

The Domestic Violence Laws and the Raising Number of Divorce Petition in Lampung Province¹² (A case study in Lampung Province, Indonesia)

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Abstract

Generally, ethnics in Indonesia have patriarch family system in which the men have dominating-position in the family and societies. On the other hand, women have minor roles and rights, including the right to declare or propose divorce to their spouse. The Lampungnese as the native tribe in Lampung province also practices patriarchal family kinship until present day. Traditionally, once a Lampungnese woman is married, she is not allowed to propose divorce in whatever conditions. However, after the enactment of the Law No. 23/ 2004 on Elimination of Domestic Violence, more women in Lampung are brave enough to propose *cerai gugat*⁴ (divorce petition) where domestic violence becomes of one the reasons of the divorce⁵. *Cerai gugat* is one type of divorce allowed in Islam in which the woman acts as the petitioner. This section will study the correlation between the enforcement of the Law No. 23/ 2004 on Elimination of Domestic Violence and the increasing number of *Cerai Gugat*⁶ applications in Lampung Province.

Keywords

women, rights to divorce, *cerai gugat*

省ランプンにおける家庭内暴力と請願の離婚の調達数の法則 (ランプン州のケーススタディ、インドネシア)

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要旨

一般的にはインドネシアの民族男は家族や社会で支配ポジションを持つ家長家族制度を持っている。女性は配偶者からの離婚を宣言するか、提案する権利を含むマイナーな役割と権利を持っている。ランプン州のネイティブ部族としてランプニシはまた、今日までまだ存在している家長制家族親族を實踐。ランプニシ女性が結婚された後、伝統的に、彼女はどのような状態で離婚を提案することはできません。しかし、家庭内暴力、セライグガトー離婚の理由になるの家庭内暴力を提案する勇気ランプンでより多くの女性の撤廃に関する法律第2004分の23の制定後。セラ

イグガトはイスラム教で許可され、それは女性が提出している離婚の一種である。この記事では省ランブンでセライグガトアプリケーション数の増加とドメスティック・バイオレンスの施行の撤廃に関する法律第23号/2004の効果との間の相関を検討する。

キーワード

女性、離婚への権利、セライグガト

A. Regulation of Divorce Petition in Indonesia

I. Definition and Legal Basis

The Act No. 1 of 1974 on Marriage Section 1, Subsection 1ⁱ stated that a marriage is a spiritual and physical bond between a man and a woman as husband and wife to build a happy and everlasting family based on belief in Allah the Almighty. Meanwhile, a broken marriage is defined as the breaking bond of a marriage between a man and a woman which is regulated by Subsection 38 to Subsection 41 of Marriage Act. A marriage might be over due to death, divorce, and court decision. Divorce as a means to end a marriage is usually used as the last resort to resolve domestic conflicts. A divorce can proceed only if it is done before the Religious Court, either because the husband drops a *talaq* (divorce) or because the wife proposes a divorce petition called *cerai gugat* or invoke the right of divorce because *sighat taklik talak*ⁱⁱ. *Sighat taklik talak* is stated by the bridegroom which basically includes certain conditions, such as if the husband leaves his wife for two consecutive years, or he does not provide his wife needs within 3 months in a row, or he abuses his wife physically, or he ignores his wife for 6 months, which will give the wife the right to ask for divorce which is equal with first *talaq*ⁱⁱⁱ from his husband.

Although in Islam a divorce is already valid

once a *talaq* is pronounced by the husband, to be legally approved it also must be done before the court to protect all the rights and obligations arising from the divorce. Section 39 of the Marriage Act regulates:

- 1) A divorce is valid after the court fails to reconcile the two parties.
- 2) To carry out a divorce there must be sufficient reasons to prove that the husband and his wife are no longer able to live together within a marriage bond.
- 3) The divorce procedures are regulated under a specific regulation.

Meanwhile, Section 40 of the Marriage Act states:

- 1) The divorce papers shall be filed in the court.
- 2) Divorce procedures on Subsection 1 of this Section shall be regulated under a specific regulation.

