



The Indissolubility Principle In Saumlaki District Court Decision Number 21 / Pdt.G/2014/PN.Sml

Barzah Latupono¹, Theresia Nolda Agnes Narwadan², Ferdly Renaldy Lerebulan³

^{1, 2, 3}, Faculty of Law Pattimura University, Ambon, Indonesia

E-mail: barzahlatupono75@gmail.com



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Abstract

Marriage within the Catholic church recognizes the indissolubility found in Canon 1141, which explains that Catholic marriages are consummated, unbreakable marriages, cannot be cut off by any human power and for any reason, other than death. The Catholic church is the only religion that strongly rejects divorce and does not acknowledge the effectiveness of court rulings that dissolve the marriage of Catholic couples. This principle provides a consequence for married couples who are Catholic. Divorce is the only way when marital harmony is no more. The concept of divorce between religious teachings and the idea of national law differs especially from that of national law, for it provides an opportunity for a couple to divorce as long as there is a clear and valid reason for the congregation, while the Catholic faith says that only death can separate, since marriage is the sacrament and involves God in it. The kind of legal research conducted is normative where the law is conceptually defined as what is written in the law (law in books) and or the law is conceived as a code or custom by which human behavior is deemed feasible, the case approach (case approach) and the conceptual approach (approach). Referred to this research we can see that the state approves divorce proceedings because the state merely wants to give its citizens legal certainty, since the state's job is to provide comfort and safety to its citizens. While this study sees the indissolubility principle harmonizes with the principle of difficulty divorce, however, it is still rarely found the application of the indissolubility principle in national law, since basically religious and state teachings cannot be harmonized.

1. Introduction

The Catholic Church is the only religion that categorically rejects divorce (Hadikusuma, 2007: 166). Canon law clearly prohibits a divorce or no divorce in a Catholic marriage or known in the Catholic Church as the principle of indissolubility contained in the Book of Canon Law (hereinafter referred to as KHK) canon 1141 which clearly states that marriage in the Catholic Church is a marriage *ratum et consummatum* can not be terminated by any human power and for any reason, other than by death (Paus Yohanis Paulus II, 2016). Marital events often require legal norms and the order that governs them. The application of legal norms in the event

of marriage is primarily necessary in order to regulate the rights, obligations and responsibilities of each family member, in order to form a happy and prosperous household. Therefore, marriage is one of the dimensions of life that is very important in human life in any world (Latupono et al., 2021: 46-53).

The principle of indissolubility is explained as a consequence of marriage based on the Catholic view and can only be decided or annulled in the presence of the prelate, based on the provisions in force in the Catholic Church. However, in national law, namely the law on marriage in Article 39 paragraph (1) and Article 39 paragraph (2); explains that divorce can only be decided and carried out in front of a court hearing, and must be with sufficient reason between husband and wife can no longer live as husband and wife.

Article 39 paragraph (1) Law No 1 Year 1974 juncto Law No 16 Year 2019 about Marriage Law contains provisions that marriage can be divorced in front of a court hearing if the person concerned tries to reconcile and does not succeed in reconciling the two parties, while Article 39 paragraph (2) confirms that to divorce there must be sufficient reasons, that between the two parties can no longer live in harmony as husband and wife (Latif, 1981: 108). The reason for divorce can be found in Article 19 of Government Regulation Number 9 year 1975 concerning the Implementing Regulations of the law on marriage (hereinafter referred to as PP No. 9 of 1975).

Different things the issue of a divorce is more complicated when religious laws such as the Catholic Church law that prohibits divorce, worse in the law on marriage Article 2 Paragraph (1) gives authority to the church in this case the autonomous religion to legalize a marriage while to divorce must be done before the state court. Article 2 Paragraph (1) of the Marriage Law explains that marriage is valid if it is carried out according to the laws of each religion and belief of the married couple who want to enter into marriage. The material condition of a marriage referred to in this article is that the marriage to be performed is valid according to the religion of each party (Latupono, 2018: 150-160). The term divorce implies that it is the married couple who dissolve the marriage, either by mutual agreement or by the will of one of the parties. Rarely in the field are litigant couples trying to seize the opportunity for deliberation or mediation to save their marriage. In other words, the husband and wife, if they have submitted a letter of divorce to the court, have determined to end the marriage.

