

THE CIRCLE OF VIOLENCE BEFORE AND AFTER DIVORCE AS A HIDDEN VIOLENCE

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ABSTRACT

Marriage is a sacred bond legitimized by religion, custom, and in the eyes of the law. On its way, it does not always last happily. Violence that occurs in marriage causes a bad emotional relationship both to the couple, as well as to children. It becomes a circle that can be transmitted and passed into the family members. It can occur before or after the divorce has occurred. In this study, it will be discussed the cycle of violence which is the reason for divorce and the children as victims of post-divorce violence. The cycle of domestic violence lasts for a long time because of the phases in which victims try to understand the abusive behavior of their partners, try to forgive, but finally they are trapped for a long time. The violence tends to be hidden because it is intentionally covered by the perpetrators and victims. One solution to solve the problems in the household is divorce. The divorce will bring legal consequences to the end of husband and wife relationship, property and children. The children tend to be the victims of the divorce.

Keywords: Violence, marriage, divorce, hidden violence.

INTRODUCTION

Marriage is an inner and outer bond between a man and woman as a husband and wife with the aim to form a happy and eternal family or household based on the belief on the one supreme God. Marriage will form a kinship system. The kinship system is interpreted as "the social recognition and expression of genealogical relations, both consanguineal and affinal" in the dictionary of sociology entitled A Dictionary of Sociology, kinship system is defined as social relationship based on real, putative or fictive consanguinity; or on the model of consanguine relations.¹

In customary law, marriage is a very important event in people's livelihoods, because it does not only involve a man and woman, but also their parents and even their families. The relationship between husband and wife after marriage is not a bond relationship based on an agreement or contract, but is a partnership.² According to customary law, the purpose of marriage is to continue the development of society. Therefore, in general, people want the marriage to last forever. But a situation can arise that a marriage cannot be fully maintained.³

In all legal traditions, those are civil law, common law, and the family of other legal systems, marriage is a contract based on personal voluntary agreement between a man and a woman to become a husband and wife. In this case, marriage is always seen as the basis for a family unit that has an important meaning for the maintenance of morals or the morality of society and the formation of civilization.⁴ On its way, it does not always go well. Many things can become problems in it. Domestic violence is a problem that includes physical, psychological, sexual and economic violence.

The domestic violence is a hidden violence. Victims tend not to share the violence they experience with others because of shame. This condition causes violence to take place in a long time. Daniel Dicola and Elizabeth Spaar⁵ state "Intimate partner violence is a prevalent worldwide health problem, affecting women is more commonly than men. It can include physical, emotional, sexual, and financial abuse, as well as control over contraception or pregnancy and medical care." The violence committed by a husband against his wife can be continued with the violence from the wife against her husband and child. One solution that is generally done by married couples who face problems in marriage is divorce.

In the eyes of the law, divorce certainly cannot just happen. This means that there must be a reason justified by the law to do a divorce, it is very basic, especially for courts that have the authority to decide whether a divorce is feasible or not. Including all decisions concerning all the consequences of divorce, it is also very much determined by the reason for divorce. For example, about the struggle for child custody, providing a living for the ex-wife and child, and the distribution of property in marriage.⁶ The divorce has extensive legal consequences in the field of Family, Material, and Agreement Law.⁷

¹ Soerjono Soekanto. (2012). *Hukum Adat Indonesia*. Jakarta: PT Raja Grafindo Persada, p. 42.

² Muhammad Syaifuddin, Sri Turatmiyah and Annalisa Yahanan. (2012). *Hukum Perceraian*. Jakarta: Sinar Grafika, p. 25.

³ Titi Triwulan Tutik. (2006). *Pengantar Hukum Perdata di Indonesia*. Jakarta: Prestasi Pustaka, p. 143.

⁴ Rifyal Ka'bah, "Permasalahan Perkawinan", *Varia Peradilan*, No 271 Juni 2008, Jakarta: IKAHI, p. 7

⁵ Daniel Dicola dan Elizabeth Spaar, "Intimate Partner Violence", *American Family Physician*, 2016-10-15, Volume 94, Issue 8, Pages 646-651.

⁶ Budi Susilo. (2008). *Prosedur Gugatan Perceraian*. Yogyakarta: Pustaka Yustisia, p. 20.

