

## Divorce in Indonesia: A Normative Legal Study on Preventive Mechanisms During the Pandemic

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### Abstract

This study analyzes the impact of the COVID-19 pandemic on the rising number of divorce cases in Indonesia, with a focus on evaluating the normative framework for divorce prevention and its associated challenges. According to Law Number 1 of 1974, marriage is intended to establish a happy and enduring family. However, the pandemic has triggered a surge in divorces due to economic pressure, lack of communication, role imbalance, domestic violence, and early marriage. This study adopts a normative legal approach, analyzing legal instruments such as Law No. 1 of 1974, Government Regulation No. 9 of 1975, Law No. 7 of 1989, and Supreme Court Regulation No. 1 of 2016 on Mediation. Secondary data are qualitatively analyzed using legal interpretation to examine how preventive efforts are implemented by judges and mediators in the Religious Courts. The findings reveal that although a normative framework for divorce prevention exists, its implementation faces significant challenges during the pandemic, including limited access to legal institutions and the need to adapt mediation procedures. The study concludes that more comprehensive preventive strategies are required—integrating social support, psychological assistance, and pre-marital education—to safeguard family integrity in times of crisis.

**Keywords:** *Marriage, Divorce, COVID-19 Pandemic, Prevention, Mediation.*

### Introduction

Based on Article 1 of Law Number 1 of 1974, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of establishing a happy and everlasting family founded upon the belief in the One and Only God (M. Hasan et al., 2022). However, in reality, not all couples succeed in achieving the ideal of a happy and enduring family. This failure often results in divorce, whether due to the death of a spouse, a *talak* divorce (repudiation), or a court-ordered dissolution (Hidayat, 2022). Within the context of marriage, divorce represents a crucial issue, as marriage is the foundation for building a family, which in turn constitutes a central pillar of society (Maiaweng, 2017). If this pillar collapses or erodes, it can significantly contribute to the deterioration of society; conversely, a strong marital foundation promotes societal well-being.

The increase in divorce cases reflects growing dissatisfaction among wives with their marital lives (Apriliani et al., 2021). This dissatisfaction is often rooted in husbands' negative behavior, including failure to fulfill their roles and responsibilities, and acts of violence, which frequently lead to domestic violence (DV) (Chaliddin, 2021). Such circumstances could potentially be avoided if the husband, as the head of the family, fulfills his duties appropriately, presents himself as a dignified and exemplary figure, and offers love and protection to his wife. In such a condition, the wife would likely feel safe and secure in the household and be less inclined to seek divorce.

In late 2019 and early 2020, Indonesia—like many other nations—was struck by the emergence of a novel virus that began infecting people worldwide (S. Hasan et al., 2021). According to the World Health Organization (WHO), the coronavirus is a pathogen that attacks the

respiratory system and causes an infection known as COVID-19 (Lugito et al., 2021). This virus spreads rapidly and can affect anyone, leading to symptoms ranging from mild respiratory issues to severe pneumonia, and even death (Xie, 2020). According to the Indonesian Ministry of Health, the first COVID-19 case was reported in Wuhan on December 30, 2019, when the Wuhan Municipal Health Committee issued an "urgent notice regarding the treatment of pneumonia with an unknown cause." (Widjaja et al., 2024).

The rise in divorce cases during the COVID-19 pandemic reflects the complexity of issues that extend beyond legal dimensions, encompassing social, psychological, and economic factors (Sasmita et al., 2021). Mobility restrictions and prolonged time spent at home, rather than strengthening family bonds, often exacerbated conflicts due to emotional unpreparedness and unhealthy communication (Klein, 2021). This was further compounded by economic pressure, such as layoffs and salary cuts, which placed significant burdens on families, especially among the lower-middle class (Manna et al., 2021) (Mustaqim et al., 2021). In such conditions, women were frequently the most vulnerable group—carrying the dual burden of being both caregivers and supplementary income earners, and experiencing more frequent family conflict due to gender role disparities. Data show that the majority of divorce filings were initiated by wives, indicating that divorce issues are closely related to power dynamics within the family, economic distribution, and the state's social protection policies (Khadijah et al., 2019).

It is important to recognize that divorce is not merely a private matter between spouses; it also profoundly affects children and future generations (Adristi, 2021). Children from divorced families are more vulnerable to psychological trauma, developmental challenges, and school dropout risks (Nasir, 2012). Therefore, this study becomes highly relevant in analyzing how divorce prevention can be formulated both normatively and practically—through the involvement of the state, social institutions, and religious organizations. Within the Indonesian legal system, divorce prevention is embedded in the principles of Law Number 1 of 1974 and reinforced by Supreme Court Regulation (PERMA) Number 1 of 2016 concerning mediation procedures in court.

