

DIVORCE SETTLEMENT DUE TO HOME VIOLENCE DURING

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DIVORCE SETTLEMENT DUE TO HOME VIOLENCE DURING THE PANDEMIC COVID 19 IN MEDAN CITY**Erniyanti¹, Mukidi², Syahrul Bakti Harahap³, Nelvitia Purba⁴**¹Batam University,²Islamic University of North Sumatra,^{3,4}Muslim Nusantara Al-Washliyah UniversityErniy725@gmail.com, mukidi@fh.uisu.ac.id, syahrulbakti71@yahoo.co.idnelvitiapurba@umnaw.ac.id**ABSTRACT**

This article aims to examine the procedure for resolving divorce caused by domestic violence during the Covid-19 pandemic in Medan City. Since the end of 2019, a deadly virus emerged from the Covid-19 pandemic, which is one of the strategies of Indonesian government in suppressing the spread. Covid -19, which continues to increase, establishes a Large-Scale Social Restriction policy which causes people to do more activities at home, both for studying, working, and even layoffs occur everywhere so that the community's economy is disrupted. At this time divorce cases in Indonesia in general and in particular in Medan City continue to increase in number until mid-2020 increase ranges from 15-20 percent. The consequences of the Covid 19 Pandemic greatly affect all aspects of human life in the world related to economy and behavior due to the pressure of life and this domestic violence occurred. The process of resolving domestic violence cases through the penal channel at investigation level is a number of activities carried out by law enforcement officials, namely: investigations, investigations, coercive measures and the making of an official report. The reason for law enforcement officials to carry out these activities is because a criminal act has occurred (a criminal act). For victims of domestic violence after processing in a criminal court, the discomfort resulting from this domestic violence process is submitted to a religious court. In the process, the judge has an obligation to reconcile a married couple who are about to divorce, this is based on Law Number 1 of 1974 concerning Marriage, Article 39 jo. PP. Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 17 Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts concerning Marriage Article 31 jo. Law Number 7 of 1989 concerning Religious Courts Articles 65 and 82. The decision for divorce will be handed down by the panel of judges if efforts to conciliate are truly unsuccessful.

Key Words : KDRT, Religious Courts, Criminal Courts, Community Economy

BACKGROUND

In the midst of the outbreak of Corona virus in early 2020 which originated in China which has spread widely and resulted in hundreds of thousands of victims resulting in deaths in various parts of the world, so that countries in the world without exception are in Medan City to avoid the spread of this virus. (stay at home) encouraged by the government is not matched by the efforts of the state to provide economic security to the community, even if there are thousands of workers who continue to be laid off by companies in order to cut company production costs, this situation is of course the income of residents who work in the informal sector This raises a separate polemic for women, the uncertainty of the state in taking a stand with regard to Covid 19 raises concerns and economic and psychological pressure in the household. 1]

Various changes and the impact of Covid -19 Pandemic which occurred in negative family relationships which also affected unstable economic conditions of this community, would trigger high stress and poor communication resulting in many arguments [2] Uncontrolled emotions from husbands this will lead to violence in the household which results in divorce.

Divorce is the termination of marriage rope due to a reason that is legalized through a judge's decision on the demands of one party or both parties. applicable law. [4]

At this time divorce cases in Indonesia in general and in particular in the city of Medan continue to increase in number until mid-2020 the increase ranges from 15 - 20 percent [5]. The consequences of Covid 19 Pandemic greatly affect all aspects of human life in the world related economy and behavior due to the pressures of life that occur among these domestic violence.

Based on WHO data during the Covid -19 pandemic, several countries reported an increase in domestic violence, including: England, France, Spain and Japan. In Spain in April 2020 it increased by 60%, in England calls for domestic violence report channels increased by 49%, while in France has risen 2 -3 times since the country imposed a lockdown. [6]

The judiciary is a symbol of power, likewise the Religious Courts in Indonesia are a symbol of the position of Islamic law and the strength of Muslims in Indonesia in resolving problems related to marriage, divorce and inheritance.

