

**LEGAL CONSIDERATIONS BY THE PANEL OF JUDGES IN DECIDING
EXCEPTIO DILATORIA IN THE CASE OF FEMALE INITIATED -
DIVORCE**

(Study of decision No.1389/Pdt.G/2021/ PA.Gm)

THESIS

BY:

ZAHRAH SALSABILLAHASHARI

SIN 200201110099



ISLAMIC FAMILY LAW DEPARTMENT

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG

2024

**LEGAL CONSIDERATIONS BY THE PANEL OF JUDGES IN DECIDING
EXCEPTIO DILATORIA IN THE CASE OF FEMALE INITIATED -
DIVORCE**

(Study of decision No.1389/Pdt.G/2021/ PA.Gm)

THESIS

BY:

ZAHRAH SALSABILLAHASHARI

SIN 200201110099



ISLAMIC FAMILY LAW DEPARTMENT

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG

2024

DECLARATION OF AUTHENTICITY

DECLARATION OF AUTHENTICITY

In the name of Allah,

With awareness and a sense of responsibility for scientific development, the author states that the thesis entitled:

LEGAL CONSIDERATIONS BY THE PANEL OF JUDGES IN DECIDING EXCEPTIO DILATORIA IN THE CASE OF FEMALE INITIATED - DIVORCE

(Study of Decision No.1389/Pdt.G/2021/ PA.Gm)

If this thesis research report is found as the result of plagiarism of other people's work in part or in whole, then the thesis as a prerequisite for obtaining a bachelor's degree is declared null and void.

Malang, 21st June 2024

Author,



Zahrah Salsabillah Ashari
SIN 200201110099

APPROVAL SHEET

APPROVAL SHEET

After reading and correcting the thesis of Zahrah Salsabillah Ashari SIN: 200201110099 Study Program Islamic Family Law Sharia Faculty State Islamic University Maulana Malik Ibrahim Malang entitled:

**LEGAL CONSIDERATIONS BY THE PANEL OF JUDGES IN DECIDING
EXCEPTIO DILATORIA IN THE CASE OF FEMALE INITIATED -
DIVORCE**

(Study of decision No.1389/Pdt.G/2021/ PA.Gm)

then the supervisor declares that the thesis has met the scientific requirements to be submitted and tested by the Board of Examiners.

Supervisor I



Jamilah, MA.

NIP 197901242009012007

Malang, 21st June 2024

Supervisor II



Suparmi, M.Pd.

NIP 197704112023212004

Acknowledged,
Head of Islamic Family Law Department



Erik Sabti Rahmawati MA, M.Ag.

NIP 197511082009012003

LEGITIMATION SHEET

LEGITIMATION SHEET

Board of Thesis Examiners Zahrah Salsabillah Ashari SIN: 200201110099 Islamic Family Law department, Sharia Faculty, State Islamic University Maulana Malik Ibrahim Malang entitled:

LEGAL CONSIDERATIONS BY THE PANEL OF JUDGES IN DECIDING EXCEPTIO DILATORIA IN THE CASE OF FEMALE INITIATED - DIVORCE

(Study of Decision No.1389/Pdt.G/2021/ PA.Gm)

Has been declared passed in the thesis examination session held on the date of 7th of June 2024.

Board of Examiners:

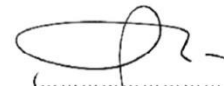
1. Erik Sabti Rahmawati, M.A., M.Ag
NIP197511082009012003


(.....)
Chairman

2. Jamilah, M.A
NIP 197901242009012007


(.....)
Examiner

3. Dr. Zaenul Mahmudi, M.A
NIP 1973060311999031001


(.....)
Examiner

Malang, 21st June 2024


Chairman, M.A. CAHRM
NIP 1975110822005011003

MOTTO

حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ ، قَالَ : حَدَّثَنَا مُحَمَّدُ بْنُ الْفَضْلِ ، عَنْ حَمَّادِ بْنِ زَيْدٍ ، عَنْ أَيُّوبَ ، عَنْ أَبِي قِلَابَةَ ، عَنْ أَبِي أَسْمَاءَ ، عَنْ ثَوْبَانَ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : " أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي غَيْرِ مَا بَأْسٍ ، فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ .

Telah menceritakan kepada kami Sulaiman bin Harb, telah menceritakan kepada kami Hammad dari Ayyub dari Abu Qilabah dari Abu Asma` dari Tsauban, ia berkata; Rasulullah shallallahu 'alaihi wasallam bersabda: "Siapapun wanita yang meminta cerai kepada suaminya bukan karena kesalahan, maka haram baginya bau surga."

Sulaiman ibn Harb narrated to us Hammad from Ayyub from Abu Qilabah from Abu Asma` from Tsauban, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: "Any woman who asks her husband for divorce for no fault of her own, the smell of Paradise is forbidden to her."

ACKNOWLEDGEMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillah, all praise is due to Allah who has bestowed all His favors and blessings on all of us, especially to the author so that he can complete the thesis entitled “Legal Considerations by the Panel of Judges in Deciding Exceptio Dilatoria at the Appeal Level Decision (Study of Decision No.8/Pdt.g/2022/PTA.Plg)” Amien.

Shalawat and salam may remain poured out to the Prophet Muhammad SAW who has guided us to the path of Allah's blessings, namely the religion of Islam, may we be classified as believers and get his intercession on the final day of Judgment. Aamiin.

The author expresses his deepest gratitude to all those who have helped and supported the author in completing this thesis, both through guidance and direction and some discussion results from various parties, so with all humility the author expresses his gratitude to:

1. Prof. Dr. H. M. Zainuddin, MA. as the Rector of Maulana Malik Ibrahim State Islamic University Malang.
2. Prof. Dr. Sudirman, MA. As the Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. and also as the author's supervisor who has given his time to direct, teach, and motivate in the completion of writing this thesis.

3. Hj Erik Sabti Rahmawati, MA, M.Ag as the Head of the Islamic Family Law Department, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang
4. Faridatus Suhadak, M.HI. as the secretary of the Islamic Family Law department, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang
5. Jamilah M. A, as the author's supervisor who has devoted time to provide direction and motivation in completing the writing of this thesis.
6. All lecturers of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang who have provided learning to all of us. With sincere intentions, may their deeds all be part of worship to gain the pleasure of Allah SWT.
7. The author's entire family, beloved father Hasan Ashari, ST. Beloved mother Nuraini Mulyono, S.Pd. and younger brother Zaudath Ahmad Sahreda. Thank you for their prayers, hard work, and support that always accompany the author in every step.
8. All comrades-in-arms in the Islamic Family Law Study Program, ICP 2020, especially (Salwa, Atirah, Mila, Adnan, Barka) who became the author's learning friends while at this university and who gave the author a lot of experience and learning as a friend.
9. All UAPM INOVASI friends, especially (Paid and Nola). Thank you for being one of the houses for the author to increase moodbooster, thank you for also being a family for the author while studying in Malang City.

10. The owner of SIN 200201110194, someone who always provides support through his presence in everything the author goes through.
11. The author, myself. Thank you for completing your responsibilities. Thank you for doing the best for this research. Thank you for continuing to move forward. Thank you for achieving more or less new things. So proud of you and let's fight on to the next step.

With the completion of this thesis report, it is hoped that the knowledge we have gained during college can provide charitable benefits for life in this world and the hereafter. As a human being who is never free from mistakes, the author really hopes for forgiveness and criticism and suggestions from all parties for the sake of improvement in the future.

Malang, 13 Mei 2024
Author,

Zahrah Salsabillah Ashari
NIM 200201110099

TRANSLITERATION GUIDENCE

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from nations other than Arabic are written as the spelling of the national language, or as written in the reference book. Writing the title of the book in the footnotes and bibliography, still use the provisions of this transliteration.

A. CONSONANT

Daftar huruf bahasa Arab dan transliterasinya ke dalam huruf Latin dapat dilihat pada halaman berikut:

Arab	Indonesia	Arab	Indonesia
ا	‘	ط	ṭ
ب	B	ظ	ẓ
ت	T	ع	‘
ث	Th	غ	Gh
ج	J	ف	F
ح	ḥ	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dh	م	M
ر	R	ن	N
ز	Z	و	W

س	S	ه	H
ش	Sh	ء	H
ص	ṣ	ي	Y
ض	ḍ		

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above (‘), turning around with a comma (‘) to substitute for the “ع” symbol.

B. VOCAL

Arabic vowels, like Indonesian vowels, consist of single vowels or monoftongs and double vowels or diphthongs.

Single Arabic vowels whose symbols are signs or harakat, the transliteration is as follows:

Huruf arab	Nama	Huruf latin	Nama
آ	Fathhah	A	A
إ	Kasrah	I	I
أ	Dammah	U	U

Arabic double vowels whose symbols are a combination of harakat and letters, transliterated in the form of a combination of letters, namely:

Tanda	Nama	Huruf latin	Nama
آي	Fathah dan Ya	Ai	A dan I
أو	Fathah dan Wau	Au	A dan U

Example:

Kaifa: كَيْفَ

Haula: هَوْلَ

C. MADDAH

Maddah or long vowels whose symbols are harakat and letters, transliterated in the form of letters and signs, namely:

Harkat dan Huruf	Nama	Huruf dan Tanda	Nama
مَا مَيَّ	Fathah dan alif atau ya	ā	a dan garis diatas
مِي	Kasrah dan ya	ī	i dan garis diatas
مو	Dammah dan wau	ū	u dan garis didas

Example:

Māta: مَاتَ

ramā: رَمَى

qīla: قِيلَ

yamūtu: يَمُوتُ

D. TA MARBUTAH

There are two transliterations for ta marbūṭah, namely: ta marbūṭah which is alive or received fatḥah, kasrah, and ḍammah, is transliterated as [t]. Whereas the ta marbūṭah which is dead or has the letter sukun, is transliterated as [h].

If the word ending in ta marbūṭah is followed by a word that uses the article al- and the two words are read separately, then ta marbūṭah is transliterated with ha. Example:

rawdah al-aṭfāl: رَوْضَةُ الْأَطْفَالِ

al-madīnah al-fāḍilah: الْمَدِينَةُ الْفَضِيلَةُ

al-hikmah: الْحِكْمَةُ

E. SYADDAH (TASYDID)

Syaddah or tasydīd which in the Arabic writing system is symbolized by a tasydīd sign (̣), in this transliteration is symbolized by a repetition of letters (double consonants) marked with a syaddah sign. Example:

Rabbanā: رَبَّنَا

Najjainā: نَجَّيْنَا

al-haqq: الْحَقُّ

al-hajj:

nu'ima: نَعِمَ

'aduwwu: عَدُوٌّ

If the letter ع is tasydīd at the end of a word and is preceded by a letter with the letter kasrah (-), then it is transliterated as maddah (ī). Example:

'Alī (bukan 'Aliyy atau 'Aly)

'Arabī (bukan 'Arabiyy atau 'Araby)

F. KATA SANDANG

The article in the Arabic writing system is symbolized by a letter (alif lam ma'arifah). In this transliteration guideline, the article of faith is transliterated as usual, al-, both when it is followed by a syllabic letter and a qamariah letter. The article does not follow the sound of the letter directly following it. The article is written separately from the word that follows it and is connected with a horizontal line (-). Example:

al-syamsu: الشَّمْسُ

al-zalزالah: الزَّلْزَلَة

al-falsafah: الفَلْسَفَة

al-bilādu: الْبِلَادُ

G. HAMZAH

The rule of transliterating hamzah letters into apostrophes (') only applies to hamzahs located in the middle and end of words. However, if the hamzah is located at the beginning of the word, it is not symbolized, because in Arabic writing it is an alif. Example:

ta'murūna: تَأْمُرُونَ

al-nau': النَّوْءُ

syai'un: شَيْءٌ

Umirtu: شَيْءٌ أُمِرْتُ

H. PENULISAN KATA ARAB YANG LAZIM DIGUNAKAN DALAM BAHASA INDONESIA

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardized in the Indonesian language. Words, terms or sentences that are already common and part of the Indonesian language treasury, or are often written in Indonesian writing, are no longer written according to the above transliteration method. For example, the words Quran (from al-Qur'ān), sunnah, hadith, special and general. However, when these words are part of a series of Arabic texts, they must be transliterated as a whole.

Example:

Fī zilāl al-Qur'ān

Al-Sunnah qabl al-tadwīn

Al-'Ibārāt Fī 'Umūm al-Lafz lā bi khuṣūṣ al-sabab

I. LAFẒ AL-JALĀLAH (الله)

The word “Allah” which is preceded by particles such as jarr and other letters or acts as muḍāf ilaih (nominal phrase), is transliterated without the letter hamzah. Example:

dīnullāh : دِينَ الله

As for the ta marbūṭah at the end of a word that is based on lafẓ al-jalālah, it is transliterated with the letter [t]. Example:

hum fi raḥmatillāh: هُمْ فِي رَحْمَةِ اللَّهِ

J. HURUF KAPITAL

Although the Arabic writing system does not recognize capital letters (All Caps), in transliteration the letters are subject to the provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of proper names (person, place, month) and the first letter at the beginning of a sentence. When a proper name is preceded by the article (al-), the initial letter of the proper name is written in capital letters, not the initial letter of the article. If it is located at the beginning of a sentence, then the letter A of the article is capitalized (Al-). The same provision also applies to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR).

Example:

Wa mā Muḥammadun illā rasūl

Inna awwala baitin wuḍi‘a linnāsi lallaẓī bi Bakkata mubārakan Syahru Ramaḍān al-laẓī unzila fīh al-Qur ‘ān

Naṣīr al-Dīn al-Ṭūs

Abū Naṣr al-Farābī

Al-Gazālī

Al-Munqiz min al-Ḍalāl

TABLE OF CONTENT

DECLARATION OF AUTHENTICITY	i
APPROVAL SHEET.....	ii
LEGITIMATION SHEET.....	iii
MOTTO.....	iii
ACKNOWLEDGEMENT	v
TRANSLITERATION GUIDENCE.....	viii
TABLE OF CONTENT.....	xv
ABSTRAK.....	xvii
CHAPTER I.....	1
INTRODUCTION.....	1
A. Research Background.....	1
B. Statement of Problem.....	5
C. Objective of Resarch	6
D. Benefit of Research	6
E. Research of Method	7
F. Previous Study.....	11
G. Systematic Discussion.....	18
CHAPTER II.....	19
LITERATURE REVIEW	19
A. Exceptio Dilatoria	19
B. Legal Consequences of Exceptio Dilatoria	23
C. Theory of Legal Justice	25
D. Theory of Legal Certainty	29
CHAPTER III.....	36
RESEARCH FINDINGS AND DISCUSSION	36
A. Legal Considerations by the Panel of Judges in Deciding Exceptio Dilatoria Cases.....	36
1. Exceptio Dilatoria in Decision Number 1389/Pdt.G/2021/PA.Gm	36
2. Analysis of Legal Consideration Factors by the Panel of Judges in Deciding Exceptio Dilatoria Cases in Decision Number 1389/Pdt.G/2021/PA.Gm	40

3. Comparison of the Application of Exceptio Dilatoria to Plaintiff's Divorce Cases	46
B. Legal Consequences of Premature Lawsuits in Verdict	
No.8/Pdt.g/2022/PTA.Plg on Legal Justice and Legal Certainty	53
1. The implementation of the principles of legal certainty theory in Decision No.1389/Pdt.G/2021/PA.Gm	54
2. Implementation of the Principles of Legal Justice in Decision No.1389/Pdt.G/2021/PA.Gm	60
CHAPTER IV	66
CONCLUSIONS AND SUGGESTION	66
A. Conclusion.....	66
B. Suggestion	68
BIBLIOGRAPHY	69
APPENDIXES	73
CURRICULUM VITAE.....	101

ABSTRAK

Zahrah Salsabillah Ashari, 200201110099, 2024. **Pertimbangan Majelis Hakim Dalam Memutuskan *Exceptio Dilatoria* Pada Perkara Cerai Gugat (Studi Putusan No.1389/Pdt.G/2021/PA.Gm)** Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang Dosen Pembimbing: Jamilah, M.A

Kata Kunci: *Exceptio Dilatoria*, Putusan hakim, Kepastian hukum

Exceptio dilatoria merupakan suatu eksepsi yang menyatakan bahwa gugatan yang diajukan ke Pengadilan Agama, belum dapat dikabulkan karena masih bersifat prematur. Dalam kasus cerai gugat yang menjadi objek pada penelitian ini, menggambarkan bagaimana hakim menerapkan *exceptio dilatoria* dalam kasus yang dinilai masih premature akibat belum memenuhi *shigat taklik talak*. Dalam hal ini, ada satu fakta dari Tergugat yang menyatakan, bahwa sebelum Penggugat dan Tergugat berpisah rumah, mereka sempat berhubungan suami istri, yang kemudian pernyataan tersebut dibenarkan oleh Penggugat. Berdasarkan hal inilah yang kemudian menjadikan alasan hakim untuk menolak gugatan Penggugat.

Penelitian ini bertujuan untuk menganalisis pertimbangan hukum yang dilakukan oleh majelis hakim dalam menetapkan *exceptio dilatoria* pada suatu perkara. Penelitian ini juga menganalisis akibat hukum dari adanya *exceptio dilatoria* pada putusan No. 1389/Pdt.G/2021/PA.Gm berdasarkan teori keadilan hukum dan teori kepastian hukum. Penelitian ini menggunakan metode penelitian yuridis normatif dengan metode pendekatan kasus. Adapun sumber data pada penelitian ini berupa Putusan no. 1389/Pdt.G/2021/PA.Gm, UU No. 50 Tahun 2009 tentang Peradilan Agama, dan Pasal 19 Peraturan Pemerintah Nomor 9 Tahun 1975, yang dikumpulkan melalui studi kepustakaan dan analisis terhadap putusan yang relevan.

Hasil penelitian menunjukkan bahwa *exceptio dilatoria* merupakan permasalahan yang tidak dapat dihindari selama belum ada aturan hukum yang mengaturnya. Sehingga pertimbangan yang dilakukan oleh majelis hakim dalam menerapkan *exceptio dilatoria* pada putusan No. 1389/Pdt.G/2021/PA.Gm, masih belum dapat memenuhi standar keadilan dan kepastian hukum dalam masyarakat. Dalam memeriksa perkara ini, hakim hanya berfokus pada penerapan aturan hukum terhadap fakta-fakta yang ditemukan, padahal masih banyak aspek lain yang perlu dipertimbangkan dalam memutus suatu perkara, contohnya aspek psikologis. Sedang *exceptio dilatoria* merupakan istilah hukum yang penerapannya belum konsisten karena belum adanya regulasi yang mengatur akan pengimplementasinya.