Several previous studies have examined the phenomenon of rising divorce rates during the COVID-19 pandemic from legal, social, and psychological perspectives. Muh Asad Imaduddin (2021), in his article *A Legal Review of Divorce during the COVID-19 Pandemic*, explains that the increase in divorce cases at the Religious Court of Raba Bima was driven by factors such as economic hardship, infidelity, domestic violence, and persistent conflict (Muh Asad, 2021). This study employed a juridical-empirical approach and emphasized how the pandemic exacerbated household tensions, particularly due to income loss and gender inequality. Meanwhile, Andriyani (2020), in her work *Divorce during the COVID-19 Pandemic: A Fiqh and Tarjih Perspective*, argued that women experienced compounded burdens during the pandemic—both domestically and publicly—which led them to seek divorce (Andriyani, n.d.). Her research highlighted the importance of a multidisciplinary approach to viewing divorce as a systemic consequence of psychosocial stress during the crisis.

Although both studies elaborated on the causes of divorce and the surrounding social conditions, there is a lack of specific research analyzing how legal regulations and divorce case resolution procedures were influenced during the pandemic by government policies such as social restrictions, limited access to legal institutions, and changes in mediation and court procedures within Religious Courts. This study seeks to fill that gap by critically examining the dynamics of divorce handling during the pandemic and evaluating how far the preventive and mediative efforts stipulated in PERMA No. 1 of 2016 can be optimally implemented in crisis situations such as COVID-19.

## Research Methodology

This study adopts a normative legal research approach. Normative legal research is conducted by examining various laws and regulations, legal theories, and legal doctrines relevant to the issue under investigation (Raco, 2010, p. 324). The primary focus of this research is to analyze legal norms related to divorce and its prevention, as well as their relevance within the context of the COVID-19 pandemic in Indonesia.

The research employs a statute approach to examine legal instruments such as Law Number 1 of 1974 on Marriage and Supreme Court Regulation Number 1 of 2016 on Mediation, alongside a conceptual approach to construct legal arguments based on relevant legal concepts. The main data source in this study is secondary data, including primary, secondary, and tertiary legal materials collected through library research (Hosnah et al., 2021, p. 326).

The collected data are analyzed qualitatively using legal interpretation methods. This analysis involves the description and interpretation of applicable legal norms, followed by an evaluation of their relevance and implications for the increasing trend of divorce during the COVID-19 pandemic. The ultimate aim is to formulate normative and applicable strategies for divorce prevention. The conclusions are drawn deductively, beginning with general legal principles and progressing toward more specific recommendations regarding divorce prevention efforts in Indonesia during the pandemic.

## Theoretical Framework

### Marriage

Marriage is a deeply respected institution, as it represents a physical and spiritual bond between a man and a woman, with the purpose of building a happy and lasting family (Pratiwi et al., 2024). This ideal of family life is a common aspiration for many. Age is a crucial factor in determining the success of a marriage. When couples face marital problems, they often find themselves unable to resolve them, and thus view divorce as the quickest solution. One of the most frequent causes of domestic conflict is economic hardship. In today's context, economic problems are complex, as living costs continue to rise while incomes remain insufficient. This situation often triggers divorce within households (Manna et al., 2021) (Sasmita et al., 2021).

Early marriage refers to marriage involving adolescents under the legal age—typically between 13 and 19 years—who are not yet considered physically or psychologically mature (Dariyo et al., 2020). Therefore, the government regulates the legal age for marriage. Article 7 Paragraph 1 of the Marriage Law states that marriage is only permitted if the man has reached the age of 19 and the woman has reached the age of 16 (Rofiah, 2018). Despite this legal provision, early marriage remains prevalent, particularly in regions with low education levels. Early marriage is considered to hinder a child's biological and psychological development and is seen as a violation of children's rights, as it forces them into adulthood prematurely (Zahri et al., 2022). The state has guaranteed children's rights in the 1945 Constitution of Indonesia, which states that every child has the right to live, grow, and develop (Azizi et al., 2020).

### Divorce

The ideal goal of a household is to build a happy family. However, many families fail to maintain household harmony. In a marriage, both husband and wife are expected to be fully prepared. Marriage is not only about happiness but also about responsibility. Many individuals choose to resolve household conflicts through divorce. The consequences of divorce extend beyond the couple and affect their extended families.