Basically every family wants to build a happy and loving family both physically and mentally, but in fact that not all of the desires of the family can be achieved, this is indicated by the fact that it is still found in a number of troubled households that even occur commonly called as domestic violence which is a variety of Domestic Violence [7]

This domestic violence can occur at all levels of society, from low status to high status communities. Most of the victims of t domestic violence are women and perpetrator is usually their husbands, the occurrence of domestic violence such as psychological violence, sexual violence and economic violence begins with unequal power relations between men (husbands) and women (wives).

The occurrence of domestic violence initially stems from the unequal power relations between men (husbands) and women (wives). This condition often results in husbands who

abuse their wives as part of the use of their authority as the head of the family. [8] With this condition of domestic violence, wife experiences physical and psychological violence that causes discomfort and discomfort. There is another sense of feeling protected by the husband because he has been treated arbitrarily resulting in this, the solution taken by this wife is a divorce which is certainly devastating to the family that has been built so far, in this case women who are vulnerable to become victims.

RESEARCH METHODS

The approach method used in this research is Normative Law (*normative juridical*) by using the statutory approach, conceptual approach, and comparative and empirical approaches (field data) which is meant by normative legal research method is a method of legal research carried out by examining the material literature or secondary data only. [9] This research was conducted to identify the concepts and principles and principles of divorce settlement that occurred during the Covid -19 pandemic as a result of domestic violence in Medan City.

The method of thinking used is the deductive thinking method (a way of thinking in drawing conclusions drawn from something that is general in nature that has been proven to be correct and conclusion is intended for something specific). [10] In normative legal research the paradigm used is *Positivism paradigm* law, then the research method is Juridical-Normative, and finally the approach is to use; statutory approach (*statute approach*), *case approach*, *historical approach*, *comparative approach* and *conceptual approach*. [11] analytical (*analytical approach*); and a *philosophical approach*.

1. Data Collection Techniques

Data collection techniques used in this study use data analysis that can be obtained in statutory regulation textbooks, journals, research results, encyclopedias, bibliographies, cumulative indexes and others. Basically, data collection techniques with this approach are carried out on various literatures (libraries).

In addition to the research carried out as mentioned above, it is also carried out through: *library research*, namely library research, where in this study the authors collect data from literature and study technical manuals and theories that can be used as material in this research.

Furthermore, *Field Research (Field work Research)* uses, among others: direct research into the field by: a. Observation, collecting data by making direct observations in the field, b. Interviews, observations through direct interviews with informants, c. Documentation, data collection is carried out to obtain secondary data in the form of documents or archives, and scientific papers relevant to this research.

2. Analysis Techniques

The data analysis technique used in this research is descriptive qualitative method, namely describing and analyzing the data that has been obtained and subsequently described in and concluded.

DISCUSSION AND RESULTS

1. The mechanism for the settlement of domestic violence carried out by husbands against wives during the Covid 19 pandemic

