

## THE VALIDITY OF DIVORCE JUDGMENTS BY THE COURT FOR CATHOLIC COUPLES ACCORDING TO CANON LAW

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### ABSTRACT

*This research discusses the validity of divorce judgments issued by civil courts against Catholic couples from the perspective of Canon Law. Canon Law itself, as the internal legal system of the Catholic Church, does not recognize divorce as a means to end a valid marriage. Marriage is considered sacred and indissoluble. Although civil courts have jurisdiction to issue divorce judgments according to state law, this research examines how such judgments are viewed from the perspective of Canon Law and their impact on the religious status of divorced couples. Through analysis, this research finds that divorce judgments by civil courts do not alter the marital status in the context of the Catholic Church, which still considers the marriage valid and binding. This finding highlights the legal dualism between state law and Canon Law and its practical implications for Catholic individuals facing divorce. This research recommends the need for a deeper understanding and sensitive handling of divorce cases involving Catholic couples to avoid legal and religious conflicts.*

**KEYWORDS** *Divorce, Canon Law, Catholic Church, Breakup of Marriage*



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### INTRODUCTION

The Catholic religion is one of the six recognized religions in Indonesia. According to data from the Ministry of Religious Affairs of the Republic of Indonesia in 2022, there were 9,044,372 followers of the Catholic faith in Indonesia, from the province of Aceh to the Southwest Papua province. Catholicism itself has sacred scriptures similar to other religions as guidelines for religious practice. Religion is an important aspect in the Unitary State of the Republic of Indonesia, as it is also a factor in the process of creating laws, as described by Van Apeldoorn, where religion is the relationship between God and humans. It entails obligations towards God, moral obligations, and legal obligations. Therefore, it can

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be seen that religion is a source of law born from religion itself and obeyed by the religious community, hence religion and societal life are inseparable.

The first principle of Pancasila states that Belief in the One and Only God, meaning that Indonesia highly values religious values. Faith is a fundamental aspect for the Indonesian nation, as stated in Article 29, paragraph (1) of the Fourth Amendment to the 1945 Constitution, which stipulates that the State is based on Belief in the One and Only God, meaning that Faith is a fundamental aspect of the state and guarantees freedom of religion and worship for all citizens. The state also guarantees the freedom of each individual to embrace their respective religions and to worship according to their religion and beliefs, as stated in Article 29, paragraph (2) of the Fourth Amendment to the 1945 Constitution.

The state guarantees every recognized religion to worship and follow its teachings. In marriage, religious points become important because they are one of the requirements for a valid marriage besides registration. The teachings of the Catholic Church interpret marriage as seen in the Canon Law Book (hereinafter referred to as KHK) in canon 1055 (1) as an agreement (foedus) between a man and a woman to form a lifelong partnership. The marriage agreement between a man and a woman forms a lifelong partnership between them; by its very nature, the agreement is directed towards the well-being of the husband and wife as well as the birth and education of children; by the Lord Christ, the marriage agreement between baptized persons is raised to the dignity of a Sacrament. The background of this definition is the document of the Second Vatican Council, *Gaudium et Spes* §48). GS and KHK no longer interpret marriage as a contract. Marriage, which was originally seen only as a contract, is now regarded as an agreement (covenant, foedus) that forms a union of life and intimate love. The new Code (KHK 83) in Kan 1055, § 1 speaks of this in terms of the "bonum coniugum" (good, well-being of husband and wife).

Catholic marriage is fundamentally characterized as monogamous and indissoluble. We call it Monogamous and Indissoluble nature. Monogamous means one man with one woman, while indissoluble means that after a marriage between baptized persons (ratum) is validly and consummated by intercourse, the marriage becomes indissoluble, except by death. This can be found in Church Law in 1983 (Canon 1141). These two characteristics signify that the Catholic Church does not recognize divorce and a marriage conducted more than once unless one of the partners has passed away. However, it cannot be denied that many Catholic couples in Indonesia end up divorced. In Indonesia, we recognize the termination of marriage, namely divorce and annulment of marriage. These two things have different requirements and legal consequences. Although both must be done in a court hearing. If we refer back to the law by Franky Anggriawan, "The Principle of Indissolubility in Canonical Marriage Law," Master of Notary Program, Faculty of Law, Lambung Mangkurat University. Volume 4 Issue 1, (2019), Catholic church marriage, the church does not recognize divorce, but annulment of marriage is possible.

