

# Legal Reconstruction on Reasons for Filing Divorce due to Acts of Household Violence Based on Justice Value

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DOI: [10.36348/sijlcrj.2023.v06i05.001](https://doi.org/10.36348/sijlcrj.2023.v06i05.001)

| Received: 06.04.2023 | Accepted: 13.05.2023 | Published: 17.05.2023

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## Abstract

Marriages carried out between husband and wife, sometimes cannot run as the purpose of marriage. If it cannot be maintained, then the path taken is divorce. In Article 19 Paragraph (4) states that the reason that can be used in filing for divorce is that one party commits cruelty or severe abuse that endangers the other party which is also a form of domestic violence and can be the cause of disputes and conflicts that occur in the household. Acts of domestic violence are not limited to physical violence in the form of abuse such as: slapping, hitting, kicking and even killing. As for the form of persecution that is psychological or psychological violence. Research Objectives: To analyze what are the current weaknesses in the Regulation on Reasons for Filing Divorce Due to Domestic Violence; To find out how to reconstruct the Law on Reasons for Filing Divorce Due to Domestic Violence based on justice. The research method uses the Constructivism Paradigm with non-doctrinal legal research with an empirical juridical approach. The study results show that (1) Weaknesses in the Regulation on Reasons for Filing for Divorce Due to Domestic Violence. Weaknesses in a legal substance: Elucidation of Article 39 Paragraph (2) of the Marriage Law and Article 19 letter d of Government Regulation 9 of 1975 only provides rules for physical violence. Weaknesses in the legal structure: The weak mentality of law enforcement officials results in law enforcement not working as it should. Weaknesses in legal culture: Domestic violence is a problem that is closely related to gender bias which is common in patriarchal societies. (2) Reconstruction of Regulations on Reasons for Filing Divorce Due to Acts of Domestic Violence. The formulations in Article 39 Paragraph (2) and the Explanatory Articles of the Marriage Law do not contain forms other than physical violence, such as psychological violence and sexual violence.

**Keywords:** Legal Reconstruction, Divorce, Justice Value.

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## INTRODUCTION

Marriage is a sacred bond, physically and spiritually carried out between a man and a woman to build a household relationship to achieve happiness. To achieve the goal of a marriage, the husband and wife should work hand in hand in maintaining the household, namely by loving each other and accepting each other's weaknesses and strengths. The legal basis for a marriage is explained in Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (here in after abbreviated as UUP). Based on Article 1, means that marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the Belief in One Almighty God (Mardani, 2013).

Marriages carried out between husband and wife, sometimes cannot run as the purpose of marriage. If it cannot be maintained, then the path taken is divorce. Divorce is a process in which the relationship between husband and wife is no longer found in harmony in marriage. The definition of divorce in the Marriage Law is not strictly regulated but only stipulates that divorce is only one reason for the breakup of a marriage, in addition to other causes, namely death and court decisions. Divorce is the abolition of a marriage due to a judge's decision or the demands of one of the parties to the marriage.

Dissolution of a marriage based on a court decision is a marriage dissolution because of a claim by a wife who is married according to the Islamic religion or because of a claim by a husband or wife who is

married according to a non-Islamic religion and belief, and the lawsuit is granted by the Court with a decision. Dissolution of a marriage due to this Court decision, for marriages held according to the Islamic religion is considered to have occurred along with all the consequences as of the time the Court's decision has permanent legal force. Suppose the marriage is held according to non-Islamic religion and beliefs, as of the time the Court's decision has permanent legal force. In that case, it is registered at the Civil Registry office by the registrar as stipulated in Article 34 Paragraph (2) of Government Regulation Number 9 of 1975.

Divorce issues in Indonesia are regulated in Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law. Law Number 1 of 1974 concerning Marriage in Article 39 Paragraph (2) states that both husband and wife can file for divorce based on the reasons stipulated by the Marriage Law. Related to this divorce, if the divorce breaker is at the will of the husband it is called a talaq divorce, and a divorce at the will of the wife is called a contested divorce (Arto, 1998).

Based on data from the Central Statistics Agency, states that throughout 2021 Domestic Violence (domestic violence) is the reason for the cause of divorce ranks fourth most, below for reasons of disputes and quarrels, economic reasons, and reasons for leaving one of the parties. Based on this data, divorce cases due to domestic violence throughout 2021 reached 3,271 cases. Meanwhile, disputes and quarrels are in first place with 176,683 cases (Kumparan, 2022).

