

AN ANALYSIS OF LAWSUIT DIVORCE FACTORS AT THE RELIGION COURT OF MEDAN, INDONESIA

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ABSTRACT

Divorce is one thing that must be avoided and needs to be eliminated. The breaking of marriage bond even it is allowed with justified reason in the teachings of Islam, but it is a disgraceful act that is disliked by Allah SWT. The breaking of marriage bond that comes from the wife's side in suing the husband in the court is a phenomenon that becomes a national problem. Lawsuit divorce is a divorce on the part of the wife in favor of the lawsuit to the Court and the divorce is decided in a court decision. there are thirteen factors that caused the wife wants to sue her husband to get a divorce in the Religion Court of Medan. The factor of no responsibility becomes the most dominating factor for the wife in proposing a divorce and the form of no responsibility of husband is in the case of husband who does not give a living, does not care for his wife and family, does not give any protection and affection, and the husband who leaves his wife in a long time and short.

Keywords: Al Quran; divorce; religion court; no responsibility

INTRODUCTION

Family is an important element in nation and state. The motto of a strong family as the pillar of the country becomes the main foundation for the formation of a character nation and upholds high the values of noble moral and religion. Divorce is one thing that must be avoided and needs to be eliminated. The breaking of marriage bond even it is allowed with justified reason in the teachings of Islam, but it is a disgraceful act that is disliked by Allah SWT. The breaking of marriage bond that comes from the wife's side in suing the husband in the court is a phenomenon that becomes a national problem.

The divorce data in North Sumatera in all religion courts of North Sumatera in 2014 are 10,429 cases, 2015 with 10,834 cases, and mid-2016 reaching 6,653 cases. Of the data include a divorce case, in 2014 there are 2025 cases, by 2015 there are 2,372 cases and in 2016 there were 2662 cases. Medan City is in the highest for divorce.

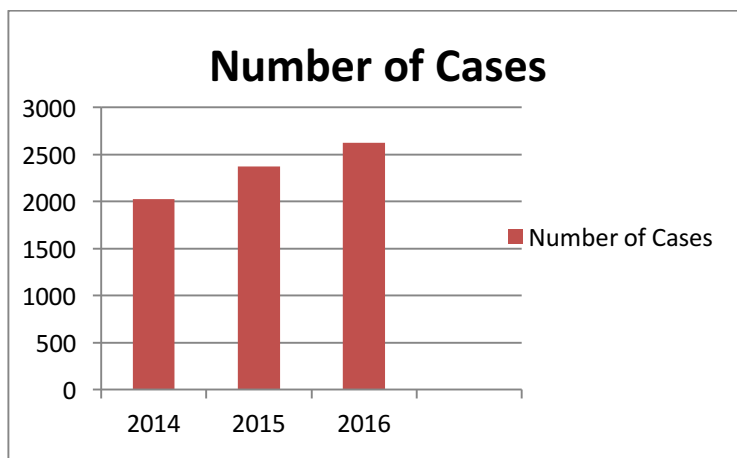


Figure 1

The high rate of divorce in North Sumatera is supposed because of the changing mindset of the community where the progress of women makes more and more wives sue for divorce. Furthermore Harmona Daulay (Sociologist of University of North Sumatra) says in the old normative view, divorce is still considered a deviation but along the time the way of view has changed. He says that there is awareness in women instead of being tortured better to

separate, especially now that many independent women. He considers that women sue for divorce due to the high independence and self-confidence to be able to live alone with the handle of work and support of her extended family.

The phenomenon occurs in the Religions Court of Medan is that the divorce data increases every year. The news revealed through the year 2016 which handles about sixty percent (60%) of divorce cases dominated by wife sued her husband for divorce in which this rate continues to increase every year. In 2012 there were 1518 cases of lawsuit divorce, in 2013 reached 1,975 cases. Moreover Jumri reveals the data about the lawsuit divorce from 2014 as many as 2,025 cases, in 2015 reached 2,372 cases, in 2016 increased to 2,527 cases that the case was decided in the Religions Court of Medan.

