



## **Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts**

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### **Abstract**

This study is to analyze the resistance of Muslim women to gender hierarchy in the family through khulu' (divorce) which is caused by acts of domestic violence. This empirical juridical research uses sample data from the Central Java Religious Court. The sample is selected based on the highest number of divorce cases in Indonesia, especially those caused by acts of domestic violence. The results of the study show that the religious court is the place most visited by muslim women in an effort to negotiate justice to stop domestic violence experienced by wives because Religious Courts are considered to provide strength to challenge the gender hierarchy in the household. Divorce initiated by the wife allows women to become active agents in determining marital status. However, Religious Court Judges do not use domestic violence as an excuse to decide on divorce cases. In his decision, the judge only mentioned the reason for the divorce because of the constant fights between husband and wife.

**KEYWORDS** *Divorce; Domestic Violence; Justice Negotiations; Religious Court*



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## Abstrak

Kajian ini untuk menganalisis tentang perlawanan perempuan muslimah terhadap hierarki gender dalam keluarga melalui khulu' (perceraian) yang diakibatkan oleh tindak kekerasan dalam rumah tangga. Penelitian yuridis empiris ini menggunakan sample data di Pengadilan Agama Jawa Tengah. Pemilihan sample berdasarkan pada jumlah kasus perceraian paling tinggi di Indonesia khususnya yang disebabkan oleh tindak kekerasan dalam rumah tangga. Hasil penelitian menunjukkan bahwa pengadilan agama merupakan tempat paling banyak didatangi perempuan muslim dalam upaya negosiasi keadilan untuk menghentikan kekerasan dalam rumah tangga yang dialami oleh istri karena pengadilan agama dianggap dapat memberikan kekuatan untuk menentang hierarki gender dalam rumah tangga. Perceraian yang diprakarsai istri memungkinkan perempuan menjadi agen aktif dalam menentukan status perkawinan. Namun, Hakim Pengadilan Agama tidak menggunakan kekerasan dalam rumah tangga sebagai alasan untuk memutus perkara perceraian. Dalam putusannya, Hakim hanya menyebutkan alasan perceraian karena pertengkaran terus menerus antara suami dan istri.

**KATA KUNCI** *KDRT; Negosiasi Keadilan; Pengadilan Agama; Perceraian*

## Introduction

The beliefs and even the traditional wisdom teach that marriage is a strong bond that should not be broken. Likewise, if there is a dispute between husband and wife, it should not end in divorce. However, divorce often occurs because of acts of violence, both verbal and physical, by husbands against their wives. With the condition of their wives who are always economically dependent, and the existence of these traditional beliefs/wisdom, women who experience domestic violence as victims are often trapped in the cycle of violence and are unable or unwilling to leave their partners. Domestic violence is often perpetrated by men as husbands and the victims are women as wives. In the patriarchal culture and the existence of traditional beliefs/wisdom, it is necessary to see and

understand how women respond to acts of domestic violence through divorce .

Divorce through the courts symbolizes the rejection of women against the domination of traditional beliefs/wisdom and the practice of Islamic family law, even in general in Indonesia, such as the rejection of the superiority of men who act arbitrarily and the rejection of the practice of polygamy . Under traditional fiqh rules, husbands have the privilege of unilaterally terminating the marital relationship (talak) or marrying other women (polygamy) without the consent of their wives. These practices are carried out on the basis of the rules contained in fiqh books written in medieval Islam, which are supported by the customs of patriarchal society. The practice of suing for divorce in courts shows that women are trying to subvert such hegemonic discourses by taking advantage of state law on marriage .

This study seeks to obtain information from divorce cases in the Religious Courts whether a divorce lawsuit is a form of resistance to power relations in marriage, by looking at the socio-religious and cultural context of Indonesia. This study also attempts to analyze divorce through the courts as a place for women's resistance to male domination supported by the practice of Islamic law in Indonesia, customary law, and state law, and examines the important dimensions of contemporary practice of Islamic family law, which reveal patterns of domination. and resistance.

Divorce cases raise several important questions that will be studied in this paper, namely how Islamic law contributes to the subordination of women on the one hand but on the other hand becomes a source of law to reject some aspects of this domination; and what the increasing number of divorce cases means in terms of gender analysis and power relations between Muslim married couples. This research also answers the question how acts of violence, both verbal and physical, in the household become the reason for the divorce and what are the judges' considerations in granting the divorce suit, and how the case of divorce due to violence

becomes a sign of a change in gender relations and power relations in the household lives. Based on this background, this research will examine how much change in gender relations and power relations between men (husbands) and women (wives) in the divorce case. This study was conducted using a gender analysis of the reasons for the divorce and the judge's consideration in granting the divorce suit. This study will use data from the Central Java Religious Court to answer these questions.

This study assumes that the divorce case is a form of resistance to the established gender hierarchy and limits the unequal power relations between Muslim married couples. Wife's divorce lawsuit marks a change in gender relations and power relations between Muslim couples and symbolizes women's resistance to patriarchy, such as the rejection of male arbitrariness and polygamy. Although Islamic law (fiqh) assigns different roles to men and women, and places men in a superior position over women on many important issues, Islamic law also provides women with a mechanism to counter this domination.

