

ABSTRACT

Nurrahmah, Fitriyah. 2015. **Law Consequence of *Ex Officio* Rights by the Judge about the *Ultra Petitem Partium* Principle in Divorce Cases *Qabla Al-dukhul* (Case Number 4841/ Pdt.G/ 2011/ PA. Kab. Mlg)** Thesis. Department of Al-Ahwal Al-Syakhshiyyah. Faculty Syari'ah. Maulana Malik Ibrahim State Islamic University of Malang. Advisor : Dr. H. Saifullah, SH., M. Hum.

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Judge in making decisions, is prohibited passed a decision on cases that are not prosecuted or grant more than the required (*ultra petitem partium principle*) so the decision handed down is not flawed. However, in practice proceedings in religious courts on specific case, the judge because the right position (*ex officio*) can decide the case more than required, even if it is not claimed by the parties. The use of *ex officio* right in divorce cases is typically applied in determining *mut'ah* divorce and *iddah* (waiting period), as a form of protection of the rights of ex-wife. It based on Article 41 c of law No. 1 of 1974. However, in contested divorce cases *qabla al dukhul* with case number 4841/ Pdt. G/ 2011/ PA. Kab. Mlg, the judge uses the *ex officio rights* to *ultra petitem partium*. The focus of this research is to determine how the consideration of the judges and the legal consequences in deciding contested divorce deviate *qabla al-dukhul* case from the principle of *ultra petitem partium* with use *ex officio* rights.

This research uses a normative law research or commonly called literature research. In this study, the author uses case approach. The law materials that used in this research are primary law materials include court decisions with case number 4841/ Pdt. G/ 2011/ PA. Kab. Mlg., secondary law materials include books, theses, and law journals and tertiary law materials in the form of law dictionary, relevant to the case at hand.

Based on the analysis result of the existing law materials, the author gets a conclusion that the judge can decide the basic consideration contested divorce deviate *qabla al-dukhul* case from the principle of *ultra petitem partium* with use *ex officio* rights, with noting philosophical aspects, juridical, and sociological which reflect the principle of fairness, rule of law, and expediency. Moreover, in deciding the case the judge perform legal discovery by using the grammatical interpretation method, the word "may" should be interpreted *ex officio* on the article 41 c by establish a fact, qualify, and constituent. While the legal consequences arising in deciding this case, resulting in death of breaking the bonds of marriage and dowry.