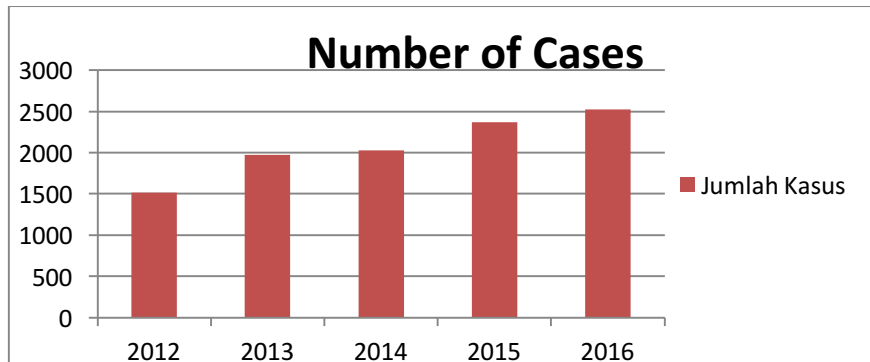


Figure 2

The Officer of Religions Court Class 1A Drs. Aidil conveys to *Sumut Pos* newspaper in 2014 that there were 1,960 women in Medan sued for lawsuit divorce and the news followed by 1660 officially divorced women and 300 lawsuits were still in trial process by 2015. Although various mediation efforts had been made by the Religion Court of Medan but only around 1 percent (1%) was successfully mediated. The handed divorce cases mostly are triggered by economic problems. Medan City as a dynamic city continues to grow and must also accompany it with a variety of life needs which are increasingly complex. The demands in meeting the economic needs are getting more either the needs of everyday children needs or the needs of the wife. The divorce cases which are decided in the Religions Court are from a diverse family of the community with no exception to the wife who sued the husband of low education level and also it happens to be among the high level of education, as well as to the economically well-established families of various tribes. The number of young couples who are divorced is not ready economically, mentally, psychologically and socially.

The fulfillment of obligations and the rights of each family member is often not fulfilled so that the trigger also be the cause of the breaking of the marriage contract, and if it happens the purpose of a sacred marriage is not achieved and even has a negative impact on the relationship of both parties, especially against the children and other family members. The High Religions Court of Medan records the divorce in the North Sumatra province continues to increase every year, which is dominated by lawsuit divorce. The breaking of marriage bonds can be performed from the husband and can also be adjudicated his case in the court at the request of his wife by paying a penalty as a redeemer himself and as a symbol willing not to be endowed and break up the marriage relationship with her husband.

Another reason for lawsuit divorce is based on the trial result is leaving the responsibility because the husband is involved in drugs that led to imprisonment as well as the occurrence of adultery and lazy to work. In more concrete term, the causes of lawsuit divorce include leaving the obligation or economy is at 570 cases, the third party interference is 205 cases, incompetence or inharmonic is 358 cases, physical violence against wife is 402 cases, mental violence is 92 cases, biological defects is 2 cases, moral crisis is 105 cases (moral crisis such as drugs involved 86, jealousy is 16 cases, polygamy is 3 cases). Many irresponsible husbands made the wives in Medan City performed the divorce.

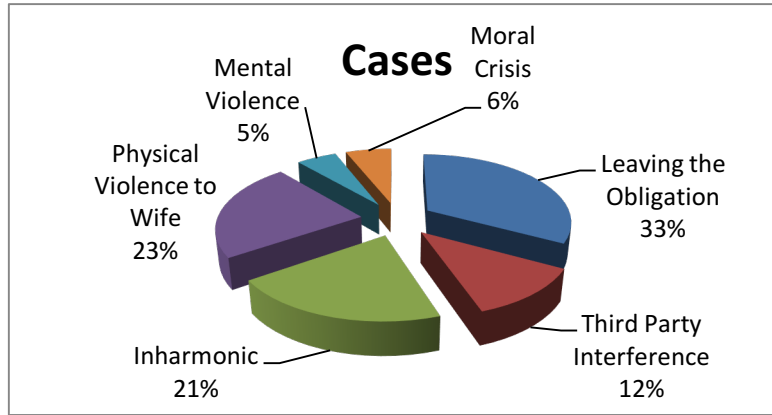


Figure 3

The data indicates that the divorce cases in Medan city are mostly due to husband leaving the obligation to support the family so that the wife sues the husband which is grouped on the economic factor. Furthermore, lawsuit divorces are caused by domestic violence in various forms such as physical, mental and economic violence. The research results of *Badan Penelitian dan Pengembangan Provinsi Sumatera Utara* (The research and Development Agency of North Sumatera Province) concluded that in North Sumatera the domestic violence occurred more or less one of two housewife experiences domestic violence which majority triggered by economic factor. Poverty is included of Social Welfare Issues (PMKS). There are 23 cases including PMKS in North Sumatera, as the results, some of them are abandoned child, neglected baby, domestic violence. The Regional Device Work Unit (SKPD) that handles PMKS also does not have a powerful formula and seriousness. As the result, social problems in North Sumatera continue to grow with various dilemmas. (*Harian Global*, July 15, 2010). Poverty, child abuse, and divorce seem to be a vicious circle of problems that are difficult to overcome.