The Canon Law Book recognizes three fundamental reasons that can cause a marriage to be annulled, including: Cases due to impediments that invalidate, Cases due to defects or absence of canonical form, and Cases due to defects in the

marriage agreement. Cases due to impediments that invalidate can occur because there are defects between the two parties or because there is one of the 12 marriage-impeding impediments as listed in canons 1083-1094 in the Canon Law Book. The obstacles are:

- a. Impediment due to insufficient age (canon 1086)
- b. Presence of impotence (canon 1084)
- c. Obstacle due to a previous marriage bond (canon 1085)
- d. Obstacle due to difference in belief *disparitas cultus* (canon 1086)
- e. Obstacle due to holy orders (canon 1087)
- f. Obstacle due to the bond of public purity (canon 1088)
- g. Obstacle due to Woman abducted (canon 1089)
- h. Obstacle due to crime (canon 1090)
- i. Obstacle due to blood relation or consanguinity (canon 1094)
- j. Obstacle due to relationship by affinity (canon 1092)
- k. Obstacle due to legal relationship arising from adoption (canon 1094)
- l. Obstacle due to public eligibility (1093)

Annulment of marriage according to canon law, can be handled through church courts (marriage tribunals) or outside the court meaning decided by the Ordinary of the region. There are two types of judicial processes: ordinary process as in Church court proceedings (Canon 1671-1685) and documentary process (Canon 1686-1688). The ordinary process is used for all cases, except for cases where the cause is an impediment that invalidates, or a defect in a valid form or an invalid representation and there is documentary evidence. Whereas cases of no valid form at all are outside the court.

Annulment of marriage according to the Catholic Church, has a relatively long process, as explained above. This is what makes Catholic couples not go through the annulment process, but only file for divorce in civil court. The rules in the Catholic Church stated in canon law clearly state that divorce is not recognized for any reason. However, there is indeed a termination of the marital relationship between husband and wife called annulment of marriage as explained above. But in fact, there are many Catholic couples in Indonesia who end up divorcing.

## **RESEARCH METHOD**

This research was conducted using the normative juridical approach method. This method utilizes the principles and principles of legislation, empirical legal findings, and non-legal sciences that are beneficial for the interests of legal analysts without changing the nature and characteristics of law as a normative science. The approach involves examining legal principles, namely research on the relationship between legal principles and legal doctrines with positive law, as well as law that exists within society. In this research, the author will examine the principles found in marriage law, as well as marriage in the Catholic Church and doctrines related to marriage, divorce, and annulment of marriage. The research method used in this study is analytical descriptive, which is a method used to describe a condition or situation that is occurring or ongoing with the aim of providing data as meticulously

as possible regarding the research object so as to be able to explore idealistic aspects, then analyzed based on legal theory or applicable law.

In this research, the researcher describes legal issues and facts related to the Divorce of Catholic Couples Associated with Canon Law and Marriage Law. To obtain good research results, the author also conducted interviews with stakeholders such as judges and Catholic Church priests.

## **RESULT AND DISCUSSION**

### **Divorce Regulation in Indonesia for Catholic Couples**

Divorce is the culmination of resolving a troubled marriage and occurs when spouses can no longer find ways to resolve issues that satisfy both parties. Many marriages that do not bring happiness are not ended in divorce due to religious, moral, economic, and other reasons. However, there are also many marriages that end in separation and annulment, either legally or quietly, and some where one spouse leaves the family. Divorce demands must be filed with the court through regular litigation in civil cases, which must be preceded by permission from the local District Court Chief to file a lawsuit. Before permission is granted, the judge must attempt to reconcile both parties. This applies to all couples regardless of background or religion who wish to file for divorce. Currently, divorce cases are referred to religious courts for couples married under Islam and to civil courts for couples married under religions other than Islam.

