



## DIFFERENCE IN FAITH AS AN ULTIMATE REASON IN SUBMITTING DIVORCE LAWSUITS IN INDONESIAN FAMILIES OF DIFFERENT RELIGIONS

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**Abstract-**As the issuance of various Indonesian Court Decisions which permit couples of different religion to perform marriage, marriage between people of different religion becomes a common practise among the nowadays society. These families of different religions, as another families, certainly may be faced with any kinds of household problems, which in some cases lead to divorce lawsuits before District Court of their domicile. I argue that the difference in faith used as an ultimate reason in submitting divorce lawsuits before the court, whereby difference in faith said as the cause of the failure of marriage's intention, *id est* to establish a happy and eternal family. In this regard, this research will be conducted by analysing and interpreting the collected data, *id est* Secondary Data Source which obtained through library research, in order to discover the backgrounds underlying them.

**Key Words:** Difference in Faith, Divorce Lawsuits, Indonesian Court Decisions, Families of Different Religions.

### INTRODUCTION

Marriage between people of different religion, certainly, cannot be said as a new practise among the nowadays society, whereby such practise has been arisen long time ago.<sup>1</sup> Marriage is intended to establish a happy and eternal family,<sup>2</sup> likewise the marriage between people of different religion. Even though, such intention was not established as a way in worshipping to the One and Only God.

According to Judge's Consideration in Probolinggo District Court Decision No. 17/Pdt.P/2014/PN.Prob, it is mentioned that marriage could be categorised as a legal action as well as a religious action. As a legal action, marriage will create a legal relation, while as a religious action, marriage will create a religious relation between the concerned parties. Such questionable consideration leads to a further consideration in which marriage could merely be performed as a legal relation, not as a religious relation. This kind of consideration, I strongly believe, becomes the cause of the rise of cases of marriage between people of different religion in Indonesia.

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<sup>1</sup> Anggreini Carolina Palandi, "Analisa Yuridis Perkawinan Beda Agama" *Lex Privatum* Vol. 1 p 197 (2013).

<sup>2</sup> Rusli and R. Tama, *Perkawinan Antara Agama dan Masalahnya*, Bandung: Pionir Jaya, 1986, p 17.

Families of different religions are not only constructed by marriage between people of different religion, but also by a common marriage, with the circumstance whereby one of the spouses changes his or her religion but then re-change it to the previous religion, after the marriage was taken place, in order to meet the provision under Article 2 Section (1) of the Act Number 1 of 1974 regarding Marriage.

The practise of marriage between people of different religion, can be said, will generate a sequence of legal matters, not only to the spouses but also to their offspring.<sup>3</sup> These due to the condition whereby the practise of marriage between people of different religion will not render the legal status of their offspring as the legitimate children, which means that the born children of an unlawful marriage will only has a civil relation to their biological mother and their biological mother's family.<sup>4</sup> Consequently, all of the children's rights to their father will be lost and will not be recognised by the law.<sup>5</sup> This legal matters, in my opinion, will be bigger in case if the spouses later on decide to put their marriage to an end. Assuredly, common insignificant reasons will not generate such considerable decision, but there is always a possibility that the decision is based upon fundamental reasons underlying it, one of them is the difference in faith of the spouses.

These conditions lead to the question whether difference in faith used as the main reason by the spouses in submitting divorce lawsuit before the court. It is interesting since the parties have put a lot of efforts to fight for their right to marry, by reason of the Act Number 1 of 1974 regarding Marriage deemed to have a legal vacuum (*recht vacuum*) in governing marriage between people of different religion,<sup>6</sup> but later on choose to break it up. In this regard, here will be compiled several Court Decisions of divorce lawsuits in Indonesian families of different religions (hereinafter referred to as the cases), *inter alia* North Jakarta Religious Court Decision No. 1131/Pdt.G/2018/PA.JT; Sleman District Court Decision No. 166/Pdt.G/2019/PN.Smn; Surabaya District Court Decision No. 424/Pdt.G/2017/PN.Sby, as well as Surabaya District Court Decision No. 892/Pdt.G/2018/PN.Sby, as the primary sources used in this research.

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<sup>3</sup> Anggreini Carolina Palandi, *Op.cit.*, p 196.

<sup>4</sup> The Act Number 1 of 1974 regarding Marriage:  
"Anak yang dilahirkan di luar perkawinan hanya mempunyai hubungan perdata dengan ibunya dan keluarga ibunya".

<sup>5</sup> Anggreini Carolina Palandi, *Op.cit.*, p 196.

<sup>6</sup> Yasin Baidi, "Fenomena Nikah Beda Agama di Indonesia: Telaah Terhadap Putusan Mahkamah Agung Republik Indonesia No. 1400/Pdt/1996" *Sosio-Religia* Vol. 9 p 680 (2010).

Accordingly, it is necessary to do a research of the “**Difference in Faith as an Ultimate Reason in Submitting Divorce Lawsuits in Indonesian Families of Different Religions**”, in order to be able to provide views of the underlying reasons on divorce lawsuits’ submissions in Indonesian families of different religions.