Marriage in Islamic teachings has a noble purpose that is the establishment of a happy and prosperous harmonious family, full of peace of life and compassion. Through marriage is formed a family that becomes a means of worship for the family members either for husband, wife or children. By law the marriage contract which has been pledged has an impact on the fulfillment of the obligation and giving wife's rights by the husband and vice versa.

The breaking of marriage bonds can be performed from the husband and can also be adjudicated his case in court at the request of the wife by paying a penalty as a redeemer himself and as a symbol willing not to be endowed and break up the marriage relationship with her husband. Various social problems arise as the result of divorce such as negligence of children, street children, drop-out children, low education, drugs and the occurrence of other social welfare persons.

This research tries to offer one of the settlement models of the PMKS causes in Medan which focuses on the handling of lawsuit divorce as the root cause of PMKS that is by formulating the prevention model that best suits the condition in Medan city especially and North Sumatera province generally. Thus, all efforts which are undertaken by the Government and non-Government, in the end expected to find a model that is appropriate and aspiration and can adjust to the situation and the development of the era of situational development cases of lawsuit divorce case.

THEORETICAL FRAMEWORK

Definition of Divorce

In *Kamus Besar Bahasa Indonesia*, "Divorce has two meanings, namely: (1) divorce with the meaning of separation, such as divorce, separation (division), (2) divorce with the meaning of *talak*, for example asking for *talak*. Another source states that divorce is the breaking up of a legal marriage before a Judge of the Court under the conditions prescribed by the Law." "Another argument is that divorce is the judge's decision, or the demands of one of the parties in the marriage." "Divorce is giving the *talak* which is to distinguish divorce by lawsuit."

From the above definitions, it can be concluded that divorce is a marriage relationship between husband and wife due to the decision of the Judge or the demands of one of the parties in the marriage and declared in front of the Judge of the Court. The parties who want to divorce sometimes come from the wife that is the wife who wants the

divorce; in this case it is called lawsuit divorce. Lawsuit divorce is a divorce on the part of the wife in favor of the lawsuit to the Court and the divorce is decided in a court decision. In the Marriage Law, it is not set in detail about the ways of divorce, but generally only the breakup of this marriage relationship in two groups as listed in Article 38 as follows:

1) Due to the death of one party.

2) Divorce, in Article 39 Verse 1 mentions that divorce can only be done in front of the court trial, after the Court concerned trying to reconcile both parties.

Reasons for Divorce

To divorce there must be enough reasons, that between husband and wife will not be able to live in harmony as husband and wife, so the Court may consider a decision on the reasons for the divorce. If a wife wants to file a divorce lawsuit then there must be appropriate reasons, which make her wish to divorce, as regulated in Article 39 of Law no. 1 Year 1974 of the Marriage Law and repeated in the same manner as in Article 19 of the Executing Rules as follows:

a. One party commits the adultery or becomes a drunkard, compactor, gambler and others which are hard to cure.

b. One party leaves the other for two years consecutively without the other's permission and for no legitimate reason or for anything other than his or her ability. It means that if a husband or wife leaves the other party for 2 years consecutively without valid permission or because of anything other than his ability such as departure on orders that are not his job, then the other party may file a divorce lawsuit for these reasons.

c. "One party gets a 5-year prison sentence or a more severe punishment after marriage takes place."

d. "One of the parties committed cruelty or severe maltreatment which harms to the other side.

e. "One party gets a disability or illness that results in not being able to perform the obligations as husband or wife.

Procedure for Divorce

In a divorce, there is a procedure or process to file for divorce and the procedures have been set in legislation. "The procedure of divorce before the Court is set in legislation. The divorce procedures before the court hearing is set in laws and regulations (contained in Article 39 of Law No. 1 of 1974) that is the Government Regulation No. 9 1975 14-36. There are two kinds of divorce: *talak* divorce and lawsuit divorce.

a. Talak Divorce

The procedure of a husband who wants to give *talak* to his wife is arranged in P.P. No. 9 /14-18 Article in 1975 that is a husband who has a marriage according to Islam is going to divorce his wife, filed a letter to the Court Religion in the residence, which provides notice that he intends to divorce his wife, accompanied by reasons and ask the Court to be held a trial for the purpose.

b. Lawsuit Divorce

This divorce procedure is set out in P.P. No. 9/1975 Articles 20-36, that a wife who wants to perform a lawsuit divorce includes the steps of the lawsuit divorce filed by the wife or her authority to the Court's jurisdiction covers the defendant.