When considering only the religion of the couple, there may be interfaith marriages or conversions after marriage. Thus, the key is to determine the religion under which the marriage was conducted. Returning to the main discussion, for couples who do not marry under Islam (especially Catholics in this context), the divorce process will be handled by civil courts. The divorce process for Catholic couples in civil courts begins with the filing of a lawsuit, where one spouse (the plaintiff) files for divorce with the competent civil court. This lawsuit must include reasons for divorce according to national law, such as continuous disputes, domestic violence, or other reasons recognized by civil law.

Registration and Notification are the next steps after the lawsuit is filed. The court will register the case and notify the other party (the defendant). The defendant is given time to respond to the lawsuit. The next process is Mediation, where the court may require both parties to undergo mediation as an effort to reconcile and find solutions outside of court. Mediation may not always succeed, especially if the couple's issues are very serious.

If mediation fails, the case will proceed to trial. Both parties will be asked to provide evidence and witnesses to support their arguments. This trial may involve several sessions depending on the complexity of the case. The final step is after hearing arguments and evidence from both parties, the judge will issue a decision. This decision will cover the divorce itself, as well as related issues such as child custody and division of shared property. If either party is dissatisfied with the court's decision, they have the right to appeal to the high court.

Reasons for divorce can be seen in Article 19 of Government Regulation No. 9 of 1975, which states that reasons that can be used as the basis for divorce include: one party committing adultery or engaging in substance abuse, addiction, gambling,

and other difficult-to-cure behaviors. These reasons must be proven that the defendant engaged in such behavior and there is no hope of continuing the marriage. This is supported by interviews conducted by the author with judges from the Bandung District Court (Mr. Riyanto Aloysius) and the Bale Bandung District Court (Mr. Adil Hakim) that in divorce cases, judges focus on the reasons and causes of the divorce. Thus, religious aspects are not the responsibility of the judge. Although according to Mr. Riyanto Aloysius and Mr. Adil Hakim, divorce is indeed not recognized in Catholic Canon Law.

It should also be emphasized that judges here only issue divorce certificates, meaning the court's product is a divorce certificate to dissolve the marriage (which is authenticated by the marriage certificate). Although we look back at the Marriage Law which states that a valid marriage is one that is valid according to religion and is recorded. However, judges do not have the authority to intervene in religious matters. This is further reinforced by the upcoming discussion on canon law. Although marriage laws initially leave the validity of marriage up to religion, this does not mean that everything that arises and occurs after marriage will be handed back to religion (in this case, divorce).

### **The Dissolution of Marriage in Canon Law**

In the view of the Catholic Church, marriage is not merely seen as a human endeavor to strengthen the bonds of love and personal relationships. Beyond that, marriage is considered a part of God's profound design and creation. This aligns with the content of Scripture, particularly concerning creation (Genesis 1:26-28). From the very beginning of human creation, God established marriage. God is love, and out of His love, He created humans, male and female, in His image (Genesis 1:27). It is not good for them to live alone (Genesis 2:11). Mark 10:6-8 emphasizes: "But at the beginning of creation God 'made them male and female.' 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh.' So they are no longer two, but one flesh."

Marriage is a contract because it involves a bilateral agreement between a man and a woman. There are three elements in marriage:

1. Form: Personal agreement between a man and a woman.
2. Object: Sharing of entire life.
3. Consequence: Right to share life, including the husband-wife relationship.

A marriage agreement is not just considered a marriage contract, as the marriage contract itself has its own significance. "Contract" in the context of marriage has its own uniqueness:

1. The contracting parties are only two and of different genders, a man and a woman (heterosexual principle).
2. The purpose and true essence of marriage rights are determined by natural law, or in today's popular language, based on the nature of marriage itself.
3. Marriage falls under the category of public matters.
4. Therefore, marriage cannot be annulled or terminated by the contracting parties. The concept of this contract is established in marriage:
  - As far as marriage is a natural institution, not a sacrament,

- In terms of its juridical aspects, not concerning the aspects or values of marriage.

Marriage is a lifelong bond between husband and wife that is full, total, and exclusive, which is inseparable and involves the whole person in every aspect of life and activity. This is the essence of marriage, where there is a lifelong commitment in all things and with full love. The object of the husband-wife agreement is to build a partnership for their whole life, an "intimate community of life and love" (GS, 48). Agreement and love form the basis of family life. To build a lifelong communion, there must be love and a bond of love. In Catholic marriage, the spouses make a vow before the priest and witnesses, stating that they are willing to live in lifelong communion. In this formulation, it is written that the parties involved (the prospective couple) promise to faithfully dedicate themselves to each other in good times and bad, in sickness and in health, and to love and honor each other throughout their lives. This vow truly expresses a complete and real lifelong communion, where the couple no longer sees themselves alone, they live in a complete communion, they are able to transform themselves, and accept their partner in every situation.