## RESEARCH METHODOLOGY

The type of this research is normative juridical, which conducted by researching library materials. This research uses the secondary data source, which obtained through a library research, as follows: primary sources, *inter alia* legislations and cases, secondary sources, *inter alia* books and journals, and tertiary sources, *id est* any other relevant materials to the research. The collected data are analysed and interpreted qualitatively in order to answer the formulated research questions.

## RESULTS AND DISCUSSIONS

### 1. Divorce Lawsuits in Families of Different Religions

According to the cases aforementioned above, it can be concluded that an action can only be categorised as a marriage between people of different religion if such action performed by two adherents of two different religion with an intention to form a family, while both of the concerned individuals keep maintaining their respective religions.<sup>7</sup> Nevertheless, in practise, there are cases of marriage, which actually cannot be categorised as marriage between people of different religion, in which the concerned individual chooses to change his or her religion in order to marry the adherent of the other religion. The reason underlying it is because, if refers to Article 2 Section (1) of the Act Number 1 of 1974 regarding Marriage (hereinafter referred to as the Marriage Act),<sup>8</sup> one of the parties needs to change his or her religion and belief in order to be able to get married, since a legal marriage is a marriage performed pursuant to the laws of each religion and belief. Such circumstance becomes a problem since in some cases, party who previously adhered to a particular religion and followed their spouse’s religion afterwards, a few years after the marriage was taken place, he or she reverted to the religion he or she previously adhered.

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<sup>7</sup> O.S, Eoh, *Perkawinan Antar Agama dalam Tiori dan Praktek*, Jakarta: Raja Grafindo Persada, 1996, p 36.

<sup>8</sup> The Act Number 1 of 1974 regarding Marriage: “perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu”.

In the common marriage, the marriage was held as a consequence to the existence of an amorous relation between two adherents of two different religions, which at the end force one of parties to change his or her religion and belief in order to have a marriage which based on the laws of his or her spouse's religion. Such marriage, I believe if connected to Article 1 of the Marriage Act,<sup>9</sup> will only be intended solely to form a family, but not a happy and eternal family based on the One and Only God. This is motivated by the circumstance which perforce one of the parties to change his or her religion and belief which lead to the existence of a reason that, as in the cases, the party which changed his or her religion is worshipping according to and practising the teaching of his or her previous religion, or even in some cases he or she reverted to his or her previous religion. This circumstance caused the most problem in families of different religion which finally end up to the submission of divorce lawsuits to the authorised District Court.

However, at the Court proceeding, both of the disputing parties keep arguing to each other in order to describe the exact position of their problem before the Court. As in North Jakarta Religious Court Decision No. 1131/Pdt.G/2018/PA.JT, the Defendant, the husband, keeps arguing to the arguments deliver by the Plaintiff, the wife, in which the Defendant said that he was never again adhering to his previous religion, as stated by the Plaintiff. Accordingly, the Plaintiff argued that it is true that the Defendant not openly change his religion to the previous one, but his action has indicated that he has re-changed his religion, in which the Plaintiff as well as the witnesses stated that the Defendant was never practising the teaching of Islam, the religion officially adhered by the Defendant and the Plaintiff, whilst the Defendant was caught up worshipping at a local Church. In addition, there are several reasons which make the Plaintiff getting more confident that the Defendant has changed his religion that, the Defendant permitted his daughter married to a non-Muslim men whereby the Defendant did not become the marriage guardian of his own daughter. Even though as in Article 21 Section (1) of the 1991 Indonesian Compilation of Islamic Law, a Muslim father should be prioritised as a marriage guardian of his own daughter.<sup>10</sup> Moreover, according to the Plaintiff's arguments as well as the witnesses' testimonies, it is found that the Defendant

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<sup>9</sup> The Act Number 1 of 1974 regarding Marriage:  
"Perkawinan adalah ikatan lahir batin antara seorang pria dan seorang wanita sebagai suami istri dengan tujuan membentuk keluarga atau rumah tangga yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa".

<sup>10</sup> The 1991 Indonesian Compilation of Islamic Law:  
"Wali nasab terdiri dari empat kelompok dalam urutan kedudukan, kelompok yang satu didahulukan dan kelompok yang lain sesuai erat tidaknya susunan kekerabatan dengan calon mempelai wanita. Pertama, Kelompok kerabat laki-laki garis lurus keatas yakni ayah, kakek dari pihak ayah dan seterusnya".

was directly giving an advice to his son to change his religion, from Islam to Christianity. These are the reasons why the Plaintiff believe that the Defendant has re-changed his religion to the previous religion he adhered.

It can be concluded from the case that different religion and faith become the reason of the divorce lawsuit's submission of family of different religion, even though the Defendant did not implicitly declared that he has reverted. But, need to be considered that if the Defendant has exactly changed his religion whilst the marriage between them will be put to an end, there is a possibility that both of the parties will disputing to their offspring's religion which actually become a further problem in marriage between people of different religion.