Divorce is the legal termination of relationship between husband and wife in a marriage. Based on the various results of research conducted, the causes of divorce are very diverse and complex, including: incompatibility, polygamy or cheating problems, financial problems, domestic violence, illegal marriage, too long distances and marrying at a young age. [12] Domestic violence or a very specific problem due to domestic violence occurs in all levels of society, from low-status to high-status people. Most of the victims of domestic violence are women and perpetrator is usually their husbands. The occurrence of domestic violence such as psychological violence, sexual violence, and economic violence stems from the unequal power relations between men (husbands) and women (wives). This condition often results in husbands' acts of violence against their wives as part of the use of authority they have as the head of the family. The justification for this authority can be born supported by state laws, so violence that occurs within the sphere of household (*domestic violence*) is a type of violence based on gender. This means that violence is born due to differences in gender roles that are socially constructed in which one party becomes subordinate to the other. The concept of gender is a trait inherent in both men and women that is constructed socially and culturally, besides that the occurrence of violence in the household can be triggered by many factors. Among them there are economic factors, low education, jealousy and it could also be caused by one parent from both parties, who takes part in a household. Cases of domestic violence are increasingly showing a significant increase from day to day, both violence in the form of physical or psychological violence as well as sexual violence and economic violence. In fact, it has been in the form of a criminal act of maltreatment and threats to the victim, which can cause fear or severe psychological suffering and even insanity in a person. The view that argues that all crimes must be regulated in a codification of law, such as the Criminal Procedure Code or Criminal Code is a view that does not support legal reform in accordance with the demands of existing developments, because these laws and regulations have not touched fundamental problem; Victims of domestic violence experience various obstacles in accessing the law, such as difficulty in reporting their cases or not receiving a positive response from law enforcement officials. The provisions of Criminal Procedure Code or other legislation have so far proven unable to provide protection for victims of domestic violence. One of the gender-based violence that often occurs today is domestic violence. This criminal act has its own characteristics, it lies in its specific subject, namely the perpetrator and victim are in the scope of household. Regulated in article 2 of Law no. 23 of 2004, the real meaning of eliminating domestic violence according to Law no. 23 of 2004 is preventing all forms of domestic violence, protecting victims of domestic violence, taking action against perpetrators of crimes in the household, maintaining a harmonious and prosperous household which embodies the principle of equal rights and respect for human dignity. The real meaning of eliminating domestic violence in this law is preventing all forms of domestic violence (preventive objectives), protecting victims of domestic violence (protective objectives), taking action against perpetrators of domestic crimes (repressive purposes), and maintaining integrity, a harmonious and prosperous household (a consolidative goal) which embodies the principles of equal rights and respect for human dignity. In fact, cases of domestic violence continue to increase from year to year. For this reason, it is necessary to have efforts from law enforcement in handling cases that occur. With the issuance of Kapolri Letter No. Pol. B / 3022 / XII / 2009 / sdeops regarding case handling through ADR. Especially in the investigation process, where in the implementation of investigation process, opportunities to commit

irregularities are very likely to occur. The same thing can also happen in the handling of cases of domestic violence. The process of resolving domestic violence cases is through the penal line at the investigation level. In the process of resolving domestic violence cases through the penal line at the investigation level, several activities were carried out by law enforcement officials, namely: investigation, investigation, coercion and the making of an official report. The reason for law enforcement officials to carry out these activities is because a criminal act has occurred (a criminal act). In connection with the occurrence of an event which can reasonably be suspected of being a criminal act, the investigator or police can take immediate action, namely in the form of an investigation. Investigation is one of the methods or sub-functions of an investigation that precedes other actions, namely actions in the form of arrest, detention, search, confiscation, examination of letters, summons, acts of examination, and submission of files to the public prosecutor. In the event that an event occurs which can reasonably be suspected of being a criminal act, then the action that must be taken by the investigator is to carry out an investigation into the incident to gather evidence relating to the incident, so as to make clear the criminal act that occurred and find the suspect. Article 102 of the Criminal Procedure Code states: Investigators who know, receive reports or complaints about the occurrence of an event which can reasonably be suspected of being a criminal act are obliged to immediately carry out the necessary criminal investigations, as mentioned in article 5 paragraph (1) letter b. Regarding the actions carried out in paragraph (1) and paragraph (2), the investigator is obliged to prepare an official report and report it to investigators in the area of law. Based on the provisions Article 102 of the Criminal Procedure Code above, it is imperative for the investigator to immediately carry out the necessary investigative action as an obligation, either in a state of being caught red-handed or in a state not caught red-handed. The requirement for investigators (the police) to immediately carry out an investigation is not only regulated in the Criminal Procedure Code, but in the Law on the Elimination of Domestic Violence also regulates this matter. Article 19 of the Law on the Elimination of Domestic Violence states that: "The police are obliged to immediately carry out an investigation after knowing or receiving a report on the occurrence of domestic violence." Article 19 of the Law on the Elimination of Domestic Violence reaffirms what has been regulated in Article 102 of the Criminal Procedure Code, that the police (both investigators and investigators) who know or receive reports of domestic violence, immediately carry out an investigation in order to gather initial evidence or sufficient evidence so that an investigation can be carried out and make it clear about an act of violence in the household and can find and determine the culprit.