## Methods

This type of research is normative empirical with a qualitative descriptive approach. The object of this research is the divorce case for reasons of domestic violence in the Central Java Religious Court. The data sought for this research is data in the forms of *das sollen* and *das sein*<sup>1</sup>. The *das sollen* data are in the form of laws relating to the provisions of marriage and divorce, both in the form of laws, court decisions, and fiqh provisions believed by community. The *das sollen* data are in the form of primary legal materials, namely court decisions and the current laws and regulations concerning marriage and divorce, namely Law no. 1 of 1974 concerning Marriage, Government Regulation No. 9 of 1975, and the

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<sup>1</sup> Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum: Normatif Dan Emiris* (Yogyakarta: Pustaka Pelajar, 2015).

Compilation of Islamic Law. In addition, other data are in the form of secondary legal materials, namely in the form of legal books, fiqh literature in the field of marriage, scientific publications on cases and provisions of litigation law, and the opinions of legal experts. Other data are tertiary legal materials, namely legal dictionaries and encyclopedias. The data in the form of *das sein* is data that comes from facts in the field, obtained from respondents through interviews with judges at the Central Java Religious Court. In addition, data were also obtained from the decisions of the Central Java Religious Court totaling twelve decisions. Data analysis is carried out in a qualitative descriptive manner, using a statutory approach and a sociological approach. Conclusions are drawn using the inductive method and presented descriptively and prescriptively in order to answer the problems studied.

## **Discussion**

### **Domestic Violence and the Theory of Gender Equality**

The issue of gender inequality is a reflection of discrimination and even in many cases it is a form of oppression if it is accompanied by hegemony and power relations. Violence that occurs in married couples arises because of the hierarchy of gender power and because of unequal gender relations that are built through culture and beliefs based on religious and cultural teachings. The discourse of violence against women in the family environment has long been a debate among Muslims. However, in the end, there was a change in views and perceptions among the ulama and Muslims in general, from being passive because it was considered a domestic area and the husband's responsibility, to become more progressive and see it as a social responsibility. This indicates a social change and the response of religious leaders to the problems of

modernity <sup>2</sup>. In Indonesia, as the largest Muslim country in the world, the movement to empower women to promote their rights to be equal with men has been started since the early 20th century <sup>3</sup>, so the discourse on gender equality is easily accepted <sup>4</sup>. For example, the results of Sri Wiyanti Eddyono's research that explores how women can effectively mobilize themselves on their own initiative. Eddyono researches various women's groups, analyzes how they challenge oppressive authorities—their husbands, community leaders and local government—and provides detailed insights into women's attitudes and what motivates them <sup>5</sup>. Likewise, research conducted by Dina Afriyanti on community institutions and local activists in helping women by carrying out their duties as agencies and taking action to achieve social and legal justice for women workers who experience domestic violence <sup>6</sup>.

The issue of gender roles, which has become the norm in Indonesian society, is one of the reasons many women think twice about deciding whether to balance the wife's role and social roles or even choose between career and household matters. Judith E. Tucker states that while acknowledging the diversity of roles of men and women in the family, Islamic law in a general sense assigns certain roles and identities, positioning women as "dependent, vulnerable, and weak" and men as "authoritative, domineering, and strong". Such positions and subject formations are still embedded in modern Muslim marriage law, sometimes it is reinforced by local patriarchal traditions <sup>7</sup>.

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<sup>2</sup> Euis Nurlaelawati and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia," *Al-Jami'ah Journal of Islamic Studies* 51, no. 2 (2013): 247–78.

<sup>3</sup> Arskal Salim and Euis Nurlaelawati, *Demi Keadilan Dan Kesetaraan, Sentivitas Jender Hakim Agama Di Indonesia* (Jakarta: Puskumham, 2009).

<sup>4</sup> Nina Nurmila, "The Influence of Global Muslim Feminism on Indonesian Muslim Feminist Discourse," *Al-Jami'ah Journal of Islamic Studies* 49, no. 1 (2011): 33–64.

<sup>5</sup> Sri Wiyanti Eddyono, *Women's Empowerment in Indonesia: A Poor Community in Jakarta* (London: Routledge, 2018).

<sup>6</sup> Dina Afrianty, "Agents for Change: Local Women's Organizations and Domestic Violence in Indonesia," *Journal of the Humanities and Social Sciences of Southeast Asia and Oceania* 174, no. 1 (2018): 24–46.

<sup>7</sup> Judith E. Tucker, *Women, Family and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2009).