ABSTRACT

Zahrah Salsabillah Ashari, 200201110099, 2024. **Legal Consideration by the Panel of Judges in Deciding Exceptio Dilatoria in The Case of Female – Initiated Divorce (Study of Decision No.1389/Pdt.G/2021/ PA.Gm)** Thesis, Islamic Family Law Study Program, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang Supervisor: Jamilah, M.A

Key Word: *Exceptio Dilatoria*, Judge's decision, Legal certainty

Exceptio dilatoria is an exception that states a lawsuit filed with the Religious Court cannot be granted because it is still premature. In the divorce lawsuit case that is the subject of this research, it illustrates how the judge applies exceptio dilatoria in a case considered premature due to not fulfilling the conditions of shigat taklik talak. In this case, there is a fact from the Defendant stating that before the Plaintiff and the Defendant separated, they had marital relations, which was later confirmed by the Plaintiff. This fact became the basis for the judge to reject the Plaintiff's lawsuit.

This study aims to analyze the legal considerations made by the panel of judges in establishing exceptio dilatoria in a case. It also analyzes the legal consequences of the existence of exceptio dilatoria in decision No. 1389/Pdt.G/2021/PA.Gm based on the theory of legal justice and the theory of legal certainty. This study employs a normative juridical research method with a case approach. The data sources in this study include Decision No. 1389/Pdt.G/2021/PA.Gm, Law No. 50 of 2009 concerning Religious Courts, and Article 19 of Government Regulation No. 9 of 1975, which were collected through literature study and analysis of relevant decisions.

The research results show that exceptio dilatoria is an issue that cannot be avoided as long as there is no legal regulation governing it. Therefore, the considerations made by the panel of judges in applying exceptio dilatoria in decision No. 1389/Pdt.G/2021/PA.Gm still do not meet the standards of justice and legal certainty in society. In examining this case, the judge focused only on the application of legal rules to the facts found, whereas there are many other aspects that need to be considered in deciding a case, such as psychological aspects. Furthermore, exceptio dilatoria is a legal term whose application has not been consistent due to the absence of regulations governing its implementation.

ملخص

زهرة سلسبيل الله الأشعري، ٢٠٠٩، ٢٠١١، ٢٠٢٤، ٢٠٢٤، نظر هيئة القضاة في البت في الاستثناء الموسع في قضية طلاق (دراسة القرار رقم Pdt.G/2021/PA.GM/1389)، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج المشرف: جميلة، م. أ.

الكلمات المفتاحية : Exceptio Dilatoria، قرار القاضي، اليقين القانوني

الاستثناء الموسع هو الاستثناء الذي ينص على أن الدعوى المرفوعة إلى المحكمة الشرعية لا يمكن قبولها لأنها سابقة لأوانها. وفي قضية طلاق متنازع عليه، وهي موضوع هذا البحث، يتضح كيف أن القاضي طبق الاستثناء الموسع في قضية اعتبرت سابقة لأوانها بسبب عدم تحقق شرط التلقيح في الطلقة. في هذه القضية، كانت هناك واقعة واحدة من المدعى عليه تفيد بأنه قبل انفصال المدعي والمدعى عليه عن منزلهما كانت بينهما علاقة زوجية، وهو ما أكدته المدعي فيما بعد. وبناءً على ذلك، رفض القاضي دعوى المدعي.

يهدف هذا البحث إلى تحليل الاعتبارات القانونية التي تراعيها هيئة القضاة في تحديد الاستثناء الموسع في قضية ما. وتحلل هذه الدراسة أيضًا النتائج القانونية المترتبة على وجود الاستثناء الموسع في القرار رقم Pdt.G/2021/PA.Gm/1389 استنادًا إلى نظرية العدالة القانونية ونظرية اليقين القانوني. يستخدم هذا البحث منهج البحث الفقهي المعياري المعياري مع منهج مقارنة الحالة. وتتمثل مصادر البيانات في هذا البحث في القرار رقم Pdt.G/2021/PA.Gm/1389، والقانون رقم 50 لعام 2009 بشأن المحاكم الدينية، والمادة 19 من اللائحة الحكومية رقم 9 لعام 1975، والتي تم جمعها من خلال دراسة الأدبيات وتحليل القرارات ذات الصلة.

أظهرت النتائج أن الاستثناء الموسع مشكلة لا يمكن تجنبها طالما لا توجد قاعدة قانونية تحكمها. لذا، فإن الاعتبارات التي استندت إليها هيئة القضاة في تطبيق الاستثناء الموسع في القرار رقم Pdt.G/2021/PA.Gm/1389، لا تزال غير قادرة على تلبية معايير العدالة واليقين القانوني في المجتمع. فقد ركز القاضي عند نظره في هذه القضية على تطبيق حكم القانون على الوقائع التي تم العثور عليها فقط، في حين أن هناك العديد من الجوانب الأخرى التي يجب مراعاتها عند البت في القضية، على سبيل المثال الجانب النفسي. وفي الوقت نفسه، فإن مصطلح "الاستثناء الموسع" مصطلح قانوني لم يكن تطبيقه ثابتًا بسبب غياب اللوائح التي تحكم تطبيقه.

CHAPTER I

INTRODUCTION

A. Research Background

Divorce in Islamic law is an act that results in the breaking of the marriage bond, which is chosen by a husband and wife when their household relationship feels unable to be reunited.¹ In Article 116 of the Compilation of Islamic Law (KHI) on Marriage, it is stated that a divorce can be filed if there is an invalid marriage, such as if one of the parties is involved in acts of domestic violence, neglect of the responsibilities of husband and wife, or there is prolonged dispute and quarrel between husband and wife.²

In Islam, the procedure for divorce is regulated in a good way to realize the benefits for the parties concerned. As this can be implemented through Law No. 50 of 2009 concerning Religious Courts and Article 115 of the Compilation of Islamic Law which says that divorce can only be carried out in front of a Religious Court trial after the Religious Court has tried and failed to reconcile the two parties.

In filing a case in the Religious Court, of course there are several rules that must be fulfilled by the parties concerned, about how the process and flow of litigation in each Religious Court is addressed. Because in practice, judges do not always grant a lawsuit in its entirety, but can also be granted in part, not

¹ Linda Azizah, "Analisis Perceraian dalam Kompilasi Hukum Islam," *Al-Adalah* 10, no. 2 (February 28, 2017): 415–22, <https://doi.org/10.24042/adalah.v10i2.295>.

² "Kompilasi Hukum Islam," accessed November 8, 2023, http://etheses.uin-malang.ac.id/1595/11/07210048_Lampiran.pdf.

granted in its entirety, and the rest must be rejected or in certain cases declared unacceptable. As is the case with a lawsuit that is considered premature to be connected to any verdict argument.

Exceptio Dilatoria or commonly referred to as a Premature Lawsuit, is a variation of a type of lawsuit that contains a formal defect. The situation where the lawsuit filed by the Plaintiff to the Religious Court cannot be accepted, this is due to the subject matter that does not meet the legal arguments that have been determined.³ In another sense, the prematurity of this lawsuit refers to a situation where the time to file a lawsuit has not yet reached a predetermined time limit, be it by a previously agreed agreement or a time limit permitted under applicable law.

For example, in a civil context, a premature lawsuit can occur if the plaintiff files a lawsuit before the time limit set in the agreement between the parties involved or before fulfilling the requirements of the applicable law for the argument of the lawsuit. Thus, a premature lawsuit indicates that the plaintiff has taken inappropriate legal steps, which may also result in the lawsuit being rejected or declared invalid by the court.⁴

Regarding the filing of a lawsuit, it has also been regulated in Article 19 of Government Regulation Number 9 of 1975 as well as the provisions in

³ I. Gusti Agung Ketut Bagus Wira Adi Putra, Ida Ayu Putu Widiati, and Ni Made Puspasutari Uj, "Gugatan Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) Dalam Gugatan Cerai Gugat Di Pengadilan Agama Badung," *Jurnal Konstruksi Hukum* 1, no. 2 (October 28, 2020): 305–9, <https://doi.org/10.22225/jkh.2.1.2565.305-309>.

⁴ Leks&Co, "Eksepsi Hukum Materiil," *Blog Leks&Co* (blog), June 25, 2013, <https://blog.lekslawyer.com/eksepsi-hukum-materiil/>.

Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which states that divorce can be carried out if it is in accordance with the specified reasons.

In this study, the author uses the decision in a divorce case, specifically Decision No. 1389/Pdt.G/2016/PA.Gm at the Giri Menang Religious Court, as the object of analysis regarding a lawsuit that was dismissed by the judge due to *exceptio dilatoria*.⁵ The decision essentially states that between the Plaintiff and the Defendant in their household, there have been frequent quarrels and disputes since 2010. These issues were caused by the Defendant having an affair, indulging in alcohol, selling alcoholic beverages, often using harsh language, damaging household furniture, and even threatening the Plaintiff with a sharp weapon.

The marital discord continued and peaked around November 8, 2021, which led to the Plaintiff no longer being able to tolerate the Defendant's behavior, eventually causing the Plaintiff to leave the Defendant and return to her parents' house. The Plaintiff also stated that since that day until the lawsuit was filed, she had no longer engaged in any marital relations. However, during the examination process, the Defendant claimed that before they had been living apart for two weeks, the Plaintiff and Defendant still engaged in marital relations. This was later acknowledged by the Plaintiff as well, making it an undisputed fact.

⁵ Direktori Putusan Mahkamah Agung, Putusan Pengadilan Agama Giri Menang No.1389/Pdt.g/2016/PA.Gm (n.d.).

Based on this reason, the Panel of Judges at the Giri Menang Religious Court declared that the lawsuit could not be accepted or was still considered premature, because the reasons for the separation of the Plaintiff and Defendant, as believed by the judge, did not yet meet the criteria for *sighat taklik talak*. Furthermore, Article 80 of the Compilation of Islamic Law also mentions that it is obligatory for a husband to provide for his wife and pay attention to her, and if for at least 6 months or more, the husband does not fulfill his obligations properly, the wife has the right to file for divorce.

However, if we trace back to the claims made by the Plaintiff, which began in 2010 and continued until 2021, it shows how long the Plaintiff endured before deciding to file the lawsuit. The duration of time the Plaintiff spent trying to maintain the marriage indicates the extent of her effort to keep the household intact. Despite the marital relations that ultimately became the reason for the lawsuit's dismissal, the potential consequences of continuing an unwanted marriage for either party suggest that the issues cited in the lawsuit could recur.

Therefore, based on the aforementioned issues, a premature lawsuit as a reason for dismissing a divorce case, especially a petition for divorce, cannot be considered effective. The lack of consideration for the Plaintiff's claims in light of the new facts presented by the Defendant makes this decision seem unfair, particularly for the party who is disadvantaged if the judge ultimately refuses to grant the divorce.

The absence of clear regulations regarding premature lawsuits leads to a situation where the lawsuit appears to lack a clear guideline for the public, making such cases difficult to avoid for both the Plaintiff and the Defendant before they file. Without clarity on when a lawsuit can be deemed premature and what its legal consequences are, the legal process becomes less structured, causing confusion and uncertainty for all parties involved. Therefore, further efforts are needed to formulate clear and comprehensive guidelines on exceptio dilatoria to ensure legal certainty and make the legal process more efficient and fair for all parties involved in dispute resolution.

Based on the background of the above problems regarding cases of contested divorce in the Giri Menang Religious Court, the author is interested in raising this issue in order to examine and study more deeply, which is outlined in the form of a thesis with the title " **Legal Consideration by the Panel of Judges in Deciding Exceptio Dilatoria in The Case of Female – Initiated Divorce (Study of Decision No.1389/Pdt.G/2021/ PA.Gm) "**.

B. Statement of Problem

1. How are the legal considerations used by the Panel of Judges in deciding exceptio dilatoria cases in decision No.1389/Pdt.G/2021/ PA.Gm?
2. What are the legal consequences of the existence of exceptio dilatoria in Decision No.1389/Pdt.G/2021/ PA.Gm on legal justice and legal certainty?

C. Objective of Research

1. To analyze the legal considerations used by the Panel of Judges in deciding *exceptio dilatoria* in the appeal level decision No.1389/Pdt.G/2021/ PA.Gm.
2. To identify the legal consequences or impact of the existence of *exceptio dilatoria* in Decision No.1389/Pdt.G/2021/ PA.Gm on legal justice and legal certainty.

D. Benefit of Research

From this research, the author hopes that this article can provide usefulness or benefit as well as knowledge both theoretically and practically in its implications for the world of education and the general public. The benefits of this research include:

1. Theoretical Benefits

To increase and expand knowledge for writers and readers regarding the issue of using lawsuit arguments in divorce cases, so that it can also be used as a theoretical basis for future researchers on similar topics.

2. Practical Benefits

As for the practical benefits expected by the author, i.e.:

- a. For researchers, in addition to adding insight for the author, this research is also expected to be a means of disseminating

knowledge related to civil matters, especially *exceptio dilatoria* in divorce cases.

- b. For Readers, this research is expected to provide additional knowledge and broader insight into the scope of civil matters.
- c. For Further Researchers, this research can be used as a guideline, or reference to discuss or develop this research into further research related to *exceptio dilatoria*.

E. Research of Method

A research method is a series of steps or a systematic approach used to collect data, analyze information, and answer research questions or achieve specific research objectives. The following are the research methods used by the author, namely:

1. Type of Research

In this thesis research, the author uses a research method in the form of normative juridical research, which analyzes a decision with applicable legal regulations in Indonesia. This research is a type of research that aims to evaluate a problem, phenomenon, or issue by referring to certain norms or standards.

The reason the author uses this method is because the author wants to examine how premature lawsuits are still one of the problems that often arise and can hamper the trial process. So that the author wants to

analyze the rules used in deciding this case, through a decision that has permanent legal force.

2. Research Design

The research used in this study uses the case approach method. In its understanding, this case approach method can be done by conducting research or analysis on cases that have occurred and have become decisions that have been decided by judges, or have permanent legal force, in accordance with what has been decided by the Religious Court. The decisions used in this study are, the sequence of case decisions No.1389/Pdt.G/2021/ PA.Gm.

3. Law Material

Normative research in this research is a form of study that focuses on the type of data used. There are two types of data used in writing this research, namely:

a. Primary Data

Based on how it is obtained, the primary data that will be used by the authors in this study are:

- Giri Menang Religious Court Decision
No.1389/Pdt.G/2021/PA.Gm
- UU no. 50 of 2009 concerning Religious Courts,
- Compilation of Islamic Law (KHI),

- Article 19 Government Regulation Number 9 of 1975 as stipulated in Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage

b. Secondary Data

Secondary data is a statement that has legal authority applied by a branch of government power which includes documents contained in books, articles, scientific journals, magazines, newspapers, and on the internet that are relevant to the theme of this research.

4. Law Material Colection

The data collection method in writing this research uses library research, which begins by looking for an object in the form of a decision that has permanent legal force, which will later become the main focus of this research. Next, if you have found the discussion point that will be studied in the research, you can start by looking for laws or other written regulations that can be linked to the problem being taken. As is the case in this research which discusses the legal consequences of Exceptio Dilatoria in divorce lawsuits. The next step is to look for additional data through various book, internet, article, journal and magazine references regarding Exceptio Dilatoria.

5. Law Material Analysis Method

After data collection was carried out, the researcher carried out a legal study using methods of studying, analyzing, studying and

researching the legal issues in the judge's decision in the case, whether the case had permanent legal force, using normative juridical analysis.

Processing data can be done through the following processes:

1) Edit

Editing in the normative data management method is the process of reviewing, correcting and perfecting the legal data that has been collected. This aims to ensure that the data used in your research is accurate, relevant and of high quality.

2) Data Classification

Categorize legal data into appropriate groups, such as laws, regulations, court decisions, etc.

3) Verification

Verifying the data can be done by checking the accuracy of the legal data collected, ensuring that the data is still relevant and in line with the context of the research. In addition, it is necessary to review the source of the data to ensure the validity and reliability of the information provided.

4) Data Analyze

According to Soejono Soekanto, data analysis methods can be qualitative or quantitative. In processing data related to the research topic, the author chooses to use a normative qualitative data analysis approach. This qualitative normative analysis approach is chosen to

provide clarity on the issues being researched by referring to the applicable positive law, while considering the facts and data found through sources such as journals or previous articles discussing similar topics.

5) Conclusion

Making conclusions can be disabled as the activity of delineating the data that has been processed until obtaining answers from the formula of the problem. Then the author draws conclusions from the answers that have been delineated in the previous paragraphs.

F. Previous Study

This previous research is useful to find differences or similarities with previous research as material for consideration and guidance in research. As for some aspects of the difference between this research and previous research, the following will be described:

First, the difference between this research and previous research can be seen from the objects and supporting theories used. In this study, the author uses the decision of the case of contested divorce Number. No.1389/Pdt.G/2021/PA.Gm as the object of research by presenting theories of legal justice and legal certainty to analyze the legal consequences of premature lawsuits. Meanwhile, previous studies used different research objects and theories, namely:

1. Research by I Gusti Agung Ketut Bagus Wira Adi Putra, Ida Ayu Putu Widiati, and Ni Made Puspatusari, in 2020. With the title “Unacceptable Lawsuit (Niet Ontivankelije Verklaard) in a Plaintiff's Divorce Lawsuit at the Bandung Religious Court”, using the lawsuit divorce decision No.0063/Pdt.G/2017/PA.Bd as the object of research and does not present any theory.
2. Research by Amanatur Robaniyah, in 2019. With the title “Analysis of Sadd Al-Dzariah Against the Judge's Decision to Reject the Plaintiff's Divorce Case Because There is Still Sexual Relations between Husband and Wife (Study of Decision Number 0868/Pdt.G/2018/PA.Mr)”, using the Decision on the case of contested divorce Number 0868/Pdt.G/2018/PA.Mr as the object of research, by presenting the theory of Islamic law Sadd Al-Dzariah.
3. Research by Chudori Syamsudin yahya, in 2023. With the title “Juridical Analysis of the Rejection of a Lawsuit by a Judge in a Plaintiff's Divorce Case in the Perspective of the Legal Theory of Evidence (Study of the Decision of the Trenggalek Class 1A Religious Court Number 561/Pdt.G/2022/PA.Trk)”, using the Decision on the case of contested divorce Number 561/Pdt.G/2022/PA.Trk as the object of research, with the theory of Evidence Law.

