

**THE FACTORS CAUSE DIVORCE AMONG TEACHERS AS CIVIL SERVANTS
IN CIAMIS RELIGIOUS COURT AFTER GOVERNMENT REGULATION
NO. 45 OF 1990 ON THE PERMISSION OF MARRIAGE AND DIVORCE
FOR CIVIL SERVANTS
PUBLICATION SCRIPT**



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**FACULTY OF LAW
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ABSTRACT

The objective of this study is to know the factors that cause divorce among teachers as Civil Servants and the judges consideration in deciding divorce cases in Ciamis Religious Court. The type of research is normative research. The type of data is secondary legal data which consist of primary legal material (Qur'an, Hadiths and Law) and secondary legal material (book, journal etc). Data collection technique used is documentation. The results of the study are 1) The factors cause divorce among teachers as Civil Servants in Ciamis Religious Court are leave obligation, continuous dispute, moral, domestic violence, child marriage and convicted 2) The judges consideration in deciding divorce cases among teachers as Civil Servants in Ciamis Religious Court are Article 76 (1), 84 and 89 Law No. 7 of 1989 as amended with Law No. 50 of 2009 on Religious Court, article 19 (f) Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage, article 3 Paragraph (1) Government Regulation No. 45 of 1990 on the Permission of Marriage and Divorce for Civil Servant, article 116 (f) and 134 Islamic Law Compilation, the Decree of Ciamis Regent on Granting Permission of Divorce No. 2475/Pdt.G/2015/PA.Cms and 3942/Pdt.G/2015/PA.Cms.

Keywords: Divorce, Teacher, Civil Servant

PRELIMINARY

Every human being who lives together in a marriage bond surely hopes that their family can walk harmoniously and always be blessed by God Almighty. The same thing as stated in Law No. 1 of 1974 on Marriage, that: "Marriage is a union between a man and a woman as a husband and a wife with the intention to build a family (household) which is happy and everlasting based on God". In achieving a happy family, the efforts are taken based on their abilities of each family. However, many families fail to achieve a harmony, which is a divorce that they never expected. Because marriage has the intention that a husband and wife can make a long-lasting family, then an action that results in a termination of marriage must really be considered and well thought out. This provision is intended to prevent divorce multiple times, so that the husband and wife really respect each other.

The number of divorces of Civil Servant (PNS) in Ciamis has increased during last two years. An average of 10 households of Civil Servants working in Ciamis ended in divorce every month. In the interval of less than one month the number of Civil Servants in Ciamis was increased by 150%.

Until June 4th, 2015 there were 50 cases of divorces among Civil Servants, 19 days later the number was increased drastically to 134 cases. From 134 divorce cases among Civil Servants in Ciamis, around 70% were divorces by petitions or wives who sued for divorce and 30% were divorced by talak. Most of them work as teachers.

Employment Board and Regional Training (BKDD) of Ciamis noted that there are 99 civil servants who were divorced in 2013. They consisted of 63 women and 36 men of civil servants. Among 63 women civil servants who sued her husband for divorce, 75 percent are elementary school teachers. While until February 2014, there were 20 civil servants who got divorced.

Many of Civil Servants (PNS) as a married couple (hereinafter referred to couples) do not recognize that many couples face problems that could threaten the marriage. They are thinking short and not able to resolve by kinship, so they take the short way that is divorce. They do not think much about the consequence of divorce, both for their children and their work.

METHODS

The type of this research is Normative research, which includes the study of the principles of law, the study of the systematic of law, the study of the level of law synchronization, the history of law and comparative of law.

The approach method used in this research is Case Approach. The case approach in normative legal research aims to learn the norms or rules carried out in the practice of law.

The type of data of this thesis is Secondary Legal Data, which consist of primary (Qur'an, Hadits and legislations) and secondary (book, journal, newspaper, internet, etc). To collect the necessary data, the researcher takes the research location in Ciamis Religious Court.

RESEARCH RESULT

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:

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

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

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.

The divorce that occurred among teachers as Civil Servant in 2013 until 2015 in Ciamis Religious Court caused by several factors, among others:

- a. Leave Obligation
- b. Moral
- c. Physical Violence
- d. Continuously Dispute
- e. Convicted

DISCUSSION

A. 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.

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

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 وَيُصَدِّكُمْ 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.

B. Judges Considerations in Deciding Divorce Case (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. 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.

After the writer follows the document of Court Decision, so it can be known that the judge's considerations in deciding the divorce cases between the plaintiff and the defendant are:

1. Article 76 (1) Law No. 50 of 2009 on Religious Court.
2. Article 3 Paragraph 1 Government Regulation No. 45 of 1990.
3. Article 19 (f) Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage.
4. Article 116 (f) Islamic Law Compilation.
5. Article 134 Islamic Law Compilation.

CLOSING

A. Conclusions

Based on the explanation above, it can be taken a conclusion among others:

1. The factors that cause divorce among teachers as Civil Servant in Ciamis Religious Court among others:
 - a. Leave Obligation, which can be classified as:
 - 1) Economic-Financial
 - 2) Forced Marriage
 - 3) Irresponsibility
 - b. Continuous Dispute, which can be classified as:
 - 1) Disharmony
 - 2) Third Party Interference
 - c. Moral, which can be classified as:
 - 1) Unhealthy Polygamy
 - 2) Moral Crisis
 - 3) Jealousy
 - d. Domestic Violence, which can be classified as:
 - 1) Physical Violence
 - 2) Non-Physical Violence
 - e. Child Marriage
 - f. Convicted/Punished

2. The judges consideration in deciding divorce cases among teachers as Civil Servant in Ciamis Religious Court among others:

a. Objective considerations:

- 1) Article 76 (1), 84 and 89 Law No. 7 of 1989 as amended with Law No. 50 of 2009 on Religious Court
- 2) Article 19 (f) Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage
- 3) Article 3 Paragraph (1) Government Regulation No. 45 of 1990 on the Permission of Marriage and Divorce for Civil Servant
- 4) Article 116 (f) and 134 Islamic Law Compilation
- 5) The Decree of Ciamis Regent on Granting Permission of Divorce No. 2475/Pdt.G/2015/PA.Cms.

b. Subjective consideration is 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 seen as a continuous dispute and quarrel, so that there is no hope to live in harmony again

B. Recommendations

1. To prevent the divorce caused by economic factors, there must be an awareness of each party. The husband must have an awareness of the obligation to provide the necessity of life for his wife without seeing the condition of his wife, the wife must also accept with gratitude for what he has given from her husband.
2. Religious Court as a place for the justice seekers, is expected to work to the maximum to the mate who will do the divorce. The judge should gives advice to reconcile the clashed couples with the foundations of the religion and the law correctly so the couples who are divorcing can be harmonious and reconciled.

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