Normatively, Islamic teachings in principle increase the status of women compared to pre-Islamic Arab culture. Islamic law emphasizes the contractual nature of marriage, which requires that a dowry be paid to the bride rather than to her family, and guarantees women's rights to inheritance and to own and manage property. Women are also given the right to live in a matrimonial home and receive a living during marriage and a waiting period after death or divorce. However, the status of women in premodern society in general is not in accordance with the ideals of the Qur'an, because it comes from the patriarchal cultural norms prevailing in society. The rules in the *fiqh* books regarding husband-wife relations that prioritize men mostly come from the patriarchal culture, including the interpretation of the verses of the Qur'an based on the mindset and environment of the interpreter's own patriarchy. Fatima Mernissi has long highlighted the role of women in Islam, and more importantly, the articulation of Islam. In her book, Mernissi criticizes women's rights based on Islamic law and makes an interesting, even controversial, argument that the role of women has been deliberately limited by men, because women do not have the opportunity to interpret Islamic teachings in the context of gender sensitivity <sup>8</sup>. As a result, the promotion of women's status has always been a major issue for modern reformist Muslims. In the rules of *fiqh*, which are based on the interpretation of the verse of the Qur'an Surah An-Nisa' verse 34, that the husband may beat his wife if the wife commits *nusyūz* (neglect of her obligations). The act of hitting is part of violence <sup>9</sup>.

Nowadays domestic violence (in marital relationships) is no longer a socially acceptable behavior. Goodmark asserts that domestic violence is a

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<sup>8</sup> Fatima Mernisi, *Women and Islam: An Historical and Theological Enquiry* (New Delhi: Women Unlimited, 2004).

<sup>9</sup> Abdullahi Ahmed An-Na'im, "Shari'a and Islamic Family Law: Transition and Transformation," in *Islamic Family Law in a Changing World: A Global Resource Book*, ed. Abdullahi Ahmed An-Na'im (London: Zed Books, 2002), 1–22.

crime and the way to overcome it is through criminal law intervention <sup>10</sup>. An institutional system to provide assistance and intervention has also been established by the government through Law Number 23 of 2004 concerning the Elimination of Domestic Violence. More and more institutions are responsible for the problem in providing intervention and support measures to end domestic violence <sup>11</sup>. However, the old pattern is difficult to disappear, so there are still cases of violence committed by husbands against their wives because they think that husbands are more worthy of being followed and obeyed. The National Commission on Violence Against Women emphasized that despite significant changes in gender equality in the household, there are factors that cause violence in marital relationships to persist <sup>12</sup>.

Divorce from a marriage is an option provided by law for each couple. However, the divorce process usually takes a long time, is tiring and can even be dangerous for women, because usually a divorce begins with an argument followed by mental and physical violence against women before leading to divorce. In traditional beliefs, women seem destined to play a subordinate role in marriage. In Indonesian Muslim society in general, the husband is the head of the family with the responsibility as the breadwinner, and the wife is the housekeeper. Law Number 1 of 1974 concerning Marriage states in Article 34 Paragraph (1) that "The husband is obliged to protect his wife and provide all the necessities of household life according to his ability", and Paragraph (2) "The wife is obliged to manage household affairs as well as possible". Normatively, even in many realities in society, the wife depends on her husband for a living, and there

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<sup>10</sup> Leigh Goodmark, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (California: California University Press, 2018); Khaerul Umam Noer, Siti Chadijah, and Endang Rudiati, "There Is No Trustable Data: The State and Data Accuracy of Violence against Women in Indonesia," *Heliyon* 7, no. 12 (2021): e08552, <https://doi.org/https://doi.org/10.1016/j.heliyon.2021.e08552>.

<sup>11</sup> Afrianty, "Agents for Change: Local Women's Organizations and Domestic Violence in Indonesia."

<sup>12</sup> Komnas Perempuan, "Perempuan Dalam Himpitan Pandemi: Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak Dan Keterbatasan Penanganan Di Tengah Covid-19," in *Catatan Tahunan Kekerasan Terhadap Perempuan 2020* (Jakarta: Komnas Perempuan, 2021).

is almost no other possibility for her to earn a living. This is part of the reason for women not to choose divorce despite experiencing violence <sup>13</sup>.

In addition, a divorced woman will be looked down upon in society but not so for men. Parker and Creese, based on their research, state that widows, as individuals and as a group, experience discrimination and negative stigma in contemporary Indonesia <sup>14</sup>. A woman's divorce can damage her social status and also her family's esteem. Even a divorce can lower the prospect of a younger sister's marriage with a prospective groom who is actually already eligible. Chances of remarriage after divorce are also usually more difficult for women than for men <sup>15</sup>.

Experts argue that domestic violence is more common in marital relationships and in cultures where inequality is high, namely those with strong patriarchal ideologies and rigid gender roles. The factor of patriarchal culture and other factors that follow indicate that domestic violence tends to be high in Indonesian society. Furthermore, the unique conditions of Indonesian society can have disastrous consequences, both economic and social, for women who are victims of domestic violence <sup>16</sup>.

In addition to gender analysis, there are several theories that can be used to examine this issue. Social exchange theory, among others, is a theory of group cohesion that can also be applied to explain the occurrence of marriage and the occurrence of divorce in marriage, as well as other social relationships. In terms of its application to divorce cases, this theory states that the decision to leave a marriage depends on the existence of the marriage's "attractiveness", the costs of ending the marriage (i.e., barriers

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<sup>13</sup> Hairul Hudaya, "Kekerasan Psikis Dalam Rumah Tangga (Perspektif Undang-Undang PKDRT Dan Hadis)," *Musawa: Jurnal Studi Gender Dan Islam* 16, no. 1 (2017): 53–65.