2. Divorce Settlement Procedures for Muslim Husbands and Wives at the Religious Courts

The birth of Republic of Indonesia Law Number 7 of 1989 concerning the Religious Courts which was promulgated on December 29, 1989, provides clarity on the functions and competencies of the Religious Courts as one of the judicial bodies implementing judicial power, the purpose of this law is to identify and positivity in the field of law civil which is the competence of jurisdiction in the environment of Religious Courts, especially when dealing with competences with General Courts, the court is one of the symbols of power and Islamic Religious Court is a symbol of that Islamic power. As mandated in Article 4 paragraph 2 of

Republic of Indonesia Law Number 4 of 2004 concerning Judicial Power, namely through the peace institution (dading), the purpose of above article in the judicial system in Indonesia is as a route used by the community so that cases or disputes can be resolved quickly, simple and low cost. Article 130 HIR / Article 154 Rbg regulates peace, the article stipulates that on the first session day and is attended by the parties, the court through the chief judge of panel tries to reconcile the case or dispute that occurs, if the peace is agreed by both parties, ³² panel of judges shall determine the peace deed which has the strength of a decision, against the decision of the panel of judges in the event of a dispute, an appeal cannot be sought, let alone an appeal. The Civil Code in Article 1851 explains that peace is an agreement between two parties, Accompanied by the delivery, agreement or withholding of an item which is to end a problem that is being litigated or to prevent a case and agreement if it is not made in writing, it is considered invalid and has no legal force. Peace is a system of *problem solving* that is mutually beneficial between the parties, no one feels defeated or defeated because in peace it prioritizes the principle of brotherhood in which egoism or compulsion of will be more lenient, so that both parties feel benefited. The feeling of defeating each other, winning and controlling disputed goods does not arise or return to the product of peace based on the principle of brotherhood. The Supreme Court as the highest institution that administers judicial power always tries to find the best solution for the sake of upholding law and justice. One of the innovations created by the Supreme Court is mediation, which is a creative innovation to optimize the peace of parties in a case / dispute and to prevent the accumulation of cases in court. Since the Working Meeting of Supreme Court with the Chairmen of the Court of Appeal in 2001, the Chief Justice of Supreme Court has seriously wanted that peace institutions or the use of alternative institutions for dispute resolution can be carried out more intensively. The practice of providing an opportunity for reconciliation simply to fulfill the formalities of a ceremony should be abandoned. Judges must play an active role in pursuing peace. Steps taken by the Supreme Court in order to overcome the accumulation of cases and service to the dissatisfaction of justice seekers with court decisions is to integrate alternative or non-litigation dispute resolution processes which are meant in this case is mediation into the judicial or litigation process, namely in order to achieve peace. , then this mediation process is used, which in practice the implementation of this mediation is carried out after the first trial. Regulation of the Supreme Court of the Republic of Indonesia (Perma RI) Number 1 of 2008 regulates Mediation Procedures in Courts which are useful for optimizing the purposes of mediation as well as the role of mediating judge as a neutral party in resolving disputes or cases. Other Religious Courts throughout Indonesia have set up a mediation institution. For now, they are still utilizing and optimizing the role of judges who are considered to have the expertise to act as mediators in seeking peace for the parties in a case, for example in cases of divorce and divorce, in implementing the procedural law of religious courts, before the judges decide the case, then After the issuance of Regulation of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts, the chief judge of panel who hears the case must appoint another judge as a mediator or also known as a mediator judge. Panel judges and mediator judges have the obligation to reconcile married couples who are about to divorce, this is based on Law Number 1 of 1974 concerning Marriage, Article 39 jo. PP. Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 17 Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts concerning Marriage Article 31 jo. Law Number 7 of 1989 concerning

