

CHAPTER IV

THE FACTOR CAUSES DIVORCE IN CIAMIS RELIGIOUS COURT

A. Divorce Cases in Ciamis Religious Court

Divorce cases in terms of divorce by petition and divorce by *talak* in Ciamis Religious Court in the period from 2013 until 2015 has received 14.590 cases, with divorce by petition was 9.217 cases or 63.17% and divorce by *talak* was 5.373 cases or 36.83%. The writer takes the data from case statistic in the annual report of Ciamis Religious Court. The details of the case as follows:

1. In 2013, the number of divorce by petition was 2.920 cases and divorce by *talak* was 1.910 cases so that the number of cases in 2013 was 4.830 cases or 33.11%
2. In 2014, the number of divorce by petition was 3.064 cases and divorce by *talak* was 1.741 cases so that the number of cases in 2014 was 4.805 cases or 32.93%
3. In 2015, the number of divorce by petition was 3.233 cases and divorce by *talak* was 1.722 cases so that the number of cases in 2015 was 4.955 cases or 33.96%

Table 1. Divorce cases in Ciamis Religious Court

No	Period	Divorce by Petition	Divorce by <i>Talak</i>	Total Case	Percentage
1	2013	2.920	1.910	4.830	33.11%
2	2014	3.064	1.741	4.805	32.93%
3	2015	3.233	1.722	4.955	33.96%
TOTAL				14.590	100%

Source: Statistic of Ciamis Religious Court

B. Background of the Plaintiff and Defendant

The background of the plaintiff and the defendant in the Ciamis Religious Court most of them are already aware of the law. In terms of professions, most of them are housewives, there are also civil servants. The education status are mostly a high school graduate, but there are also who have reached the degree of bachelor. Meanwhile, the economic status varies on the job or profession.

C. The Factors Causes Divorce in Ciamis Religious Court

Because the purpose of marriage is to create a happy and everlasting family, the Marriage Law in Indonesia contains the principle to complicate the divorce. In addition with the existence of the rules governing that divorce can only be done in front of trial, after the Court in question tried and unsuccessful reconciling the husband and wife. There is also a provision governing that divorce can only be done if there are reasons or factors that allow for divorce.

From divorce cases in the Ciamis Religious Court, it is known that the cause of divorce is economic factors, unhealthy polygamy, irresponsibility, forced marriage, disharmony, interference of third parties, moral crisis, physical cruelty, mental cruelty, jealousy, punished, biological defects and underage married.

In Article 19 (a) Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage mentioned the reasons for divorce among others:

1. One of the parties commits adultery or become drunks, compactor, gamblers and other refractory;

2. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without valid reason or because of other things beyond their ability;
3. One of the parties gets prison punishment for 5 (five) years or a more severe punishment after the marriage;
4. One of the parties commits cruelty or persecution that harm to the other party;
5. One of the parties gets disability or illness causes are unable to perform his responsibility as a husband/wife;
6. Between husband and wife there is continuous disputes and quarrels, and there is no hope to live in harmony again in the household.

Article 116 Islamic Law Compilation added two more reasons are: the husband violates the *taklik* of divorce and conversion of religion or apostasy that cause disharmony in the household.

The divorce that occurred among teachers as Civil Servant in 2013 in Ciamis Religious Court caused by several factors, among others:

1. Leave Obligation
2. Moral
3. Physical Violence
4. Continuous Dispute
5. Convicted

The divorce that occurred among teachers as Civil Servant in 2014 in Ciamis Religious Court caused by several factors, among others:

1. Leave Obligation
2. Moral
3. Physical Violence
4. Continuous Dispute
5. Convicted

The divorce that occurred among teachers as Civil Servant in 2015 in Ciamis Religious Court caused by several factors, among others:

1. Leave Obligation
2. Moral
3. Physical Violence
4. Continuous Dispute
5. Convicted

Table 2. The factors causes divorce on 2013 until 2015 in Ciamis Religious Court

No	Period	Total Cases			Teacher (Civil Servant)					
		Divorce by <i>Talak</i>	Divorce by Petition	Total	Divorce by <i>Talak</i>	Divorce by Petition	Total	Factor		
								Leave Obligation	Continuous Dispute	Moral
1	2013	1.910	2.920	4.830	231	758	989	724	240	25
2	2014	1.741	3.064	4.805	183	511	694	646	44	4
3	2015	1.722	3.233	4.955	763	925	1.688	1.385	239	64
TOTAL		5.373	9.217	14.590	1.177	2.194	3.371	2.755	523	93

Source: Statistic of Ciamis Religious Court

D. Analysis on the Factors Cause Divorce

The divorce that occurred in Ciamis Religious Court generally caused by the factors of:

1. Leave Obligation

a. Economic-Financial

Economic factor is one of the causes of disputes and quarrels between husband and wife. Economics is one of the important factors for the establishment of the family and it is a supporting factor for the success or failure in the family. Even if the economy is not everything, not enough economy will bring a lot of problems.

The obligation to provide a living is a religious orders determined in the Qur'an surah Ath-Thalaq verse 7:

لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ ۗ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ
 اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَاءً آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ﴿٧﴾

The meaning: “Let him who hath abundance spend of his abundance, and he whose provision is measured, let him spend of that which Allah hath given him. Allah asketh naught of any soul save that which He hath given it. Allah will vouchsafe, after hardship, ease.”

In Article 80 paragraph 2 and 4 of Islamic Law Compilation stated that the obligation of the husband to the wife is: the husband shall protect

his wife and provide every necessity of home life according to his ability.

And in accordance with the husband's income to bear:

- 1) Living, *kiswah* and residence for wife
- 2) Household expenses, cost of care and treatment for the wife and children
- 3) Cost of education for children

Based on the article above, the husband is obliged to provide income/living cost to the wife and children. Not only economic factors can lead to divorce, wife demands can also lead to a divorce. The divorce caused of economic factor in Ciamis Religious Court during 2013 until 2015 the number is 6,081 cases or 55.7%.

b. Forced Marriage

Forced marriage is a marriage in which one or more of the parties is married without his or her consent or against his or her will. A forced marriage differs from an arranged marriage, in which both parties presumably consent to the assistance of their parents or a third party such as a matchmaker in choosing a spouse. There is often a continuum of coercion used to compel a marriage, ranging from outright physical violence to subtle psychological pressure. Forced marriage is still practiced in various cultures across the world, particularly in parts of South Asia and Africa. Some scholars object to use of the term "forced marriage" because it invokes the consensual legitimating language of marriage (such as husband/wife) for an experience that is precisely the

opposite. A variety of alternative terms exist, including "forced conjugal association" and "conjugal slavery".

There are numerous factors which can lead to a culture which accepts and encourages forced marriages. Reasons for performing forced marriages include: strengthening extended family links; controlling unwanted behavior and sexuality; preventing 'unsuitable' relationships; protecting and abiding by perceived cultural or religious norms; keeping the wealth in the extended family; dealing with the consequences of pregnancy out of wedlock; considering the contracting of a marriage as the duty of the parents; obtaining a guarantee against poverty; aiding immigration.

c. Irresponsibility

In the household, both husband and wife have the responsibility. Each has the obligation, the husband is the head of the family and the wife is a housewife. The position of the husband as head of the family is obliged to provide necessities of life for his wife and children. The husband's obligation is regulated in Article 80 Islamic Law Compilation, one of the duty is described in paragraph (4) a, namely: the husband to bear a living income, *kiswah* and residence for the wife. A wife can file the divorce lawsuit to the Religious Court if the husband neglects the obligations to provide necessities of life for his wife and children. The other obligation of the husband is as a supervisor to his wife and

household, obliged to protect his wife and children and provide necessities of life and so on. Article 34 Paragraph (3) of Law No. 1 of 1974 on Marriage that explains that if the husband or wife neglects the obligation, each can file a lawsuit to the Religious Court.