An example of a well-known domestic violence case is a husband in Banyuasin Regency, South Sumatra, who had the heart to abuse his wife by inserting a mortar into his genitals. The victim was then stripped naked and his body was doused with oil and chili sauce. A husband in Depok City severely abused his wife and children by stabbing them. A husband in Palembang has the heart to beat his wife to a pulp. These cases are only a few examples of domestic violence in Indonesia (Kumparan, 2022).

Various forms of violence, especially domestic violence, are considered a violation of the principles of human rights, crimes against human dignity, and a form of discrimination. In addition, the developments in this period show that violence is real, so we need an act to prevent such crimes. To avoid the many victims of domestic violence, many countries in the world made efforts, as done by the Agency for International Human Rights. The trial of the International on population and Development in Cairo in 1994 provided important notes about the efforts to eliminate discrimination, sexual

harassment and violence against women, and was hoped to follow with special legislation. Some acts were enacted in the world among them: in New Zealand, The Domestic Violence Act 1995; in Taiwan, the Prevention, and Treatment of Domestic Violence Act 1998; in Japan, the Law for the Prevention of Spousal Violence and the Prevention of Victims 2001, in Malaysia, Domestic Violence Act 1994; and in Indonesia, Domestic Violence Act 2004 (Arief, 2017).

Efforts to minimize cases of violence in Indonesia were realized with the ratification of the CEDAW Convention into Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. In addition, the presence of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence to protect victims of violence within the household, especially cases that often occur in the most vulnerable subjects, namely women and children (Hardiyanti, Purwanti, and Wijaningsih, 2018).

Based on the Marriage Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, according to regulations, it is not directly stated that the reason that a wife can divorce is that there is an act of domestic violence, but in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Article 19 Paragraph (4) states that the reason that can be used in filing for divorce is that one of the parties commits cruelty or serious abuse that endangers other parties which is also a form of domestic violence and can be a cause of disputes and conflicts that occur in the household.

Acts of domestic violence are not limited to physical violence in the form of abuse such as: slapping, hitting, kicking and even killing. As for forms of persecution that are psychological in nature or psychological violence, it can be in the form of instilling fear through threats, intimidation, and insults to the point where it limits their movement, where the dominant perpetrator is carried out by the husband which results in the wife getting sick and suffering. If the husband neglects his obligations and with the right reasons, the wife can apply for divorce in court. In this regard, acts of domestic violence have been specifically regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Even though Law No. 23 of 2004 concerning the Elimination of Domestic Violence has been enacted, it does not necessarily make domestic violence disappear, there is still domestic violence that occurs in society and some of them even file for divorce. Divorce because there is an element of domestic violence, which is generally filed by the wife.

Divorce because of domestic violence is a disgrace for him because he feels ashamed and afraid of being ridiculed by society. Many wives who experience domestic violence are silent and endure their pain. However, if the wife cannot stand it anymore, then a new divorce is filed but with a different reason from what she experienced.

Based on the description above, the writer is interested in conducting research with the title: "Reconstruction of the Regulation of Reasons for Filing Divorce Due to Acts of Domestic Violence Based on the Value of Justice".

Based on the background above, the formulation of the problem in this study is:

1. What are the current weaknesses in the Regulation on Grounds for Divorce Due to Acts of Domestic Violence?
2. How is Reconstruction of Regulations Reasons for Filing Divorce Due to Acts of Domestic Violence Based on the Value of Justice?

## METHOD OF RESEARCH

The paradigm that is used in the research is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or scientific knowledge (Faisal, 2010). Paradigm also looked at the science of society as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is qualitative research. Writing aims to describe a society or a certain group of people or a description of a symptom or between two or more symptoms.

The approach method used in this research is *Empirical-Juridical* (Ibrahim, 2005), which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

The source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data is an indirect source that can provide additional and reinforcement of research data. Sources of secondary data in the form of Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author uses data collection techniques, namely literature study, interviews, and documentation where the researcher is a key instrument which is the researcher himself who plans, collects, and interprets the data (Moleong, 2002).

The specification of this legal research is in the form of analytical descriptive research. Descriptive means that the researcher in analyzing wants to provide an overview or explanation of the object of his research. Primary data collection was carried out by observation (direct observation) and interviews with several informants in this study. In terms of observation or observation is an activity carried out by researchers in the context of collecting data by observing the phenomenon of a certain community at a certain time as well. This primary data is also through interviews with several sources. Deep interview (in-depth-interview) is the process of obtaining information for research purposes using question and answer while face to face between interviewers and informants or interviewees, with or without using guidelines (guide) interviews, where interviewers and informants are involved in social life for a relatively long time (Widodo *et al.*, 2023).

## Research Result and Discussion

### 1. Current Weaknesses in the Regulation of Grounds for Divorce Due to Acts of Domestic Violence

Domestic violence has recently appeared in various areas, both in urban and rural areas which has been reported on by various social media, print or electronic media, as well as in discussions with the Social Society Organizations (NGOs) for the Protection of Women and Children and Advocate offices. /lawyer.