In addition to the legal definition of a breakup marriage, some regulations are also set in the Compilation of Islamic Law^{iv}. Section 113 to Section 162 of the Compilation of Islamic Law formulate a more detailed outline of divorce reasons, procedures, and legal consequences. For example, Section 113 of the Compilation of Islamic Law and Section 38 of the Marriage Act discuss three reasons which might end a marriage: death, divorce, and court decision.

Section 114 explains that a breakup marriage may be caused by a divorce petition or *talaq*. Section 115 of the Compilation of Islamic Law, in accordance with the provisions of the Compilation of Islamic Law concept for Muslims, confirms the content of Section 39 of the Marriage Act: "Divorce can only be valid in court after the court fails to reconcile the two parties".

A *divorce petition* is defined as a divorce proposed by a wife to her husband through the court, and then the court in favor of the plaintiff shall break up the marriage between the petitioner and the defendant. The legal basis for the divorce petition refers to the Compilation of Islamic Law Section 116 about the breakup marriage as a result of divorce petition, and it is further explained in Section 132 and 133.

II. The Divorce Reasons

According to Section 19 of the Decree No. 9 of 1975 on Implementation of the Marriage Act and Section 116 of the Compilation of Islamic Law the reasons for divorce are as follows:

1. One of the parties commits adultery, or a refractory alcoholic, junkie, gambler, and so forth.
2. One of the parties (husband and wife) leaves the other for 2 (two) years of legal obligations associated with providing physical and spiritual needs.
3. One of the parties is imprisoned for 5 years or more.
4. One of the parties commits atrocities or severe abuse that can harm the other.
5. One of the parties gets disability or illness resulting in inability to fulfill their obligations as husband and wife/wives.
6. The existence of persistent disputes and

quarrels between husband and wife with no hope of reconciliation.

7. Husband breaks the *divorce addendum*.
8. Conversion or apostasy causing disharmony in the household.

III. Divorce Claims Procedure

Section 40 of the Marriage Act governs divorce lawsuit regarding the breakdown of a marriage and the consequences. Meanwhile, the procedure for divorce is filed under Section 14 of the Marriage Act which states that if a husband wants to divorce his wife, he has to file his lawsuit to the court which has competence of his wife's residence and notices his intention to divorce his wife and therefore asks the court to hold the trial for that purpose. The designated court shall learn the divorce file and, not later than 30 (thirty) days, shall call the sender of the lawsuit and also the wife to clarify about anything related to the divorce proposal.

The court shall decide to carry out a trial if indeed there are divorce reasons (Section 19), and the divorce will be approved when the Court found that between husband and wife have no longer possibility to live harmoniously and to be reconciled again in the household. Shortly after the divorce trial, the head of judges panel makes a statement about the divorce. The decision letter of this divorce is sent to the Islamic Court Registrar in order to be recorded.

The divorce lawsuit is filed by the husband or wife or their proxies in the Court where the defendant resides. If the defendant resides overseas or in unknown, or unclear, or not fixed residence, the divorce lawsuit shall be filed in the court of the plaintiff's residence. Chairman of the petition delivers the lawsuit to

the defendant through the local representative of the Republic of Indonesia (Section 20 (1), (2), (3) of Decree No. 9 of 1975 on the Marriage Act Implementation).

In case of divorce which one party of the couple leaves the other for two (2) consecutive years without his/her spouse's permission or without any valid reason, the lawsuit shall be filed in the court of the plaintiff's residence two (2) years after the defendant leaves the house. The suit is acceptable if the defendant shows unwillingness to return to the place where the couple used to live together (Section 21 of the Marriage Act).

In the circumstance where continuous disputes and quarrels cannot be resolved and there is no hope of reconciliation, a divorce lawsuit might be registered to the court on the defendant's residence. The suit is acceptable when it is quite clear for the Court to see the impossibility of saving the marriage due to the continuous conflicts after listening to all of the testimony from the family or anyone close to the couple (Section 22).