⁷ Martiman Prodjohamidjojo. (2002). *Hukum Perkawinan Indonesia*. Jakarta: Indonesia Legal Centre Publishing, p. 46.

The circle of violence in the family can continue after the divorce. A conflict does not always end with the end of marriage. Violence can occur between the ex-wife and ex-husband and child. In this study, it will be discussed the cycle of violence which is the reason for divorce and the children as victims of post-divorce violence.

VIOLENCE CYCLE TO DIVORCE

Social change is a change in the structure, function and pattern of society. The theory of social change bases the thinking of human social life. Humans are basically dynamic beings so that people in society will always change. Parson as quoted by Satjipto Rahardjo says that the development of society is characterized by its ability to utilize its environment, namely what is referred to as the generalized adaptive capacity.⁸ The community develops according to certain values that are prominent in the community concerned. These values are ideational (i.e. absolute truth as revealed by Almighty God), sensate (i.e. values based on experience) and idealistic (which is a mixed category). Laws and other socio-cultural symptoms are formed in accordance with the forms of values that are being applied in society.⁹

At first, marriage is a sacred bond, so divorce is something that is greatly avoided. Social change and values in society gradually erode this assumption. Divorce is seen as a solution to solve family conflicts and the first step to a better life. Before the divorce occurred, many things indicated the existence of domestic violence. The act of not providing for the family is a crime of neglect which is included in the category of domestic violence. Ahmad Tholabi Kharlie explains that on the one hand women have been able to be economically independent, but on the other hand, men (husbands) do not provide happiness in domestic relations. It is natural that divorce is considered as the right choice.¹⁰

Some researchers assume that violence is born of pressure. The emphasis that has implications for this violence is much discussed in General Strain Theory as stated by Agnew. Larry J. Siegel analyzed Agnew's thinking and subsequently writes "Agnew suggests that criminality is the direct result of affective states of negativity - anger and frustration that emerge in the wake of destructive social relationships. He finds negative affective states are produced by a variety of sources of strain."¹¹ Pressure at work and insufficient economic needs are often the reason for arguments in the household. Problems without good emotional management will cause violence to last for a long time and continuously.

On the other hand, violence is not always caused by pressure. Michael S. Kimmel puts it forward: "Some violence by men against women is motivated not by the desire to express anger, frustration, or some other immediate emotion during a family conflict but may be more instrumentally motivated by the desire to control. However, the use of violence may not indicate the experience of control but the experience of loss of control"¹² In a theoretical explanation of the violence that occurs in relationships with partners, there are at least 3 theories used, namely:

- 1) Intra-individual theory. This explanation is often referred to as the theory of psychopathology. The intraindividual approach tries to reach an understanding of the actions of the offender to defeat his partner and the psychological characteristics of the victim who has suffered persecution. Researchers in this theory point out the psychological conditions of the perpetrators and the influence of the use of alcohol and illegal drugs that affect the psychological condition of the offender.
- 2) Theory of sociocultural explanation (patriarchy). This theory approaches with the view of male domination in society. Violence against women is seen as a result of treatment in a patriarchal society.
- 3) Theory of the Social Learning Approach: the perspective of helplessness learned. The final approach is to analyze the helplessness of the victim to remain in a situation of violence, which is also part of the sociocultural tradition. Some experts point out that someone who does not leave their partner who has committed violence is caused by economic dependence, the presence of children in their relationship, the lack of skills to work as a result of the placement of women's roles in the history of society. The notion of helplessness is centered on three components, namely information that someone has about what will happen, knowledge or perception of what will happen and the behavior of people towards the event that occurs. Some people believe that they cannot influence or control what will happen to them. Because this perception increases and grows bigger, the victims believe that they are powerless to change their environment.¹³

Violence does not occur at any time, but can form a cycle of violence. Gradually, it is built through the feeling that the victims are powerless and unable to change circumstances. Walker sees this cycle consisting of three different stages: (1) the tension building phase, (2) the acute battering incident, and (3) the honeymoon phase.

- 1) The tension building phase may be accompanied by a mild attack. During this period, the woman believed that she could fend off her husband's intimidation.

⁸ Satjipto Rahardjo. (2009). *Hukum dan Perubahan Sosial Suatu Tinjauan Teoretis Serta Pengalaman-pengalaman di Indonesia*. Yogyakarta: Genta Publishing, p. 63.