<sup>14</sup> Lyn Parker and Helen Creese, "The Stigmatisation of Widows and Divorcees (Janda) in Indonesian Society," *Indonesia and the Malay World* 44, no. 128 (2016): 1–6.

<sup>15</sup> Iskandar Ritonga, *Hak-Hak Wanita Dalam Putusan Peradilan Agama* (Jakarta: Departemen Agama RI, 2003); Viola Corradini and Giulia Buccione, "Unilateral Divorce Rights, Domestic Violence and Women's Agency: Evidence from the Egyptian Khul Reform," *Journal of Development Economics* 160 (2023): 102947, <https://doi.org/https://doi.org/10.1016/j.jdevec.2022.102947>.

<sup>16</sup> Anne Castleton, "Speaking Out on Domestic Violence," *Dialogue: A Journal of Mormon Thought* 23, no. 3 (1990): 90–100.

to divorce), and the attractiveness of the available alternatives (e.g., being single or being in relationship). Levinger stated that barriers to divorce refer to changes in a person's perceived psychological condition, legal status, social status, or economic condition that must be expelled in the event of a divorce. The attractiveness of marriage and the impediments of divorce are theoretical constructs, which do not have direct and comprehensive steps <sup>17</sup>.

In addition, regarding the relationship between law, power and hegemony, Mindie Lazarus-Black and Susan F. Hirsch analyze the relationship between law and power which is often paradoxical. They view power in relation to law as "fluid and dynamic, shaping social interactions, and embedded materially and symbolically in the legal process". In this sense, law contains power that not only forms hegemony but also encourages oppositional discourses. Women may experience this legal paradox because many of them live under multiple dominations, some of which are created by law, but the law simultaneously empowers them to resist power and gender bias <sup>18</sup>.

Muslim women in Indonesia live under various norms and laws (state law, Islamic law, and customary law) <sup>19</sup>. Therefore, through the courts women seek to challenge the contradictions that legal pluralism poses to them. The provisions of state law are often seen as contradictory to religious beliefs, but efforts to overcome acts of violence must use the most favorable rules. This is an effect of the legislative process and legal codification carried out by Muslim countries such as Indonesia, which do not declare Islam as the basis of the constitution. The dualism and ambiguity of the law is felt by the community. The state is not able to fully take over the authority of religious law which has been believed to be true

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<sup>17</sup> George Levinger, "A Social Psychological Perspective on Marital Dissolution," *Journal of Social Issues* 32, no. 1 (1976): 21–47.

<sup>18</sup> Mindie Lazarus-Black and Susan F. Hirsch, *Contested States: Law, Hegemony and Resistance* (London: Routledge, 1994).

<sup>19</sup> Sugeng Priyadi, "Cablaka Sebagai Inti Model Karakter Manusia Banyumas," *Diksi* 14, no. 1 (2007): 11–18.

by those who maintain traditionalism<sup>20</sup>. However, the state can provide a means to seek justice for anyone who is a victim of domestic violence, namely through the justice system.

## Facts of Divorce Cases in Indonesia

Religious courts do not actually have the authority to handle cases of domestic violence, but they are often used as a place for married couples to file for divorce due to, among other things, domestic violence. Thus, even though it is outside its authority, the religious court is a strategic institution for tracing an act of domestic violence. The issue of domestic violence is regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Domestic violence is defined in the Law (Article 1 Paragraph 1) as “every act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household scope”.

Domestic violence is often perpetrated by husbands against their wives. Based on data from Komnas Perempuan, throughout 2020, 79% (6,480 cases) occurred violence against women in the personal sphere. Of these cases, violence against wives was ranked first, namely 3,221 cases (50%). This means that most cases of violence against women occur in the home and the perpetrator is the closest party, namely the husband<sup>21</sup>. This is clearly a manifestation of the superiority of men over women. In Islamic law, especially the provisions of classical/medieval *fiqh*, some forms of husband violence against wives can be tolerated, namely if the wife does not fulfill her obligation to serve her husband, the husband can beat the wife in an educational way. This provision seems to legitimize violence by a husband against his wife. This also strengthens power relations within the

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<sup>20</sup> Euis Nurlaelawati, “Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?,” *Musawa: Jurnal Studi Gender Dan Islam* 12, no. 2 (2013): 261–77.

<sup>21</sup> Komnas Perempuan, “CATAHU 2020 Komnas Perempuan: Lembar Fakta Dan Poin Kunci,” in *Catatan Tahunan Komnas Perempuan Tahun 2020* (Jakarta: Komnas Perempuan, 2021).

household. However, in the contemporary era, the modern legal system places men and women equally. The state also protects victims of domestic violence through its legal system <sup>22</sup>.

The protection of victims of domestic violence has been clearly stated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The form of protection is in the form of preventive policies, curative policies, and repressive policies for perpetrators of domestic violence. In many cases, the victims of domestic violence, mostly women, are generally reluctant to come to the police and/or to the criminal court to prosecute the perpetrators of domestic violence because the process is long, costly, and in many cases the perpetrator is the husband, that is someone where women depend economically. Therefore, the safest and fastest way for the victims (wives) to take is to go to the religious court and demand a divorce.