2. Continuous Dispute

a. Disharmony

Disharmony in the household is one of the reasons for a wife to file a lawsuit to the Ciamis Religious Court. Disharmony in the household leads to continuous disputes that will end in the Court. This is due to the bad attitudes and behavior of the husband, like husband are often being rude to his wife, the husband rarely come home, the husband cannot stand alone (always depends on parents) and the husband take care of the family more than his wife. The number of the divorce caused because of disharmony in Ciamis Religious Court during 2013 until 2015 is 28 cases or 0.25%.

b. Third Party Interference (Cheating)

Cheating is a common problem in many relationships. When one partner discovers that the other is cheating, there are heart-wrenching emotional effects. Unfortunately, cheating cannot always simply be defined as having sex with someone outside of your relationship. Cheating comes in a variety of shapes and forms, but they are all equally devastating. Cheating can be classified into:

1) Physical Cheating

Physical cheating is the act of being sexually intimate with someone other than your spouse or significant other. It is one of the most common forms of cheating. Although physical cheating is common among men and women, it seems to affect men and women in different ways. Men view physical cheating as emasculating and a form of physical rejection. Women, on the other hand, may be more likely to see beyond the physical indiscretion if they perceive that emotions were not involved. Emotional cheating may include physical intimacy but not necessarily so.

2) Emotional Cheating

Emotional cheating may begin as an innocent friendship. Eventually, an emotional cheater finds himself intimately confiding in the person, sharing thoughts, dreams and an emotional closeness that would normally be reserved for his mate. In some ways, emotional cheating is more crippling to a relationship than physical cheating. With physical cheating, the cheater may still feel emotionally connected to his partner and may only be seeking to fulfill a sexual fantasy. With emotional cheating, however, the cheater's heart may no longer be in the relationship.

3) Cyber Cheating

With the popularity of the Internet, cyber cheating is becoming a more common problem among couples. Cyber cheating can come in a variety of forms. Cyber cheating includes Internet

pornography, online dating and flirting with other people on social networking sites. Cyber cheating is harder to catch than other forms of cheating. It requires the couple to have access to one another's computer passwords and to pay close attention to conversations each person is having on the Internet.

3. Moral

a. Unhealthy/Unfair Polygamy

A Muslim is allowed to marry more than one woman, but this has a requirement that is an obligation to do justice. Actually it looks easy, but in the practice it requires energy, time, material and also knowledge. In Surah An-Nisa verse 129 says that a husband must be able to do justice to all his wives, and say that if a husband cannot do justice to his wives later, it is best not to do polygamy.

b. Moral Crisis

This moral crisis is related to the behavior of the husband who treats his wife and family improperly. Wife was treated improperly as a wife, like a husband often snapped and spoke harshly to his wife. It is also related to the husband's on religious obedience. Husband did not obey the order of religion. Husband became a drunkard and gambler is the reason that often used as reason to divorce. Drunk and gambling not only are hated by man, but are also hated by God. Surah Al-Maidah verse 90 states:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ
وَالْمَيْسِرِ وَيُصَدِّكُمُ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ ﴿٩١﴾

The meaning: “O ye who believe! Strong drink and games of chance and idols and divining arrows are only an infamy of Satan’s handiwork. Leave it aside in order that ye may succeed.”

In Article 19 (a) Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage described "one party commits adultery or become drunks, compactor, gamblers and other refractory". The number of the divorce caused by moral crisis in Ciamis Religious Court during 2013 until 2015 was 10 cases or 0.09%.

c. Jealousy

Jealousy generally refers to the thoughts or feelings of insecurity, fear, concern, and envy over relative lack of possessions, status or something of great personal value, particularly in reference to a comparator, a rival, or a competitor.

Jealousy can consist of one or more emotions such as anger, resentment, inadequacy, helplessness or disgust. In its original meaning, jealousy is distinct from envy, though the two terms have popularly become synonymous in the English language, with jealousy now also taking on the definition originally used for envy alone.

Jealousy can either be suspicious or reactive, and it is often reinforced as a series of particularly strong emotions and constructed as a

universal human experience. Psychologists have proposed several models to study the processes underlying jealousy and have identified factors that result in jealousy. Sociologists have demonstrated that cultural beliefs and values play an important role in determining what triggers jealousy and what constitutes socially acceptable expressions of jealousy. Biologists have identified factors that may unconsciously influence the expression of jealousy.