There is a big difference between church and state when it comes to divorce, because the Catholic Church basically forbids divorce. The church is of the opinion that what God has united cannot be separated from man for any reason, in the CCC canon 1057 number 2 explains that : “the marriage agreement is a force of Will by which man and woman give themselves to each other and accept each other to form a marriage by an irrevocable covenant.”

The decision of the District Court against Catholic marriage does not guarantee that a married couple after a divorce can remarry in the Catholic Church, because the Catholic Church rejects and does not recognize the effectiveness of the decision issued by the civil registry, it means that although officially before the District Court

the married couple has been declared divorced, but in the, because marriage has a close bond with religion and religion is the main staple of State Life (Basyir, 2000: 11). This study was conducted because it was found that the District Court ruled on divorce between married couples who were married in the Catholic Church and the application was accepted in its entirety.

This happened in the decision of the District Court Saumlaki number 21 / Pdt.G/2014 / PN Sml between RC as the plaintiff and YL as the defendant, the verdict was issued on Monday, December 15, 2014. According To R.Wirjono Prodjodikoro in his book Marriage Law in Indonesia explains that if there is the influence of a religion on the development of a rule of law, the influence of religion is most visible in marriage law (Prodjodikoro, 1959: 20). The state exists as a guarantor of the creation of the principles of equality, respect and care (Arliman, 2017: 74-87).

Based on the description of the background of the problem that has been described, the author raises the issue as legal writing material with the title: "the principle of Indissolubility in the decision of the Saumlaki District Court Number 21/Pdt.G/2014/PN Sml."

2. Methods

This paper uses normative juridical research methods, because this type of research is research aimed at written regulations and refers to the norms contained in legislation. Using case approach and statue approach, and the research was conducted by conducting library studies.

3. Results And Discussion

3.1 Principle of Indissolubility in the Catholic Church and National Law

The principle of law is the basic principle of law or legal foundation that contains understanding and values that become a benchmark for thinking about law (Huijbers, 1986: 78). The principle of law is also the foundation for the formation of a rule of law, which contains the reason for the formation of a rule of law or is a logical ratio of a rule of law, which contains values, soul, social ideals or ethical legislation to be realized, because the principle of law is actually the heart and bridge of a rule of law that is able to connect between the rule of law or positive law with social or ethical ideals in public life (Rahardjo, 2000: 85-86). A. R. Lacey explained that the principle is " principles may resemble scientific laws in being descriptions of ideal world, set up to govern actions as a scientific laws are to govern expectations" this shows the broad legal principles in the sense/rule of law to regulate human behavior that causes the expected legal consequences (Mahadi, 2003: 120). Based on the understanding of the principle, it can be concluded that the principle becomes an important part in the world of law as a touchstone in seeing, studying, forming or taking a legal action that causes legal consequences.

The principle of indissolubility in the Catholic Church is as much in church literature as it is in Scripture ; Malachi 2:14-16, Mark 10: 2-12, Matthew 5:31;19:2-12,

Luke 16:18. Romans 7:2 and 1 Corinthians 7: 11 while the teaching of the church is contained in the Second Vatican Council which is specifically discussed in *gaudium et spes* article 48, *Familiaris Concortio* number 30 which is a document submitted by Pope John Paul II to the bishops, priests and faithful of the entire Catholic Church which contains the role of the Christian family in the modern world, the Catechism of the Catholic Church 1638-1642 which talks about the sacrament of marriage establishes an eternal and exclusive bond between the bride and groom, and The Book of Canon Law canon 1141. The principle of indissolubility or indissolubility is the perception of marriage as a sacrament mentioned in KHK kanon 1055 number 1, namely: by the covenant of marriage men and women form between them togetherness throughout life; from its nature, the covenant is directed at the welfare of husband and wife as well as the birth and education of children; by Christ The Lord. The covenant of marriage between baptized persons, elevated to the dignity of the sacrament. Canon 1056 States: the essential qualities of marriage are, monogamous and indissoluble which in Christian marriage acquire special strength on the basis of the sacrament.