In Indonesia, the wife-initiated lawsuit for divorce is the most common case, which is generally motivated by acts of husband violence. Therefore, with the number of divorce cases, judges play an important role in protecting victims of domestic violence <sup>23</sup>. This also indicates that women can fight against forms of injustice in a patriarchal marriage system. However, the settlement of domestic conflicts to court is actually a last resort, after independent resolution or through third party mediation cannot reach an agreement.

Economic factors are the most common cause of divorce throughout 2021 reached 1,554 cases. Meanwhile, divorces based on continuous disputes and fights accompanied by violence are 407 cases, the reasons for leaving one of the parties are 31 cases, and other causes are less than 500 cases. This condition also illustrates that the wife's divorce lawsuit (wife-initiated divorce) is more than the husband's divorce suit (husband-

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<sup>22</sup> Yeni Salma Barlinti, "Harmonization of Islamic Law in National Legal Systems: A Comparative Study between Indonesian Law and Malaysian Law," *Indonesia Law Review* 1, no. 1 (2013): 35–51.

<sup>23</sup> Faqihuddin Abdul Kodir and Ummu Azizah Mukarnawati, *Referensi Bagi Hakim Peradilan Agama Tentang Kekerasan Dalam Rumah Tangga* (Jakarta: Komnas Perempuan, 2008).

initiated divorce). Divorce initiated by wife who filed the petition reached 1,459 cases. Meanwhile, the divorce rate initiated by husbands who file a lawsuit is only about a third of the wife's divorce suit, i.e., the Central Java Religious Court recorded 506 cases <sup>24</sup>.

The number of divorce cases in 2021 recorded at the Central Java Religious Court in the category of wife divorce lawsuits (wife-initiated divorce) reached 2,077 cases. As for divorce, there are 718 cases. Of this number, 2,058 cases were decided for the wife's divorce and 692 cases were decided for the husband's divorce suits. The reasons for divorce were varied. The main factor causing divorce is economic factor as many as 1,377 cases. While the second cause is continuous disputes that lead to domestic violence. For the second cause, there were 853 cases <sup>25</sup>.

The increasing number of wife-initiated divorce cases indicates a change in gender and power relations between husband and wife. Under the provisions of Islamic law, women (wives) do not share the right that men (husbands) do to dissolve the marriages, so the religious courts serve as the only place where Muslim women can seek a divorce. For this reason, women are the majority of divorce seekers in the Religious Court. Religious courts have become the preferred place for women (wives) to resolve their domestic conflicts and to get out of domestic violence, because the courts offer them the power to subvert gender bias and patriarchal culture <sup>26</sup>.

## **Court Decisions on Divorce due to Domestic Violence**

Marriage is the basis for the family unit which has an important meaning for the moral preservation of society and the formation of

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<sup>24</sup> Mokhamad Farid, "Interview," in *Banyumas Religious Court* (Banyumas: 15 April 2022, 2022).

<sup>25</sup> Asnawi, "Interview," in *Purwokerto Religious Court* (Purwokerto: 20 April 2022, 2022).

<sup>26</sup> Nasir, "Islamic Law and Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok Indonesia."

civilization<sup>27</sup>. Meanwhile, according to Soebekti, divorce is the abolition of marriage due to a judge's decision based on the demands of one of the parties to the marriage<sup>28</sup>. With the enactment of Law Number 1 of 1974 and the Compilation of Islamic Law, divorce has become strictly and firmly restricted both regarding the conditions for divorce and the procedure for filing for divorce. However, the opportunity to file for divorce is given equally to both men and women. The marriage law stipulates that divorce can only be carried out before a court session after the court concerned has tried and failed to reconcile the two parties. In order to divorce, there must be sufficient reason that a man and a woman will not be able to live in harmony again as husband and wife. Divorce in the Religious Courts can occur because of the husband's initiative called "*cerai talak*", or based on the wife's initiative called "*cerai gugat*". Based on these provisions, it can be seen that there are two kinds of divorce handled by the Religious Courts, namely: *cerai talak* and *cerai gugat*.

Domestic violence is regulated in Law Number 23 of 2004. It is a criminal offense handled by the District Court. However, the Religious Courts can also handle divorce cases caused by domestic violence. It is based on Law Number 1 of 1974 and the Compilation of Islamic Law, which consists of psychological violence (Article 39 paragraph (2) of Law No. 1/1974 along with the explanation in conjunction with Article 116 letters a and f of the Compilation), physical violence (Article 39 paragraph (2) of Law No. 1/1974 along with its explanation in conjunction with Article 116 letter d of the Compilation), and economic neglect (Article 39 paragraph (2) of Law No. 1/1974 along with its explanation in conjunction with Article 116 letter b of the Compilation).

There are many cases of divorce due to domestic violence that are submitted to the Central Java Religious Court. Examples are the twelve divorce cases that occurred in 2021 and 2022 in the two courts. We, the

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<sup>27</sup> Rifyal Ka'bah, "Permasalahan Perkawinan," *Varia Peradilan* 271 (2008): 7.