Second, the difference between this research and previous research can also be seen from the research methods used. In this study, the authors

used Normative juridical research methods using a case approach. While in previous studies using different research methods, namely as follows:

1. Research by I Gusti Agung Ketut Bagus Wira Adi Putra, Ida Ayu Putu Widiati, and Ni Made Puspatusari, in 2020. With the title “Unacceptable Lawsuit (Niet Ontvankelijk Verklaard) in a Plaintiff's Divorce Lawsuit at the Bandung Religious Court”, using the Normative legal research method using a case approach.⁶
2. Research by Amanatur Robaniyah, in 2019. With the title “Analysis of Sadd Al-Dzariah Against the Judge's Decision to Reject the Plaintiff's Divorce Case Because Sexual Relations of Husband and Wife Still Occur (Study of Decision Number 0868/Pdt.G/2018/PA.Mr)”, using the Field Research method (field research), using a juridical qualitative approach.⁷
3. Research by Chudori Syamsudin yahya, in 2023. With the title “Juridical Analysis of the Rejection of a Lawsuit by a Judge in a Plaintiff's Divorce Case in Perspective of the Legal Theory of Evidence (Study of the Decision of the Trenggalek Religious Court class 1A

⁶ Putra, Widiati, and Uj, “Gugatan Tidak Dapat Diterima (Niet Ontvankelijk Verklaard) Dalam Gugatan Cerai Gugat Di Pengadilan Agama Badung.”

⁷ “Amanatur Robaniyah. Analisis Sadd Al-Dzariah Terhadap Putusan Hakim Menolak Perkara Cerai Gugat Karena Masih Terjadi Hubungan Seksual Suami Istri (Studi Putusan Nomor 0868/Pdt.G/2018/PA.Mr),” accessed October 6, 2023, http://digilib..ac.id/36178/2/Amanatur%20Robaniyah_C91215039.pdf.

Number 561/Pdt.G/2022/PA.Trk)”, using the Field Research method (field research), using a qualitative approach.⁸

Third, the differences in this research with previous research can also be seen from the findings and limitations of the research. In this study, the author analyzes the legal considerations of the panel of judges regarding exceptio dilatoria in the case of contested divorce, by including legal rules related to this research, which then analyzes the legal consequences of the determination of the case using the theory of legal justice and legal certainty.

Therefore, in this research, the author limits the analysis of this problem by only discussing matters relating to how a case can be said to be exceptio dilatoria, the rules governing exceptio dilatoria and the legal consequences of exceptio dilatoria itself. The findings and limitations of research on previous research are as follows:

1. Research by I Gusti Agung Ketut Bagus Wira Adi Putra, Ida Ayu Putu Widiati, and Ni Made Puspatusari, in 2020. With the title “Unacceptable Lawsuit (Niet Ontivankelije Verklaard) in a Plaintiff's Divorce Lawsuit at the Bandung Religious Court”, analyzes the overview of the unacceptable lawsuit (Niet Ontivankelije Verklaard) in a plaintiff's divorce case which also analyzes the judge's consideration in deciding the case. Then, Gusti Agung also explained specifically the legal

⁸ Chudori Syamsudin Yahya, “Analisis yuridis Penolakan Gugatan Oleh Hakim Dalam Perkara Cerai Gugat Perspektif teori Hukum Pembuktian (Studi Putusan Pengadilan Agama Trenggalek kelas 1A Nomor 561/Pdt.G/2022/PA.Trk)” (2023).

consequences of Niet Ontivankelije Verklaard in decision No.0063/Pdt.G/2017/PA.Bd. so it can be seen that the limitation of this research is research on Niet Ontivankelije Verklaard that occurs in decision No.0063/Pdt.G/2017/PA.Bd only, not explaining in detail about how the judge's consideration or its legal consequences.

2. Research by Amanatur Robaniyah, in 2019. With the title “Analysis of Sadd Al-Dzariah Against the Judge's Decision to Refuse the Plaintiff's Divorce Case Because There is Still Sexual Relations between Husband and Wife (Study of Decision Number 0868/Pdt.G/2018/PA.Mr)”, explains the chronology of the judge's decision to refuse the case of divorce because there is still sexual relations between husband and wife in the study of decision number 0868/pdt.G/2018/PA.MR, by describing the stages of the legal process that occurred in the case including proof of the facts submitted, the judge's consideration, and the decisions taken.

Then, this research explores Islamic legal thinking on the judge's decision. By referring to the concepts and principles of Islamic law, this study reviews how Sadd Al-Dzar aḥ views in interpreting and assessing the judge's decision related to the sexual relations between husband and wife in the divorce case.

3. Research by Chudori Syamsudin yahya, in 2023. With the title “Juridical Analysis of the Rejection of a Lawsuit by a Judge in a Plaintiff's Divorce Case in Perspective of the Legal Theory of Evidence (Study of the Decision of the Trenggalek Religious Court class 1A Number

561/Pdt.G/2022/PA.Trk)”. This study describes how the law of evidence is applied in these cases. By exploring the concepts and basic principles of evidentiary law that form the basis for the judge's decision to reject the divorce lawsuit, including laws and regulations, and previous court decisions.

Then, in analyzing the judge's views, this research seeks an understanding of the judge's thoughts and considerations in assessing the evidentiary aspects that form the basis for rejecting the divorce lawsuit. By analyzing the reasons put forward by the judge in the decision, this research tries to explore the legal thoughts and considerations that form the basis for the judge's decision.

Tabel 1

The Different and Equality of Previous Research

NO.	TITLE	EQUALITY	DIFFERENCE
1	I Gusti Agung Ketut Bagus Hero Adi Putra, Ida Ayu Putu Widiati, and Ni Made Puspatusari, in 2020. With the title “Unacceptable Claims (Niet Ontivankelije Verklaard) in Divorce Claims in the Religious Court of Bandung”, 2020	- Research topic, both researching unacceptable lawsuits. - The research method used is normative law using a case approach.	- The object of this research uses the lawsuit divorce decision No. 0063/Pdt.G/2017/PA.Bd as the research object. - Examining the judge's considerations in deciding the case and the legal consequences of Niet Ontivankelije Verklaard's lawsuit. - The perspective used is normative legal theory.
2	Chudori Syamsudin Yahya, in 2023. With the title "Judicial	- Reviewing the legal aspects regarding divorce	- The object of this research is the lawsuit divorce decision Number

	Analysis of Rejection of Lawsuits by Judges in Divorce Cases from Legal Theory of Evidence Perspective (Study of Class 1A Trenggalek Religious Court Decisions Number 561/Pdt.G/2022/PA.Trk), 2023.	lawsuits that cannot be accepted by the judge.	561/Pdt.G/2022/PA.Trk), 2023. - The topic studied is the lawsuit that was rejected by the judge. - The perspective used is the perspective of the legal theory of evidence. - The method used is the Field Research method, using a qualitative approach. - To investigate how the judge views the aspect of proof as a reason for rejecting the divorce claim in judgment No. 561/Pdt.G/2022/PA.Trk
3	Amanatur Robaniyah, in 2019. With the title "Sadd Al-Dzariah's Analysis of the Judge's Decision to Reject the Divorce Case Due to the Sexual Relations of Husband and Wife Still Occurring (Decision Study Number 0868/Pdt.G/2018/PA.Mr), 2019.	- Reviewing the legal aspects regarding divorce lawsuits that cannot be accepted by the judge.	- The object of this research is the lawsuit divorce decision Number 0868/Pdt.G/2018/PA.Mr. - The perspective used is Sadd Al-Dzariah's Islamic legal theory. - The research method used is the Field Research method, using a juridical qualitative approach. - The focus of the research is on the chronology of the judge's decision in rejecting a contested divorce case involving sexual relations between husband and wife.

From the table above, it can be concluded that there are similarities and differences between some of these previous studies and the research

conducted by the author. As in research topics, objects used, research methods, theoretical perspectives, and research focus. So that it can be emphasized again, that this research, the author focuses on discussing the legal considerations by the panel of judges used in deciding case No.1389/Pdt.G/2021/PA.Gm, by analyzing existing decisions and reviewing using legal theory and several applicable regulations. Then the author also analyzes the legal rules governing exceptio dilatoria, and identifies the legal consequences of the existence of exceptio dilatoria on the theory of legal justice and legal certainty. The discussion is certainly an important point as a new research conducted by the author, which has also not been done by previous researchers.

G. Systematic Discussion

In order to make this thesis more focused and systematic, the researcher generally breaks it down into five chapters, namely:

Chapter I, This chapter describes the background of study, which contains a brief explanation of the chronology of the case in the lawsuit that resulted in decision No.1389/Pdt.G/2021/PA.Gm. In addition, this chapter also contains the statement of problems, objectives, benefit of research, research of method, previous research, and systematic discussion.

Chapter II, this chapter describes the Literature Review, which contains a deeper explanation of the theories used in this research. In addition, the author also includes several theorists as the development of data or

information, both substantially and other methods that are more relevant to the research problem.

Chapter III, This chapter describes the results of the research and analysis conducted by the author. The results of this study are presented in the form of data that has been obtained from the results of literature research (reading and reviewing the literature), which is then followed by the process of editing, classification, diversification, and analysis, so as to obtain answers to the problems raised, namely regarding how the legal considerations by the judge in deciding the exception dilatoria lawsuit in decision No.1389/Pdt.G/2021/PA.Gm.

Chapter IV, this chapter is the last chapter of this thesis which contains the Conclusion and Suggestion. For this reason, the author draws several conclusions from the research results above briefly regarding the answers to the problems presented in the form of points. Apart from that, the author also makes several suggestions or proposals that are deemed necessary for future research.

CHAPTER II

LITERATURE REVIEW

A. Exceptio Dilatoria

1. Definition

Exceptio dilatoria, commonly referred to as premature litigation, is one of the variations of lawsuits that contain formal defects. Basically, there are three possible verdicts from a lawsuit decided by a judge: the lawsuit is granted, the lawsuit is rejected, and the lawsuit is deemed inadmissible (Niet Ontvankelijke verklaard or NO). NO itself consists of several types of lawsuits, including:

a. Lawsuits with insufficient power of attorney

In its development, specific and general powers of attorney by the Supreme Court are distinct. Previously, rules regarding the essential requirements of a legal representative were explained, as stated in Article 123 paragraph 1 of HIR, which reads, "If desired, the parties may be accompanied or appoint a representative, for which a specific authorization must be given, unless the granting party is present. The plaintiff may also grant authority stated in the summons, or in oral litigation, in which case it must be recorded in the summons."

Then, the aforementioned article was further refined through Circular Letter of the Supreme Court (SEMA), including SEMA Number 2 of 1959, dated January 19, 1959; SEMA Number 5 of 1962, dated July 30,

1962; SEMA Number 01 of 1971, dated January 23, 1971; and SEMA Number 6 of 1994, dated October 14, 1994. From these four SEMAs, cumulative conditions were found, so if one condition is not fulfilled, it may result in an invalid power of attorney (formal defect). The outlines of the conditions and formulations of the special power of attorney are as follows⁹:

- 1) Clearly and specifically stating the power of attorney to act in court;
- 2) Specifying the relative competence, at the District Court where the power of attorney is used to represent the interests of the grantor;
- 3) Stating the identities and positions of the parties (as plaintiffs and defendants);
- 4) Concisely and specifically stating the subject and object of the dispute between the litigating parties. At least, mentioning the type of legal issue involved in the case.

b. Lawsuit without legal basis

In the context of a lawsuit without a legal basis, this defect occurs when the lawsuit filed is not based on applicable legal norms or does not specify a clear legal basis supporting the claims or demands made. Justice dictates that every party involved in the legal process has equal access to the law and clear procedures. Having a clear legal basis provides legal certainty for all parties involved in the process.

⁹ Yosep Peniel Batubara, "Putusan NO (Niet Ontvankelijke Verklaard): Berbagai Macam Cacat Formil Yang Melekat Pada Gugatan | Kementerian Keuangan Republik Indonesia," June 17, 2021, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13958/Putusan-NO-Niet-Ontvankelijke-Verklaard-Berbagai-Macam-Cacat-Formil-yang-Melekat-pada-Gugatan.html>.

c. Error in persona lawsuit in the form of disqualification or plurium litis consortium

An error in persona lawsuit occurs when the party involved in the lawsuit is not actually the party that should be involved in the legal process. Disqualification occurs when the party filing the lawsuit does not have the right to do so for certain reasons. For example, a guardian filing a lawsuit on behalf of someone who cannot represent themselves without permission from the court or without the legal authority to do so. Meanwhile, plurium litis consortium refers to a situation where several parties jointly file a lawsuit in one case. Essentially, error in persona lawsuits and plurium litis consortium can occur when one of the parties involved in the lawsuit actually does not have the right or legal qualification to be a party in the case.

d. Lawsuit containing obscure defects or violating absolute or relative jurisdiction

This lawsuit is usually a lawsuit filed by a plaintiff where the contents of the legal facts that occur with the arguments of the lawsuit have a mismatch. In other words, the posita in the lawsuit does not explain the legal basis and events underlying the lawsuit. These things certainly result in the lawsuit being unclear so that it is declared an unacceptable lawsuit. In addition, objects whose existence is unclear, as well as combining two or

more issues into one lawsuit can also cause the lawsuit to be included in the NO case.¹⁰

2. Consequences of Premature Lawsuits

The legal consequences of a premature lawsuit can vary depending on the applicable legal jurisdiction and the court's policies in handling such cases. Courts may reject premature lawsuits on the grounds that they were filed before the appropriate time according to the applicable legal requirements. This can result in the dismissal of the lawsuit or the application filed. Therefore, even if the substance of the case meets the larger requirements, such as meeting the conditions for filing for divorce, if the judge finds one fact that hasn't reached the deadline for filing for divorce, meaning it's premature, the judge will still decide on the case with the status of the lawsuit being inadmissible.

The rejection of a premature lawsuit not only means that the lawsuit is dismissed by the court but also has deeper implications for the plaintiff's legal rights. When the court rejects a premature lawsuit, it means the plaintiff may lose the opportunity to obtain justice in court. The plaintiff not only loses the chance to advocate for their rights formally before the court but may also result in a sense of injustice and frustration towards the entire judicial system.

¹⁰ Willa Wahyuni, "Mengenai Cacat Hukum," hukumonline.com, June 10, 2022, <https://www.hukumonline.com/berita/a/mengenai-cacat-hukum-lt62a329138bae7/>.

Furthermore, the rejection of a premature lawsuit can also result in the plaintiff losing their access to a fair legal process. They may no longer be able to use legal channels to resolve disputes or obtain what they deem as fair compensation. This can be highly detrimental to the plaintiff, especially if they believe they have strong arguments or clear rights in their case. Thus, the rejection of a premature lawsuit not only impacts the specific case filed by the plaintiff but can also undermine public confidence in the judicial system as a whole. If this *exceptio dilatoria* is still perceived as an unfamiliar issue within the community.

B. Legal Consequences of Exceptio Dilatoria

In general, legal acts are all actions or activities carried out by legal subjects such as individuals (humans) or legal entities such as companies/organizations. These actions have legal consequences, meaning that the results or impacts of such acts have a predetermined legal status, or in other words, the actions taken will have legal implications as regulated by applicable laws. This includes the emergence of rights and obligations marked by the expression of will by legal subjects.¹¹

A legal subject engaging in a legal act is the main factor in determining the legal implications of such actions. This implies that the actor must be responsible for their actions in accordance with the applicable legal rules. In

¹¹ Nafiatul Munawaroh M.H S. H. and Hukumonline, "Perbuatan Hukum, Bukan Perbuatan Hukum, dan Akibat Hukum," July 7, 2018, <https://www.hukumonline.com/klinik/a/perbuatan-hukum-lt5ceb4f8ac3137/>.

other words, whatever legal consequences arise from such acts are recognized as expressions of the actor's will subject to legal regulations.

Legal consequences are the results that arise from the application of law or specific legal decisions. This includes various outcomes that may occur in response to legal actions, court decisions, or the legal process as a whole. These legal implications may include the granting of new rights and obligations, the cancellation or reduction of existing rights or obligations, as well as other consequences such as sanctions or compensation given to parties involved in the legal process.¹² The application of legal consequences may involve the establishment, alteration, or cessation of a legal status and legal relationship; the imposition of sanctions for unlawful actions; and legal consequences arising from emergency situations necessitating the violation of the law.

Additionally, in general, a legal consequence can alter the rights and obligations of the parties involved in a case, based on how the law is implemented in that particular case. These impacts include the financial influence on the party responsible for compensating for the losses incurred. For example, in cases involving the payment of damages for material losses, the financial implications can significantly affect the finances of individuals or organizations subjected to such obligations.

¹² Erfaniah Zuhriah, *Peradilan Agama Indonesia: Sejarah, Konsep, Dan Praktik Di Pengadilan Agama* (Setara Press, 2014), <https://scholar.google.com/scholar?cluster=10799782994783966155&hl=en&oi=scholarrr>.

Similarly, the psychological impacts also need to be considered, as changes in one's rights and obligations can affect their mental and emotional well-being. Therefore, it is crucial for the justice system to consider not only the financial consequences but also the psychological impacts that may be experienced by the parties feeling aggrieved by the decision, such as in the case of *exceptio dilatoria* found in cases that meet the requirements for approval but cannot be granted due to this reason.

C. Theory of Legal Justice

1. Definition

In general, fairness is something that aligns with facts or logic and corresponds to all prevailing norms of good and bad within society.¹³ Meanwhile, legal justice is a principle underlying the judicial system to ensure that every individual is treated fairly and equally in the eyes of the law. This principle involves the application of moral norms, ethics, and justice values in the legal process, aiming to achieve fair and just outcomes for all parties involved in a dispute or legal case.

This concept of justice primarily indicates that decisions and actions taken must be based on prevailing objective standards. However, it needs to be understood that justice is a relative concept, meaning that views on what is fair for one person may differ for another. Therefore, when someone

¹³ "Rifqi Qowiyul Iman BADILAG.Pdf," Google Docs, accessed April 26, 2024, https://drive.google.com/file/d/1lunag9lyJ3KZUT5YdToLHRZaJlvot8IM/view?usp=embed_facebook.

claims to have acted justly, its relevance must be evaluated in the context of norms and general order widely recognized as benchmarks of justice. In this context, it is important to understand that the definition of justice may vary depending on individual perspectives and values embraced within a society.¹⁴

In the legal context, justice not only means providing proportional punishment for offenders but also ensuring fair and proportionate treatment for all individuals, as well as guaranteeing equal access to justice for all members of society, regardless of their social, economic, or political status.¹⁵ This aligns with Aristotle's statement, which essentially suggests that justice is a balance between the numeric and the proportional.