Section 23 of the Decree on Marriage Act Implementation formulates divorce lawsuit by reason of one party of the spouses is sentenced to jail for five (5) years or more severe punishment, to get the divorce decision, it is sufficient by only delivering a copy of the court decision of the punishment of her/his spouse, accompanied by a statement saying that the decision has been legally fixed as sufficient evidence.

Within the divorce process, as the request of the plaintiff or defendant, based on considerations that dangerous condition might incur, the Court may permit the spouses for not living in one house. In addition to that, during the divorce process, upon request of the plaintiff or

the defendant, the Court may:

- a) Determine the income that must be borne by the husband;
- b) Determine necessary conducts to ensure the maintenance and education of children;
- c) Determine necessary conduct to ensure the protection of the properties owned by spouses or items belonging the husband or items belonging his wife.

B. General Overview of Divorce Petition after the Enactment of Act No. 23 of 2004 on Eliminating Domestic Violence^Y in Lampung Province

Lampung Province has a heterogeneous and multicultural population, most of whom practice patriarchal family kinship in which the position of women and men are unequal. Marriage as a social institution is a form of culture accepted, recognized, and implemented by the society of Lampung province which cannot be separated from the roots of patriarchal culture. One of the consequences of this inequality is a lower position of one party than the other.

The domination of one party over the other creates a gap of power and bargaining position between the two parties. This inequality is likely to cause problems in household, one of which is domestic violence. However, because of the strong patriarchal culture, a woman or a wife, as the victimized party, tends to keep it a secret instead of reporting it to the authorities (police). She realizes that some effects may rise if she does otherwise; divorce, lack of livelihood due to her husband's imprisonment, the dark future of her children, and even she would receive more severe violence from her husband.

Also, in the Indonesian society, especially Lampung, divorce is still considered a disgrace

for any reason in any condition. The society still view the occurrence of a divorce is caused by the wife’s inability for taking care of her family. Thus, usually she will retain her marriage even though she has to suffer more. However, this stigma is now shifting due to the enactment of the Act No. 23 of 2004 on Elimination Domestic Violence since this law has indirectly increased the number of wives as petitioners who propose a divorce. (Table 1)

The table above shows that the number of divorce petition cases was far beyond that of *talak* divorce: 1911 and 713 respectively, and that most of the divorces were driven by the wife’s dissatisfaction towards the husband; dissatisfaction could bring disharmony into the

household. (Table 2)

According to the table, the most common reason of couples in Lampung to divorce is the lack of harmony which causes a constant strife within the family. Economic factor and lack of responsibility took the second place while the third place is occupied by the occurrence of domestic violence. Some of the factors are interrelated; for example, a domestic violence might occur after a dispute between husband and wife. However, the irresponsibility, the most common factor, sometimes occurs without previously being triggered by any dispute.

The table does not explicitly mention domestic violence as one of the reasons for divorce. However, the table includes physical

Table 1. Number of Divorces in Lampung Province in 2009^{vi}

No	District Religious Court	Remaining Last Year	Received Case	Total	Cancelled	Marriage		Rejected	Unaccepted	Failed	Cancelled from Register	Total. 7 s/d 42	Remaining last year	Appeal	
						Talak Divorce	Divorce Petition							Appeal	Cassation
1	2	3	4	5	6	12	13	40	41	42	43	44	45	46	47
1	P A ^{va} . Karang	126	592	718	74	118	295	7	22	14	8	502	142	14	2
2	P A. Metro	71	719	790	21	174	414	2	4	25	12	646	123	1	-
3	P A. Kalianda	55	468	523	13	91	317	-	-	6	5	439	71	2	2
4	P A. Kotabumi	38	265	303	14	49	168	3	3	4	3	244	45	1	-
5	P A. Krui di Liwa	17	107	124	10	20	67	-	-	-	2	92	22	1	-
6	P A. Tulang Bawang	22	177	199	11	46	105	-	-	5	3	165	23	1	1
7	P A. Tanggamus	34	243	277	14	53	155	-	3	3	5	230	33	1	-
8	P A. lambngan Umpu	20	92	112	7	23	50	1	-	1	2	80	25	1	-
9	P A. Gunung Sugih	39	533	572	21	139	340	-	3	4	3	503	48	-	-
Total		422	3,196	3,618	185	713	1,911	13	35	62	43	2,9	532	22	5