⁹ Soerjono Soekanto. (2009). *Pokok-pokok Sosiologi Hukum*. Jakarta: PT RajaGrafindo Persada, p. 107.

¹⁰ Ahmad Tholabi Kharlie. (2013). *Hukum Keluarga Indonesia*. Jakarta: Sinar Grafika p. 23.

¹¹ Larry J. Siegel. (2011). *Fourth Edition Criminology The Core*, Wadsworth, Belmont, p. 154.

¹² Michael S. Kimmel, Violence Against Women, Vol. 8 No. 11, November 2002 1332-1363 DOI: 10.1177/107780102237407, p. 1352.

¹³ Lorraine Wolhuter, Neil Olley and David Denham. (2009). *Victimology Victimisation and Victims' Rights*. Cavendish: Routledge.

- 2) The second phase of the cycle is the episode of beating incidents which is the culmination of the frustration experienced in the first stage. At this point, the person is out of control and acting in anger. Like Walker (1979: 55) explains that the offender carries out an attack to teach his partner and does not intend to cause certain injuries to her. This action stops when the offender feels he has given the lesson. At that time, however, the victims have generally been severely beaten.
- 3) The last stage is the period of reconciliation or honeymoon phase. In this phase, the offender transforms himself into a very sorry, gentle, and loving character. Requests for forgiveness and the promise of a better future often lead to anger and fear experienced by the victim in the hands of the partner. The batter really believes that he will never hurt the woman he loves again; the offender believes that he can control himself from now on. This action becomes a lesson for the perpetrator. After committing violence, the perpetrator actually shows remorse by doing romantic things.¹⁴

In a cycle-violence perspective, it shows that this period will also pass and form a chain of violence. Women will be trapped in deeper relationships. She will even find it difficult to leave the perpetrator because of fear of a decline in living standards when leaving her partner, especially if they have children in the relationship. This dependence will cause them to accept violence over a long period of time. Parents who experience conflict will be drained of time for their own problems. As a result, they will lose control of their children. The children experience mistreatment.

The problem of divorce in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage. In principle, this law makes divorce difficult because marriage is basically an eternal bond. Article 38 of Law Number 1 Year 1974 concerning Marriage states that marriage can be broken for several reasons, one of them is due to divorce. Divorce is not only a legal problem regulated in the national law but also becomes an important discussion in the customary law.

Reasons that can be used as the basis for divorce can be seen in the Elucidation of Article 39 paragraph (2) of Law Number 1 Year 1974 concerning Marriage. The reasons include:

- a. One of the parties commits adultery or becomes a drunkard, compactor, gambler, etc. which is difficult to cure;
- b. One of the parties leaves the other for 2 (two) consecutive years without the permission of the other party and without valid reason or because of other things beyond his will;
- c. One party gets a sentence of 5 (five) years imprisonment or a more severe sentence after marriage;
- d. One party commits atrocities or severe abuse which endangers the other party;
- e. One of the parties gets a disability or illness which results in not being able to carry out the obligations as a husband / wife;
- f. Between husband and wife, there are continuing disputes and quarrels and there is no hope of living in harmony again in the household.

Tolib Setiady argues, according to the customary law, the causes of divorce from a marriage are:

- a. Adultery
- b. Wife's infertility
- c. Husband leaves his wife for very long time
- d. Wife is impolite.
- e. There is a shared desire from both parties or husband and wife's agreement to divorce
- f. One party gets a sentence of more than 5 years imprisonment¹⁵

Submission of the divorce process through a court session is not solely decided by the judge. Article 31 of the Republic of Indonesia Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage determines:

- (1) The judge examining the divorce lawsuit seeks to reconcile the two parties.
- (2) As long as the case has not been decided, an effort to reconcile can be done at each examination session.

Not every divorce claim submitted to court can be granted. Consideration is needed by the panel of judges regarding the reasons for the filing of a divorce suit as described above. So that, it becomes feasible to decide on a marriage bond legally according to applicable regulations. Divorce has extensive legal consequences, both in the field of Family, Material, and Agreement Law.¹⁶ Divorce is the elimination of marriage with a judge's decision, or the demands of one party in the marriage.¹⁷ According to Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage that in order to conduct divorce, there must be sufficient reason, that between the husband and wife will not be able to live in harmony as husband and wife. The initiative to divorce can come from the husband or wife side:

- a. On the initiative of the husband

¹⁴ *Ibid.*

¹⁵ Tolib Setiady. (2009). *Intisari Hukum Adat Indonesia : Dalam Kajian Kepustakaan*, Bandung: CV Alfabeta, p. 269.