Meaning, every individual should be treated fairly and equally in the eyes of the law, and each individual should also be given what is rightfully theirs according to their abilities and achievements. Aristotle divides legal justice into two aspects:

- a. Distributive justice, a principle that emphasizes the fair distribution of resources and wealth within society, considering the needs and contributions of each individual; and

¹⁴ Hasaziduhu Moho, "PENEGAKAN HUKUM DI INDONESIA MENURUT ASPEK KEPASTIAN HUKUM, KEADILAN DAN KEMANFAATAN," *Warta Dharmawangsa* 13, no. 1 (March 14, 2019), <https://doi.org/10.46576/wdw.v0i59.349>.

¹⁵ Melisa Nasir et al., "Kedudukan Hukum dalam Mewujudkan Keadilan dan Kesejahteraan di Indonesia," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (February 23, 2023): 241–54, <https://doi.org/10.37680/almanhaj.v5i1.2084>.

- b. Corrective justice as an effort to correct or remedy injustices that have occurred within society.

According to John Rawls, the principles of justice are divided into two aspects. Firstly, the principle of equal liberty, which means that every citizen has equal rights in the eyes of the law and the law must be applied fairly to all individuals without discrimination. Secondly, the principle of difference pertains to socioeconomic disparities, which is a form of justice that not only grants equal rights to all individuals but also takes into account reasonable differences among them. This principle refers to the acknowledgment of individual contributions and achievements in society.¹⁶

Rawls highlights the significance of these principles of justice as fundamental elements in organizing social cooperation. This implies that the principles of justice should form the basis of a social structure that ensures the interests of all members of society are safeguarded. In achieving this goal, the principles of justice are expected to support the fair distribution of goods and primary social values, such as income, wealth, freedom, opportunities, as well as self-respect and esteem. These principles can only be realized through fair procedures. Thus, governance processes naturally become procedural.¹⁷

¹⁶ Damanhuri Fattah, "TEORI KEADILAN MENURUT JOHN RAWLS," 2013, 35.

¹⁷ ps2k.uin-suka.ac.id, "TEORI KEADILAN JOHN RAWLS: SEBUAH REVIEW," accessed April 30, 2024, <https://ps2k.uin-suka.ac.id/id/kolom/detail/311/teori-keadilan-john-rawls-sebuah-review>.

Rationality of justice is ensured through the initial conditions known as "the original position" by Rawls. This refers to the initial situation where rationality, freedom, and equality of rights are assumed principles and serve as the basic stance of all parties involved in selecting principles of justice. This aims to prevent distortions and ensure the rationality of the principles of justice.

2. Aspects of Justice

The legal aspects of justice encompass two elements, namely procedural and substantive aspects. The procedural aspect relates to a series of steps and stages that must be followed in the resolution of a legal case, including filing a lawsuit, trial proceedings, and decision-making. The principles of equality, transparency, and protection of procedural rights are at the core of this aspect, ensuring that all parties are treated fairly and equally under the law.¹⁸

On the other hand, the substantive aspect emphasizes the substance or content of the decisions made by the court. This involves an objective assessment of the evidence and relevant facts, as well as the consistent and fair application of applicable law. Substantive justice ensures that the decisions made reflect the underlying values of justice, morality, and humanity that underpin the legal system. This includes protecting human

¹⁸ M. Syamsudin, "KEADILAN PROSEDURAL DAN SUBSTANTIF DALAM PUTUSAN SENGKETA TANAH MAGERSARI," *Jurnal Yudisial* 7, no. 1 (March 24, 2014): 18–33, <https://doi.org/10.29123/jy.v7i1.91>.

rights, civil liberties, and social welfare. Essentially, legal justice is a cornerstone in maintaining the integrity and trust of society in the justice system, and it is a crucial foundation in building a fair and civilized society.¹⁹

D. Theory of Legal Certainty

1. Definition

In general, legal certainty is a concept of paramount importance in a country's legal system. This concept refers to the state in which the law is clear, definite, and understandable by all parties involved. In this context, legal certainty provides confidence to the public that the applicable rules will be enforced fairly and consistently.

The principle of legal certainty also serves as a tool to protect individuals from arbitrary or arbitrary actions by authorities. With legal certainty, individuals can expect that their rights will be recognized and upheld, and that they will receive what is expected in specific situations.²⁰ This helps maintain social stability and prevents the occurrence of uncertainty that can harm both individuals and society as a whole.

Van Apeldoorn emphasizes two main aspects of legal certainty, namely the ability to establish laws in concrete terms and to provide legal

¹⁹ Yustinus Suhardi Ruman, "Keadilan Hukum dan Penerapannya dalam Pengadilan," *Humaniora* 3, no. 2 (October 31, 2012): 345, <https://doi.org/10.21512/humaniora.v3i2.3327>.

²⁰ Lusiana Indriawati and Risma Nur Arifah, "Konsistensi Mahkamah Agung Dalam Memastikan Kepastian Hukum Pada Kasus Wanprestasi Tanah Dan Onvoldoende Gemotiveerd," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 5, no. 2 (2023): 130–49.

protection to all individuals. By establishing laws in concrete terms, legal certainty ensures that existing rules can be applied clearly and consistently in various situations. Meanwhile, by providing legal protection, legal certainty ensures that individual rights are recognized and protected, and that they have equal access to justice before the law.²¹

Legal certainty is a crucial characteristic in the legal system, especially for unwritten legal norms. Without legal certainty, the law would lose its meaning as it can no longer serve as a guide for behavior for society as a whole. Thus, legal certainty becomes a necessary foundation to ensure justice and order in society.²²

In his book, Gustav Radbruch states that there are three legal principles identified with the purpose of law, namely the utility of law, legal certainty, and legal justice. According to Radbruch, justice means equal rights for all individuals before the court. Utility or finality depicts the content of the law in accordance with the objectives intended to be achieved by the law, while legal certainty is defined as the condition where the law can function as rules that must be obeyed.²³

²¹ Eldbert Christanto Anaya Marbun, "MENGAJI KEPASTIAN HUKUM DAN PERLINDUNGAN HUKUM TERHADAP INVESTASI DI INDONESIA MELALUI LEMBAGA PERIZINAN ONLINE SINGLE SUBMISSION (OSS)" 1 (2021).

²² Marbun.

²³ Siti Halilah Mhd. Fakhurrahman Ari, "ASAS KEPASTIAN HUKUM MENURUT PARA AHLI," *Siyasah: Jurnal Hukum Tata Negara* 4, no. II (desember 2021):3.

To implement these three purposes of law, Radbruch employs a scale of priority principles to address the tension between these basic values.²⁴ The primary priority is justice, followed by utility, and finally legal certainty. This aims to create an orderly and balanced societal order.²⁵ However, in practice, not all judges apply these priorities, depending on how each judge views the case at hand. It is also possible that judges who have established the above priority principles receive fair recognition from the litigants because fairness to one party may not necessarily be perceived as fair by the other party.

Radbruch also interprets legal certainty as the condition where the law can function as rules that must be obeyed. With legal certainty, it can serve as a guarantee for individuals to behave in accordance with the provisions of the applicable law. Conversely, without legal certainty, there are no regulations or guidelines governing one's behavior. The attainment of legal certainty is said to be divided into two main elements:

- a. The law must be clear and not subject to multiple interpretations.
- b. The authority enforcing the law must not act arbitrarily in applying the law and must adhere strictly to the principle of legality.

²⁴ Islamiyati Islamiyati, "Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan," *Law, Development and Justice Review* 1, no. 1 (November 9, 2018): 82–96, <https://doi.org/10.14710/ldjr.v1i1.3574>.

²⁵ Abdullah Taufik, "ANALISIS KEADILAN HUKUM PUTUSAN VERSTEK PADA PERKARA CERAI TALAK NO. 0520/Pdt.G/2014/PA. KAB. KEDIRI" 3, no. 2 (2019).

In deciding a case, judges must consider various considerations acceptable to all parties and not deviate from legal principles. This way, justice and legal certainty can be implemented together. Although in Radbruch's priority principle, the theory of legal certainty is at the end, if carefully considered, the presence of legal certainty can strengthen the theory of justice, thus forming a strong legal unity.²⁶

2. Aspects of Legal Certainty

Gustav Radbruch stated that there are four fundamental aspects related to the concept of legal certainty.²⁷ Firstly, law is positive, and positive law refers to legislation. Positive law, also known as *ius constitutum*, refers to the collection of written legal principles and rules that are currently applicable and binding, both generally and specifically, and enforced by the government or courts in Indonesia.

Positive law in the context of Indonesia can be classified into various categories, such as its sources, forms, substance, and others. Thus, positive law encompasses the entire framework of regulations that are concretely applied within the legal system of the country and serves as the foundation for the enforcement of law and justice in Indonesia. These regulations can originate from various sources, including statutes, government regulations,

²⁶ M. Muslih, "NEGARA HUKUM INDONESIA DALAM PERSPEKTIF TEORI HUKUM GUSTAV RADBRUCH (Tiga Nilai Dasar Hukum)," *Legalitas: Jurnal Hukum* 4, no. 1 (May 12, 2017): 130–52, <https://doi.org/10.33087/legalitas.v4i1.117>.

²⁷ "Teori Kepastian Hukum," accessed May 6, 2024, <http://repository.unas.ac.id/6990/5/BAB%20II.pdf>.

local regulations, court decisions, and other legally valid regulations. Positive law reflects the current applicable law and ensures that legal norms are applied fairly and effectively in the daily lives of the community.²⁸

Secondly, law is based on facts, meaning it is grounded in reality. Law based on facts or reality is a fundamental principle in the legal system that emphasizes the need for legal decisions to be based on existing realities. In this context, proven facts serve as the basis for law enforcement, rather than mere assumptions or opinions. This principle emphasizes objectivity in the legal process, requiring legal decisions to be based on valid and reliable data or information, rather than subjective views.

In the judicial system, these facts are revealed through the presentation of evidence in court proceedings, which are then evaluated by judges to determine their compliance with applicable law. The importance of law based on facts is also related to the principle of justice, where legal decisions based on reality can be considered fairer because they consider the actual situation. Furthermore, this principle helps protect individual rights by ensuring that law enforcement is based on actual circumstances rather than mere speculation. Thus, law based on facts or reality becomes an important foundation in efforts to create justice and protect individual rights within the legal system.²⁹

²⁸ "CAKAP HUKUM, HUKUM POSITIF, DAN HUKUM ISLAM," accessed May 6, 2024, <http://repo.iain-tulungagung.ac.id/4582/3/BAB%20II.pdf>.

²⁹ Rina Wahyu Yulianti, "Analisis Penyusunan Fakta Hukum Dalam Putusan Pidana," n.d.

Thirdly, facts must be formulated clearly to avoid misunderstanding and facilitate the legal process. Clear formulation ensures that facts presented in legal proceedings can be understood by all parties involved, including judges, lawyers, witnesses, and other relevant parties. With clear formulation, every important detail of the facts can be identified accurately, leaving no room for misinterpretation or misunderstanding. This helps prevent disputes or controversies that may arise due to different interpretations of the same facts.³⁰

Moreover, formulating facts clearly also facilitates the practical implementation of the legal process. Having a clear picture of the facts involved in a case allows parties to better prepare arguments, present evidence, and respond to questions from other parties. It also enables judges to make more informed decisions based on information presented clearly and comprehensively.³¹

Fourthly, positive law should not be easily changed. Positive law consists of a set of written rules that regulate societal life, and its changes should not be made lightly. According to Arief Sidharta, every legal rule has its roots in a certain legal principle. In other words, rules and judicial decisions are elaborations of values and basic concepts that serve as the philosophical or moral foundation of the legal system itself. This concept

³⁰ "KASUS POSISI, FAKTA HUKUM DAN IDENTIFIKASI FAKTA HUKUM," accessed May 6, 2024, <https://repository.unpas.ac.id/14852/3/BAB%20II.pdf>.

³¹ Laila M Rasyid, M Hum, and M Hum, "PENGANTAR HUKUM ACARA PERDATA," n.d.

helps explain the underlying rationale behind the formation of specific legal rules and judicial decisions, as well as the relationship between existing law and the values upheld in society.³²

In practice, some legal principles may contradict each other. Therefore, in implementing them, Sidharta categorizes legal principles according to the criteria for assessing a legal rule, namely respect for human dignity³³, respect for the spiritual and physical aspects of human existence as individuals, the principle of reciprocity in trust, the principle of accountability, and the principle of justice.

Gustav Radbruch regards legal certainty as a conviction about the substance or content of the law itself. According to him, legal certainty is the result of the legal system of regulations that apply in a country, which includes laws and other regulations. In his view, Radbruch emphasizes that compliance with positive law, which regulates the relationships between individuals in society, must be upheld, even if the law is considered not entirely fair or in line with higher moral standards of justice.

³² Susi Dwi Harijanti Ph.D S. H. , LL M. and Hukumonline, "Bila Hukum Positif Bertentangan dengan Asas Hukum," July 7, 2018, <https://www.hukumonline.com/klinik/a/bila-hukum-positif-bertentangan-dengan-asas-hukum-lt52d0d2e4afc2c/>.

³³ Dewa Gede Atmadja, "ASAS-ASAS HUKUM DALAM SISTEM HUKUM," *Kertha Wicaksana* Volume 12, Nomor 2 (2018).

CHAPTER III

RESEARCH FINDINGS AND DISCUSSION

A. Legal Considerations by the Panel of Judges in Deciding Exceptio Dilatoria Cases

1. Exceptio Dilatoria in Decision Number 1389/Pdt.G/2021/PA.Gm

Generally, Exceptio dilatoria, commonly known as premature lawsuits, is one variation of lawsuits that cannot be accepted by judges due to formal defects. Premature lawsuits often become one of the issues that arise in resolving judicial processes. This can be evidenced in the records of the Supreme Court, where the keyword 'premature' yielded approximately 18,049 cases suspected or already declared as premature lawsuits by the panel of judges.³⁴

Despite the considerable number of cases above, the author analyzed the presence of the word 'premature' in several of the aforementioned verdicts. Thus, it was found that some of these cases were exceptions filed by the defendants as a challenge to lawsuits that indirectly related to the substance of the case. In other words, arguments or claims presented by one party in a legal dispute do not directly address the core issue or substance being considered by the court. An exception may not be entirely granted by the judge. Some cases were declared not premature lawsuits, indicating that

³⁴ Mahkamah Agung Republik Indonesia Direktori Putusan, "Direktori Putusan Gugatan Prematur," accessed March 13, 2024, <https://putusan3.mahkamahagung.go.id/search.html?q=prematur>.

the submission of the exception was rejected by the judge. This statement is certainly made after the panel of judges reexamines the lawsuit in question by the exception party.

Subsequently, some cases that are declared premature lawsuits by the judge can alter or annul the legal status previously established. One example of a lawsuit that was dismissed due to being premature occurred in a divorce case with decision No. 1389/Pdt.G/2021/PA.Gm. In an anonymized case, it was mentioned that Reyna (not her real name) as the wife and Dean (not his real name) as the husband, had married on May 12, 2007, which was also recorded at the Office of Religious Affairs X Number 77/05/V/2007, dated May 15, 2007.

During their marriage, the Plaintiff and the Defendant lived harmoniously as husband and wife. They were blessed with two children and formed a small family under the Defendant's residence. However, in January 2010, the harmony of the Plaintiff's and Defendant's household began to deteriorate due to disputes and arguments, leading to an unharmonious family. Based on the Plaintiff's lawsuit arguments dated November 25, 2021, these disputes were caused by:

- The Defendant has another woman.
- The Defendant often gets drunk and even sells alcoholic beverages.
- The Defendant frequently uses foul language, damages household items, and even threatens the Plaintiff with a sharp weapon.

The disputes that caused the household to break down continued until they peaked around November 8, 2021, leading the Plaintiff to leave the Defendant and return to her parents' home because she could no longer tolerate the Defendant's behavior. Since that incident, for approximately two weeks until this lawsuit was filed, there has been no physical or emotional relationship between the Plaintiff and the Defendant. The Defendant also did not leave anything that could be used as a substitute for financial support for the Plaintiff.

Subsequently, in response to the Plaintiff's arguments above, Dean as the Defendant verbally acknowledged most of the Plaintiff's claims. However, the Defendant still wished to maintain the marital relationship with the Plaintiff. In his subsequent statement, the Defendant admitted that he had marital relations with the Plaintiff about two weeks before the Plaintiff left the Defendant's home, which the Plaintiff confirmed and acknowledged.

In this matter, the judge considered the Defendant's statement, which was then confirmed by the Plaintiff, to be a valid admission that did not need further verification. This is in accordance with the provisions of Articles 311 and 313 RBg jo. 1925 of the Civil Code, which state *that every admission must be accepted in its entirety, and the judge is not free to accept part of it and reject another part to the detriment of the person making the admission.*

*This can only be done insofar as the debtor intends to free themselves by presenting false claims.*³⁵

Regarding the fact that the Defendant did not provide financial support to the Plaintiff as stated in the lawsuit, it was deemed not to have met or not yet met the applicable rules. As mentioned in the shigat taklik talak, the period during which a husband neglects or fails to support his wife is six months. However, in this case, the judge considered a period of at least three months, as three months is the minimum period for the Plaintiff to file her lawsuit.

Therefore, based on these facts, the Religious Court of Giri Menang decided this case by declaring it as an exceptio dilatoria. A deeper analysis reveals that this case is an example of the injustice arising from the application of exceptio dilatoria. The priority of the judge's considerations between the substance of the case being examined and the fulfillment of certain procedural rules raises questions about the justice being pursued.

This premature lawsuit becomes quite complex when not associated with definite law. In some legal systems, the reasons or criteria used by judges to determine that a lawsuit can be considered premature can be found in laws or regulations established by judicial institutions or competent legal bodies. For example, in the above case, the judge decided the case as a premature lawsuit because the Plaintiff's claim did not meet Article 80 of

³⁵ "REGLEMEN ACARA HUKUM UNTUK DAERAH LUAR JAWA DAN MADURA," accessed June 19, 2024, <https://pta-jambi.go.id/attachments/article/1110/RBg.pdf>.

the Compilation of Islamic Law and the conditions of shigat taklik talak. However, exceptio dilatoria itself does not have jurisdiction or rules explicitly regulating its implementation.

This indicates that handling premature lawsuit cases can become more complicated in legal systems where there are no clear guidelines. Conversely, the principles or legal policies governing premature lawsuits are often enforced through Supreme Court decisions or court rulings considered authoritative for subsequent cases with similar facts or legal issues (legal precedents).

So that for the public, especially those who feel aggrieved by this premature lawsuit, or as people who are still unfamiliar with the law, argue that premature lawsuits are only an obstacle in the litigation process. Therefore, at least there should be clear and easy-to-understand rules regarding premature lawsuit claims. That way, the public can anticipate the lawsuit they will file, by avoiding things that result in a premature lawsuit.

