

## ANALYSIS OF FACTORS INFLUENCING JUDGES' DECISIONS IN DIVORCE CASES AT THE RELIGIOUS COURT OF PROBOLINGGO

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### Abstract :

*The purpose of this study is to investigate the key elements that influence judges' decisions in divorce cases at the Religious Court of Probolinggo. A qualitative approach was used as the research technique, and Judge Rifqi Kurnia Wazzan M.H. of the Religious Court of Probolinggo was interviewed in-depth., evaluation of the literature, and analysis of decision papers. The analysis's findings show that a number of elements, including legal, social, cultural, and psychological ones, significantly influence court judgments. The conformity of judicial rulings with Islamic law, the clarity of the evidence, and the child's best interests are all important determining factors. Furthermore, social and cultural factors including social stigma, family support, and local traditions have a big impact on how judges make decisions. This study advances legal literature, offers a better understanding of the factors affecting judges' rulings in contentious divorce cases at the Religious Court, and lays the groundwork for systemic changes to the family law system.*

**Keyword:** *impact of a judge's decision, divorce litigation*

### INTRODUCTION

Divorce cases in religious courts play a crucial role in the family judicial system, significantly impacting the social and personal lives of the parties involved. In divorce procedures, judges make decisions based on a variety of complex factors, including legal challenges as well as social, cultural, psychological, and Islamic considerations.

Given this situation, a comprehensive investigation is required to determine the elements influencing judges' divorce decisions at the Religious Court of Probolinggo. Factors such as the social and cultural context, the interpretation and application of Islamic law, the quality of evidence, and the welfare of children all influence how judges make their decisions.

The Islamic legal aspect in divorce proceedings adds complexity to the decision-making process, as judges must ensure alignment with religious teachings. However, social and cultural variables may affect judges' perceptions of justice, especially when considering regional norms and family support.

Furthermore, the psychological aspects of the individuals involved, as well as the psychological effects on the children concerned, become significant variables that demand careful consideration. Judges' decisions in divorce cases can have long-term effects on the psychological well-being of family members and the stability of the family unit.

Therefore, the objective of this study is to provide a comprehensive analysis of the variables influencing judges' decisions in divorce cases at the Religious Court of Probolinggo. It is anticipated that a better understanding of

these dynamics will offer more profound insights into the family court system and assist in developing a fairer and more humane system.

## **RESEARCH METHOD**

The research method employed is a qualitative approach using normative juridical methods. The study begins with the collection of preliminary data through descriptive methods. The initial information gathered will be analyzed to identify the root of the problem and then elaborated into theoretical form, supported by relevant literature.

This research program will involve direct investigation of the institution or object of study that is the focus of the research. A literature review will be conducted by cataloging legal materials from various sources.

## **THEORY**

### **a. The Influence of Judges' Decisions**

Analyzing various aspects of judicial reasoning within the legal system is essential for theoretical research on the impact of their rulings. Several concepts and methodologies are commonly used to evaluate the impact of judges' decisions, such as:

- **Positive Legal Theory:** This theory places a strong emphasis on adherence to relevant legal requirements. Judges' rulings are considered highly authoritative legal standards that all involved parties must follow.
- **Sociological Legal Theory:** From this perspective, social change and social ideals are reflected in the law. Reviewing the social, political, and economic consequences of judicial decisions can be part of the reevaluation process.
- **Legal Realism Theory:** This theory highlights the influence of extralegal factors on judicial reasoning, including the judges' personal beliefs, morals, and life experiences. It is posited that judicial decisions are made after considering these elements.
- **Critical Legal Theory:** The goal of this theory is to address and evaluate inequalities and injustices within the legal system. Examining the distribution of power and justice within the context of critical legal theory can be part of the study on the impact of judges' decisions.
- **Economic Legal Theory:** This approach views the law as a tool for achieving economic efficiency. Analyzing the influence of judges' decisions may involve evaluating the economic impact of legal rulings on markets and society.
- **Feminist Legal Theory:** This theory explores the role of gender in the legal system and assesses how judges' decisions may affect women and gender issues in general. Gender analysis forms a vital part of this study.
- **Human Rights Legal Theory:** In the human rights context, the study can focus on the extent to which judges' decisions uphold or violate fundamental human rights. This analysis often involves understanding international and national norms related to human rights.