The principle of indissolubility if brought into the law of marriage it will be in harmony with the principle of complicating divorce, because divorce means the failure of the purpose of marriage to form a happy and prosperous family. Seeing the very essential purpose of marriage as described in Article 1 of the law on marriage, the marriage law makes it difficult for divorce to occur, because with divorce it will result in no success of good intentions to form a happy and eternal family due to the end of the marriage bond between husband and wife. In addition, divorce can cause conflict between ex-husband and ex-wife that can come from the struggle for property, and the struggle for custody of children.

The principle of complicating divorce is a legal principle contained in the general explanation of Law Number 1 of 1974 jo Law Number 16 of 2019 number 4 letter e which explains in principle that this law makes divorce difficult, stated "because the purpose of marriage is to form a happy, eternal and prosperous family, this law adheres to the principle of complicating divorce". In order for a divorce to be possible, there must be certain reasons, and it must be done before the court. Article 39 paragraph (1) of the law on marriage determines that divorce can only be carried out in front of a court hearing after the relevant court has tried and unsuccessfully to reconcile the two parties, this article is also regulatory and binding. Based on the explanation of Article 39 paragraph (1) mentioned above, it can be understood that the court does not necessarily allow a married couple to divorce but the court tries to reconcile the two parties so that the divorce does not take place and can be avoided through peace, if peace is reached and the parties wish it, an minutes will be made which will be signed by the parties or their proxies specifically appointed for it, but if the attempt fails then the divorce can be made before the court (Ropaun, 2006: 12).

According to Abdul Kadir Muhammad, the law on marriage makes divorce difficult because of the reasons (Muhammad, 2000: 109):

- a) Marriage has a holy and noble purpose, while divorce is an act hated by God;
- b) To limit the husband's arbitrary actions towards the wife;
- c) To equalize the degree and dignity of women to be equal to the degree and dignity of the husband.

The principle of indissolubility when viewed as having similarities with the principle of complicating the occurrence of divorce in national law, namely;

- a) The principle of Indissolubility and the principle of complicating divorce are both carried out before a court session, where the principle of indissolubility is carried out before a church court while the principle of complicating divorce is carried out before a district court session;
- b) These two principles have a binding nature;
- c) The principle of Indissolubility and the principle of complicating divorce both have the purpose of making it difficult for divorce to occur, where the principle of indissolubility is a consequence of not carrying out divorce in the Catholic Church;
- d) There must be a clear reason;
- e) The principle of complicating divorce first there must be an attempt to reconcile by the judge, while the principle of indissolubility does not want a divorce at all.

It will be very difficult if this principle is adopted into national law because religious law and national law do not go hand in hand, but religious law and national law can coexist, although in Article 2 Paragraph (1) it is explained that a marriage performed according to the laws of each religion and belief is a legal marriage, but in Article 39 paragraph (1) explains that divorce can only be done before a court hearing and explanation of Article 40 paragraph (1) a lawsuit is filed with the court.

Based on the explanation of the articles above, it is clearly explained that for a legal marriage, it must be carried out according to the religious teachings adopted by the prospective married couple (Subekti, 1990: 3), but if there is a divorce, the divorce is carried out before a court hearing, because in Article 39 of the law on forced marriage it does not involve religion in the decision. This issue is obviously very complicated because in positive law it gives religion the opportunity to legalize a marriage while divorce must be done before a state court. The consequences when there is a Catholic couple who did not succeed with the marriage will come to the District Court for divorce. Giving divorce papers to Catholic couples will obviously cause new problems, because the judge who is authorized to decide on divorce can not actually guarantee that a Catholic to remarry with a new person in the Catholic Church. However, the purpose of positive law is done to protect the interests and human rights, because with this positive law, couples who are legally married can get legal protection and a number of rights as citizens.