<sup>28</sup> Soebekti, *Pokok-Pokok Hukum Perdata* (Bandung: Intermassa, 2005).

authors, draw samples across two years from both trials with two decisions each. The twelve religious court decisions reflect how cases of domestic violence in various forms can trigger divorce. These cases can be seen in the following table:

<b>No.</b>	<b>Case Number</b>	<b>Reasons for Divorce</b>	<b>Decision</b>
1.	1725/Pdt.G/2021/PA.Bms Banyumas, 2021	The husband commits violence against his wife in the form of psychological violence by not providing a living and physical violence in the form of beatings.	Divorce lawsuit granted
2.	1968/Pdt.G/2021/PA.Bms Banyumas, 2021	The husband commits violence against his wife in the form of verbal violence by often yelling and saying harsh words and psychological violence by calling his mistress in front of his wife.	Divorce lawsuit granted
3.	2000/Pdt.G/2021/PA.Bms Banyumas, 2021	The husband commits violence against his wife in the form of verbal violence by frequently yelling and cursing with dirty words.	Divorce lawsuit granted
4.	2502/Pdt.G/2021/PA.Pwt Purwokerto, 2021	The husband commits violence against his wife in the form of economic violence by not providing a living, verbal violence in the form of insults, and physical violence in the form of beatings.	Divorce lawsuit granted
5.	2799/Pdt.G/2021/PA.Pwt Purwokerto, 2021	The husband commits violence against his wife in the form of economic violence by not providing a living, verbal violence in the form of frequently saying harsh words, and physical violence in the form of beatings.	Divorce lawsuit granted
6.	2817/Pdt.G/2021/PA.Pwt Purwokerto, 2021	The husband commits violence against his wife in the form of economic violence by not providing a living, psychological violence in the form of neglect by leaving the house without permission and without responsibility, verbal violence in the form of frequently saying	Divorce lawsuit granted

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7.	128/Pdt.G/2022/PA.Bms Banyumas, 2022	harsh words, and physical violence in the form of beatings and threats with knives. The husband commits violence against his wife in the form of verbal violence by often saying harsh words, and physical violence in the form of beatings.	Divorce lawsuit granted
8.	404/Pdt.G/2022/PA.Bms Banyumas, 2022	The husband commits violence against his wife in the form of economic violence by not providing a living, psychological violence by establishing relationships with other women and neglecting (leaving without a reason).	Divorce lawsuit granted
9.	488/Pdt.G/2022/PA.Bms Banyumas, 2022	The husband commits violence against his wife in the form of economic violence by not providing a living, physical violence in the form of beatings, and psychological violence in the form of neglect (leaving without permission) for years.	Divorce lawsuit granted
10.	0230/Pdt.G/2022/PA.Pwt Purwokerto, 2022	The husband commits violence against his wife in the form of verbal violence by often saying harsh words, physical violence in the form of beatings, and psychological violence in the form of neglect by leaving the house without permission.	Divorce lawsuit granted
11.	0451/Pdt.G/2022/PA.Pwt Purwokerto, 2022	The husband commits violence against his wife in the form of economic violence by not providing a living for his wife and children, and psychological violence by leaving the house without permission.	Divorce lawsuit granted
12.	0583/Pdt.G/2022/PA.Pwt Purwokerto, 2022	The husband commits violence against his wife in the form of economic violence without providing a living for his wife and children and psychological violence by leaving the house without permission (abandonment).	Divorce lawsuit granted

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Based on a case study of twelve divorce decisions by the Central Java Religious Court, the judge granted the plaintiff (wife) claim on the grounds that there were continuous disputes and quarrels between the wife (plaintiff) and husband (defendant) involving physical, psychological and economic violence activities carried out by husbands against wives. For this reason, it is necessary to understand the status of women according to Indonesian family law by analyzing the provisions relating to women's rights and obligations in married life. The analysis of the 12 decisions of the Religious Courts captures several factors behind the judges of the two Religious Courts in deciding divorce cases caused by domestic violence. The considerations used by the judge are provisions that in *fiqh* terms are called *syiqāq*, namely the condition of a husband-and-wife relationship that cannot be reunited. Based on those twelve decisions, the court did not use domestic violence in its various forms as the basis for determining or granting a divorce suit filed by a wife against her husband. In the decisions, the judge only stated that the basis for divorce was a constant quarrel, not even one of the decisions touched articles related to domestic violence. In the case of divorce due to domestic violence, the judge's consideration in the decision is always returned to the reasons for irreconcilable squabbles and quarrels or *syiqāq*.

Interviews with judges from the Religious Court found that one of the factors behind the judges' considerations in their decisions was the absolute authority of the Religious Courts, which can only adjudicate cases in the civil realm, not in the criminal field <sup>29</sup>. This is based on Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts which states that "The religious court has the duty and authority to examine, decide, and resolve cases at the first level between Muslim people in the field of marriage, inheritance, wills, grants,

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<sup>29</sup> Nor Solichin, "Interview," in *Banyumas Religious Court* (Banyumas: 15 April 2022, 2022).