According to domestic violence Article 1 Paragraph 1 of law no. 23 of 2004, concerning the Elimination of Domestic Violence states that domestic violence is; "any action against a person, especially a woman, which results in misery or suffering physically, psychologically sexual, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere (Nahariah, 2022).

The physical and psychological impact on victims of domestic violence has begun to be discussed openly and has become a popular theme in scientific, social, and religious discussions, especially since domestic violence itself takes victims which include not only women but also victims who are still children. child. It's not enough to stop there, the victim can also be the men themselves who incidentally are often and commonly predicated as perpetrators of domestic violence.

The dominant position of the husband as the breadwinner for his wife and children causes the husband to feel in control of his family situation. Not infrequently stressed at work causes husbands to take out their anger on their wives and children and other family members at home by engaging in physical, psychological, and verbal violence. The household should be a safe place for its members because the

husband and wife build the family based on physical and spiritual bonds between the two. However, in reality, many households have become places of suffering and torture due to acts of violence.

So, as a result of the violence he experienced, a wife (and husband) filed for divorce because they were unable to maintain their household as the aim of marriage is to form a happy and eternal family (household) based on the Belief in One Almighty God.

In the previous chapter, it was explained that regulations related to domestic violence as reasons for filing for divorce in the Marriage Law and Government Regulation Number 9 of 1975 have not been fair. Since the law and implementing regulations were promulgated, there are still weaknesses. The weaknesses according to the theory of the legal system put forward by Lawrence M. Friedman are divided into legal, structural, and cultural substantively.

- a. Weaknesses in a legal substance: Explanation of Article 39 Paragraph (2) of the Marriage Law and Article 19 letter d of Government Regulation Number 9 of 1975. Shows that the violence in question is physical. So, if there is domestic violence other than physical violence, the reason for filing for divorce cannot use as a legal basis.
- b. Weaknesses in the legal structure: The weak mentality of law enforcement officials results in law enforcement not working as it should. Many factors contribute to the weak mentality of law enforcement officials, including a weak understanding of religion, the economy, non-transparent recruitment processes, and so on. Because of this, many victims do not want to report acts of violence experienced in their households. This is because not all law enforcement officers have sensitivity in favor of victims of domestic violence and there are still many law enforcement officers who blame the victims. This shows that law enforcement officers do not understand the meaning of domestic violence comprehensively, moreover, domestic violence is not limited to physical violence but also includes psychological, verbal, and sexual violence that occurs in the household.
- c. Weaknesses in legal culture: Domestic violence is a problem that is closely related to gender bias which is common in patriarchal societies where the distribution of power between men and women is unequal so that men dominate social institutions and women's bodies. In addition, the community still does not fully understand domestic violence. That the violence he experiences continuously is a form of crime that can be used as an excuse for filing for divorce. However, because the positive law in force, namely the Marriage Law, does not yet clearly and specifically regulate forms of domestic violence (among them psychological violence,

and sexual violence) which can be a reason for filing for divorce, society may have doubts or fear of filing for divorce for that reason.

## 2. Reconstruction of Regulations on Reasons for Filing Divorce Due to Acts of Domestic Violence Based on the Value of Justice

Regulations regarding the reasons for filing for divorce that has not been specifically and explicitly regulated will certainly cause injustice to victims who experience domestic violence, in this case, psychological violence and sexual violence. Regulations or legal rules must create and fulfill justice because the law is a tool to create justice. Justice in the law is justice that is coveted by all people who live within the legal framework itself. Therefore, the law requires a basis for establishing justice that can be accepted by society at large. The number of problems regarding the law, especially problems in the formation of laws and regulations raises problems in achieving justice. Law is still a mere political desire, not a desire of society in general.

The state is obliged to prevent, protect victims, and take action against perpetrators of domestic violence. The state must be of the view that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as forms of discrimination. Acts of violence not only have implications for physical and mental health, but this phenomenon is not just a criminal phenomenon that stands alone, but a phenomenon that crosses the scope of law, and health, and is also related to moral ethics, culture, politics, and also personal background. Komnas Perempuan, 2016).

Whereas the previous chapter it was explained the regulation of the reasons for filing for divorce because domestic violence has not been justified, so as a country which is a rule of law and based on Pancasila, the law reform is carried out. Regarding the regulations that have not been fair they can cause problems of injustice in society, Pancasila can provide answers to these problems. Pancasila can provide the values of justice as a legal reform in Indonesia. Legal reform in Indonesia is urgently needed because there are still many new issues that cannot be addressed by law. These problems should be resolved with a single vision, mission, goals, and perceptions of Pancasila in carrying out legal reforms in Indonesia. In addition to new unresolved problems, old problems are also considered problems urgent to be resolved immediately, bearing in mind that the law is always present in people's lives to provide certainty, justice, and benefits.