4. Physical and Non-Physical Violence

a. Physical Violence

Physical violence is any intentional act causing injury or trauma to another person or animal by way of bodily contact. In most cases, children are the victims of physical abuse, but adults can also be victims, as in cases of domestic violence or workplace aggression. Alternative terms sometimes used include physical assault and may also include sexual abuse. Physical abuse may involve more than one abuser, and more than one victim. Physical abuse means any non-accidental act or behavior causing injury, trauma, or other physical suffering or bodily harm.

b. Non-Physical Violence

Non-Physical violence (also referred to as psychological violence, emotional abuse, or mental abuse) is a form of abuse, characterized by a person subjecting or exposing another person to behavior that may result in psychological trauma, including anxiety, chronic depression, or post-

traumatic stress disorder. It is often associated with situations of power imbalance in abusive relationships, and can include bullying, gaslighting, and abuse in the workplace. It also may be perpetrated by persons conducting torture, other violence, acute or prolonged human rights abuse, particularly without legal redress such as detention without trial, false accusations, false convictions and extreme defamation such as where perpetrated by state and media.

Violence includes those acts that result from a power relationship, including threats and intimidation, neglect or acts of omission. Such non-physical violence has a broad range of outcomes – including psychological harm, deprivation and mal-development. Violence may not necessarily result in injury or death, but nonetheless poses a substantial burden on individuals, families, communities and health care systems worldwide. Many forms of violence can result in physical, psychological and social problems that do not necessarily lead to injury, disability or death. These consequences can be immediate, as well as latent, and can last for years after the initial abuse. Defining outcomes solely in terms of injury or death thus limits the understanding of the full impact of violence.

5. Child Marriage

Child marriage is related to child betrothal, and it includes civil cohabitation and court approved early marriages after teenage pregnancy. In many cases, only one marriage-partner is a child, usually the female. Causes

of child marriages include poverty, bride price, dowry, cultural traditions, laws that allow child marriages, religious and social pressures, regional customs, fear of remaining unmarried, illiteracy, and perceived inability of women to work for money.

The consequences of child marriage among others:

a. Health

Child marriage threatens the health and life of girls. Complications from pregnancy and childbirth are the main cause of death among adolescent girls below age 19 in developing countries. Girls aged 15 to 19 are twice as likely to die in childbirth as women in their 20s, and girls under the age of 15 are five to seven times more likely to die during childbirth. These consequences are due largely to girls' physical immaturity where the pelvis and birth canal are not fully developed. Teen pregnancy, particularly below age 15, increases risk of developing obstetric fistula.

b. Illiteracy and Poverty

Child marriage often ends a girl's education, particularly in impoverished countries where child marriages are common. In addition, uneducated girls are more at risk for child marriage. Girls that have only a primary education are twice as likely to marry before age 18 than those with a secondary or higher education, and girls with no education are three times more likely to marry before age 18 than those with a secondary education. Early marriage impedes a young girl's ability to

continue with her education as most drop out of school following marriage to focus their attention on domestic duties and having or raising children.

c. Domestic Violence

Married teenage girls with low levels of education suffer greater risk of social isolation and domestic violence than more educated women who marry as adults. Following marriage, girls frequently relocate to their husband's home and take on the domestic role of being a wife, which often involves relocating to another village or area. This transition may result in a young girl dropping out of school, moving away from her family and friends, and a loss of the social support that she once had.

6. Convicted/Punished

Article 39 Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage which stated that one of the parties leaves the other party for 2 consecutive years without the permission of the other party and without valid reason or because of other things beyond their ability, one of the parties is in prison for 5 years or more severe punishment after marriage is allowed to file a lawsuit to the Religious Court for divorce.

E. Analysis on the Decision No. 2475/Pdt.G/2015/PA.Cms.

1. The Parties

Plaintiff: Ine Suryati, S. Pd binti Eman, 53 years old, Islamic religion, work as teacher (Civil Servant), live in Dusun Sukamaju RT 001 RW 001 Desa Sukamaju Kecamatan Cihaurbeuti Kabupaten Ciamis.