¹⁶ Martiman Prodjohamidjojo. (2002). *Hukum Perkawinan Indonesia*. Jakarta: Indonesia Legal Centre Publishing, p. 46.

¹⁷ Subekti. (1985). *Pokok-pokok Hukum Perdata*. Jakarta: Intermasa, p. 42.

- b. On the initiative of the wife
- c. With the agreement of both parties
- d. Through court decisions.¹⁸

Divorce must be carried out in court by filing a lawsuit before the court in the jurisdiction of the defendant's residence. The jurisdiction for filing a lawsuit is regulated in Article 20 of the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 Year 1974 concerning Marriage which states:

1. A divorce lawsuit is filed by a husband or wife or their representative of attorney to the Court whose legal territory covers the residence of the defendant.
2. In the case where the defendant's residence is unclear or unknown or does not have a permanent residence, the divorce suit shall be submitted to the Court at the plaintiff's residence.
3. In the case that the defendant resides in a foreign country, the divorce claim shall be submitted to the Court at the plaintiff's residence. The Chairperson of the Court submits the request to the defendant through the local Republic of Indonesia Representative.

The United Kingdom initially adhered to the principle that divorce can only be carried out by the Plaintiff who is not guilty and can prove the Defendant's fault that he has committed a violation in marriage. In *The Matrimonial Act 1973*, it is determined that the divorce lawsuit can be asked to the Court by the husband or wife on the basis of breakdown marriage which cannot be repaired anymore. This is the only reason for divorce under family law in England. The court can grant a divorce application after assessing the breach of the marriage.¹⁹

During the divorce claim at the request of the plaintiff or the defendant or based on the consideration of possible harm, the Court may allow the husband and wife not to stay in one house. During the divorce lawsuit at the request of the plaintiff or defendant, the Court can determine the income that must be borne by the husband, the things that need to guarantee the maintenance and education of the child, and the things that are necessary to ensure the maintenance of properties that are the rights of both husband and wife, the husband's right, or the wife's rights.

CHILDREN AS VICTIMS OF POST-DIVORCE VIOLENCE

Article 41 of Law Number 1 Year 1974 concerning Marriage states that due to the termination of marriage due to divorce are as follows:

- a. Both the mother and father are still obliged to take care of and educate their children, solely based on the interests of the child; if there is a dispute regarding the control of children, the Court gives its decision;
- b. The father is responsible for all the maintenance and education costs that the child needs; if the father does not fulfill this obligation in reality, the Court can determine that the mother is carrying the costs;
- c. Courts can require ex-husbands to provide livelihood costs and / or determine obligations for ex-wives.

Article 45 of Law Number 1 Year 1974 concerning Marriage which states that both parents must take care of and educate their children as well as possible. The obligation of this parent is valid until the child marries or can stand alone, this obligation continues even though the marriage between the two parents breaks up. Divorce has the effect on the ending the parent's power (*ouderlijke macht*) and turning into guardianship (*voogdij*). Therefore, if the marriage is broken by a judge, it must also be regulated about guardianship for the children. Determination of the guardian by the judge is carried out after hearing the closest relationship of the children with the family of the father or mother. The judge is independent to determine the father or mother who will be the guardian, depending on who is seen as the most capable or good considering the interests of the children. This guardian approach can also be reviewed by the judge based on changing circumstances.²⁰

The cycle of violence still occurs even though the marriage is over. Divorce makes families fragmented. The broken family is a family where there is an absence of one of the parents because of death, divorce, separated life, for an unlimited period or the husband leaves the family without confirmation. These conditions cause:

1. Children are lack of attention, affection, and educational guidance from their parent, especially father's guidance, because their father and mother are busy with their problems.
2. The physical and psychological needs of the teen are not fulfilled, the desires of hope for children are not channeled satisfactorily or do not get compensation.
3. Children do not get the physical and mental training that is needed to live morally. They are not accustomed to discipline and good self-control. So the consequences of divorce cause children to feel neglected.²¹

¹⁸ Amir Syarifuddin. (2006). *Hukum Perkawinan Islam di Indonesia*. Jakarta: Prenada Media, p. 197.