Factor of Wife Sues the Divorce

The term factor is often interpreted as the cause of something happens. A wife who is going to file a divorce lawsuit certainly has a factor or cause why she was about to file a lawsuit divorce. A wife has factors underlie the events that she experienced so that her desire for divorce has matured and has been steady. According to Sofia Kartika, generally a reason proposed by women in proposing divorce, other than incompatibility reasons is the occurrence of domestic violence, this is due to several factors such as economic factors (household spending money), refused to have sex, husband cheating, jealousy, and want to marry again. The economy condition in the marriage becomes the determinant of the harmony of a marriage. If the economy condition is always fulfilled then it does not matter, but if the household economy is always in shortage whereas the daily necessities must be met then it could be that a

wife is often angry at her husband for their household economy. Over the time both parties may experience disputes within their marriage. As a result, the way taken for this problem is divorce.

Saparinah Sadli reveals that gender knowledge is seen as a factor which influence the women's determining the women's decisions, perceptions and life, shaping her consciousness, her skills and forming a relationship pattern between men and women. Thus the decision to file a divorce is closely related to the growing awareness of rights as a wife as the result of the awareness of gender equality. Therefore, there are three factors caused the wife filed for divorce, namely: (1) Inharmonic, (2) Domestic violence that includes economy factors (household spending money), refusing to have sex, husband cheating, and want to marry again, (3) Gender knowledge.

METODOLOGY

Research Background

This research chose the research location in Religions Court of Medan, and was conducted from January to March 2014.

Types of Research and Approach

The type of research used is descriptive quantitative, that is variables description of a study on a divorce case that occurred in the Religion Court of Medan with the research approach through documents on lawsuit divorce cases In the Religion Court of Medan. This study was conducted on the case happened in the field of lawsuit divorce cases that occurred in the year 2013 as many as 1514 cases in Religion Court of Medan.

Population and Sample

Population is the whole object of the research that has certain characteristics in a study. As for the population of this study is a lawsuit divorce case in 2013 at the Religion Court of Medan from January to December. In this study, it is also needed a sample to meet the effectiveness of the research and can also represent the data achievement and the required research information. Sample is part of the number and characteristics possessed by the population. The samples are taken through the opinions of Gay and Dehl (1996), namely for descriptive research, the sample is taken at least 10% of the population, while if the population is large then the sample is taken at least 20% of the population. Then, from the above description, it can be obtained a sample of 25% of the population that is = 25% of 12 months = 3 month. Thus, the sample of this study is a lawsuit divorce case that occurred from January to March with a total of 415 cases in the Religion Court of Medan.

Data Collection Techniques

The sources of this research data is divided into two parts, namely:

a) Primary Data

Primary data is the main data obtained by the writer directly from the field. Primary data is the main source of data presentation and is descriptive quantitative. Then the primary data is the Documentation of Lawsuit Divorce Case in the year 2013 with the number of cases 415 that occurred in the Religions Court of Medan.

b) Secondary Data

Secondary data is the source of supporting data which is useful to complement the primary data. Secondary data include writings that relate to the problem of the wife's factor who sued for divorce, and books about divorce. In collecting the data, there are tools in collecting such data, such as document studies. The document study is documentation on a government or a person against a topic or problem. Through this study, the writer can search through documentation data of a lawsuit divorce case in 2013 at the Religions Court of Medan, especially the writer only sees what factors make a wife wants to get divorce which will used as the primary data source, as well as the related writings on issues of the wife-side factors in suing the divorce, and the source of the book on divorce that will be the secondary data source.

Data Analysis Techniques

After the data obtained from the data collection tool above, then data processing will be conducted in a descriptive analysis of the data. The data are processed in the form of descriptive data and conducting the tabulation on the data. Then, the tabulated data will be presented and described. Furthermore, the data deduction process is conducted that is concluding the data obtained by whole. Thus this research is deductive because it departs from the

data which are general in nature to formulate specific conclusions.

Writing Method

The writer used a method of writing which is guided by the A Guidebook Writing of Thesis and scientific writings published by Syariah Faculty of IAIN of North Sumatra.

DISCUSSION

Data Description

In the case of divorce in the Religion Court of Medan, there are a number of higher lawsuit divorces than *talak* divorces. This indicates that the initiative or desire to divorce is on the woman's side. The problem is why it is the wife who more often filed for divorce to the Religions Court of Medan. In the data description, it is found the factors behind the wife sued for divorce from her husband. Here are the factors behind the wife sued the divorce.