Defendant: Enceng Abd Rohman bin Winita, 53 years old, Islamic religion, work as entrepreneur, live in Dusun Sukamaju RT 009 RW 003 Desa Sukamaju Kecamatan Cihaurbeuti Kabupaten Ciamis.

2. The Factors Causes Divorce in the Decision No. 2475/Pdt.G/2015/PA.Cms

The reason and judges consideration in Ciamis Religious Court was observed chronologically, and in detail one by one from both parties (plaintiff and defendant) either in the form of a letter, witness, confession, and so on.

Based on the description of two witnesses which caption one another mutually compatible, the judges can find the facts in the court proceeding as follows:

- a. That Plaintiff and defendant household had lived in harmony for around 28 years 2 months, but since January 2010 the condition of household was not harmony again and always happen a quarrels;
- b. The cause is the defendants provide less sufficient income until he did domestic violence;
- c. The Plaintiff and Defendant lived separately for around 7 months;

- d. The Plaintiff and Defendant was no longer communicate with each other after living separately;
- e. The witness had tried to reconcile both parties, but there is no result and the witness has not been able to reconcile again.

Before the decision, the judges consider the information to be submitted by both parties, that the Plaintiff and defendants households do not have inner anymore, and it's difficult to reconcile, so the judge argued that the disputes and quarrels that happen between the plaintiff and the defendant can be viewed as a continuous dispute and quarrel, so that there is no hope to live in harmony again.

The result of the attitude and treatment of the defendant to the plaintiff caused a sense of the deep displeasure of the plaintiff to the defendant, then in this condition judge may give *talak* of the defendant to the plaintiff as first *talak*.

After the writer follows the documents of court decision, it can be known that the factors causes divorce are:

a. Continuous Dispute

Building the harmony in the household is not easy, because marriage is the union of two persons who come from different backgrounds, even from social, cultural, economic and family environment. Many things that cause the quarrel between the husband and wife, from financial problems, rude attitude from the husband to the wife and especially the problem of communication.

Disharmony in the household is one of the reasons for a wife to file a lawsuit to the Ciamis Religious Court. Disharmony in the household leads to continuous disputes that will end in the Court. This is due to the bad attitudes and behavior of the husband, like husband who are often being rude to his wife, the husband rarely come home, the husband cannot stand alone (always depends on parents) and a husband who take care of the family more than his wife. The number of the divorce caused by disharmony in Ciamis Religious Court during 2013 until 2015 was 28 cases or 0.25%.

b. Leave Obligation

In the household, both husband and wife have the responsibility. Each has the obligation, the husband is the head of the family and the wife is a housewife. The position of the husband as head of the family is obliged to provide necessities of life for his wife and children. The husband's obligation is regulated in Article 80 Islamic Law Compilation, one of the duty is described in paragraph (4) a, namely: the husband to bear a living income, *kiswah* and residence for the wife. A wife can file the divorce lawsuit to the Religious Court if the husband neglects the obligations to provide necessities of life for his wife and children. The other obligation of the husband is as a supervisor to his wife and household, obliged to protect his wife and children and provide necessities of life and so on. Article 34 Paragraph (3) of Law No. 1 of

1974 on Marriage that explains that if the husband or wife neglects the obligation, each can file a lawsuit to the Religious Court.

c. Physical Violence

The violence that occurs within the family is not something that arose by chance, but a behavior that occurs because there are certain conditions that provoke and get it back. The causes that triggers violence is very diverse, such as financial problems, children problems, jobs, mistress, etc. divorce generally becomes the last option which is done by the victim of domestic violence (wife) after all the efforts made were not able to resolve the problem.

Should the husband and wife be more discerning and wise in dealing with any issues that come up in the household, he can try to create a good communication relationship with her life partner.