2. Analysis of Legal Consideration Factors by the Panel of Judges in Deciding Exceptio Dilatoria Cases in Decision Number 1389/Pdt.G/2021/PA.Gm

In general, a panel of judges is a body or group of people tasked with receiving, examining, adjudicating, and deciding a legal case at the court level. In Indonesia, a judge has the principle of freedom which has been fully guaranteed by Law number 48 of 2009 concerning Judicial Power. The

law stipulates that judicial power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia.³⁶

Judicial power is the highest authority possessed by a state entity, which stands independently from any form of influence or intervention from other forces. This indicates that the state has the right to make policies, implement laws, and make decisions without interference from other institutions or parties.³⁷ This concept of freedom is applied to the judiciary and also to judges as the main element in the system.

Contextually, judicial independence has three important aspects that form the core of the exercise of judicial power. First, judges are subject only to law and justice, which means that their decisions must be based on applicable legal principles and on justice acceptable to the parties concerned. Second, judicial independence guarantees that no one, including the government, has the authority to influence or direct the decisions to be made by judges. Thirdly, the freedom of judges also includes the absence of consequences to the judge's person in carrying out their judicial duties and functions. This means that judges must be able to act without fear of

³⁶ Dachran Busthami, "KEKUASAAN KEHAKIMAN DALAM PERSPEKTIF NEGARA HUKUM DI INDONESIA," *Masalah-Masalah Hukum* 46, no. 4 (October 30, 2017): 336–42.

³⁷ "PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA PENYALAHGUNAAN WEWENANG PEMBINA YAYASAN STUDI PUTUSAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR 2722 K/PDT/2014," accessed April 27, 2024, <https://dspace.uui.ac.id/bitstream/handle/123456789/20661/05.3%20bab%203.pdf?sequence=18&isAllowed=y>.

reactions or pressures that may arise from parties who are dissatisfied with the decisions taken.³⁸

To realize these three aspects, in considering the application of a law to a case, judges are required to be able to formulate and compile legal considerations based on facts that already exist or that have not been raised in the lawsuit. Thus, in determining the judge's decision, it can be accepted by all parties and does not deviate from existing legal principles. This is of course as stated in Article 53 of Law No. 48 of 2009 concerning Judicial Power which reads:

- a. In examining and deciding cases, judges are responsible for the decisions and decisions they make.
- b. The determination and decision as referred to in paragraph (1) must contain the legal considerations of the judge based on appropriate and correct reasons and legal grounds.³⁹

In this study, the author will analyze how the elements used by the panel of judges were applied in deciding the series of cases involving *exceptio dilatoria* in decision No. 1389/Pdt.G/2021/PA.Gm. First, it can be seen from the minutes of decision No. 1389/Pdt.G/2021/PA.Gm that before the judge proceeded with the case under review, the judge at the first level

³⁸ "PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA PENYALAHGUNAAN WEWENANG PEMBINA YAYASAN STUDI PUTUSAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR 2722 K/PDT/2014."

³⁹ "UU No. 48 Tahun 2009," Database Peraturan | JDIH BPK, accessed April 28, 2024, <http://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009>.

had fulfilled his authority to summon the Plaintiff and the Defendant to appear in court via e-court, in accordance with Article 55 of Law Number 7 of 1989 and Article 26 paragraph 1 of Government Regulation Number 9 of 1975 in conjunction with PERMA 1 of 2019 concerning the Administration of Court Proceedings Electronically.

In this case, the judge also made efforts to reconcile the Plaintiff and the Defendant through mediation before further examining the case. This effort aimed to advise the Plaintiff and the Defendant to reconsider and withdraw their intention to divorce. However, at this stage, mediation did not result in an agreement. The judge then examined and assessed the case based on the statements made in court. As a result of the proceedings, the judge ruled the lawsuit to be inadmissible due to its premature nature.

Based on the legal considerations of the panel of judges regarding the inadmissibility of the case in decision No. 1389/Pdt.G/2021/PA.Gm, it is a decision that is less appropriate. If we look at the Plaintiff's arguments, the Plaintiff stated that since 2010, the household condition of the Plaintiff and the Defendant had started to experience conflicts caused by the Defendant having another woman, often getting drunk and becoming a liquor seller, using foul language, damaging household furniture, and threatening the Plaintiff with a sharp weapon. Based on this, the reasons for divorce submitted by the Plaintiff already meet Article 19 letters (a, d, f) of Government Regulation Number 9 of 1975.

Furthermore, if we consider the duration from the beginning of the conflicts in 2010 to the filing of this lawsuit in 2021, which spans approximately 11 years, it can be interpreted that this period represents the Plaintiff's efforts to maintain her household. Thus, when it became apparent that the marital discord could not be repaired, it is reasonable for the Plaintiff to file the lawsuit. Moreover, the Plaintiff also stated that the Defendant threatened her with a sharp weapon. Therefore, if the Plaintiff and the Defendant are forced to continue their marriage (with the lawsuit being dismissed), it could endanger the Plaintiff's safety and mental well-being. Regardless of the marital relations occurring two weeks before the Plaintiff and the Defendant separated, it is crucial to consider the potential future implications for both parties involved. Given such circumstances, it cannot be guaranteed that the Defendant will not repeat his actions.

Thus, considering the judge's rationale in applying *exceptio dilatoria* to the entirety of the case in this decision, it appears that justice has not been adequately served for the Plaintiff. Although the minutes of the decision do not provide detailed information on how the Plaintiff responded to the new facts regarding the marital relations stated by the Defendant, the justice for the Plaintiff in this case would be to ensure that both parties feel safe in their marital life.

This case underscores that the judicial system must continually strive to achieve optimal justice while adhering to the applicable rules. This includes considering both the substantive aspects and the procedural

regulations that must be applied in a case. Therefore, the judge plays a crucial role in ensuring that every legal process conducted complies with the established rules, including identifying and appropriately handling premature lawsuits.

The existence of premature lawsuits gives both the Plaintiff and the Defendant the opportunity to resolve their issues outside the court, especially for problems that can still be settled among the parties involved. However, in the context of issues such as those in decision No. 1389/Pdt.G/2021/PA.Gm, it is hoped that the judge, in his examination, will more thoroughly consider the advantages and disadvantages for each individual, not just focusing on the duration of the marriage but also on the sustainability of the marriage after the lawsuit is resolved. Successful marriages require the individuals involved to feel comfortable, safe, and happy.

If, ultimately, *exceptio dilatoria* must be applied to a particular case, it is crucial for the judge to provide a clear understanding of the meaning and implications of the decision. This ensures that the decision by the Religious Court judge is perceived as fully considering the urgency of the matter under review, not just introducing a rule that might seem unfamiliar to the public but also considering the impact of the decision. In this regard, especially for *exceptio dilatoria*, which denotes a lawsuit containing formal defects and still lacks specific regulations regarding its implementation.

Having clear rules on exceptio dilatoria can also reduce the number of prematurely filed lawsuits. This way, the public can better prepare their lawsuits with the necessary arguments and evidence, making the court process more efficient and fair.

3. Comparison of the Application of Exceptio Dilatoria to Plaintiff's Divorce Cases

Comparing cases that have been declared premature, particularly cases of divorce, is an important step in assessing the consistency of judges' decisions within the judicial system. This process allows us to analyze whether judges have applied legal principles consistently in similar cases. By comparing the factors that influence the status of premature lawsuits and judges' assessments of them, a clearer understanding of consistency in law enforcement and maintaining integrity and fairness in the judicial system can be gained.

Decision	Similarities	Differences
Decision No.1389/Pdt.G/2021/PA.GM	- Premature lawsuit leads to inadmissibility - Premature factor: The facts presented in the Plaintiff's lawsuit are not in accordance with the established legal basis. the time of separation between the Plaintiff and the	- Case: quarrels that occurred because the Defendant had another woman, the Defendant often got drunk and sold alcohol, the Defendant often spoke harshly and damaged household goods and threatened the Plaintiff with

	Defendant was still 2 weeks, and 2 weeks before the separation the Plaintiff and the Defendant were still having marital relations. This does not fulfill the provisions of the <i>taklik talak sighat</i>.	sharp weapons; house separation for approximately 2 weeks. - Legal basis: the provisions as believed by the Panel of Judges, in accordance with the <i>sighat taklik talak</i>, namely the separation of the house between husband and wife for at least 3 months. - In this case, the judge ruled that this claim was inadmissible.
Decision No.8/Pdt.g/2022/PTA.Plg (decision for this research)	- Premature lawsuit leads to inadmissibility - Premature factor: The facts presented in the decision of the court of first instance are not in accordance with the established legal basis.	- Case: domestic quarrels were only seen twice by witnesses, while the marriage had been going on for 24 years; it was natural for the respondent to focus more on her sick parents; the plaintiff and respondent had been separated for 1 month. - Legal basis: Decision of the Supreme Court of the Republic of Indonesia. Number 81/K/AG/1993

		- In this case, the first instance judge and the cassation judge were of the same opinion regarding the facts and legal basis used. Whereas the appellate judges were of the opinion that the two matters were inconsistent.
Decision No. 0881/Pdt.G/2016/ PA.Bpp	- Premature lawsuit leads to inadmissibility - Premature factor: The facts presented in the Plaintiff's lawsuit are not in accordance with the established legal basis.	- Case: the Defendant did not provide alimony for his wife, the Defendant was abusive and used the word divorce, the Defendant insisted on marital relations, spoke disrespectfully to his in-laws, the Defendant often evicted the Plaintiff from their house and paid 200 million, slandered the Plaintiff for her debt to the Defendant, the Defendant often insulted and humiliated her, the Defendant often played with other women, when angry he would throw things, and betrayed their agreement. - Legal basis: The panel of judges was

		of the opinion that since the husband and wife were still in contact, there was no dispute. - Premature factor: on July 9 and 12, 2016 the Plaintiff and the Defendant were still having marital relations.
--	--	--

Based on a comparative analysis of Decision No. 1389/Pdt.G/2021/PA.GM, Decision No. 8/Pdt.G/2022/PTA.Plg, and Decision No. 0881/Pdt.G/2016/PA.Bpp, it can be concluded that the considerations made by judges in implementing *exceptio dilatoria* vary. Some judges apply *exceptio* to lawsuits that should be granted, while others approve lawsuits in cases that are still premature.

In Decision No. 0881/Pdt.G/2016/PA.Bpp, the judge ruled the case as a premature lawsuit because he found that the Plaintiff and the Defendant admitted to having marital relations under the Defendant's coercion two days before the court hearing. In his consideration, the judge decided that based on the admissions of the Plaintiff and the Defendant, their household did not have any disputes or conflicts, and thus, he dismissed the Plaintiff's claim on the grounds that the lawsuit was premature.⁴⁰ However, according

⁴⁰ Jamilah Jamilah and Akmal Adicahya, "Persepsi Pelaku Kekerasan Dalam Rumah Tangga Terhadap UU Pkdr No 23 Tahun 2004," *De Jure: Jurnal Hukum Dan Syariah* 6, no. 2 (2014), <http://ejournal.uin-malang.ac.id/index.php/syariah/article/view/3208>.

to Articles 8 and 47 of Law No. 23 of 2004 on the Elimination of Domestic Violence, the term "coercion" is considered an act of domestic violence that causes suffering to a person. This was evidenced by the Plaintiff filing a lawsuit in the Religious Court as proof of her suffering in the household.⁴¹ However, the judge did not include this term in his considerations in the ruling.⁴²

Additionally, in her lawsuit, the Plaintiff mentioned that since 2014, her household had not been functioning well. This was due to the Defendant not providing financial support, frequently uttering divorce threats, coercing the Plaintiff into marital relations, using harsh language, and even slapping the Plaintiff. Based on these admissions, it is highly likely that the marital relations on July 9 and 12, 2016, were a result of the Defendant's coercion, as the Defendant mentioned in his response that he objected to the divorce because he still cared for the Plaintiff.⁴³

Therefore, based on these facts, the application of *exceptio dilatoria* to this lawsuit is inappropriate. This lawsuit is very complex and should have been granted as it meets the reasons for divorce outlined in Article 19 of Government Regulation No. 9 of 1975. Similarly, in decision No. 1389/Pdt.G/2021/PA.GM, the harmful actions by the Defendant towards the

⁴¹ Jamilah and Adicahya.

⁴² Issha Harruma, "Bolehkah Suami Memaksa Istri Berhubungan Badan?," January 18, 2023, <https://nasional.kompas.com/read/2023/01/18/01000071/bolehkah-suami-memaksa-istri-berhubungan-badan->.

⁴³ Fauzan Akhmad, "Analisis Yuridis Pengadilan Agama Tentang Nafkah Batin" (UIN Antasari Banjarmasin), accessed April 29, 2024, <https://idr.uin-antasari.ac.id/22134/>.

Plaintiff cannot be guaranteed not to recur in the future. Hence, when applying *exceptio dilatoria*, it is essential to assess the urgency of each lawsuit.

In contrast, in Decision No. 8/Pdt.G/2022/PTA.Plg, the main issue leading to the dismissal of the lawsuit was continuous conflicts due to the Defendant's excessive concern for his parents and the fact that they had lived apart for only one day. In this case, the judge determined that the duration or length of the conflicts in the Plaintiff's and Defendant's household could not be categorized as continuous. Witnesses also testified that they had only seen the conflicts twice, which is minimal considering the 24 years of marriage. According to the regulations, the required separation period for a husband and wife is three months.⁴⁴

Furthermore, the substantive issue behind these conflicts is due to the Defendant's frequent attention to his sick parents. However, according to Article 19 of Government Regulation No. 9 of 1975 as a whole, caring for parents is not a permissible reason for divorce under these rules. Moreover, in this case, the Plaintiff appealed to the appellate court, presenting the fact that "the Defendant has not provided emotional support to the Plaintiff for approximately 8 years due to a stroke." This strengthened the Plaintiff's argument. Therefore, based on this, the application of *exceptio dilatoria* needs to be reconsidered on cases that can be granted and those that cannot.

⁴⁴ Mahkamah Agung Republik Indonesia Direktori Putusan, Putusan Mahkamah Agung No.881 K/AG/2022, No. No.881 K/AG/2022 (Mahkamah Agung Oktober 2022).

Based on the analysis of the two case examples presented above, it is evident that the principle of exceptio dilatoria or premature lawsuit plays a crucial role in the judicial process. This principle emphasizes the importance of considering the Plaintiff's grounds for the lawsuit by implementing applicable legal rules. The analysis of the Plaintiff's grounds with legal rules is a procedure performed by judges to assess whether the timing of the Plaintiff's lawsuit conforms to the applicable rules. In other words, if a lawsuit does not comply with the rules and is deemed premature, the judge will automatically reject the lawsuit without further consideration of its substance.

Therefore, the parameters of justice based on procedural and substantive grounds need to be strengthened by considering the urgency of decisions that affect the parties involved. By reinforcing these parameters of justice, it is hoped that the legal decisions made will provide clear legal certainty and not create negative impacts that harm the continued life of the Plaintiff and the Defendant within their families.

Thus, it can be concluded that the principle of exceptio dilatoria plays a very important role in maintaining the integrity and fairness of the judicial system. By ensuring that every lawsuit can only be filed at the right time in accordance with the applicable legal rules, judges can maintain legal certainty and prevent abuse of the judicial process. Therefore, the application of this principle in the form of official rules governing exceptio dilatoria could be the key to achieving true justice in the judicial system.

**B. Legal Consequences of Premature Lawsuits in Verdict
No.1389/Pdt.G/2021/PA.Gm on Legal Justice and Legal Certainty**

As explained in its theory, legal acts performed by legal subjects, whether individuals or legal entities such as companies/organizations, can influence the legal implications of those actions, which are then referred to as legal consequences. All consequences or legal implications arising from such acts are recognized as expressions of the will of the actor subject to the applicable legal regulations in society. One thing that can lead to legal consequences is court decisions.

In general, clarity regarding legal consequences is a crucial foundation in ensuring effective legal certainty in a legal system. When an individual or institution has a clear understanding of the outcomes that will result from a specific action or legal decision, it provides a solid basis for predictability and stability in the law. Additionally, these parties can better assess the risks and consequences of their actions, thereby minimizing the potential for errors or legal abuses.

Clarity of legal consequences also plays a significant role in determining consistency in the application of the law. When the law is applied consistently and clearly, legal actors can rely on a fair and predictable process. They can have confidence that the decisions made will be consistent with the prevailing legal norms, without any gaps or inconsistencies clouding the certainty. However, if legal certainty is not

guaranteed, for example, due to inconsistent interpretations or ambiguous legal rules, predicting the appropriate legal consequences also becomes difficult. This can create detrimental uncertainty for all parties involved in the legal system, undermine trust in the legal process, and hinder social and economic development.

In this context, *exceptio dilatoria* is a matter that is not clearly regulated in any regulation, yet the discrepancy between the subject matter of the case and the applicable law, resulting in the emergence of the term premature, has been explained in several related regulations. Thus, *exceptio dilatoria* remains a problem that often arises but is not widely known by the public.

Therefore, the relationship between clarity regarding legal consequences and legal certainty is an essential prerequisite for building a strong and well-functioning legal system. By ensuring that legal consequences can be understood clearly and consistently, and applied fairly and consistently, a legal system can provide effective protection, promote justice, and support sustainable societal development.

1. The implementation of the principles of legal certainty theory in Decision No.1389/Pdt.G/2021/PA.Gm

Through the analysis of the issues in the decision No. No.1389/Pdt.G/2021/PA.Gm as the research object, the author connects the theory of legal certainty to examine how judges can resolve a lawsuit based

on the elements of legal certainty in a case deemed premature, to the determination of the legal force or legal consequences of the judge's decision. The principles of legal certainty theory are crucial foundations in the legal system to maintain stability, consistency, and justice in society.

Gustav Radbruch proposed 4 fundamental aspects related to the meaning of legal certainty. Firstly, that the law is positive, and positive law is legislation. The concept that the law is positive emphasizes that the law is established in written form as legislation. In other words, positive law encompasses all regulations officially established by the government and applicable in a country. The importance of positive law lies in its ability to provide a clear and structured framework for society to regulate their behavior.

When positive law can be predicted by society, it enables legal actors to make informed decisions and understand the consequences of their actions. Legal certainty is key in this regard because it allows society to have realistic expectations of how the law will be applied in specific situations. By knowing and understanding the positive law in force, society can avoid actions that violate the law and ensure that their behavior complies with the established rules.⁴⁵

⁴⁵ Bernadetha Aurelia Oktavira S.H and Hukumonline, "Arti Ius Constitutum dan Ius Constituendum," July 7, 2018, <https://www.hukumonline.com/klinik/a/ius-constitutum-dan-ius-constituendum-lt56777c031ec1c/>.

