must be provided with protection and a sense of safety. This right to safety is enshrined in Article 29(1) of Law No. 39 of 1999 on Human Rights, which states that:

“Everyone has the right to protection of their personal safety, family, honour, dignity and property.”

In addition, Article 30 states that:

‘Everyone has the right to feel safe and secure and to be protected from threats of fear to do or not do something.’

Victims or wives who experience violence, whether physical or psychological, almost always seek protection by separating from their husbands and no longer living with them. This is because they do not want similar acts to be repeated.

3. Right to Life.

The protection of the right to life is the most fundamental right of every human being, and the nature of this right is non-negotiable. In a final analysis, if there is no right to life, then there would be no other human rights issues. Law No. 39 of 1999 on Human Rights, Article 33 (2) states that:

‘Everyone has the right to be free from enforced disappearance and deprivation of life.’

4. The Right to Freedom from Torture and Cruel Treatment

The next protection is that there should be no domestic violence in the form of torture, as stated in Article 33 (1) of Law No. 39 of 1999 on Human Rights, which states that:

“Everyone has the right to be free from torture, cruel, inhuman, or degrading treatment or punishment.”

Meanwhile, Article 28G paragraph 2 of the 1945 Constitution of the Republic of Indonesia states that: ‘everyone has the right to be free from torture or treatment that degrades human dignity and has the right to seek political asylum from another country.’

Gustav Radbruch argued that ideally, a ruling should contain the *idee des recht*, which comprises three elements, namely justice (*Gerechtigkeit*), legal certainty (*Rechtsicherheit*) and expediency (*Zweckmassigkeit*). These three elements should be considered and accommodated proportionally by judges, so that in turn, high-quality decisions that meet the expectations of those seeking justice can be produced. (Op. Cit. Nisa, 2018) Recently, there has been a perception that the legal process is often unable to resolve issues completely, let alone provide substantive justice for the parties involved.

The legal process appears more like a judicial machine that merely functions to pursue the target of effective case resolution in terms of quantity in accordance with the stages and rules formally stipulated in the regulations. (Wisnubroto, 2006)

The decisions of the Religious Court The reason for the divorce was a district court decision on the enforcement of the domestic violence decision. All stated that the domestic violence had been resolved through their lawyers. So domestic violence was used as a reason to get a quick divorce, but the domestic violence was not processed for the sake of protecting the human rights of the victim of domestic violence.

D. CONCLUSION.

- Obstacles to the enforcement of domestic violence laws in divorce proceedings include limitations as a complaint offence, a lack of reports from victims, difficulties in proving cases, a lack of gender sensitivity among law enforcement officials, and judges' consideration of the impact on the family.
- The resolution of domestic violence through humanistic law involves the following steps: removing the perpetrator, bringing the perpetrator and victim together for mediation, seeking legal assistance from a solicitor or the Religious Court, as well as from neighbours, relatives and parents. Document or keep evidence of the consequences of the violence.
- Protection of human rights obtained, namely protection in obtaining justice, protection of the right to feel safe, protection of the right to life, and protection from torture and cruel treatment.

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