3.2 Divorce in Marriage Law

Divorce is the breaking of the marriage bond between a man and a woman. The end of the bond can be caused because one of the parties dies, the man and woman are divorced, and one of them has left his residence so that the court considers that

the person concerned is dead (Ali, 2014: 73). According to Subekti, divorce is a situation where there is a deletion of marriage either from the judge's decision or the demands of one of the parties to the marriage (Purwadarminta, 1986: 42).

Divorce in the law on marriage is described in Article 38 which states "marriage can be broken because of: (1) Death, (2) divorce, (3) on the decision of the court.

- a) Death; The breakup of marriage is caused because one of the spouses has died, this divorce in public life is referred to as a dead divorce.
- b) Divorce; Breakup of marriage due to divorce is often referred to as divorce life, there are two types of breakup of marriage due to divorce :
 - 1) Divorce suit; It is a type of divorce that applies to those who enter into a marriage based on their religion and beliefs, not Islam, and a wife who enters into a marriage according to the religion of Islam
 - 2) Divorce talak; It is a type of divorce that applies to those who enter into marriage according to the Islamic religion
 - 3) On the verdict of the court; Divorce as a result of a court decision is contained in the law on Marriage described in Article 39 paragraph (1) and Paragraph (2). Paragraph one explains that "divorce can only be done in front of a court hearing after the court concerned tried and failed to reconcile the two parties" and the second paragraph explains to do a divorce must have sufficient reason, that between husband and wife can no longer live in harmony as husband and wife. It can be concluded from the above that divorce is a result of the termination of marriage by a judge for certain reasons, which is decided before a court hearing based on certain reasons and registered in the civil registry office.

The reasons that strengthen the occurrence of divorce contained in Article 19 PP No. 9 of 1975 explained:

- a) One of the parties commits adultery or becomes a drunkard, stuffing, gambler and so forth that is difficult to cure,
- b) One party leaves the other for two consecutive years without the other party's permission and for no valid reason or for any other reason beyond its consent.
- c) One of the parties gets a five-year prison sentence or a more severe sentence after the marriage takes place.
- d) One of the parties commits atrocities or serious maltreatment against the other
- e) One of the parties has a body record or other illness that results in not being able to carry out obligations as a wife or husband
- f) Between the wife or husband there are continuous disputes and quarrels so that there is no hope to live in harmony in the House.

3.3 Divorce According To The Regulations Of The Catholic Church

The Catholic Church expressly states that divorce is prohibited in the Catholic religion, in addition to being contrary to canon law as well as contrary to the teachings of Jesus Christ. The church assumes that what God has united cannot be separated by man for any reason. This is contained in the KHK canon 1057 number 2 which states: "a marriage agreement is an act of Will by which a man and woman

give themselves to each other and accept each other to form a marriage by an irrevocable agreement”.

Divorce in the law of the Catholic Church does not recognize divorce, because the church assumes that what has been united by God cannot be separated by man for any reason. This is contained in the KHK canon 1057 number 2 which states: “a marriage agreement is an act of Will by which a man and woman give themselves to each other and accept each other to form a marriage by an irrevocable agreement”.

Divorce in the Catholic Church is different from civil divorce. In the Catholic Church divorced couples need to go through a church judicial process that ultimately issues a “nullity” stating the marriage never took place, in Catholic law known marriage annulment procedure or called “annulment”. The result of this annulment under church law is that both parties who have had their marriage annulled can remarry. The annulment of marriage in the Catholic Church is carried out by a tribunal of the church elected by the Bishop.