Table 2. Factors of Divorce in Lampung Province in 2009

No	District Religious Court	Irresponsibility	Violence		Continuous Conflicts	
			Torture/Physical Violence	Mental Violence	Economic Reason	Disharmony
1	2	4	6	7	12	15
1	PA. Karang	61	–	–	20	322
2	PA. Metro	51	5	–	184	157
3	PA. Kalianda	107	2	–	48	203
4	PA. Kotabumi	40	–	–	6	162
5	PA. Krui Liwa	22	–	4	6	21
6	PA. Tulang Bawang	27	4	–	44	25
7	PA. Tanggamus	53	–	3	41	71
8	PA. Blambangan Umpu	4	–	5	20	22
9	PA. Gunung Sugih	75	–	25	102	78
Total		440	11	37	471	1,061

and mental violence which can be categorized as criminal offenses listed in Domestic Violence Act. In fact, physical violence or torture occupies the highest rank of violence against women in the private sphere/ household in Lampung Province in 2009.

Economic factor occupied the second highest cause of divorce in Lampung. However, even though economic negligence is one type of domestic violence, the pattern or type of economic violence cannot be clarified due to the limited data and time to research about it. Interestingly, data on the number of violence against women in Lampung Province in 2009^{vii}, economic violence against women increased dramatically from 0 cases in 2001 to 23 cases in 2009.

Lampung Province has nine Religious Courts, but only one in Metro City that has specific data showing that domestic violence has contributed to the increase of the divorce petition. Meanwhile, the other Religious Courts

do not have such specific data. Thus, the data above cannot provide a clear map of direct relation between the enactment of Domestic Violence and the increasing number of divorce petition in Lampung Province. However, it has shown that the rate of the divorce petition in Lampung Province increased after the Domestic Violence Act came into force.

C. General Overview of Domestic Violence after the Enactment of Act No. 23 of 2004 on Elimination Domestic Violence in Lampung Province

The summary of data on violence against women cases obtained by DAMAR, an advocacy organization for women, shows that in the last ten years of the 2,122 monitored cases in total, raping occupied the highest number of violence against women in which 139 cases were done in private sphere while 1,054 cases happened in public sphere. It means that 56.22% of the violence cases against women

Table 3. Summary of Cases of Violence against Women in Lampung^{ix}

Form of Violence	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Private/ Domestic area :											
Ravishment	8	0	31	11	14	16	13	15	15	16	139
Sexual Assault	0	0	1	2	0	0	1	1	1	1	7
Incest	0	0	0	16	6	8	10	7	8	7	62
Physical											
Oppression	17	40	42	41	20	26	54	37	32	55	364
Murder	2	0	4	2	0	0	0	1	3	5	17
Combustion	0	0	0	0	0	1	0	1	0	0	2
Psychological	0	0	0	0	0	4	15	9	1	7	36
Economic	0	0	0	6	0	8	7	1	1	0	23
Abandonment	0	0	0	0	0	0	0	0	0	2	2
Public Area :											
Sexual											
Ravishment	111	103	144	113	82	74	127	96	90	114	1054
Sexual Assault	16	24	10	15	10	23	59	15	42	5	219
Trafficking	0	3	5	20	0	6	45	7	10	14	110
Physical											
Pre-Marriage Violence	0	6	3	3	2	2	5	2	1	3	27
Escapee	2	5	11	2	0	4	5	7	1	3	40
Marginalization	0	0	0	0	0	0	0	1	1	0	2
Others	0	18	0	0	0	0	0	0	0	0	18
Total	156	199	251	231	134	172	341	200	206	232	2122

were rape cases.