It is important to note that theoretical studies on the influence of judges' decisions may involve various perspectives and approaches, depending on the legal, cultural, and societal values at play. (Sudirman, Mustaring, and Suyitno, 2022)

#### **b. Factors Influencing Judges' Decisions**

Judges' rulings in a case can be influenced by various factors. The following are some commonly recognized factors affecting judicial decisions:

- **Evidence and Proof:** The availability and strength of evidence presented by the parties involved can influence judges' decisions. This includes evidence such as witness testimony, documents, or expert opinions supporting claims or defenses.
- **Legal Provisions and Religious Rules:** Judges in religious courts consider applicable legal provisions and religious rules in divorce cases. The interpretation and application of Islamic norms influence judicial decisions.
- **Gender Perspectives and Social Justice:** Gender factors and aspects of social justice can also play a role. Judges may consider balancing the rights and responsibilities of spouses while ensuring social justice in their decisions.
- **Mediation and Amicable Resolutions:** Judges may encourage mediation or amicable resolution before issuing rulings. The ability of parties to reach peaceful agreements can affect how judges view the case.
- **Psychological Conditions and Child Welfare:** When cases involve children, judges will consider psychological conditions and the well-being of the children. Decisions are often influenced by the best interests of the child in the divorce context.
- **Attitudes and Ethics of the Parties Involved:** The attitude, ethics, and behavior of parties in a divorce case can influence judicial perceptions. The presence of cooperative witnesses or parties may play a role in forming the judges' opinions.
- **Clarity and Consistency of Legal Arguments:** Arguments presented by legal representatives of the parties must be clear, consistent, and aligned with applicable laws. The clarity of arguments can affect persuasiveness and judicial rulings.
- **Family and Civil Legal Provisions:** Beyond religious provisions, judges also consider relevant civil legal rules, including issues such as joint property division and financial responsibilities.
- **Judges' Characteristics and Legal Approaches:** Personal characteristics and judicial approaches can also influence decisions. Judges with specific backgrounds and views may have particular tendencies in assessing cases.
- **Local Social and Cultural Factors:** Local social and cultural factors in Probolinggo's context may influence judges' perspectives. Cultural values and social norms are often reflected in judicial decisions.

### **c. Separation of Husband and Wife**

The separation of husband and wife, commonly referred to as divorce, is a formal legal or social procedure in which a husband and wife dissolve their union (Eko Turisno and Basuki Prasetyo, n.d.). Different approaches to spousal separation can be taken based on relevant legal, cultural, and religious perspectives.

In Islamic law, divorce is considered a last resort and should be undertaken cautiously and in accordance with Sharia principles. Before choosing divorce, some Islamic scholars emphasize the importance of maintaining family stability and providing as many reconciliation opportunities as possible.

Spousal separation is governed by family laws in many jurisdictions, encompassing financial obligations, child custody, property distribution, and divorce procedures. Family law experts may focus on these aspects to ensure that the separation process complies with the relevant legal rules. (Journal, 2023)

## **FINDINGS AND DISCUSSION**

General Background Factors That May Influence Judges' Decisions in Divorce Cases

- 1. Legal Basis.** Judicial decisions are based on the legal framework applicable within a specific jurisdiction. This includes marriage laws, family laws, and related regulations governing the divorce process. In Indonesia, the legal basis for judges' decisions in religious courts is drawn from various legislative instruments regulating religious judicial processes, including laws, government regulations, and other binding statutes.
- 2. Grounds for Divorce.** The grounds for divorce presented in religious court hearings and subsequently forming the basis for judges' decisions may vary depending on factors recognized by Islamic law or applicable family law. Common grounds for divorce that may influence judges' rulings include:
  - Irreconcilable Disputes (Talak)
  - Khulu (Divorce Initiated by Wife Due to Husband's Fault)
  - Unambiguous Divorce Declarations (Talaq Bighunah)
  - Adultery (Zina)
  - Domestic Violence (KDRT)
  - Abandonment or Dereliction of Family Responsibilities
  - Chronic Illness or Disability
  - Impotence (Physical or Sexual Incapacity)
  - Contradiction with Islamic Law
  - Injustice in Providing Maintenance or Other Rights
- 3. Child Welfare.** Child welfare is a primary consideration in judicial decisions made by religious courts, particularly in divorce cases involving children. Judges are responsible for ensuring that their rulings comply with applicable

religious laws while prioritizing the welfare and best interests of the children. Judges must ensure that children are not victims of the conflicts arising from divorce and that the decisions promote the children's optimal growth and development.

Judges may also mandate mediation or psychological support to help parents and children adjust to changes in the family structure. Considerations such as custodial care, parental relationships, education, mental and emotional health, financial support, safety, and protection are critical factors in judicial decisions. Ultimately, the primary aim is to ensure that the rulings establish an environment that best supports the children's well-being.

4. **Evidence and Witnesses.** In religious courts, as in divorce cases, evidence and witnesses play a pivotal role in judicial proceedings. Types of evidence that may influence decisions include marriage documents, proof of financial support, evidence of child welfare, proof of violence or threats, and written or communication evidence. Witnesses that may be considered significant include eyewitnesses, character witnesses, expert witnesses, and third-party witnesses.
5. **Principles of Justice and Humanity.** The principles of justice and humanity are fundamental in judicial systems, including in the decisions of religious courts. Judges in religious courts are expected to uphold justice in all their rulings. Justice involves ensuring a fair and balanced distribution of rights and obligations to all parties involved. Judges must ensure that every step of the judicial process is conducted equitably, without discrimination or unequal treatment, allowing all parties an equal opportunity to present their arguments and evidence. The application of procedural justice ensures that every stage of the trial is carried out transparently and openly. Judges' rulings should reflect substantive justice by providing fair and proportional solutions to the conflicts or disputes at hand. Additionally, humanity emphasizes treating individuals with respect and care. This principle includes protecting vulnerable parties, such as spouses or children, by considering the social and economic conditions of each party in the ruling, especially concerning alimony, child custody, or property division. Justice and humanity serve as the foundation of the judicial system, and judges bear the responsibility of making decisions that embody these values to achieve balanced justice and protect the human rights of all individuals involved.