Table 1 Factors of Wife Sued Divorce

NO	Factors of Wife Sued Divorce	January	February	March	Total	Percentage
1	Mental cruelty	7	9	7	23	5,54 %
2	Economy	4	4	1	9	2,16%
3	Inharmonic	19	16	19	54	13,01 %
4	Sentenced	1	0	0	1	0,24 %
5	Irresponsibility	65	56	56	177	42,65 %
6	Moral Crisis	8	4	10	22	5,30 %
7	Unhealthy Polygamy	5	4	2	11	2,65 %
8	Jealousy	7	0	2	9	2,16 %
9	Third Party Interference	19	13	27	59	14,21 %
10	Apostasy	3	2	1	6	1,44%
11	Biological Disabilities	3	1	0	4	0,96 %
12	Drugs	0	0	2	2	0,48 %
13	Physical Cruelty	22	7	9	38	9,15%
	Total	163	116	136	415	100 %

Source: Documentation of Lawsuit Divorce Cases in
January to March in 2013 at the Religion Court of Medan

Factors of Wife Sued Divorce

Based on the above table, it is obtained a picture of the 13 dominant factors that cause the wife filed a divorce to the Religion Court of Medan. Among these factors, the most dominant factor is irresponsibility by the husband with the calculation reached 177 cases or 42.65% of 415 divorce cases in January to March.

DISCUSSION

A. Dominant Factor of the Wife's Party Sues Divorce

Among the factors above, there is a factor that dominates the wife in suing the divorce is that there is no husband's responsibility. A wife sued for divorce her husband with the factor that the husband has no responsibility to his family. Thus, wives and families become being neglected. This factor becomes a factor which dominates the wife in filing a divorce to the Religion Court of Medan. Husbands have an obligation to provide for their wives both by birth and mind. That livelihood must be implemented and become debt if it is not implemented with intentionally. The birth livelihood is in the form of cost and reasonable living expenses in the form of food, clothing, board, etc., while the mind livelihood is in the form of nature and a good attitude to the wife and not to hurt the feelings of the wife, so if husband does not provide a living so he status as a person who has a debt to his wife and the debt becomes free if it is released by the concerned person.

Based on the research results conducted by Swanri in 2001 in a thesis entitled *Cerai Gugat di Pengadilan Agama Klaten (Analisis Terhadap Perceraian karena Faktor Suami Meninggalkan Tanggungjawab, Tahun 1997-1999)* obtained the data that among the factors causing the largest lawsuit divorce is due to the factor of a husband abandons his responsibility, which ranks first from the existed factors. According to Swanri, this indicates problems faced by wives in marriage relate to those rights that should have been received during the marriage, but the husband ignore or do not give the rights to the wife.

The term of no responsibility is not found in Law No. 1 of 1974 concerning marriage, Compilation of Islamic Law, and neither in PP. 9 of 1975.

Due to there is no term, this 'responsibility' has the meaning of 'disregarding' the family as well 'abandoning' the family, we can equate the terms with 'no responsibility' with the term of 'negligence'. The term 'negligence' is used in Law no. 23 of 2004 on the Elimination of Domestic Violence which stated that "Everyone is prohibited to neglect people within the scope of his household, whereas according to the law which applies to him or because of the consent or agreement he is obliged to give a living, care, or maintenance to that person."

In the above case the dominating factor is the absence factor of the husband's responsibility in the case of husband does not provide a living, not giving care for wife and family, not providing protection and compassion, and husbands who leave their wives for long or short periods of time. On These factors, the husband and wife experience disputes and inner quarrels in their marriage so that the reasons for disputes and quarrels between them become the reasons for the wife and enough to be the basis for sue the divorce, because of obtaining the explanation through the legal content on Compilation of Islamic Law in Article 116 letter f and Government Regulation no. 9 of 1975 on Article 19 Letter f, which states that, "Between husband and wife who continuously dispute and quarrels and no hope of living in harmony again in the household".

CONCLUSION

From the research that has been studied, it can be concluded that: there are thirteen factors that caused the wife wants to sue her husband to get a divorce in the Religion Court of Medan, namely: (1) there is no husband's responsibility, (2) the third party interference, (3) there is no harmony in the household, (4) physical cruelty, (5) mental cruelty, (6) moral crisis, (7) unhealthy polygamy, (8) jealousy, (9) economy, (10) apostate, (11) biological disability, (12) drugs, (13) sentenced. The factor of no responsibility becomes the most dominating factor for the wife in proposing a divorce and the form of no responsibility of husband is in the case of husband who does not give a living, does not care for his wife and family, does not give any protection and affection, and the husband who leaves his wife in a long time and short. Thus, the factor of no husband responsibility becomes the most dominant factor of the whole factors of the wife in suing the divorce in the Religion Court of Medan with the reasons that there have been disputes and quarrels within the household.

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