3. Judges Consideration in Deciding Divorce Case No. 2475/Pdt.G/2015/PA.Cms.

The judges argued that disputes and quarrels that happen between the plaintiff and the defendant can be viewed as a continuous dispute and quarrel, so there is no hope to live in harmony again, as referred in Article 19 (f) Government Regulation No. 9 of 1975 jo Article 116 (f) Islamic Law Compilation.

The plaintiff as Civil Servants who will divorced has received permission from his superior with the Decision of Ciamis Regent Decree

number: 474.2/Kpts.249/BKDD.3/2015 November 13, 2015 on Granting Permission of Divorce issued by Ciamis Regent, because of that the Plaintiff lawsuit has complied with the provisions of Article 3 Paragraph 1 Government Regulation No. 10 of 1983 jo Article 3 Paragraph 1 Government Regulation No. 45 of 1990.

To fulfill the provisions of Article 84 Paragraph 1 Law No. 7 of 1989 as amended by Law No. 50 of 2009 the Judges felt the need to instruct the Clerk of Ciamis Religious Court to deliver a copy of the decision which has a legal power without stamp, to the Religious Affairs Office where the plaintiff and defendant lived and or where the marriage took place.

After the writer follow the document of Court Decision, it can be known that the judge's considerations in deciding the divorce cases between Ine Suryati, S.Pd and Enceng Abd Rohman are:

- a. Article 84 Paragraph 1 Law No. 7 of 1989 as amended with Law No. 50 of 2009 on Religious Court
- b. Article 89 Paragraph 1 Law No. 7 of 1989 as amended with Law No. 50 of 2009 on Religious Court
- c. Article 19 (f) Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage
- d. Article 3 Paragraph 1 Government Regulation No. 45 of 1990 on the Permission of Marriage and Divorce for Civil Servant
- e. Article 116 (f) Islamic Law Compilation

f. The Decree of Ciamis Regent Number: 474.2/Kpts.249/BKDD.3/2015
November 13, 2015 on Granting Permission of Divorce.

Religious Court as an institution that provides law legalization should be more careful in deciding a divorce case filed by the Plaintiff. To carry out the divorce, there should be enough reason or consideration that a husband and wife are not able to live together.

In the Supreme Court Circular Letter (SEMA) No. 3 of 1974 on Marriage, the Supreme Court gave an appeal and a request to the judges (both in the General Courts or in the Religious Court) about the necessity of a decision to include consideration or reason properly, because according to Supreme Court without any consideration and proper reason, it may lead to the cancellation of the decision.

In taking the legal considerations of divorce cases in Ciamis Religious Court, the judges always start by considering the intent and purpose of the Plaintiff. Because the task of the Court is only to examine and decide cases submitted by the Plaintiff, the judge should create fair decision based on Almighty God.

In this case the judges stated that the household of Plaintiff and Defendant had no tranquility/peaceful physically and spiritually, and it is difficult to be reconciled. So that the statement that the dispute and quarrel between the Plaintiff and the Defendant can be seen as a continuous dispute and quarrel.

The use of Article 19 (f) Government Regulation No. 9 of 1975 as the legal considerations by the Ciamis Religious Courts based on the author can be justified, because the dispute between husband and wife in this case is constituted by the actions of Defendant who always do a domestic violence. It makes the household becomes disharmony.

The use of the Decree of Ciamis Regent No. 474.2/Kpts.249/BKDD.3/2015 as the legal consideration also can be justified, because based on Government Regulation No. 45 of 1990 stated that Civil Servant who will do divorce shall obtain prior permission or written request from the Official.

In determining which party paid the course fee, the Ciamis Religious Courts use Article 89 Paragraph (1) Law No. 50 of 2009 as the legal basis in deciding this case. This article states: "The court fees in the field of marriage charged to Plaintiff or Petitioner".

Based on the analysis of the cases above, it can be seen that the continuous disputes and quarrels in the household, will only lead to the household that are not in line with the expectations and the purpose of marriage. This becomes the consideration of the judges in deciding the case of divorce.

Based on the legal considerations and the legal basis used in the case above, it is known that the decision of the judges in accordance with the

regulations. Just to add a more complete legal basis in the form of the Qur'an, Hadith and Ijma to complete the legal bases.