The Tribunal is an institution that has the authority to deal with the issue of annulment of marriage, for people who are Catholic. There are three levels of tribunals in the Catholic Church, namely the first level Tribunal (Collegiate Tribunal, single judge Tribunal, and other personnel), the second level Tribunal and the Apostolic See.

a) First Level Tribunal

This Tribunal is also called a collegial tribunal is a tribunal in the form of an assembly, consisting of three or five judges described in KHK canon 1421 number 1. The Tribunal has its seat in the diocese with the Diocesan Bishop as its first judge.

b) A Single Judge Tribunal

Not all dioceses are able to establish a collegiate ecclesiastical tribunal of the first level due to limited power, so the Indonesian bishops ' conference (hereinafter referred to as KWI) based on KHK canon 1425 number 4 can allow a bishop to submit matters to a cleric (clergy and clergy) as the sole judge. It is usually accompanied by an assessor and an auditor described in KHK canon 1425 numbers 4 and 1424.

An assessor is a tribunal officer appointed by a judge to assist the judge in assessing evidence, especially if the judge is unfamiliar with the culture of a particular group. While the auditor is the person appointed by the tribunal to compile and collect evidence.

c) Second Level Tribunal

The Tribunal is the Appellate tribunal of the first instance, based on Canon 1438 which explains that the tribunal of the second instance has its seat in the Tribunal of the Metropolitan Bishops. Bishop of Metrapolit is addressed to the office held by the Archbishop of a metropolis or major city within a province.

d) The Apostolic Tribunal

The Tribunal is based in Rome, the Rota Romana and the Supreme Court of the Apostolic Signatura, and according to Canon 1442 the Pope is the Supreme Judge of the whole world for Catholics.

3.4 District Court Ruling Against Canonical Marriage

The Saumlaki District Court received a letter of claim from the plaintiff on August 19, 2014 with Register Number : 21/Pdt.G/2014/PN.Sml. Plaintiff and defendant have been married for more than eight years with civil registration certificate of marriage extract No 474.1/39/2006 from the Register of marriages according to Stbl 1933 No. 75. Jo 10. 193 6 No. 607 in Saumlaki on July 8, 2003 by the head of Population and Family Welfare Agency E.Kanarubun S.sos. From the marriage, three children were born who were recorded in a family card letter from the Government Office of the population and Civil Registration Office of Southeast Maluku regency. Since 2012-2014 the marriage was no longer harmonious so that there was a quarrel in the household so that this divorce lawsuit arose and the divorce lawsuit was granted and accepted in its entirety.

Marriage that has been decided by divorce on the decision of the District Court Saumlaki No. 21/Rev.G/2014 / PN Sml by the panel of judges, Betsy Matuan Kotta, SH.,MH as chairman of the assembly and two member judges on December 15, 2014 is a marriage *ratum et consummatum*, where this marriage can no longer be decided or divorced. The marriage is called *ratum et consummatum*, because the married couple RC and YL already have three children.

3.5 Status of District Court rulings against married couples who are married Catholically after a divorce ruling by the District Court

The court in making a divorce decision against a Catholic marriage, not many consider the principle of indissolubility that applies to adherents of the Catholic religion, but there are courts that consider the principle against some divorce lawsuits. For example, divorce lawsuit number 268 / PDT.G/2015/PN.JKT. The dispute between Cathy Sharon as defendant and Eka Kusuma as plaintiff. The divorce lawsuit was rejected by The Jakarta District Court because they were Catholic spouses and considered the principle of indissolubility.

Marital Status based on the court decision on the divorce case between RC and YL in Catholic religious law is still considered as a married couple before the church, because the consummate marriage applies the principle of indissolubility or not divorced where this marriage can only be decided by death alone. If there has been a divorce and has been decided by the District Court and the registrar has sent a divorce decision and has been recorded by the civil registry office, then legally, the marital status between RC and YL has officially broken up, because it is clear that it has fulfilled the reason for divorce in PP No. 19 of 1975, namely; the defendant and the defendant could no longer coexist as husband and wife or could no longer live in harmony in the household, the defendant no longer fulfilled the defendant's rights as a wife, and the mediation judge could not reconcile the two parties because of the unanimous desire of the defendant and the defendant to divorce, although Catholic law considered that divorce never existed.