Meanwhile, the number of cases of domestic violence against women in private/ household occupied the highest position with a total of 419 cases, 364 of which were torture cases. It means that 64.26% of the cases of domestic violence were physical violence.

The total data of violence against women in Lampung shows an increasing trend as there was an increase from 134 cases in 2004 to 232 cases in 2009. Even worse, the number increased significantly into 341 cases in 2006. (Table 3)

More interestingly, according to the report of the National Commission of Women, in 2011 there were 110,468 domestic violence cases against wives in Indonesia, interestingly 95 % of which coming from divorce cases compiled by the Religious High Courts in 33 provinces in Indonesia (Annual Report of the Indonesian National Woman Commission: 2012: 12).^x In addition, there were 711 cases of domestic violence in private sphere in 2011 in Lampung Province (Annual Report of Indonesian National Woman Commission: 2012: 11).

D. The Impact of Enactment of Act No. 23 of 2004 on the Elimination of Domestic Violence against Divorce Petition Rate in Lampung Province

Lawrence M. Friedman's (Lawrence M. Friedman: 1975: p 14-15) stated that a successful law enforcement requires well functioning components of the legal system. Friedman specified three components required for law enforcement: the legal structure, the legal substance and the legal culture.

A legal rule cannot be separated from culture where the law exists. Law and culture are like two sides of a coin, in a sense that the legal substance formulated should embrace the culture of the society. Therefore, when the culture accommodated in the formulation of law is patriarchal, it is not surprising that the law will be likely unable to give equal justice to women. In this case, the culture puts women and men in unequal relationship of power, and it is legitimized by the law. Sociological approaches to law found that state law is not the only reference to behave in a society. In fact, culture as the other "law" serves as behavioral reference and is followed effectively by the people because they know that this law, existing in the midst of the society, has passed down through generations and is easy to follow in daily practices. If we assume that the Domestic Violence Act is the state law and the patriarchal culture is the other "law", the co-existence of the two in a society will rise conflicts due to their different materials: while the Domestic Violence Act limits the men's actions, the patriarchal culture gives them privilege instead. Therefore, it will be difficult to enforce the Domestic Violence Act in the middle of the existing patriarchal

culture. As aforesaid, Friedman referring to the system theory stated that the difficulty of law enforcement might come from the substance of its own components i.e. cultural values which are influential to household life in the society.

The Semi-Autonomous Social Field theory, in line with the statement above, states that a rule will never be static after being set because it will be continuously modified by the community (Sally. S.F Moore: 1983: 54-81) The Domestic Violence Act which basically provides legal protection for victims of domestic violence, usually women, will be hard to enforce due to the strong patriarchal culture not only in Lampung Province, but also in other regions in Indonesia. However, referring to the semi-autonomous social field theory of Moore, this rule modifies the Domestic Violence Act into legal basis for other legal actions, such as the legal basis to file the divorce petition.

The enactment of the Act No.23 of 2004 on the Elimination of Domestic Violence has indirectly increased the number of divorce petition in Lampung Province because this law provides legal protection for victims of domestic violence through:

a) Expanding the definition of violence and scope of household

This law defines domestic violence as any act against a person, especially women, resulting in the emergence of misery or suffering physical, sexual, psychological, and/or negligence of household including threat to commit acts, coercion, or deprivation of liberty against law in the domestic sphere (Section 1, subsection 1). Domestic violence is not limited only to physical violence, but also sexual violence, psychological, and negligence. The expansion of the definition has expanded the scope and competence of the law in

dealing with domestic violence. The Act also expands the scope of who are considered as the household members: husband, wife, children, and all people living in the household.

b) Assuring the rights of the victim

The Domestic Violence Act Section 10 lists the rights victims can acquire as follows:

- 1) Protection of the family, police, prosecution, courts, lawyers, social institutions, or any other temporary or determination through a protective order from the court;
- 2) Health services in accordance with the medical needs;
- 3) Treatment specifically related to the confidentiality of the victim;
- 4) Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations, and
- 5) Spiritual guidance services to motivate the victim and reduce her/his fear to denounce the violence that happened to her/him

c) Requiring the government and society to participate

This Act requires the government (Section 12) and the community (Section 15) to participate in the enforcement of this Domestic Violence Law. The victim should be protected when she/he denounces the violence that happened to her/him as regulated in the government policies in favor of the victim. The protection also comes from the public which supports that any violence must be stopped and the victim should not be excluded in the society.

d) Determining punishment for the perpetrators.