In this case, in the verdict No. 1389/Pdt.G/2021/PA.GM, positive law refers to how the judge applies Article 80 of the Compilation of Islamic Laws and the Form of Divorce Authorization (Sighat Taklik Talak) as valid legal grounds in Indonesia, concerning the core of the lawsuit stating that during two weeks of separation, the Defendant did not provide any maintenance, as well as the facts regarding the marital relationship between the Plaintiff and the Defendant prior to separation. Based on these points, the judge ruled the case as premature. However, generally, *exceptio dilatoria* lacks a firm foundation in the applicable legal regulations. This situation can create uncertainties among the parties involved in the case. Although premature lawsuits often pose challenges in civil law practice, there are deficiencies in the regulation and explanation of this issue within existing legal frameworks.

Referring to the Supreme Court Decision Directory, it can be seen that premature lawsuits often lead to dismissals in civil cases. Nevertheless, to date, there has been no specific rule that clearly sets out explanations or regulations regarding premature lawsuits. The numerous cases dismissed due to *exceptio dilatoria* do not lead to the adoption of regulations specifically addressing this issue. This highlights the complexity in addressing *exceptio dilatoria* issues and the need for further adjustments or clarifications within the existing legal framework.

Secondly, law is based on facts, meaning it is based on reality. Law based on facts or reality refers to the principle that legal processes must be

grounded in actual events or facts that can be proven. This implies that in enforcing the law, decisions and actions taken must be based on clear and verifiable evidence, not on assumptions or opinions alone.

The dismissal of exceptio dilatoria in verdict No. 1389/Pdt.G/2021/PA.GM was based on concrete facts revealed during the trial. In this context, the factual basis for rejecting the lawsuit was that the Plaintiff and Defendant continued their marital relationship before the Plaintiff left the Defendant's home to separate. This fact was further corroborated by the Plaintiff confirming the Defendant's statement. Unfortunately, the minutes of the hearing did not detail how this situation occurred. Therefore, based on the Plaintiff's acknowledgment as evidence, the judge decided to dismiss the exceptio dilatoria in the lawsuit filed by the Plaintiff.

Relying on clear and objective evidence allows legal decisions to be made more accurately and fairly. It also helps prevent errors or injustices in law enforcement because decisions are based on factual data and are not influenced by mere assumptions or speculation. Thus, a legal foundation grounded in facts helps maintain the integrity and public trust in the legal system, as decisions made can be objectively justified.

Thirdly, a fact must be formulated clearly to avoid misunderstandings in its interpretation and application of the law. In the judicial system, clarity in formulating facts plays a crucial role in preventing incorrect

interpretations or manipulation of information. As seen in verdict No. 1389/Pdt.G/2021/PA.GM, where the plaintiff had included all the facts that could strengthen their lawsuit, until the defendant finally raised a clearly detrimental fact to the plaintiff.

In this case, the plaintiff did not provide a proper response to defend their lawsuit if indeed, in fact, the plaintiff did not genuinely intend to engage in marital relations. With the lawsuit's grounds considered not meeting the requirements under applicable law, the judge ruled the lawsuit as premature.

Concealing facts, which lead to the dismissal of premature claim lawsuits, not only benefits one party but can also harm others. For parties with minor issues, such as still having hope to reconcile their marriage, *exceptio dilatoria* provides an opportunity to rectify the situation. Conversely, if the lawsuit filed by a party implies the necessity to separate between the plaintiff and the defendant, and the lawsuit is not upheld due to premature filing, then *exceptio dilatoria* becomes a disadvantageous issue.

Fifth, the filing of premature lawsuits often leads to delays in the judicial process, ultimately creating legal uncertainty for the parties involved. The impact can result in financial and psychological losses for those embroiled in protracted legal proceedings due to premature lawsuits. This underscores the importance of avoiding premature lawsuits because

they can lead to delays or even prevent the enforcement of legitimate rights for the affected parties.

Fourth, positive law should not be easily changed. Its positive nature indicates that it has been formally established by the government or authorized institutions, such as parliament or legislative bodies, and can be enforced by the judiciary. Regarding *exceptio dilatoria* as a type of lawsuit variation that can invalidate a claim, it certainly needs to be definitive and not easily changed. As discussed in the previous point, the application of *exceptio dilatoria* in divorce cases appears inconsistent. It ranges from how *exceptio dilatoria* can terminate complex cases that should be granted to how it grants cases that should still be premature.

This emphasizes the importance of the principle of legal certainty in the judicial process, where clarity of rules and consistent decisions are crucial aspects to ensure justice within the legal system. Legal certainty provides a foundation for the public to understand their rights and obligations, and gives them confidence that the law will be applied fairly and evenly. With legal certainty, parties involved in legal disputes can plan their actions based on clear and recognized rules.

In addition, judges and other law enforcers can make consistent decisions, thereby preventing uncertainty that could disadvantage any party. This principle also ensures that the law does not change arbitrarily without proper procedures, maintaining the stability and legitimacy of the legal

system as a whole. Thus, legal certainty is a cornerstone supporting the establishment of justice and order in society.

Gustav Radbruch's opinion is based on his view that legal certainty pertains to certainty about the law itself. Legal certainty is a product of the law, or more specifically, legislation. According to his viewpoint, Gustav Radbruch asserts that positive law, which regulates human interests within society, must always be obeyed even if it is less than just.

2. Implementation of the Principles of Legal Justice in Decision No.1389/Pdt.G/2021/PA.Gm

According to John Rawls, the principle of justice can be divided into two aspects. Firstly, the principle of equal liberty, which means that the law should be applied fairly to all individuals without discrimination or granting special treatment to specific parties. This implies that everyone has equal access to the justice system and is considered to have equal rights to fair and just treatment in legal proceedings. This principle reflects the essence of democracy and justice in a society where all individuals are recognized to have equal worth in the eyes of the law and should not be unfairly oppressed or advantaged.⁴⁶

In Decision No.1389/Pdt.G/2021/PA.Gm, justice is reflected in the ability of every individual, both plaintiffs and defendants, to file lawsuits in

⁴⁶ Cekli Setya Pratiwi, "KEGAGALAN MEWUJUDKAN KEADILAN PROSEDURAL DAN SUBSTANSIAL DALAM PUTUSAN HAKIM TINGGI PERKARA TINDAK PIDANA PSIKOTROPIKA NOMOR: 25/PID/B/2010/PT SBY," *JURNAL HUMANITY*, ISSN 0216-8995 9 (n.d.).

court without discrimination or unfair barriers. Judges play a key role in ensuring that each party has equal access to the legal process. They not only receive lawsuits openly but also consider every argument and evidence presented fairly and objectively. Moreover, the decisions made by the judges are based on careful analysis of the existing facts and laws, without showing favoritism towards any party. Thus, justice is realized through transparency, openness, and fair enforcement of the law by the authorities, enabling every individual to obtain a fair and balanced outcome in court proceedings.

Secondly, the principle of socioeconomic difference pertains to justice that not only grants equal rights to all individuals but also takes into account reasonable differences among them. Justice is not only formal but also substantive, considering these reasonable differences. The principle of socioeconomic difference in the context of divorce cases refers to the understanding that not all individuals have the same socioeconomic conditions in resolving divorce matters.

This may include differences in income, asset ownership, access to resources, and other life conditions. This principle emphasizes that in handling divorces, courts must fairly consider these differences to ensure that decisions are not only based on equal rights for all individuals but also take into account their reasonable conditions.

Based on the above, conditions that are considered reasonable in the case in decision No.1389/Pdt.G/2021/PA.GM, can be seen in the defendant

who still loves the Plaintiff and wants to maintain his marriage for the sake of the Plaintiff and defendant's child. In this case it is very natural to have an attitude of wanting to maintain the household, but on the other hand it is also natural for the Plaintiff to feel uncomfortable with the behavior of the defendant, which made her leave the Defendant. However, in this reasonableness, there are rights that take precedence over simply rejecting or granting the claim.

On the other hand, the Judge may also consider how the Plaintiff and the Defendant fared after the relationship. The Judge will assess the impact of the relationship on the physical, emotional, and social conditions of both parties. For example, if the relationship resulted in the Plaintiff becoming pregnant, the judge should consider the legal and moral implications of the pregnancy. This includes the Defendant's responsibility for the Plaintiff's welfare during pregnancy and after childbirth, as well as the financial responsibility and care of the child that will be born.

This consideration is crucial to ensure that all parties, including the unborn child, receive adequate and fair legal protection. Judges must ensure that their decisions not only comply with the law, but also consider the long-term welfare of the Plaintiff and the unborn child.

Although some members of society may feel that they could live with better mental and psychological conditions if they were to separate from their spouses, this does not always apply to everyone. For some individuals,

divorce can be a path to achieving peace and emotional stability, especially if their marital relationship is fraught with conflict, violence, or unhappiness. In such situations, parting ways with a partner can provide an opportunity to start anew in a healthier and happier life. However, it is important to remember that divorce also brings challenges and consequences, including changes in family dynamics, impacts on children, and financial and social implications. Therefore, any decision to separate should be carefully considered, taking into account the well-being of all parties involved.

While the aspects of legal justice encompass procedural and substantive elements, procedural aspects relate to the processes or mechanisms used in law enforcement. This includes the procedures for filing lawsuits, hearings, evidence presentation, and enforcement of judgments. Procedural aspects ensure that every individual has equal access to the courts, the right to a fair hearing, and that legal processes are conducted transparently, openly, and accountably. The procedural application of *exceptio dilatoria* in Decision No. 1389/Pdt.G/2021/PA.GM has been in accordance with the applicable rules.

Meanwhile, the substantive aspect relates to the substance or content of the law applied in a case. It involves the application of norms, principles, and values underlying the legal system to resolve cases fairly and based on truth. Premature lawsuits or *exceptio dilatoria* are clearly related to the procedural aspect of the legal system. For example, in filing a lawsuit,

procedures established by law must be strictly followed. Lawsuits filed before meeting the established criteria, such as time limits or other requirements, are considered premature and may be automatically dismissed by the court.

In this context, judicial decisions are based on procedural aspects, where the court does not need to examine the substance of the case if the lawsuit is deemed premature. Thus, premature lawsuits or *exceptio dilatoria* underscore the importance of complying with established procedures in the legal system to ensure that justice can be effectively served and that judicial processes proceed in accordance with applicable legal provisions.

Decisions on a case of *exceptio dilatoria* are an integral part of efforts to ensure justice and compliance with the law in the judicial process. These judicial decisions are crucial in ensuring that court proceedings adhere to principles of fairness and compliance with applicable laws. Judges must carefully examine arguments presented by both parties and assess the objections raised by the defendant meticulously. Judicial decisions can vary depending on the facts and evidence presented in the case.

In some cases, judges may find that the objections raised are valid and decide to postpone or suspend the court proceedings temporarily to allow the concerned parties to rectify any deficiencies. On the other hand, if the judge determines that the objections are unfounded or lack strong grounds, they may reject the *exceptio dilatoria* and proceed with the judicial process.

Therefore, decisions regarding exceptio dilatoria are an important part of the judicial process aimed at ensuring that each case is handled fairly and in accordance with applicable legal principles, as well as ensuring that the rights of all parties are properly protected.

There are several reasons why premature lawsuits are not always explicitly regulated in rules. First, legal systems often require flexibility to handle various situations that may arise. By not creating rigid rules regarding premature lawsuits, courts can adapt law enforcement to the facts and specific circumstances of each case presented. Second, the law cannot comprehensively regulate every possible scenario that may arise in a dispute. Therefore, courts often rely on interpretation and application of general legal principles to resolve issues not specifically covered by laws or regulations.

Third, legal principles such as fairness and efficiency in law enforcement also play an important role. In some cases, requiring disputing parties to try to resolve disputes amicably or through mediation before filing a lawsuit in court may result in a fairer and more efficient resolution than going straight to litigation. Fourth, Supreme Court decisions often guide lower courts in interpreting and applying the law. By referring to previous Supreme Court decisions dealing with premature lawsuit issues, courts can ensure consistency and legal certainty in handling similar cases in the future.

CHAPTER IV

CONCLUSIONS AND SUGGESTION

A. Conclusion

Based on the research focus of this thesis, it can be concluded that exceptio dilatoria is an issue that cannot be avoided as long as there is no legal regulation governing it. This is evident from the analysis of the legal considerations by the panel of judges in the case of Decision Number 1389/Pdt.G/2021/PA.GM. In this decision, the judge ruled the case as a premature lawsuit due to the ongoing marital relationship between the Plaintiff and the Defendant, which did not fulfill the conditions of sighat taklik talak. However, if viewed from the Plaintiff's lawsuit claims, there are several important aspects that also need consideration. In this case, however, the judge only focused on the facts that did not comply with the applicable regulations.

As for Decision Number 8/Pdt.g/2022/PTA.Plg In this decision, the case was ruled as a lawsuit with formal defects. This was due to the fact that the separation between the Plaintiff and the Defendant had only lasted for one day as claimed by the Plaintiff, and the disputes between them could not be classified as continuous quarrels. However, in the subsequent court proceedings, the judge granted the Plaintiff's lawsuit because new facts revealed that the Defendant had not provided conjugal support for approximately eight years.

In this context, it can be concluded that the substance of what the Plaintiff has claimed in the lawsuit will not be valid as long as there are other facts that do not meet the related regulations. Although some parts of the claims in the above decisions have met the requirements of Article 19 of Government Regulation Year 1975, the fact remains that *exceptio dilatoria* is a rule that can be both detrimental and beneficial. However, what happened in Decision Number 8/Pdt.g/2022/PTA.Plg is quite the opposite. The judge disregarded the previous judge's ruling and instead focused on the new facts presented during the trial.

The legal consequence of a premature lawsuit on legal certainty is legal uncertainty, caused by the lack of rules clarifying the implementation of *exceptio dilatoria*. Thus, the parties involved do not have a strong reference to avoid this formal defect. Additionally, due to the claims not meeting the requirements, the lawsuit can be postponed or outright rejected by the judge, leading to wasted time, financial losses, and psychological distress for the involved parties.

Meanwhile, the legal implications of a premature lawsuit on the aspect of justice can be viewed from two perspectives: procedural and substantive. It can be concluded that Decision No. 1389/Pdt.G/2021/PA.GM reflects procedural justice. One indication is that the judge performed his duties in accordance with Law No. 48 of 2009 concerning judicial authority, allowing both the plaintiff and the defendant to participate fully in the proceedings. However, substantively, the decision has not fully achieved substantive justice.

In this case, the plaintiff's arguments seemed to be disregarded after the judge heard the facts about the marital relationship between the plaintiff and the defendant. Potential adverse outcomes might occur if the judge matches the plaintiff's claims with the defendant's assertions. This should serve as a consideration for the judge to pay closer attention to the cause and effect of applying *exceptio dilatoria* to the parties involved.

B. Suggestion

1. For future researchers, it is hoped that they will analyze the legal force of judges' decisions in resolving *exceptio dilatoria* cases using jurisprudence. Additionally, they should explore the position or priority given in deciding *exceptio dilatoria* concerning the substance of the plaintiff's claims.
2. For the government, it is advisable to provide legal certainty in the form of regulations that explain about *exceptio dilatoria*, so that the public in their lawsuits can avoid issues that may harm themselves.

BIBLIOGRAPHY

- Akhmad, Fauzan. "Analisis Yuridis Pengadilan Agama Tentang Nafkah Batin." UIN Antasari Banjarmasin. Accessed April 29, 2024. <https://idr.uin-antasari.ac.id/22134/>.
- "Amanatur Robaniyah. Analisis Sadd Al-Dzariah Terhadap Putusan Hakim Menolak Perkara Cerai Gugat Karena Masih Terjadi Hubungan Seksual Suami Istri (Studi Putusan Nomor 0868/Pdt.G/2018/PA.Mr)." Accessed October 6, 2023. http://digilib.uinsa.ac.id/36178/2/Amanatur%20Robaniyah_C91215039.pdf.
- Atmadja, Dewa Gede. "ASAS-ASAS HUKUM DALAM SISTEM HUKUM." *Kertha Wicaksana* Volume 12, Nomor 2 (2018).
- Azizah, Linda. "Analisis Perceraian dalam Kompilasi Hukum Islam." *Al-'Adalah* 10, no. 2 (February 28, 2017): 415–22. <https://doi.org/10.24042/adalah.v10i2.295>.
- Batubara, Yosep Peniel. "Putusan NO (Niet Ontvankelijke Verklaring): Berbagai Macam Cacat Formil Yang Melekat Pada Gugatan | Kementerian Keuangan Republik Indonesia," June 17, 2021. <https://www.djkn.kemenkeu.go.id/kpkn-manado/baca-artikel/13958/Putusan-NO-Niet-Ontvankelijke-Verklaring-Berbagai-Macam-Cacat-Formil-yang-Melekat-pada-Gugatan.html>.
- Busthami, Dachran. "KEKUASAAN KEHAKIMAN DALAM PERSPEKTIF NEGARA HUKUM DI INDONESIA." *Masalah-Masalah Hukum* 46, no. 4 (October 30, 2017): 336–42.
- "CAKUPAN HUKUM, HUKUM POSITIF, DAN HUKUM ISLAM." Accessed May 6, 2024. <http://repo.iain-tulungagung.ac.id/4582/3/BAB%20II.pdf>.
- Database Peraturan | JDIH BPK. "UU No. 48 Tahun 2009." Accessed April 28, 2024. <http://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009>.
- Direktori Putusan, Mahkamah Agung Republik Indonesia. "Direktori Putusan Gugatan Prematur." Accessed March 13, 2024. <https://putusan3.mahkamahagung.go.id/search.html?q=prematuur>.
- . Putusan Mahkamah Agung No.881 K/AG/2022, No. No.881 K/AG/2022 (Mahkamah Agung Oktober 2022).
- Fakhrurrahman Ari, Siti Halilah Mhd. "ASAS KEPASTIAN HUKUM MENURUT PARA AHLI." *Siyasah: Jurnal Hukum Tata Negara* 4, no. II (desember 2021): 3.
- Fattah, Damanhuri. "TEORI KEADILAN MENURUT JOHN RAWLS," 2013, 35.
- Google Docs. "Rifqi Qowiyul Iman BADILAG.Pdf." Accessed April 26, 2024. https://drive.google.com/file/d/1lunag9lyJ3KZUT5YdToLHRZaJlvot8IM/view?usp=embed_facebook.
- Harruma, Issha. "Bolehkah Suami Memaksa Istri Berhubungan Badan?," January 18, 2023. <https://nasional.kompas.com/read/2023/01/18/01000071/bolehkah-suami-memaksa-istri-berhubungan-badan->.