Religious Courts Articles 65 and 82. The decision for divorce will be handed down by the panel of judges if efforts to conciliate are truly unsuccessful. The characteristics that must be possessed by a mediator are big-hearted, patient, resilient and animate the character of two parties who are in a dispute, the role of this mediator is only impartial or mediator for all parties, and as a party who tries to discuss with both parties is in dispute to seek and find a solution that can be accepted in a good manner. The purpose of mediation is not only to end disputes, but also to build sincerity and willingness of the parties without anyone feeling defeated, so that the final estuary of mediation as outlined in the form of a peace deed is the best choice of the parties based on sincerity. Therefore, the mediator's intelligence and expertise are very important to resolve disputes between these two parties. Regulation of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts was enacted by the chairman of Supreme Court on July 31, 2008, in the period until 2010, Lubuk Pakam District Religious Court in handling divorce cases has further activated the role of judges to become mediators. Other Religious Courts throughout Indonesia have established mediation institutions. For now, they are still utilizing and optimizing the role of judges who are considered to have the expertise to act as mediators in seeking peace for the parties in a case, for example in divorce and divorce cases, in implementing religious procedural law court, before the judge decides the case, after the issuance of Regulation of the Republic of Indonesia Number 1 of 2008 concerning Procedures for Mediation in Courts, the chairman of the panel hearing the case must appoint another judge as a mediator or also known as a mediator judge. The panel of judges and mediating judges are obliged to reconcile married couples who are going to divorce, this is based on Law Number 1 of 1974 concerning Marriage, Article 39 jo. PP. Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 17 Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Procedures for Mediation in Courts concerning Marriage Article 31 jo. Law Number 7 of 1989 concerning Religious Courts Articles 65 and 82. The decision for divorce will be handed down by the panel of judges if peace efforts are truly unsuccessful. The characteristics that must be possessed by a mediator are a big heart, patient, resilient and animating the character of two disputing parties, the role of this mediator is only impartial or mediator for all parties, and as a party who tries discussing with both parties is a dispute to find and find a solution that can be accepted well. The purpose of mediation is not only to end disputes, but also to build sincerity and willingness of the parties without anyone feeling defeated, so that the final outcome of mediation as outlined in the form of a peace deed is the best choice of the parties based on sincerity. Therefore, the intelligence and expertise of mediator is very important to resolve the dispute between these two parties. Regulation of the Republic of Indonesia Number 1 of 2008 concerning Procedures for Mediation in Courts was ratified by the Chief Justice of Supreme Court on July 31, 2008, in the period up to 2010, Lubuk Pakam District Religious Court in handling divorce cases increasingly activated the role of judges to become mediators.

CONCLUSION

1. Victims of domestic violence experience various obstacles in accessing the law, such as difficulty in reporting their cases or not receiving a positive response from law enforcement officials. The provisions of Criminal Procedure Code or other legislation have so far proven unable to provide protection for victims of violence in household, but

if there is violence in this household The process of resolving domestic violence cases is through the penal line at the investigation level. In the process of resolving domestic violence cases through the penal line at the investigation level, several activities were carried out by law enforcement officials, namely: investigation, investigation, coercion and the making of an official report. The reason for law enforcement officials to carry out these activities is because there has been a criminal act (a criminal act which actually means the elimination of domestic violence according to Law No. 23 of 2004 is preventing all forms of domestic violence, protecting victims of domestic violence, taking action against criminals in the household, looking after the house

2. Panel judges and mediator judges have the obligation to reconcile married couples who are about to divorce, this is based on Law Number 1 of 1974 concerning Marriage, Article 39 jo. PP. Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 17 Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts concerning Marriage Article 31 jo. Law Number 7 of 1989 concerning Religious Courts Articles 65 and 82. The decision for divorce will be handed down by the panel of judges if efforts to make peace are truly unsuccessful. The traits that must be possessed by a mediator are big-hearted, patient, resilient and animate the character of both parties

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