## CONCLUSION

Based on the review of the factors outlined above, it can be concluded that judicial decisions in divorce cases in the religious court of Probolinggo are influenced by a range of factors, including economic aspects, child welfare considerations, as well as legal and religious principles. In performing their duties, judges must strive to achieve a fair balance rooted in the principles of justice and humanity.

By considering all these factors, judicial decisions aim to uphold justice

and balance the rights and obligations of the parties involved in the divorce. Each decision must adhere to the relevant legal and religious principles while ensuring the well-being and human rights of those affected.

## **BIBLIOGRAPHY**

- (Journal 2023)Eko Turisno, Bambang, And Agung Basuki Prasetyo. N.D. "Penegakan Hak Dan Kewajiban Suami Istri Dalam Perkawinan Dengan Pemisahan Harta." 1-17.
- Handayani, Weely Septia Angger. 2016. "Analisis Terhadap Putusan Hakim Dalam Kasus Cerai Gugat Ditinggal Suami (Studi Kasus Di Pengadilan Agama Wonogiri Jawa Tengah 2014)." 21.
- Journal, Nationally. 2023. "Jurnal Private Law Fakultas Hukum Universitas Mataram Analisis Terhadap Putusan Hakim Dalam Kasus Cerai Gugat ( Studi Putusan Nomor 64 / Pdt . G . / 2013 / Pa . Mtr ) ( Case Study In Verdict Number 64 / Pdt . G . / 2013 / Pa . Mtr )." 3(1).
- Sudirman, Muh, Mustaring, And Imam Suyitno. 2022. "Analisis Faktor Penyebab Perceraian Karena Orang Ketiga (Studi Putusan Pengadilan Agama Kelas Ia Makassar)." *Jurnal Pemikiran Dan Penelitian Ilmu-Ilmu Sosial, Hukum, & Pengajarannya* 17(1):89-114.
- Eko Turisno, Bambang, And Agung Basuki Prasetyo. N.D. "Penegakan Hak Dan Kewajiban Suami Istri Dalam Perkawinan Dengan Pemisahan Harta." 1-17.
- Handayani, Weely Septia Angger. 2016. "Analisis Terhadap Putusan Hakim Dalam Kasus Cerai Gugat Ditinggal Suami (Studi Kasus Di Pengadilan Agama Wonogiri Jawa Tengah 2014)." 21.
- Journal, Nationally. 2023. "Jurnal Private Law Fakultas Hukum Universitas Mataram Analisis Terhadap Putusan Hakim Dalam Kasus Cerai Gugat ( Studi Putusan Nomor 64 / Pdt . G . / 2013 / Pa . Mtr ) ( Case Study In Verdict Number 64 / Pdt . G . / 2013 / Pa . Mtr )." 3(1).
- Sudirman, Muh, Mustaring, And Imam Suyitno. 2022. "Analisis Faktor Penyebab Perceraian Karena Orang Ketiga (Studi Putusan Pengadilan Agama Kelas Ia Makassar)." *Jurnal Pemikiran Dan Penelitian Ilmu-Ilmu Sosial, Hukum, & Pengajarannya* 17(1):89-114.
- (Handayani 2016)Eko Turisno, Bambang, And Agung Basuki Prasetyo. N.D. "Penegakan Hak Dan Kewajiban Suami Istri Dalam Perkawinan Dengan Pemisahan Harta." 1-17.
- Handayani, Weely Septia Angger. 2016. "Analisis Terhadap Putusan Hakim Dalam Kasus Cerai Gugat Ditinggal Suami (Studi Kasus Di Pengadilan Agama Wonogiri Jawa Tengah 2014)." 21.
- Journal, Nationally. 2023. "Jurnal Private Law Fakultas Hukum Universitas Mataram Analisis Terhadap Putusan Hakim Dalam Kasus Cerai Gugat ( Studi Putusan Nomor 64 / Pdt . G . / 2013 / Pa . Mtr ) ( Case Study In Verdict Number 64 / Pdt . G . / 2013 / Pa . Mtr )." 3(1).
- Sudirman, Muh, Mustaring, And Imam Suyitno. 2022. "Analisis Faktor Penyebab Perceraian Karena Orang Ketiga (Studi Putusan Pengadilan Agama Kelas Ia Makassar)." *Jurnal Pemikiran Dan Penelitian Ilmu-Ilmu Sosial, Hukum, &*

*Pengajarannya 17(1):89-114.*