At the same time, in Surabaya District Court Decision No. 892/Pdt.G/2018/PN.Sby, the performance of marriage has been done since one of the parties, by her full consent, prefer to change her religion to Christian, *id est* her spouse's religion, in order to fulfil the element of Article 2 Section (1) of the Marriage Act, *id est* based on the laws of each religion and belief. Since one of the parties has changed her religion, the marriage certainly be performed according to Christian religious law. Similar to the background in North Jakarta Religious Court Decision No. 1131/Pdt.G/2018/PA.JT, the party who previously change her religion, years after their marriage, re-change her religion to the previous one, *id est* Islam. Such decision automatically became problem in their family in which the Plaintiff, the husband, argued that since the Defendant, the wife, re-change her religion to Islam, she never want to go to the Church along with the Plaintiff any longer.

Differs from North Jakarta Religious Court Decision No. 1131/Pdt.G/2018/PA.JT, in Sleman District Court Decision No. 166/Pdt.G/2019/PN.Smn, it is found that the Plaintiff and Defendant's marriage has been taken place pursuant to one's religious law, *id est* Catholic religious law, in which both of them were maintaining their respective religions, which are Islam and Christian. Such marriage between people of different religion has also been registered at Sleman Residence and Civil Registration Office as in Marriage Certificate No. 0608/Cs/G/2000, so that the marriage has been recognised as an administratively valid marriage. Even if both of the Plaintiff, the husband, and the Defendant, the wife, realised that there are differences in their religion and belief, nevertheless, both were willing to have a marriage between people of different religion but still maintaining their respective religions. However, after certain period of their marriage, then both realised that there is a mismatch in between whereby the difference of faith in their family made the condition became worst. As in Catholic religious law, marriage is a sacrament in which cannot be separated by worldly

powers.<sup>11</sup> Accordingly the Defendant argued that, there should be no divorce, as in the principle of the Catholicism, and divorce is not the way to put the problems to an end in which children will be victim of their parents' divorce.

In relation to, as in Surabaya District Court Decision No. 424/Pdt.G/2017/PN.Sby, difference of faith also become the background of divorce lawsuit's submission. It is also found that at the time of the marriage performance, the Plaintiff, the wife, who is a Muslim chose to subject herself to the conditions and procedures of marriage according to the Christian religious law, the religion of the Defendant which is her husband, in which such marriage has also been registered by Surabaya Residence and Civil Registration Office as noted in Marriage Certificate No. 224/G/1997. One of the most interesting things in this family of different religion is that at the time of the marriage performance, both of the parties have agreed upon the religion of their later offspring, in which their offspring will follow their mother's religion, *id est* Islam. Nonetheless, what was promised was later denied by Defendant whereby he want that all of their offspring follows his religion, *id est* Christian. This circumstance leads to dispute and quarrel between them, which at the end make the Plaintiff submit a divorce lawsuit before the Court.

It can be concluded that the difference of faith is chosen to be the ultimate reason, within the parties' lawsuits, to put the marriage to an end. It derives from two fundamental reasons, namely: First, the fact whereby the parties, after having been married for years, realised that marriage between people of different religion should not be done with any reasons. Second, the situation whereby one of the parties, either secretly or openly, reverts to the religion he or she previously adhered. Both of the reasons later on become the most spoken reasons before the court, whereby difference in faith, can be said, as the strongest reasons in submitting divorce lawsuits in the families of different religions.

## **2. Difference in Faith as the Reason of Divorce Lawsuits' Submission**

Based on the cases previously discussed, the similarities among all of the cases is that that difference of faith becomes the most reasons used by the parties to submit divorce lawsuits of families of different religion to the court, as it is stated who creates the parties' household problems. The existence of circumstance in which one of the parties, which previously change their religion and belief, recharge his or her religion to the previous one

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<sup>11</sup> Paroki Blok B – Keuskupan Agung Jakarta. “*Perkawinan Katolik: Hakekat dan Tujuannya*”. Paroki-blokb.org, Accessed October 26, 2020. [http://paroki-blokb.org/index.php?option=com\\_content](http://paroki-blokb.org/index.php?option=com_content).

creates individual's limitation of freedom of religion and worship to the One and Only God, which I believe caused by the inevitably conditions and procedures of marriage as in religious laws of each religion and belief. However, in the other cases, the marriage is taken place since there is party with his or her full consent prefer to subject himself or herself to the religious law of the other party, so that both still with their respective religion and belief.

## **CONCLUSION**

As a conclusion to this research, I strongly believe that, marriage between people of different religion does not preclude the possibility of divorce lawsuits' submission to the court. I also believe that, difference of faith becomes the most common reason that has been adopted as the basis of divorce lawsuits' submission to the court, even though there were numbers of existed problems in the concerned families. In fact, promises of mutual respect to not to interfere their respective religions have been taken before and at the time of the performance of the marriage between people of different religion. However, in practise, the promises which have been established are likely to be denied with the reason that their household can no longer be maintained, which lead to the circumstance whereby the children awfully impacted by their parents' decisions. I found that difference of faith is likely used as the most telling reason to put the marriage to an end, even though it is clear that marriage is a sacred agreement intended to the happiness and the eternal of the family based on the One and Only God, nevertheless this is often overlooked by many people.

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