According to the *Kamus Besar Bahasa Indonesia* (Great Dictionary of the Indonesian Language), “divorce” is defined as the separation or termination of a marital relationship. It can

also be interpreted as a conflict or incompatibility that cannot be reconciled. Divorce is a life event associated with high levels of stress for all family members. Under Indonesian law, divorce must be processed legally through the courts, as stipulated in Law No. 7 of 1989 concerning the Religious Courts. Various factors may lead couples to divorce, including early age at marriage, economic issues, infertility, and domestic violence (Khadijah et al., 2019).

The term for divorce initiated by the wife in Arabic is *al-~~khulu~~*, meaning “to remove a garment.” This term is used when a woman requests her husband to release her from the marriage bond (Lindbekk, 2020). To reduce divorce rates, the government has implemented preventive measures, including age restrictions on marriage. The legal minimum age is 19 for both men and women; however, the National Population and Family Planning Agency (BKKBN) recommends an ideal marriage age of 21 for women and 25 for men (Haeratus & Fatahullah, 2022). At this age, a woman’s reproductive system is considered mature and ready for pregnancy, and it is expected that the couple is financially independent and economically prepared for marriage (Widyastuti, 2022).

### **Divorce Prevention in Indonesian Law**

The government has made various efforts to curb the rising divorce rate, including setting age restrictions for marriage. Divorce prevention is also regulated under Article 16 of Government Regulation No. 9 of 1975, which implements Law No. 1 of 1974. This provision requires the court to examine the grounds for divorce and determine that reconciliation is no longer possible (Dariyo et al., 2020). Judges in religious courts carry the noble duty of preserving *sakinah* (peaceful and harmonious) families.

During court proceedings, judges are obliged to seek reconciliation between disputing parties through deliberation. This effort is mandated by Articles 65 and 82 of Law No. 7 of 1989 on the Religious Courts (Hanifah, 2020). Mediation, as a form of dispute resolution through deliberation with the assistance of a neutral third party (mediator), is governed by Supreme Court Regulation (PERMA) No. 2 of 2003 and later updated by PERMA No. 1 of 2016 concerning Court Mediation Procedures (Saragih, 2024). The purpose of mediation is to help parties find mutually satisfactory solutions and reach agreements.

Divorce prevention also includes suppressing personal desires, instilling the value of marital harmony, avoiding the magnification of disputes, and teaching children to have realistic and shared expectations of marriage. The legal basis for divorce procedures in Indonesia is established by Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975. According to these laws, either the husband or wife may file for divorce in a religious court. Article 38 of Law No. 1 of 1974 states that marriage may be dissolved by death, divorce, or court decision. Article 36 Paragraph 1 stipulates that divorce may only occur in court after attempts at reconciliation have failed (M. Hasan et al., 2022). From a religious perspective, particularly in Islam, divorce is not forbidden but is strongly discouraged.

Maintaining balance in a marital relationship is essential—not only in terms of material support, but also in emotional care, understanding, sacrifice, and a fair division of household responsibilities. Effective strategies for preventing divorce include managing expectations within marriage, prioritizing the marital relationship over extended kinship ties, avoiding the escalation of conflict, and fostering shared values about marriage among children (Abidin, 2019).

## **Result and Discussion**

### **The Phenomenon of Rising Divorce Rates During the COVID-19 Pandemic**

The impact of the COVID-19 pandemic has extended beyond the economic sector, significantly affecting households and contributing to a notable rise in divorce cases. Surveys indicate that approximately 31% of couples reported that the pandemic triggered domestic breakdowns. The highest divorce rates during the pandemic were recorded on the island of Java. Data from the Supreme Court of Indonesia show a sharp increase in divorce cases, from 20,000 in April–May 2020 to 57,000 in June–July 2020 (Puspitasari & Gayatri, 2022).

The primary causes of divorce during the COVID-19 pandemic were disputes or quarrels and financial problems (Puspitasari & Gayatri, 2022). As a non-natural disaster, COVID-19 had health and economic repercussions, prompting the government to implement large-scale social restrictions and a “new normal” policy, which led to mass layoffs (A. Wijayanti et al., 2022). This situation significantly impacted the Indonesian economy, with the national economic growth rate declining to minus 4.19%, according to Statistics Indonesia (BPS) (Golar et al., 2020). The resulting hardships contributed to heightened conflict within households. Common reasons for divorce during the pandemic included economic pressures, imbalance in daily household responsibilities, domestic violence, prolonged periods of forced cohabitation, and challenges related to the age and maturity of couples in managing family life (Rozak et al., 2021).