F. Analysis on the Decision No. 3942/Pdt.G/2015/PA.Cms.

1. The Parties

Plaintiff: Yati Mulyawati, S. Pd binti Adang Kusdinar, 37 years old, Islamic religion, work as teacher (Civil Servant), live in Dusun Tarisi RT 006 RW 003 Desa Maruyungsari Kecamatan Padaherang Kabupaten Pangandaran.

Defendant: Samidan, S. Pd bin Darsono, 33 years old, Islamic religion, works as a part time employees, lives in Dusun Tarisi RT 006 RW 003 Desa Marruyungsari Kecamatan Padaherang Kabupaten Pangandaran.

2. The Factors Causes Divorce in the Decision No. 3942/Pdt.G/2015/PA.Cms.

The reason and judges consideration in Ciamis Religious Court was observed chronologically, in detail one by one from both parties (plaintiffs and defendants) either in the form of a letter, witness, confession, and so on.

Based on the description of two witnesses which caption one another mutually compatible, the judges can find the facts in the court proceeding as follows:

- a. Since January 04, 2007 between the Plaintiff and Defendant bound with a legitimate marriage and until now had never had any divorce.

- b. Since July, 2010, the plaintiff and defendant household was not in harmony, quarrels and disputes often happened because of economic problem and domestic violence.
- c. Since March, 2011 between plaintiff and defendant had lived in a separated house.
- d. The family had tried to reconcile both parties but no result and the family has not been able to reconcile again.

Based on the facts, the judges argued that the plaintiff and defendant household is not in harmony anymore and it's difficult to reconcile, so the judges argued that the disputes and quarrels that happen between the plaintiff and the defendant can be viewed as a continuous dispute and quarrel, so that there is no hope to live in harmony again, as referred in Article 19 (f) Government Regulation No. 9 of 1975 jo Article 116 (f) Islamic Law Compilation.

After the writer follow the document of Court Decision, it can be known that the factors causes divorce are:

- a. Leave Obligation

One of the factors to maintain happy marriage is influenced by the economic and financial life. The necessities of life will be fulfilled properly if a husband and wife have adequate financial resources. In traditional or modern society, a husband holds a role to sustain the family economy, so inevitably, a husband has to work in order to have an income. Therefore, the finance will be able to enforce the economic needs of their

families. Otherwise, the condition of financial problems would give bad impacts like the needs of the family that cannot be met, the children who suffer from hunger, sick, may lead to conflict between husband and wife and finally ended in divorce (Nakamura, 1990).

On the other hand, there are families who have wealthy financial, but the husband has a bad behavior that he limits the financial resources to his wife. This is called economic violence. What is meant by economic violence is a financially difficult living conditions in the household, as a result of deliberate treatment, especially from husbands. Even if a husband has sufficient income, he limits the use of money to domestic economic activity, so that families feel deprived and suffer financially.

b. Continuous Dispute

Building the harmony in the household is not easy, because marriage is the union of two persons who come from different backgrounds, even from social, cultural, economic and family environment. Many things can cause disputes between with the husband and wife, such as financial problems, rude attitude from the husband to the wife and especially the problem of communication.

Disharmony in the household is one of the reasons for a wife to file a lawsuit to the Ciamis Religious Court. Disharmony in the household leads to continuous disputes that will end in the Court. This is due to the bad attitudes and behavior of the husband, like husband are often being rude to his wife, the husband rarely come home, the husband cannot

standalone (always depends on parents) and the husband take care of the family more than his wife. The number of the divorce caused because of disharmony in Ciamis Religious Court during 2013 until 2015 is 28 cases or 0.25%.

c. Physical Violence

The violence that occurs within the family is not something that arose by chance, but a behavior that occurs because there are certain conditions that provoke and get it back. The causes that triggers violence is very diverse, such as financial problems, children problems, jobs, mistress, etc. divorce generally becomes the last option which is done by the victim of domestic violence (wife) after all the efforts made were not able to resolve the problem.