Based on the analysis in the previous chapter, the provisions of the Marriage Law regarding the reasons for filing for divorce have not been specifically regulated. Whereas the formulation in Article 39 Paragraph (2) along with the Explanatory Article of the



Marriage Law does not contain forms other than physical violence, such as psychological violence and sexual violence. Therefore, there is a need for a regulatory reconstruction of this law to fill the legal void in divorce cases caused by domestic violence, namely psychological violence and sexual violence.

That violence, in this case, domestic violence, includes not only physical violence but also psychological violence and sexual violence that can be experienced by husbands/wives in their households. Indonesia as a constitutional state, in the formation of laws and regulations based on Pancasila as the source of all sources of law. Pancasila contains the values of justice in its precepts so that in the formulation of laws and regulations it is obligatory to provide justice for anyone for the sake of common prosperity. It would be unfair if the husband/wife experienced psychological violence or sexual violence in their household life, but the provisions in the Marriage Law do not regulate the reasons for filing the divorce.

The existence of this regulatory reconstruction will certainly provide legal certainty for someone who has experienced psychological violence or sexual violence in the household to become reason for filing for divorce. Because so far, in practice, when there are applications for divorce on the grounds of psychological or sexual violence, judges use the legal basis in the PKDRT Law because this law specifically regulates domestic violence. However, the PKDRT Law focuses on criminal forms, not civil ones.

Reconstruction of regulations on the grounds for filing for divorce due to domestic violence by regulating more strictly and specifically regarding forms of domestic violence including physical violence, psychological violence, and sexual violence. This reconstruction is by adding additional formulations related to psychological violence and sexual violence which adopts the PKDRT Law. The formulation pattern for the reconstruction of the regulation on Marriage Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is as follows:

**a. Before Reconstruction:** Explanation of Article 39 Paragraph (2)

- (a) One of the parties commits adultery or becomes a drunkard, drunkard, gambler, etc. which is difficult to cure.
- (b) One party leaves the other party for 2 (two) consecutive years without a valid reason or for other reasons beyond his control.
- (c) One of the parties gets a prison sentence of 5 (five) years or a more severe punishment after the marriage takes place.
- (d) One of the parties commits cruelty or severe persecution that harms the other party. (It is) One of the parties gets a disability or illness as

a result of not being able to carry out his obligations as husband/wife.

- (e) Between husband and wife there are constant disputes and fights and there is no hope of living in harmony in the household again.

**b. Weakness:** (1) The contents of the article regarding the reasons for filing for divorce have not yet been stated, and (2) In the reasons for divorce, the meaning of violence only refers to cruelty and serious maltreatment, not verbal violence or violence in general.

**c. After Reconstruction:** Provisions on the reasons for filing for divorce are included in the contents of the article, not the explanation of the article. The article regarding reasons for filing for divorce is added to reasons for physical violence, psychological violence, and sexual violence.

- (a) One of the parties commits physical violence resulting in pain, falling ill, or serious injury.
- (b) One party commits psychological violence which results in fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering to someone.
- (c) One party commits sexual violence in the form of:
  - 1) Coercion of sexual relations committed against people who live within the scope of the household;
  - 2) Coercion of sexual relations against a person within the scope of the household with another person for commercial purposes and/or certain purposes.

## CONCLUSION

Based on the discussion above, it can be concluded that:

1. Weaknesses in the regulation on reasons for filing for divorce due to acts of domestic violence are classified into 3 components, namely:
  - a. Weaknesses in a legal substance: Elucidation of Article 39 paragraph (2) of Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage. It contains that only physical violence in domestic violence is the reason for filing for divorce.
  - b. Weaknesses in the legal structure, namely the weak mentality of law enforcement officials resulted in law enforcement not working as it should.
  - c. Weaknesses in legal culture: Domestic violence is a problem that is closely related to gender bias which is common in patriarchal societies where the distribution of power between men and women is unequal so that men dominate social institutions and women's bodies.
2. Reconstruction of Regulations on Reasons for Filing Divorce Due to Domestic Violence. The formulations in Article 39 Paragraph (2) and the

Explanatory Articles of the Marriage Law do not contain forms other than physical violence, such as psychological violence and sexual violence. Therefore, there is a need for a regulatory reconstruction of this law to fill the legal void in divorce cases caused by domestic violence, namely psychological violence and sexual violence.

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