*waqf, zakat, infaq, shadaqah*, and sharia economics". The article above limits the authority of the Religious Courts <sup>30</sup>. So, in their consideration, the judges cannot immediately decide on divorce cases caused by domestic violence with legal considerations that lead to the criminal realm <sup>31</sup>.

## **Shifting Gender Relations and Power Relations of Husband and Wife**

In the traditional Indonesia society, reflected in the family of farm workers which is husbands work to earn a living by becoming farm laborers on land or rice fields, as well as wives help make a living as farm laborers like husbands. However, in general, the types of work of male and female farm workers are not the same. Women farm workers do jobs that are not as heavy as men's work. However, the main task of the wife is at home, namely educating and raising children as well as providing food for her husband, children and completing other household tasks. This husband-wife relationship is categorized as a senior-junior partner marriage pattern (Scanzoni distinguishes husband-wife relations into four patterns, namely: property owner, head complement, senior-junior partner, and equal partner) <sup>32</sup>. In such a society, even though the wife has contributed economically, the husband still has more power than the wife because of his position as the main breadwinner <sup>33</sup>.

Socio-cultural construction has led to an unequal division of labor between men and women. At first glance, it seems that the wife gets more burden than the husband. However, if you look at the economic situation and the income earned, the husband is required to work twice as much to meet household needs so that he cannot participate in domestic work. This

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<sup>30</sup> Asnawi, "Interview."

<sup>31</sup> Khamimudin, "Interview," in *Purwokerto Religious Court* (Purwokerto: 20 April 2022, 2022).

<sup>32</sup> Letha Scanzoni, *Men, Women and Change: A Sociology of Marriage and Family* (New York: McGraw-Hill Inc., 1976).

<sup>33</sup> Harmona Daulay, *Pergeseran Pola Relasi Gender Di Keluarga Migran: Studi Kasus Keluarga TKIW Di Kabupaten Kerawang Jawa Barat* (Yogyakarta: Galang Press, 2001).

social and cultural construction that distinguishes traditional types of work for women makes women able to do domestic work without the help of their husbands.

Through social and cultural structures, women are regulated by traditional formulas and uniformity, so that stereotypical views of women continue to be attached to the personality of Javanese women. For women who are structurally shackled by these values, they feel unable and do not dare to develop their potential and be involved in various sectors of life <sup>34</sup>. However, along with the changing times, gradually there are changes that cause a diversity of perceptions among women themselves. Traditional perception still assumes that it is the nature of women to submit and obey men (husbands). The perception of these cultural values is not the only factor that influences the development of women's potential in various sectors of life. However, there is still a relationship or a close relationship between women's perceptions of Javanese cultural values and the process of developing women's potential. This can be interpreted that women's perceptions of the values contained in the Javanese cultural system still have a role in the process of developing the potential of women themselves, although this only applies to certain things.

The factor that has a big influence on the change in perception of the role of women, of course, comes from state policies that require equality between men and women. To meet the demands of a rapidly developing era, in accordance with the spirit of modernism and gender equality, reform efforts are carried out by the state (government), including in the field of family law. The family law reforms carried out by the government have resulted in legal provisions that are different from customary law or Islamic law which are commonly known in classical *fiqh* literature, so it can be said that family law for Muslim communities in modern times has moved from the provisions contained in classical *fiqh*. The move has

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<sup>34</sup> Chusni Hadiati, "Redefining Cablaka 'Banyumasan Way of Speaking': Is It Totally Explicature?," *Theory and Practice in Language Studies* 4, no. 10 (2014): 2082–89.

touched issues of human rights and gender equality, as stated in the laws and regulations, for example Law Number 1 of 1974 concerning Marriage, which is intended to elevate the status of women in the field of marriage <sup>35</sup>. Through the law, the government seeks to limit arbitrary divorce and polygamy and to abolish child marriage <sup>36</sup>.

However, there are several provisions in the marriage law that show the government's ambivalence towards the above objectives, namely to emphasize the subordination of women (wives) to men (husbands). Article 31 Paragraphs 1 and 2 of the Marriage Law, for example, stipulates that the rights and obligations of the wife and husband are the same in household and community life, and both wife and husband have the right to take legal actions (this provision is also stated in Article 79 Paragraphs 2 and 3 of the Compilation of Islamic law). However, Article 31 Paragraph (3) of the Marriage Law stereotypes the status of husband and wife, where the husband is considered the breadwinner, while the wife is considered a housewife. The same statement is also stipulated in Article 79 Paragraph (1) of the Compilation of Islamic Law.

Divorce cases in the Religious Courts as illustrated in the table above can be interpreted from different perspectives. From a woman's point of view, this can mean that more husbands are abusive, irresponsible to their wives, neglecting their obligations to protect and provide for them, and more husbands who betray love and affection, so that many wives seek divorce and choose to live alone. From a woman's perspective, if there is a wife who demands a divorce, it is her husband who must introspect and improve himself. However, when viewed from the point of view of men, the conclusion that may arise is the opposite, namely that the high rate of divorce is due to the impact of wives becoming more independent, more educated, legal guarantees for equality, and the impact of advances in

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<sup>35</sup> Bani Syarif Maula, "Kebijakan Negara Untuk Perempuan: Studi Komparasi Hukum Poligami Dan Cerai Di Beberapa Negara Muslim Di Asia Tenggara," *Syariah: Jurnal Hukum Dan Pemikiran* 3, no. 2 (2003): 166–84.