Catholic marriage is essentially characterized as one for ever and indissoluble. It is called Monogamous and Indissoluble. Monogamous means one man with one woman, while indissoluble means that after the marriage between baptized persons (ratum) is validly and consummated by sexual intercourse, the marriage becomes indissoluble, except by death. This can be found in the 1983 Church Law (Canon 1141). An indissoluble marriage is a marriage that cannot be dissolved or terminated for legitimate reasons. The concept of indissoluble marriage is found in much literature on marriage according to the Catholic religion. In other religions (non-Catholic), this concept exists, but it is not explicitly regulated regarding the indissolubility of a marriage institution. The basis for the indissolubility of Catholic marriage is: Scripture (Mark 10:2-12; Matthew 5:31-32; 19:2-12; Luke 6:18); "So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate." (Matt 19:6). This law applies not only to Catholic marriage but also to marriages in other religions and customary marriages. The Catholic Church is not allowed to dissolve marriages in other religions.

Thus, it can be concluded that the indissoluble marriage in the view of Catholic Church doctrine is based on Canon 1055 and 1056 as well as Canon 1141; that married life cannot be dissolved by any human power and for any reason. If divorce is done, it is considered adultery because Catholic marriage is a sacramental marriage; this institution was born as a means of God's salvation for humans and also as God's creation in human life. Through the family, God creates new humans to continue His work of salvation on this earth.

However, in married life, it is undeniable that many consequences can arise from a marriage, which can lead to the dissolution of a household, namely separation. Although the Catholic Church does not recognize the term divorce, there is a termination of marital ties. According to Church teaching, every marriage has the nature or genuine character of being indissoluble. These two qualities gain more strength in sacramental marriage or valid marriage between two baptized persons. However, from the history of canonical jurisprudence, it can be seen that under

certain conditions, the church allows the termination of some marital ties that are not both *ratum* and *consummatum* (*ratum* and *consummatum* marriage). *Ratum* and *consummatum* marriage is a valid marriage solemnized between two persons who are both validly baptized, either in the Catholic Church or in a non-Catholic Church, and has been consummated by sexual relations between the husband and wife (canon 1061).

The author conducted an interview with Father Martinus Hery as the Judicial Vicar of the Bandung Diocese. He stated that ideally, Catholic couples who have divorced in court should then seek a marriage annulment. In order to consider the marriage status of the couple nullified, given that there is no concept of divorce in the Catholic Church, only marriage annulment exists. As for the annulment itself, unlike the Marriage Law we know, there is no expiration date for filing for annulment, meaning an annulment can be requested 6 months, 10 years, or even 30 years after the marriage took place.

The church will forward this annulment request to the local diocese and then the parties will receive a call schedule for the annulment investigation. The Church, represented by the diocese, does not easily grant annulments to every couple who requests one. Similar to the court, which has a hearing process for divorce, the Church is very cautious in making annulment decisions. This is because annulment is a last resort and the Church must commit to preserving a marriage.

The consequences of annulment are that the status of the man and woman who were originally bound by marriage returns to being single and the marriage is considered null because the status is void. However, if there are children from the marriage, children born lawfully within the marriage must still be considered and their rights fulfilled by both parents even though the marriage is no longer binding.

## CONCLUSION

Divorce among Catholic couples is not a new phenomenon in Indonesia; many couples have divorced in court. After the issuance of the divorce certificate, questions arise regarding their marital status because in the Catholic religion, divorce is not recognized. However, in the process of marriage annulment, the church considers the divorce certificate or ongoing divorce proceedings as a crucial factor. Thus, the divorce certificate, which is a product of the court, terminates the marriage certificate. However, this does not apply to their marriage in the Catholic Church. Therefore, it is important for Catholic couples to handle the annulment of their marriage in the church after or during the divorce proceedings in court.

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