### **Divorce Prevention: Normative Framework and Challenges During the COVID-19 Pandemic**

Indonesia's legal system governing marriage mandates various measures for the prevention of divorce, as articulated in several regulations. According to Article 16 of Government Regulation Number 9 of 1975, which implements Law Number 1 of 1974 on Marriage, the court is required to conduct hearings if the conditions specified in Article 19 are met and reconciliation between the spouses is deemed impossible (Rifqi, 2021). This aligns with Islamic principles that emphasize the prevention of harm and the promotion of well-being (*maslahah*), underlining the noble responsibility of religious court judges in rebuilding harmonious family relationships (Rifqi, 2021).

In divorce cases, judges are obligated to confirm the grounds for divorce and adhere to the fundamental principles and norms of prevailing legislation. Central to this preventive effort is the judge's duty to pursue reconciliation. During court proceedings, judges are required to encourage disputing parties to engage in deliberation aimed at achieving peace, as mandated in Articles 65 and 82 of Law Number 7 of 1989 on Religious Courts (Riyanto et al., 2018). A crucial instrument in this context is mediation, as outlined in Supreme Court Regulation Number 2 of 2003 (later revised by Supreme Court Regulation Number 1 of 2016) (Taufik, 2021) (Hanifah, 2020). Mediation serves as a means of dispute resolution through dialogue, facilitated by a neutral mediator who assists the parties in finding mutually satisfactory solutions (Haeratus & Fatahullah, 2022). The philosophical foundation of divorce prevention lies in the understanding that marriage, as defined in Article 1 of Law Number 1 of 1974, is a physical and spiritual bond between a man and a woman, intended to form a happy and lasting family based on the belief in God Almighty. Thus, it encompasses both physical and spiritual elements that are deeply rooted in religious teachings.

Despite the strong normative framework for divorce prevention, its implementation faced significant challenges during the COVID-19 pandemic. The pandemic's broad impact on households is reflected in the dramatic rise in divorce cases. As mentioned, surveys showed that approximately 31% of couples experienced domestic rifts due to the pandemic, with the number of cases jumping from 20,000 in April–May 2020 to 57,000 in June–July 2020, particularly in Java (U. T. Wijayanti, 2021) (Putry & Fathinnuddin, 2022).

The main contributing factors to this increase included disputes and economic hardship. As a non-natural disaster, the pandemic affected both health and economic stability, triggering policies of large-scale social restriction and widespread layoffs. The resulting economic stress—highlighted by Indonesia's negative growth rate of -4.19%—became a primary catalyst for household conflicts (U. T. Wijayanti, 2021). Other common causes included the economic burden,



role imbalances in daily life, domestic violence, excessive time spent together, and the immaturity of couples (Endang Kusniati, 2021).

These conditions posed major obstacles to the implementation of legal mechanisms for divorce prevention. Limitations on mobility and access to legal institutions, along with heightened psychological and economic stress on couples, significantly hindered the mediation process and reconciliation efforts mandated by law. Therefore, specific adaptations and strategies are needed to ensure the effectiveness of divorce prevention initiatives amid crises such as the COVID-19 pandemic.

## Conclusion

The significant increase in divorce cases during the COVID-19 pandemic in Indonesia reflects the complexity of issues that go beyond legal dimensions. This surge was primarily triggered by economic pressure due to layoffs and income reduction, further exacerbated by mobility restrictions, emotional unpreparedness, poor communication, gender role imbalances, and the rise in domestic violence (DV) cases. Early-age marriages also contributed to household vulnerability in the face of the crisis.

Normatively, Indonesia's marital legal system has provided a comprehensive framework for divorce prevention, particularly through Law No. 1 of 1974 and mandatory mediation as stipulated in Supreme Court Regulation (PERMA) No. 1 of 2016. Religious Court judges play a central role in promoting reconciliation and restoring harmonious family life (*sakinah*). However, the implementation of these preventive efforts encountered significant challenges during the pandemic, including limited public access to courts and the need to adapt court and mediation procedures, which often had to be conducted online.

The effectiveness of divorce prevention, especially through mediation, during the pandemic largely depends on procedural adaptation and the capacity of judges and mediators to address external pressures experienced by couples. Prevention also requires early inculcation of values such as marital readiness, gentle communication, suppression of personal ego, and the abandonment of ineffective communication habits for the sake of family unity. Therefore, a more comprehensive approach is needed—one that involves not only legal aspects but also social support, psychological intervention, and pre-marital education—to sustain household integrity in times of crisis.

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