- Indriawati, Lusiana, and Risma Nur Arifah. "Konsistensi Mahkamah Agung Dalam Memastikan Kepastian Hukum Pada Kasus Wanprestasi Tanah Dan Onvoldoende Gemotiveerd." *Al-Huquq: Journal of Indonesian Islamic Economic Law* 5, no. 2 (2023): 130–49.
- Islamiyati, Islamiyati. "Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan." *Law, Development and Justice Review* 1, no. 1 (November 9, 2018): 82–96.
<https://doi.org/10.14710/ldjr.v1i1.3574>.
- Jamilah, Jamilah, and Akmal Adicahya. "Persepsi Pelaku Kekerasan Dalam Rumah Tangga Terhadap UU Pkdr No 23 Tahun 2004." *De Jure: Jurnal Hukum Dan Syar'iah* 6, no. 2 (2014). <http://ejournal.uin-malang.ac.id/index.php/syariah/article/view/3208>.
- "KASUS POSISI, FAKTA HUKUM DAN IDENTIFIKASI FAKTA HUKUM." Accessed May 6, 2024.
<https://repository.unpas.ac.id/14852/3/BAB%20II.pdf>.
- "Kompilasi Hukum Islam." Accessed November 8, 2023. http://etheses.uin-malang.ac.id/1595/11/07210048_Lampiran.pdf.
- Leks&Co. "Eksepsi Hukum Materiil." *Blog Leks&Co* (blog), June 25, 2013.
<https://blog.lekslawyer.com/eksepsi-hukum-materiil/>.
- Mahkamah Agung, Direktori Putusan. Putusan Pengadilan Agama Giri Menang No.1389/Pdt.g/2016/PA.Gm (n.d.).
- Marbun, Eldbert Christanto Anaya. "MENGENAL KEPASTIAN HUKUM DAN PERLINDUNGAN HUKUM TERHADAP INVESTASI DI INDONESIA MELALUI LEMBAGA PERIZINAN ONLINE SINGLE SUBMISSION (OSS)" 1 (2021).
- M.H, Nafiatul Munawaroh, S. H., and Hukumonline. "Perbuatan Hukum, Bukan Perbuatan Hukum, dan Akibat Hukum," July 7, 2018.
<https://www.hukumonline.com/klinik/a/perbuatan-hukum-lt5ceb4f8ac3137/>.
- Moho, Hasaziduhu. "PENEGAKAN HUKUM DI INDONESIA MENURUT ASPEK KEPASTIAN HUKUM, KEADILAN DAN KEMANFAATAN." *Warta Dharmawangsa* 13, no. 1 (March 14, 2019).
<https://doi.org/10.46576/wdw.v0i59.349>.
- Muslih, M. "NEGARA HUKUM INDONESIA DALAM PERSPEKTIF TEORI HUKUM GUSTAV RADBRUCH (Tiga Nilai Dasar Hukum)." *Legalitas: Jurnal Hukum* 4, no. 1 (May 12, 2017): 130–52.
<https://doi.org/10.33087/legalitas.v4i1.117>.
- Nasir, Melisa, Elmi Khoiriyah, Bagus Priyono Pamungkas, Inas Hardianti, and Raesitha Zildjianda. "Kedudukan Hukum dalam Mewujudkan Keadilan dan Kesejahteraan di Indonesia." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (February 23, 2023): 241–54.
<https://doi.org/10.37680/almanhaj.v5i1.2084>.
- "PERTIMBANGAN HAKIM DALAM MEMUTUS PERKARA PENYALAHGUNAAN WEWENANG PEMBINA YAYASAN STUDI PUTUSAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR 2722 K/PDT/2014." Accessed April 27, 2024.

- <https://dspace.uui.ac.id/bitstream/handle/123456789/20661/05.3%20bab%203.pdf?sequence=18&isAllowed=y>.
- Ph.D, Susi Dwi Harijanti, S. H. , LL M., and Hukumonline. “Bila Hukum Positif Bertentangan dengan Asas Hukum,” July 7, 2018.
<https://www.hukumonline.com/klinik/a/bila-hukum-positif-bertentangan-dengan-asas-hukum-lt52d0d2e4afc2c/>.
- Pratiwi, Cekli Setya. “KEGAGALAN MEWUJUDKAN KEADILAN PROSEDURAL DAN SUBSTANSIAL DALAM PUTUSAN HAKIM TINGGI PERKARA TINDAK PIDANA PSIKOTROPIKANOMOR: 25/PID/B/2010/PT SBY.” *JURNAL HUMANITY, ISSN 0216-8995* 9 (n.d.).
ps2k.uin-suka.ac.id. “TEORI KEADILAN JOHN RAWLS: SEBUAH REVIEW.” Accessed April 30, 2024. <https://ps2k.uin-suka.ac.id/id/kolom/detail/311/teori-keadilan-john-rawls-sebuah-review>.
- Putra, I. Gusti Agung Ketut Bagus Wira Adi, Ida Ayu Putu Widiati, and Ni Made Puspasutari Uj. “Gugatan Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) Dalam Gugatan Cerai Gugat Di Pengadilan Agama Badung.” *Jurnal Konstruksi Hukum* 1, no. 2 (October 28, 2020): 305–9.
<https://doi.org/10.22225/jkh.2.1.2565.305-309>.
- Rasyid, Laila M, M Hum, and M Hum. “PENGANTAR HUKUM ACARA PERDATA,” n.d.
- “REGLEMEN ACARA HUKUM UNTUK DAERAH LUAR JAWA DAN MADURA.” Accessed June 19, 2024. <https://pta-jambi.go.id/attachments/article/1110/RBg.pdf>.
- Ruman, Yustinus Suhardi. “Keadilan Hukum dan Penerapannya dalam Pengadilan.” *Humaniora* 3, no. 2 (October 31, 2012): 345.
<https://doi.org/10.21512/humaniora.v3i2.3327>.
- S.H, Bernadetha Aurelia Oktavira, and Hukumonline. “Arti Ius Constitutum dan Ius Constituendum,” July 7, 2018.
<https://www.hukumonline.com/klinik/a/ius-constitutum-dan-ius-constituendum-lt56777c031ec1c/>.
- Syamsudin, M. “KEADILAN PROSEDURAL DAN SUBSTANTIF DALAM PUTUSAN SENGKETA TANAH MAGERSARI.” *Jurnal Yudisial* 7, no. 1 (March 24, 2014): 18–33. <https://doi.org/10.29123/jy.v7i1.91>.
- Taufik, Abdullah. “ANALISIS KEADILAN HUKUM PUTUSAN VERSTEK PADA PERKARA CERAI TALAK NO. 0520/Pdt.G/2014/PA. KAB. KEDIRI” 3, no. 2 (2019).
- “Teori Kepastian Hukum.” Accessed May 6, 2024.
<http://repository.unas.ac.id/6990/5/BAB%20II.pdf>.
- Wahyuni, Willa. “Mengenal Cacat Hukum.” [hukumonline.com](https://www.hukumonline.com), June 10, 2022.
<https://www.hukumonline.com/berita/a/mengenal-cacat-hukum-lt62a329138bae7/>.
- Yahya, Chudori Syamsudin. “Analisis yuridis Penolakan Gugatan Oleh Hakim Dalam Perkara Cerai Gugat Perspektif teori Hukum Pembuktian (Studi Putusan Pengadilan Agama Trenggalek kelas 1A Nomor 561/Pdt.G/2022/PA.Trk,” 2023.

- Yuliati, Rina Wahyu. "Analisis Penyusunan Fakta Hukum Dalam Putusan Pidana," n.d.
- Zuhriah, Erfaniah. *Peradilan Agama Indonesia: Sejarah, Konsep, Dan Praktik Di Pengadilan Agama*. Setara Press, 2014.
<https://scholar.google.com/scholar?cluster=10799782994783966155&hl=en&oi=scholar>.

APPENDIXES

A. Decision of the Giri Menang Religious Court

No.1389/Pdt.g/2021/PA.GM

  **Direktori Putusan Mahkamah Agung Republik Indonesia**
putusan.mahkamahagung.go.id

PUTUSAN
Nomor 1389/Pdt.G/2021/PA.GM

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Agama Giri Menang yang menerima, memeriksa dan mengadili perkara **Cerai Gugat** pada tingkat pertama dalam persidangan Hakim Majelis telah menjatuhkan putusan sebagaimana tersebut dibawah ini antara :

PENGUGAT, tempat dan tanggal lahir Gondang Timur, 4 Maret 1984, agama Islam, pekerjaan xxxxxxxx xxxxx xxxxxx, pendidikan Sekolah Lanjutan Tingkat Atas, tempat tinggal di xxxxx xxxxxxxx xxxxx, xxxxx xxxxxxxx, xxxxxxxxxx xxxxxxx, xxxxxxxxxx xxxxxxx xxxxx, selanjutnya disebut sebagai **Penggugat**;

melawan

TERGUGAT, tempat dan tanggal lahir Lekok, 13 Mei 1980, agama Islam, pekerjaan xxxxxxxx xxxxxxx xxxxx (PNS di Puskesmas Gondang), pendidikan Sekolah Lanjutan Tingkat Atas, tempat tinggal di xxxxx xxxxxxxxxx xxxxx, xxxxx xxxxxxxxxx, xxxxxxxxxx xxxxxxx, xxxxxxxxxx xxxxxxx xxxxx, selanjutnya disebut sebagai **Tergugat**;

Pengadilan Agama tersebut;

Telah membaca dan mempelajari berkas perkara;

Telah mendengar keterangan Penggugat dan Tergugat;

DUDUK PERKARA

Bahwa, Penggugat telah mengajukan gugatan secara tertulis dengan surat gugatannya tanggal 25 November 2021 yang didaftarkan di kepaniteraan Pengadilan Agama Giri Menang dengan Register Nomor 1389/Pdt.G/2021/PA.GM, tanggal 25 November 2021 dengan dalil-dalil sebagai berikut:

1-----B

ahwa pada tanggal 12 Mei 2007, Penggugat dengan Tergugat telah melangsungkan pernikahan sebagaimana termuat dalam Kutipan Akta Nikah yang dikeluarkan oleh Pegawai Pencatat Nikah Kantor Urusan Agama xxxxxxxxxx xxxxxxx Nomor: 77/05/VI/2007, tertanggal 15 Mei 2007;

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 1

Dikawatir
Kawatiran Mahkamah Agung Republik Indonesia untuk selalu menyampaikan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam rangka terwujudnya tujuan pembangunan peradilan yang lebih baik, Mahkamah Agung telah melakukan berbagai upaya untuk meningkatkan kualitas pelayanan peradilan. Salah satu upaya yang dilakukan adalah dengan melakukan sosialisasi kepada masyarakat tentang fungsi dan tugas Mahkamah Agung. Dengan hal ini diharapkan masyarakat akan lebih memahami dan menghormati kekuasaan kehakiman yang dijalankan oleh Mahkamah Agung. Untuk lebih jelasnya, silakan kunjungi website Mahkamah Agung RI melalui :
Email : kawatiran@mahkamahagung.go.id Telp : 021-384 3348 (ext.214)

Halaman 1



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

2.-----B

ahwa setelah menikah antara Penggugat dengan Tergugat bertempat tinggal di rumah Tergugat di xxxxx xxxxxxx xxxxx, xxxxx xxxxxxx, xxxxxxxxxx xxxxxx, xxxxxxxxxx xxxxxx xxxxx;

3. Bahwa selama pernikahan tersebut Penggugat dengan Tergugat telah hidup rukun sebagaimana layaknya suami istri dan telah dikaruniai 2 (dua) orang anak bernama:

a. **ANAK 1**, perempuan, lahir 22 April 2009;

b. **ANAK 2**, laki-laki, lahir 22 Juli 2014;

4. Bahwa sejak bulan Januari 2010 ketentraman rumah tangga Penggugat dengan Tergugat mulai tidak harmonis dengan adanya perselisihan dan pertengkaran antara Penggugat dengan Tergugat yang terus menerus yang sulit untuk dirukunkan lagi yang disebabkan antara lain:

a. Tergugat memiliki wanita idaman lain;

b. Tergugat sering mabuk-mabukan bahkan menjadi menjual minuman keras;

c. Tergugat sering mengucapkan kata-kata kasar dan merusak barang-barang rumah tangga bahkan sampai mengancam Penggugat dengan senjata tajam;

5.-----B

ahwa puncak keretakan hubungan rumah tangga Penggugat dengan Tergugat tersebut terjadi kurang lebih pada tanggal 8 November 2021, yang akibatnya karena Penggugat sudah tidak tahan dengan sikap Tergugat akhirnya Penggugat pergi meninggalkan Tergugat pulang ke rumah orangtua Penggugat sendiri di xxxxx xxxxxxx xxxxx, xxxxx xxxxxxx, xxxxxxxxxx xxxxxx, xxxxxxxxxx xxxxxx xxxxx. Sejak kejadian tersebut lebih kurang sudah 2 (dua) minggu hingga sekarang. Selama itu sudah tidak ada lagi hubungan baik lahir maupun batin antara Penggugat dengan Tergugat serta tidak ada suatu peninggalan apapun yang dapat digunakan sebagai pengganti nafkah;

6.-----B

ahwa dengan kejadian tersebut rumah tangga antara Penggugat dengan Tergugat sudah tidak dapat dibina dengan baik sehingga tujuan perkawinan untuk membentuk rumah tangga yang sakinah, mawaddah dan rahmah sudah sulit dipertahankan lagi dan karenanya agar masing-masing pihak tidak melanggar norma hukum dan norma agama maka perceraian merupakan

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 2

Disclaimer

Kepanduan Mahkamah Agung Republik Indonesia berusaha untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas penyelenggaraan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan keterlambatan informasi yang kami sampaikan, hal mana akan terus kami perbaiki dari waktu ke waktu. Dengan hal Anda menemukan informasi kesalahan yang bermuat pada atau isi atau informasi yang selarasnya ada, namun belum terakurasi, maka harap segera hubungi Kepanduan Mahkamah Agung RI melalui:

Email : kepanduan@mahkamahagung.go.id Telp : 021-384 2348 (ext.218)

Halaman 2



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

alternatif terakhir bagi Penggugat untuk menyelesaikan permasalahan Penggugat dengan Tergugat;

7.-----P

enggugat sanggup membayar seluruh biaya perkara ini;

Berdasarkan alasan/dalil-dalil diatas, maka dengan ini Penggugat mohon kepada Ketua/Majelis Pengadilan Agama Giri Menang Pengadilan Agama Giri Menang untuk menerima, memeriksa dan mengadili perkara ini, selanjutnya menjatuhkan putusan yang amarnya berbunyi sebagai berikut:

PRIMER:

1. Mengabulkan gugatan Penggugat;
2. Menceraikan Penggugat (**PENGGUGAT**) dari Tergugat (**TERGUGAT**);
3. Membebankan biaya perkara sesuai ketentuan yang berlaku;

SUBSIDER

Apabila Pengadilan Agama Giri Menang berpendapat lain, mohon putusan yang seadil-adilnya;

Bahwa pada hari sidang yang ditentukan untuk pemeriksaan perkara ini, Penggugat dan Tergugat telah dipanggil secara resmi dan patut untuk datang menghadap di persidangan, terhadap panggilan tersebut Penggugat dan Tergugat menghadap ke persidangan secara *in person*;

Bahwa, Majelis Hakim telah menasehati Penggugat dan Tergugat agar bersabar dan kembali membina rumah tangga dengan Tergugat, tetapi Penggugat tetap pada dalil-dalil gugatannya untuk bercerai dengan Tergugat;

Bahwa, Tergugat selaku xxxxxxx xxxxxx xxxxx telah melampirkan Surat Keterangan Untuk bercerai yang diterbitkan oleh instansi tempat Tergugat bekerja;

Bahwa, dikarenakan Penggugat dan Tergugat hadir secara *in person* ke persidangan, oleh karena itu Penggugat dan Tergugat diwajibkan mengikuti upaya mediasi terlebih dahulu sebelum lanjut pada proses persidangan selanjutnya sebagaimana diatur dalam PERMA Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan;

Bahwa, untuk kepentingan mediasi, kedua belah pihak melalui Majelis Hakim sepakat memilih mediator Hakim **Fatihatur Rahmatis Silmi, S.H.I.** dan atas dasar kesepakatan tersebut, Majelis Hakim meminta kepada mediator yang disepakati untuk memediasi kedua belah pihak;

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 3

Disclaimer

Kepanduan Mahkamah Agung Republik Indonesia berusaha untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan berupa ketidakakuratan informasi yang kami sampaikan, hal mana akan terus kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepanduan Mahkamah Agung RI melalui : Email : kepanduan@mahkamahagung.go.id Telp: 021-394 3348 (ext.218)

Halaman 3



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Bahwa, mediasi telah dilaksanakan di ruang mediasi Pengadilan Agama Giri Menang, dan menurut laporan mediator hakim, **mediasi tidak berhasil mencapai kesepakatan**, maka dari itu pemeriksaan perkara tetap dilanjutkan ke proses selanjutnya;

Bahwa, selanjutnya proses pemeriksaan terhadap perkara *aguo* dilanjutkan dengan pembacaan surat gugatan Penggugat, yang terhadap maksud dan isinya tetap dipertahankan oleh Penggugat;

Bahwa, terhadap gugatan Penggugat tersebut, Tergugat telah menyampaikan jawabannya secara lisan yang pada pokoknya membenarkan sebagian besar posita gugatan Penggugat namun Tergugat pada dasarnya ingin tetap mempertahankan rumah tangga Penggugat dan Tergugat;

Bahwa, selanjutnya Tergugat menambahkan keterangan secara lisan yaitu terakhir kali Penggugat dan Tergugat berhubungan suami isteri sekitar dua minggu sebelum tanggal 8 November 2021 yang mana keterangan tersebut juga dibenarkan dan diakui oleh Penggugat;

Bahwa atas jawaban Tergugat tersebut, Penggugat mengajukan replik secara lisan yang pada pokoknya tetap pada dalil-dalil gugatan Penggugat;

Bahwa atas replik Penggugat tersebut, Tergugat mengajukan duplik secara lisan yang pada pokoknya tetap pada dalil jawaban Tergugat;

Bahwa kemudian Majelis Hakim menyatakan bahwa pemeriksaan perkara ini dinyatakan telah cukup;

Bahwa tentang jalannya pemeriksaan di persidangan selengkapya telah dicatat dalam berita acara persidangan dan untuk mempersingkat uraian putusan ini Majelis Hakim menganggap cukup dengan menunjuk kepada berita acara tersebut yang merupakan bagian yang tidak terpisahkan dari putusan ini;