¹⁹ Abdul Kadir Muhammad. (1998). *Perkembangan Beberapa Hukum Keluarga di Beberapa Negara Eropa*. Bandung: Citra Aditya Bakti, p. 126.

²⁰ Subekti. (2003). *Pokok-Pokok Hukum Perdata*. Jakarta: PT. Intermasa, p. 45.

²¹ Yani Trizakia. (2005). *Latar Belakang dan Dampak Perceraian*, Semarang: UNS, p. 29.

Marriage breakups due to divorce can be more damaging to children than marriages that break up due to death. There are 2 (two) reasons for it, namely:

- a. the adjustment period for divorce is longer and more difficult for children than the adjustment that accompanies the death of parent. In this period, most children go through 4 (four) stages in adjustments, namely rejecting the divorce, anger directed at those involved in the situation, bargaining in an effort to unite parents and finally accepting the divorce.
- b. separation caused by divorce is more serious because divorce tends to make children "different" from the eyes of peer groups. If children are asked where their parents are or why they have new parents in lieu of non-existent parents, they become confused and feel ashamed.²²

Criminologist, Larry J. Siegel states "children who grew up in homes wracked by conflict, attended inadequate schools, or deviant peers became exposed to forces that engendered crime."²³ This poor condition in parenting can at least be related to the models of violence against children in their family environment. The pattern of care for children dominated by violence will cause children are trained to commit violence, so that child offenders are actually victims of their social environment. Ian Marsh, John Cochrane and Gaynor Melville²⁴ divide the category of victims as primary and secondary victims. They explain as follows:

Primary victims are those who experience the act or its consequences at first hand, for instance a child who is the victim of a hit and run driver. Secondary victims are those who suffer the effects but are not immediately involved, for instance the relatives of that child. To define the victims of crime is not an easy task; and it would be helpful here to outline very briefly some of the major examples of victims of crime to highlight this difficulty.

Family is the closest social environment to raise, mature, and become the first place of education for children.²⁵ Divorce can occur in anyone's household. According to Clinical psychologist Sanata Dharma University, Yogyakarta, Heri Widodo, that psychologically, parental divorce has a negative impact on children as follows :

- a. The absence of a mother figure can make a child becomes the anxious person.
- b. Not confident.
- c. The absence of a father figure can make a child naughty because the superego role does not exist.
- d. The child becomes out of control.
- e. The child likes to give unexpected choices

But on the other hand, there are also some positive impacts of divorce to the child, including:

- a. The child becomes more independent.
- b. The child has the ability to survive because being trained to get an easy thing in life.
- c. Some children become stronger and rise up²⁶

Increasing number of children traumatized by parents' divorce will also need specialist attention and this means that schools will need to be supplied with specialist support services providers including school counselors or school psychologists. The intention here is not to suggest that schools take over completely home responsibilities to children.²⁷

CONCLUSION

Some researchers consider that violence is born of pressure, but in other parts of the study it is assumed that violence is caused by non-optimal self-control, patriarchal culture and the process of social learning. The violence cycle consists of three different stages: (1) the tension building phase, (2) the acute battering incident, and (3) the period of reconciliation or the honeymoon phase. In a violence-cycle perspective, it shows that this period will also pass and form a chain of violence. Violence not only occurs before divorce, but also after divorce, especially for children. Children are among prolonged conflicts from their parents. The pattern of care for children who are dominated by violence will cause they are trained to commit violence if they cannot break the chain of violence. The children who are victims of this violence need to get intense psychological counseling.

²² Elizabeth B. Hurlock. (1992). *Perkembangan Anak Jilid 2*, translated by Meitasari Tjandrasa, Jakarta: Erlangga, p. 216.

²³ Larry J. Siegel, *op.cit.* p. 12.

²⁴ Ian Marsh, John Cochrane and Gaynor Melville. (2004). *Criminal Justice: An Introduction to Philosophies, Theories and Practice*. London: Routledge, p. 96.

²⁵ Nashriana. (2012). *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. Jakarta: RajaGrafindo Persada, p. 40.

²⁶ Melly Febrida. (2013). *Ini Dampak Positif dan Negatif Perceraian Ke Anak*, Available at www.health.liputan6.com.

²⁷ Olaniyi Bojuwoyeand Orok Akpan, Children's Reactions to Divorce of Parents, *The Open Family Studies Journal*, 2009, 2, 75-81, p. 80.

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