<sup>36</sup> Bani Syarif Maula, "Perlindungan Hukum Atas Hak-Hak Kelompok Agama Minoritas Di Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 5, no. 2 (2020): 248–69.

information technology that is increasingly accessible. Some of these perceptions are true. But what is certain is that the Javanese people have experienced a shift in husband-wife relations due to the influence of the values of the modern world. The modern world now no longer gives rise to discrimination or differences between men and women.

The shift in husband-wife relations was caused not only by economic independence and modern world values, but also by support from the state in the form of policies that protect women's rights, including the enactment of a law on the elimination of domestic violence. In addition, the provisions in the legislation on marriage also provide guarantees for the wife to sue her husband if her rights are violated. The legislation that provides protection for women gives the wives the strength to fight all acts of violence from their husbands. The issue of domestic violence is not as simple as what is stated in the legislation, therefore many women (wives) who experience violence from their husbands do not report it to the police. However, many wives prefer to divorce by filing a divorce suit in the Religious Courts.

With the enactment of Law Number 1 of 1974 and several supporting regulations, the opportunity to file for divorce is given equally to men and women. The marriage law stipulates that divorce can only be carried out before a court hearing after the court has tried and failed to reconcile the two parties. To do a divorce there must be enough reason, that between husband and wife will not be able to live in harmony again as husband and wife. Divorce in the Religious Courts can occur because of the husband's initiative which is called *cerai talak*, or based on the wife's initiative which is called *cerai gugat*. Based on this legal provision, men and women (husband and wife) have the same right to dissolve a marriage through the courts. However, the principle held by the court is to make it difficult for divorce to occur. In order for a divorce to occur there must be certain reasons and it must be done before the court, because the laws and regulations only recognize that divorce is carried out in court.

Some of the court decisions mentioned above show that a large number of divorces filed by women (wives) in the Religious Courts contain elements of domestic violence. This can be interpreted that women (wives) who experience violence by their husbands can try, at least, to escape from a stressful situation, namely by filing a divorce suit to the Religious Court. The case of domestic violence is actually no longer a domestic matter, but it has become a public matter that can be handled by the state security apparatus (police) and the perpetrators can be charged with imprisonment. The Religious Courts will not punish perpetrators of criminal acts of domestic violence, but at least such acts of violence can no longer occur because the husband and wife have been divorced. Divorce cases caused by domestic violence in the Religious Courts are directed to the violation of *taklik talak* (husband's oath at marriage if there is a violation then divorce will occur), one of which reads "Hurt my wife's body", but in legal considerations, judges also use Article 39 Paragraph (2) of Law Number 1 of 1974 and Article 19 Letter (f) Government Regulation Number 9 of 1975.

According to the author's understanding, the reason for divorce seems to have been patterned normatively in Article 39 Paragraph (2) of Law Number 1 of 1974 which stipulates "To divorce there must be enough reasons, that between husband and wife will not be able to live in harmony as husband and wife", and also in Article 19 of Government Regulation No. 9 of 1975, which is also confirmed in the Compilation of Islamic Law. For reasons that the author understands, the law does not explicitly mention domestic violence but there is a provision regarding persecution in Article 19 Letter (d) of Government Regulation Number 9 of 1975, while the reasons in Letter (f) regarding disputes and quarrels can cover all the reasons listed in the other articles.

## Conclusion

A large number of wife-initiated divorce (*gugat cerai*) cases at Central Java Religious Court were filed for reasons of domestic violence, and domestic violence has been accommodated as a reason for divorce in the family law applicable in Religious Courts. However, the court does not use domestic violence as the basis for determining or granting a divorce suit filed by a wife against her husband. In the court's decision, the judge only stated that the grounds for divorce were constant quarrels. The increasing number of divorce cases filed by the wife (*cerai gugat*) indicates a change in gender relations and power relations between husband and wife in domestic life. From a sociological perspective, there is a reciprocal relationship between law and society, namely law is formed by society and it also forms society. Modern people generally have bilateral or parental kinship characteristics. In such a kinship system, the status of women is usually equal to that of men. In addition, the husband-wife relationship model in modern people is closer to the senior-junior partner model. In this case, the wife's position is not only as a complement to her husband, but also as a friend, because the wife also contributes economically even though the main breadwinner is still the husband. However, patriarchal culture also applies in such a kinship system, so that the husband still has more power than the wife because of his position as the main breadwinner. Because of the weaker position of women, the Religious Courts serve as the only place where Muslim women can file for divorce. Women are the majority of justice seekers in the Religious Courts. The Religious Court have become favorite places for women to stop violence against women (wives) and resolve their domestic conflicts because the courts offer them the power to challenge gender bias and patriarchy. Wife-initiated divorce has allowed women to be active agents in determining their marital status. Those who are less able and less powerful, such as women in the household, can use the legal system in the Religious Courts to fight

unequal power relations and gender bias, as revealed in the divorce cases initiated by women at the Religious Court.

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