Conditions of imprisonment or fines set out in Chapter VIII ranging from chapter 44-

chapter 53. The duration of the imprisonment and the amount of the fine vary depending on the acts of violence committed. These criminal provisions serves as an assurance that the perpetrators will not be free from the law and are accountable for his actions.

E. CONCLUSION

Based on the explanation and discussion above, several points can be drawn as follows:

1. The number of divorce in Lampung Province has increased since the enactment of Law No. 23 Year 2004 about the Elimination of Domestic Violence. Physical Violence occupied the second position among many of the causal factors of the divorce while disharmony came to the top of the chart.
2. Total number of violence against women in the private sphere (household) increased after the enactment of the Law No. 23 year 2004 about the Elimination of Domestic Violence.
3. The impact of the implementation the Law No. 23 year 2004 about the Elimination of Domestic Violence has indirectly increased the number of divorce petition in Lampung Province since the law provides legal protection for domestic violence victims through:
 1. Expanding the definition of violence which is not only limited to physical, but also sexual, psychological, and/or negligence, and of the scope of household;
 2. Providing the rights assurance for the victims;
 3. Requiring the government and the community to participate;
 4. Determining punishment for the criminal perpetrators.

[Notes]

- 1 Some data in this paper were based on normative research by Law and Human Right Bureau of Lampung Province on 2010.
- 2 This paper was presented in Asian Criminology Society 5th Annual International Conference, on April 15, 2013 in Mumbai India.
- 3 Presenter is currently enrolled as a doctoral candidate in Kanazawa University and an Indonesian Directorate Higher Education (DIKTI) Scholarship awardee.
- 4 According to Islamic High Court of Bandar Lampung on 2009 of 2,624 divorce cases 1,911 cases were divorce petitions.
- 5 Domestic Violence is not the primary reason of the divorce petition however it becomes an elevating factor of divorce in Lampung province. The primary reason of divorce in Lampung Province is inharmonious relation in a marriage.
- 6 Hereafter called *divorce petition*
- i Hereafter called Marriage Act. This law came into force in 1974 to govern specifically Islamic marriage. Non Islamic marriages in Indonesia are ruled by general private law and under competence of the General Court.
- ii The *sighat takliq talak* is stated on marriage certificate as promises of the husband to treat his wife in well manner.
- iii *Talaq* is a divorce statement pronounced by the husband. There are 4 levels of *talaq* which have different level of law consequences. The 1st *talaq* means the 1st statement of *talaq*, the 2nd *talaq* is the second statement, and so on. When the 1st *talaq* and the 2nd one are pronounced and the couple decides to reconcile, they can immediately reconcile and cancel the divorce. Meanwhile, for the 3rd *talaq*, once it is pronounced and the couple decides to reconcile, the couple cannot immediately does so; instead, one of the couple has to marry another person first,

and then they have to wait until the new couple divorces; henceforth, the old couple can reunite if they want to do so. In case of the 4th *talaq*, the highest level, once it is pronounced, the couple will never be allowed to reunite (even if one of the couple has already married another person). Therefore, in Islam a man or a husband has to be very careful and think wisely before pronouncing a *talaq*.

- iv Hereafter called KHI
- v The Law No. 23 year 2004 about Domestic Violence came into force on September 14, 2004 which consists of 10 chapters and 56 Sections.
- vi according to the Religious High Court of Lampung Province data in 2009.
- vii P A is the District Religious Court
- viii The data were collected by DAMAR
- ix Based on data owned by DAMAR

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