The decision of the District Court against marriage between RC and YL raises uncertainty, because by religious law, the married couple in the church's parent book is still recorded as a married couple, because there is no record of the divorce book which will make it difficult if you want to marry again in the Catholic Church (Rosely, 2017: 3). The difference between the principles of marriage law and religious law creates legal uncertainty, legal action in divorce must provide certainty. Legal certainty is the certainty of rights and obligations regarding what according to the law may or may not be (Rumokoy & Maramis, 2014: 140). So that this legal certainty speaks of a definite state, where the law of law is fair and certain. The law must be because it serves as a code of conduct and fair because the code of conduct must support an order that is considered reasonable. Only by being fair and certain Can the law perform its function.

This legal certainty can only be answered normatively and cannot be answered sociologically, because according to Kelsen, law is a system of norms, and norms are statements that emphasize aspects of should or *das sollen*, by including some rules about what should be done (Marzuki, 2016: 158). Legal certainty is a guarantee of law that contains Justice. Norms that promote justice must really serve as rules that must be obeyed. Gustav Radbruch argued that legal certainty must be maintained for the sake of Justice, security and law of a country, which in the end positive law will always be obeyed. Based on the theory of legal certainty and the value to be achieved is the value of justice and happiness (A. Ali, 2002: 95).

So based on the theory of legal certainty, the divorce status of a married couple is considered valid based on a District Court decision, provided that it is based on clear reasons in accordance with the provisions described in the law on marriage and related regulations, although in religious law the married couple is still valid before the church.

The result of the court ruling against the Catholic marriage was;

- a) Divorced couples cannot remarry another person in the Catholic religion because they are considered to have committed adultery, because they are still considered husband and wife
- b) Couples whose marriage has been broken up by a District Court hearing, can not be recognized its decision in the Catholic Church, or in other words the Catholic Church does not recognize the effectiveness of the court decision
- c) There is legal uncertainty about the divorce status of married couples who are married Catholics.

Indonesia in the law on marriage regulates and provides equal opportunities for all citizens without exception to terminate their marriage by means of a divorce made through a court decision, because all citizens have the same position, all have the same right to marry and divorce and there is no distinction. The Church herself cannot accept that marriage can be decided by the decision of a judge in a trial before a court, which could mean that men go beyond the power of God to break the bonds of marriage that God has united through the sacrament.

Between the law of the church and the law of the state can not be denied conflicting with each other in the matter of divorce and Catholics are citizens as well as citizens of the church, which must be subject to such conflicting laws. From this it can be seen that Catholics are required loyalty and also wisdom from all Catholics to always be subject to the church and also to the government or state. Catholics are required to follow and obey everything that is to be followed without having to present problems. Divorce by state law is allowed but church law opposes it, this opposition must be addressed properly because the church and the state already have their respective authorities. Divorce is a choice in marital life, as Catholics who understand the essential characteristics of marriage upheld by the church, can determine their own choice. If you want to obey the laws of the church mandated by God, then divorce will never be done.

4. Conclusion

The principle of indissolubility was brought into national law in harmony with the principle of complicating divorce in the law on marriage, because this principle equally gives consequences to married couples who have entered into marriage. The principle of complicating divorce is contained in the general explanation of Law Number 1 of 1974 jo Law Number 16 of 2019, the principle of complicating divorce is born from the purpose of marriage in Article 1 of the law on marriage. The principle of Indissolubility and the principle of complicating divorce have one main purpose, namely to avoid divorce of married couples. Marriage in the marriage law has explained that the purpose of marriage is to form a happy and eternal family based on the Supreme God, because this marriage becomes the beginning of the process of human manifestation. When talking about divorce, there will be different views between divorce according to positive law and according to religious law, especially Catholicism, the Catholic Church does not recognize divorce because the principle of Catholic marriage is one until death, Therefore, if there is a District Court decision regarding the Catholic marriage, then the court decision is considered invalid, and the couple are still husband and wife in the Catholic religion. Differences in views on the decision of marriage due to divorce, resulting in legal uncertainty because legally the status of both spouses is no longer husband and wife, while in the Catholic Church is still a husband and wife.

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