Should the husband and wife be more discerning and wise in dealing with any issues that come up in the household, he can try to create a good communication relationship with her life partner.

3. Judges Consideration in Deciding Divorce Case No. 3942/Pdt.G/2015/PA.Cms.

The judges argued that the plaintiff and defendant household is not harmony anymore and it's difficult to reconcile, so the judges argued that the disputes and quarrels that happen between the plaintiff and the defendant can be viewed as a continuous dispute and quarrel, so that there is no hope to live

in harmony again, as referred in Article 19 (f) Government Regulation No. 9 of 1975 jo Article 116 (f) Islamic Law Compilation.

Document evidence of P-3 (Copy of Mayor Decree of Pangandaran) explains the Granting Divorce for Civil Servants Governments in Pangandaran Regency, so the evidence has to comply with Article 3 Paragraph 1 Government Regulation No. 10 of 1983 in conjunction with Article 3 Paragraph 1 Government Regulation No. 45 of 1990.

Because the reason of divorce Plaintiff and Defendant is the occurrence of continuous disputes and quarrels, so to fulfill the provisions of Article 76 (1) Law No. 7 of 1989 which amended by Law No. 50 of 2009 jo Article 134 Islamic Law Compilation, the judges have heard the family witnesses or people close to the plaintiff and the defendant under oath in the court trial states that the household between the plaintiff and the defendant cannot be reconcile.

After the writer follow the document of Court Decision, so it can be known that the judge's considerations in deciding the divorce cases between Yati Mulyawati, S.Pd and Samidan, S.Pd are:

- a. Article 76 (1) Law No. 50 of 2009 on Religious Court.
- b. Article 3 Paragraph 1 Government Regulation No. 45 of 1990.
- c. Article 19 (f) Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage.
- d. Article 116 (f) Islamic Law Compilation.
- e. Article 134 Islamic Law Compilation.

Religious Court as an institution that provides law legalization should be more careful in deciding a divorce case filed by the Plaintiff. To carry out the divorce, there should be enough reason or consideration that a husband and wife are not able to live together.

In the Supreme Court Circular Letter (SEMA) No. 3 of 1974 on Marriage, the Supreme Court gave an appeal and a request to the judges (both in the General Courts or in the Religious Court) about the necessity of a decision to include consideration or reason properly, because according to Supreme court without any consideration and proper reason, it may lead to the cancellation of the decision.

In taking the legal considerations of divorce cases in Ciamis Religious Court, the judges always start by considering the intent and purpose of the Plaintiff. Because the task of the Court is only to examine and decide cases submitted by the Plaintiff, the judge should create fair decision based on Almighty God.

In this case the judges stated that the household of Plaintiff and Defendant had no tranquility/peaceful physically and spiritually, and it is difficult to be reconciled. So that the statement that the dispute and quarrel between the Plaintiff and the Defendant can be seen as a continuous dispute and quarrel.

The use of Article 19 (f) Government Regulation No. 9 of 1975 as the legal considerations by the Ciamis Religious Courts based on the author can be

justified, because the dispute between husband and wife in this case is constituted by the actions of Defendant who always do a domestic violence. It makes the household becomes disharmony.

The use of the Decree of Ciamis Regent No. 474.2/Kpts.249/BKDD.3/2015 as the legal consideration also can be justified, because based on Government Regulation No. 45 of 1990 stated that Civil Servant who will do divorce shall obtain prior permission or written request from the Official.

In determining which party paid the course fee, the Ciamis Religious Courts use Article 89 Paragraph (1) Law No. 50 of 2009 as the legal basis in deciding this case. This article states: "The court fees in the field of marriage charged to Plaintiff or Petitioner".

Based on the analysis of the cases above, it can be seen that the continuous disputes and quarrels in the household, will only lead to the household that are not in line with the expectations and the purpose of marriage. This becomes the consideration of the judges in deciding the case of divorce.

Based on the legal considerations and the legal basis used in the case above, it is known that the decision of the judges in accordance with the regulations. Just to add a more complete legal basis in the form of the Qur'an, Hadith and Ijma to complete the legal bases.