PERTIMBANGAN HUKUM

Menimbang, bahwa maksud dan tujuan gugatan Penggugat adalah sebagaimana tersebut di atas;

Menimbang, bahwa untuk pemeriksaan perkara ini Majelis Hakim telah memanggil Penggugat dan Tergugat untuk hadir di persidangan secara e-court, sebagaimana yang dimaksud oleh Pasal 55 Undang-Undang Nomor 7 Tahun 1989 dan Pasal 26 ayat (1) Peraturan Pemerintah Nomor 9 Tahun 1975 jo. PERMA 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan secara Elektronik, panggilan-panggilan tersebut telah disampaikan secara resmi dan patut

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 4



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

sebagaimana yang dimaksud Pasal 26 ayat (2), ayat (3) dan ayat (4) Peraturan Pemerintah Nomor 9 Tahun 1975;

Menimbang, bahwa Tergugat selaku xxxxxxxx xxxxxx xxxxx telah melampirkan Surat Keterangan untuk bercerai yang diterbitkan oleh instansi tempat Tergugat bekerja, oleh karenanya telah sesuai dengan ketentuan Peraturan Pemerintah Nomor 45 Tahun 1990 tentang Perubahan atas Peraturan Pemerintah Nomor 10 Tahun 1983 tentang izin perkawinan dan perceraian bagi xxxxxxxx xxxxxx xxxxxx;

Menimbang, bahwa pada hari dan tanggal sidang yang ditentukan Penggugat dan Tergugat hadir di persidangan secara *in person*, oleh karenanya Penggugat dengan Tergugat telah diupayakan berdamai melalui proses mediasi dengan sepakat memilih mediator Hakim **Fatihatur Rahmatis Silmi, S.H.I.** berdasarkan Pasal 4 ayat (1) Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan dan mediator telah melaporkan hasil mediasi tanggal 1 November 2021, maka Majelis Hakim berpendapat berdasarkan Pasal 32 ayat (1) Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan **mediasi tidak berhasil mencapai kesepakatan damai**;

Menimbang, bahwa Majelis Hakim telah berupaya mendamaikan dengan memberikan nasihat kepada Penggugat baik di awal persidangan maupun di setiap persidangan agar lebih berpikir lagi dan mengurungkan niatnya untuk bercerai dengan Tergugat, namun Penggugat tetap dengan gugatannya untuk bercerai dengan Tergugat, sehingga dengan demikian ketentuan yang dimaksud dalam Pasal 65 dan Pasal 82 Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama yang telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009 jo Pasal 31 Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 jls Pasal 115 Kompilasi Hukum Islam di Indonesia, telah terpenuhi;

Menimbang, bahwa setelah dibacakan gugatan Penggugat tersebut, ternyata Penggugat pada pokoknya menyatakan tetap pada dalil-dalil gugatannya;

Menimbang, bahwa terhadap dalil-dalil Gugatan Penggugat tersebut, Tergugat dalam jawabannya pada pokoknya menolak untuk bercerai dengan Penggugat;

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 5

Disclaimer

Kepanduan Mahkamah Agung Republik Indonesia berupaya untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam rangka terdapatnya masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan keterlambatan informasi yang kami sampaikan, hal ini dapat disebabkan oleh berbagai faktor yang di luar kendali kami. Dalam hal Anda menemukan inkonsistensi informasi yang tercantum pada situs ini atau informasi yang sebenarnya ada, namun belum terupdate, maka harap segera hubungi Kepanduan Mahkamah Agung RI melalui : Email : kepanduan@mahkamahagung.go.id Telp : 021-384 2348 (ext.218)

Halaman 5



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Menimbang, bahwa Penggugat mendalilkan bahwa yang menjadi alasan pokok gugatan Penggugat adalah kehidupan rumah tangga Penggugat dan Tergugat yang sudah tidak harmonis yang menyebabkan **Penggugat dan Tergugat saat ini telah berpisah tempat tinggal sejak tanggal 8 November 2021 yang lalu dan pengakuan Tergugat bahwa dua minggu sebelum berpisah tersebut Penggugat dan Tergugat masih melakukan hubungan suami istri;**

Menimbang, bahwa mengenai keterangan Tergugat tersebut diatas telah diakui oleh Penggugat, sehingga hal tersebut dinilai sebagai pengakuan oleh Penggugat, maka Tergugat tidak perlu membuktikannya lagi karena sesuai ketentuan pasal 311 dan 313 RBg jo. 1925 KUHPerdara, pengakuan adalah merupakan alat bukti yang mempunyai nilai pembuktian yang bersifat mengikat, sempurna dan menentukan;

Menimbang, bahwa sebagaimana ketentuan Pasal 80 Kompilasi Hukum Islam, suami wajib menafkahi isterinya dan memberikan perhatian kepada isterinya, dan apabila setidak-tidaknya 6 (enam) bulan atau lebih, suami tidak memberikan nafkah atau menunaikan kewajiban kepada isterinya maka isteri berhak mengajukan gugatan perceraian ke Pengadilan Agama setempat;

Menimbang, bahwa Majelis Hakim mengambil ketentuan waktu setidak-tidaknya seorang istri selama 3 (tiga) bulan tidak dinafkahi oleh suami dan/atau istri selama 6 (enam bulan) atau lebih tidak diperdulikan oleh suami, dengan mempertimbangkan *sighat taklik talak*, Majelis Hakim menilai 3 (tiga) bulan adalah waktu seminimal mungkin Penggugat dapat mengajukan gugatan perceraian ketika Penggugat dan Tergugat sudah berpisah dan tidak melaksanakan kewajiban masing-masing selayaknya suami isteri;

Menimbang, berdasarkan fakta hukum diketahui bahwa Penggugat dan Tergugat baru berpisah sekitar sejak **dua minggu yang lalu** terhitung sejak gugatan ini diajukan dan dua minggu sebelum berpisah Penggugat dan Tergugat masih melakukan hubungan suami istri;

Menimbang, oleh karena berpisahanya Penggugat dan Tergugat belum memenuhi ketentuan sebagaimana yang diyakini Majelis Hakim sesuai *sighat taklik talak* yakni setidak-tidaknya 3 (tiga) bulan, oleh karenanya gugatan Penggugat harus dinyatakan masih prematur (*Dilatoria*);

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut di atas, maka Majelis Hakim berpendapat gugatan Penggugat mengandung cacat

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 6

Diseminasi

Kependataan Mahkamah Agung Republik Indonesia berupaya untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dijumpainya terjadi permasalahan terkait dengan akurat dan ketepatan informasi yang kami sampaikan, hal mana akan terus kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum terdapat, maka harap segera hubungi Kependataan Mahkamah Agung RI melalui Email : kependataan@mahkamahagung.go.id Telp : 021-381-2049 (ext. 208)

Halaman 6



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

formil, sehingga gugatan Penggugat dianggap masih prematur (*Dilatoria*), oleh karena itu gugatan Penggugat dinyatakan tidak dapat diterima (*Niet ontvankelijke verklaard/NO*);

Menimbang, bahwa oleh karena gugatan pokok dalam perkara *aquo* adalah gugatan perceraian yang sudah dinyatakan tidak dapat diterima (*Niet ontvankelijke verklaard/NO*) oleh Majelis Hakim, oleh karenanya terkait seluruh gugatan *assesoir* Penggugat patut untuk dikesampingkan dan tidak dipertimbangkan lebih lanjut;

Menimbang, bahwa sesuai dengan penjelasan Pasal 49 huruf a Undang-Undang Nomor 3 Tahun 2006 Tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama, maka perkara ini termasuk bidang perkawinan, oleh karena itu berdasarkan ketentuan Pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama, semua biaya perkara dibebankan kepada Penggugat:

Mengingat semua peraturan perundang-undangan yang berlaku;

MENGADILI

1. Menyatakan gugatan Penggugat tidak dapat diterima (*Niet ontvankelijke verklaard/NO*);
2. Membebankan kepada Penggugat untuk membayar biaya perkara sejumlah Rp 720.000,00 (**Tujuh ratus dua puluh ribu rupiah**);

Demikian diputuskan di Pengadilan Agama Giri Menang dalam Musyawarah Majelis Hakim pada hari **Rabu**, tanggal **15 Desember 2021 Masehi**, bertepatan dengan tanggal **11 Jumadil Awwal 1443 Hijriyah**, oleh **Ulfa Nurwindiasari, S.H.I.** sebagai Ketua Majelis **Kunthi Mitasari, S.H.I.** dan **Indah Syajratuddar, S.H.** masing-masing sebagai Hakim Anggota Majelis, putusan tersebut diucapkan pada hari itu juga dalam sidang terbuka untuk umum oleh Hakim Ketua Majelis, didampingi Hakim Anggota Majelis tersebut diatas, dibantu **Baiq Santi Sulistiorini, S.E., S.H., M.H.** sebagai Panitera Pengganti dengan dihadiri Penggugat dan Tergugat.

Hakim Anggota

Ketua Majelis

Kunthi Mitasari, S.H.I.

Ulfa Nurwindiasari, S.H.I.

Hakim Anggota,

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 7

Dikawatir

Kepartahanan Mahkamah Agung Republik Indonesia berupaya untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi pemisahan berita terkait dengan akurasi dan ketepatan informasi yang kami sampaikan. Hal ini akan segera kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan informasi yang bertentangan pada situs ini atau informasi yang salah lainnya, maka harap segera hubungi Administrasi Mahkamah Agung RI melalui:

Email : kapidinas@mahkamahagung.go.id Telp: 021-394 3343 (ext.213)

Halaman 7



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id
Indah Syajratuddar, S.H.

Panitera Pengganti

Baiq Santi Sulistiorini, S.E., S.H., M.H.

Perincian Biaya Perkara :

1.	Biaya Pendaftaran	:	Rp	30.000,00
2.	Biaya Proses	:	Rp	50.000,00
3.	Panggilan dan PNB	:	Rp	620.000,00
3.	Meterai	:	Rp	10.000,00
4.	Redaksi	:	Rp	10.000,00
				Rp 720.000,00

(Tujuh ratus dua puluh ribu rupiah)

Putusan Nomor 1389/Pdt.G/2021/PA.GM. Hal. 8

Disclaimer

Kapadharan Mahkamah Agung Republik Indonesia berakarsa untuk selalu mencantumkan informasi paling kini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pengajaran publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan ketepatan informasi yang kami sajikan, hal ini dapat disebabkan oleh kesalahan dari waktu ke waktu. Dalam hal Anda menemukan informasi yang terakurasi atau ada informasi yang seharusnya ada, namun belum terakurasi, maka harap segera hubungi Kapadharan Mahkamah Agung RI melalui :
Email : kapadharan@mahkamahagung.go.id / Telp : 021-394 3242 (ext.214)

Halaman 8

B. Decision of the Balikpapan Religious Court

No.881/Pdt.G/2016/PA.Bpp



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

PUTUSAN
Nomor 0881/Pdt.G/2016/PA.Bpp
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Agama Balikpapan yang memeriksa dan mengadili perkara tertentu pada tingkat pertama dalam sidang majelis telah menjatuhkan putusan perkara cerai gugat antara :

XXX, umur 40 tahun, agama Islam, pekerjaan XXX, pendidikan SLTA, tempat tinggal di Jalan XXX, Kota Balikpapan, sebagai **Penggugat;**

m e l a w a n

XXX, umur 40 tahun, agama Islam, XXX, pendidikan SLTA, tempat tinggal di Jalan XXX, Kota Balikpapan, sebagai **Tergugat;**

Pengadilan Agama tersebut;
Setelah membaca dan mempelajari surat-surat perkara;
Setelah mendengar kedua belah pihak yang berperkara dan para saksi;

DUDUK PERKARA

Menimbang, bahwa Peggugat dalam surat gugatannya tertanggal 22 Februari 2016 yang didaftarkan di Kepaniteraan Pengadilan Agama Balikpapan tanggal 30 Mei 2016 Nomor 0881/Pdt.G/2016/PA.Bpp, telah mengajukan gugatan untuk melakukan cerai gugat terhadap Tergugat dengan uraian/alasan sebagai berikut :

1. Bahwa pada tanggal 17 Februari 1998, Peggugat dengan Tergugat melangsungkan pernikahan secara sah yang dicatat oleh Pegawai Pencatat Nikah Kantor Urusan Agama Kecamatan

1

Dastawir
Kepaniteraan Mahkamah Agung Republik Indonesia berakta untuk selalu menyediakan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal ini belum memungkinkan terjadi permasalahan teknis terkait dengan akses dan keamanan informasi yang kami sampaikan, hal yang akan terus kami perbaiki dari waktu ke waktu.
Dalam hal Anda menemukan inkonsistensi informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui :
Email : kepaniteraan@mahkamahagung.go.id / Telp : 021-384 3348 (jkt 318)

Halaman 1



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

Sawakan, Kabupaten Nganjuk, Propinsi Jawa Timur (Kutipan Akta Nikah Nomor 341/06/II/1998);

2. Bahwa setelah menikah/perkawinan Penggugat dan Tergugat tinggal bersama di rumah milik Tergugat selama 13 tahun di Jalan XXX, Kaltim dan hingga saat sekarang ini perkawinan Penggugat dan Tergugat telah berjalan lebih kurang 18 tahun, selama perkawinan tersebut Penggugat dengan Tergugat telah hidup rukun sebagaimana layaknya suami istri dan telah dikaruniai 4 (empat) orang anak bernama:

- a. XXX;
- b. XXX;
- c. XXX;
- d. XXX;

3. Bahwa awalnya rumah tangga Penggugat dan Tergugat berjalan baik dan harmonis, namun sejak awal tahun 2014 sudah tidak terdapat lagi keharmonisan, karena sejak saat itu Penggugat dengan Tergugat sering terjadi perselisihan dan pertengkaran yang penyebabnya antara lain:

- a. Tergugat tidak memberi nafkah pada istri;
- b. Tergugat sering marah-marah hanya masalah sepele dan tanpa alasan yang jelas, suka mengeluarkan kata talak/cerai;
- c. Tergugat sering memaksa untuk melakukan hubungan suami istri dengan melakukan tindakan tidak menyenangkan maupun kata-kata kasar dengan mendobrak pintu kamar dan menempeleng;
- d. Tergugat seringkali berbicara tidak sopan terhadap mertua tidak lagi hormat terhadap orang tua dengan menyebut orang tua dengan kata-kata kamu;

Disclaimer

Kepanduan Mahkamah Agung Republik Indonesia berusaha untuk selalu menyampaikan informasi yang benar dan akurat sebagai bentuk kontribusi Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan ketepatan informasi yang kami sampaikan. Hal mana akan terus kami perbaiki dari waktu ke waktu. Dalam hal Anda menemukan informasi yang bertentangan pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi: kepaniteraan@mahkamahagung.go.id atau melalui media sosial kami.

Email : kepaniteraan@mahkamahagung.go.id | Telp: 021-384 2348 (ext.216)



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

- e. Tergugat seringkali kata-kata mengusir dari rumah dan menyuruh membayar sejumlah uang sebesar Rp 200.000.000,- apabila ingin tinggal di rumah kami tersebut;
- f. Tergugat seringkali mengeluarkan kata-kata bahwa Penggugat telah berhutang kepada Tergugat dan harus melunasi hutang itu dengan segera mungkin dengan menyebutkan nominal sebesar Rp 25.000.000,- yang membuat Penggugat merasa tertekan karena merasa tidak pernah berhutang terhadap Tergugat;
- g. Tergugat sering mengeluarkan kata-kata menghina atau merendahkan seperti menuduh Penggugat telah tidur dengan pria lain, menuduh hamil dengan laki-laki lain;
- h. Tergugat pernah menggoda wanita maupun adik ipar via bbm dengan mengajak bertukar pasangan serta menggoda wanita lain dengan media bbm yaitu teman Penggugat sendiri;
- i. Apabila bertengkar Tergugat sering melemparkan barang maupun ingin memukul itu terjadi di depan orang tua Penggugat;
- j. Tergugat pernah membuat surat perjanjian dengan tidak akan mengulangi perbuatannya tetapi Tergugat melakukannya berulang-ulang kali;
4. Bahwa sejak menikah sampai sekarang Tergugat masih tinggal satu rumah dan Penggugat tinggal bersama anak-anak di Jalan XXX, Kota Balikpapan alamat sebagaimana tersebut di atas, sejak saat itu sudah tidak ada hubungan yang harmonis dan kecocokan dalam rumah tangga kepada Penggugat;
5. Bahwa dengan kondisi rumah tangga yang demikian, Penggugat menderita lahir batin, tidak sanggup meneruskan rumah tangga dengan Tergugat dan oleh karenanya Penggugat mengajukan gugatan ini;

Disclaimer

Kepanduan Mahkamah Agung Republik Indonesia berkeaja untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan tugas/pelayanan. Namun dalam hal ini terdapat masih dimungkinkan terjadi permasalahan teknis terkait dengan akses dan ketersediaan informasi yang kami sajikan, hal ini akan terus kami perbaiki dan waktu ke waktu. Dalam hal Anda menemukan inkonsistensi informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum tersedia, maka harap segera hubungi Kepanduan Mahkamah Agung RI melalui:

Email : kepanduan@mahkamahagung.go.id Telp : 021-394 2348 (ext. 218)



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

Berdasarkan hal-hal yang telah diuraikan di atas, Penggugat memohon kepada Ketua Pengadilan Agama Balikpapan Cq. Majelis Hakim yang memeriksa dan mengadili perkara ini, selanjutnya menjatuhkan putusan yang amarnya berbunyi:

PRIMER :

1. Mengabulkan gugatan Penggugat;
2. Menjatuhkan talak satu bain sughra Tergugat terhadap Penggugat;
3. Membebankan biaya perkara kepada Penggugat;

SUBSIDER :

Atau menjatuhkan putusan lain yang seadil-adilnya;

Menimbang, bahwa pada hari dan tanggal yang telah ditetapkan, Penggugat dan Tergugat telah hadir sendiri, dan selanjutnya Ketua Majelis berusaha mendamaikan kedua belah pihak yang berperkara akan tetapi tidak berhasil;

Menimbang, bahwa sesuai Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan, Majelis Hakim telah memerintahkan kepada Penggugat dan Tergugat untuk menempuh upaya mediasi dan telah menunjuk Dra. Juraidah, Hakim Pengadilan Agama Balikpapan sebagai mediator, akan tetapi sesuai laporannya bertanggal 17 Juni 2016, menyatakan bahwa upaya mendamaikan Penggugat dengan Tergugat dengan jalan mediasi tidak berhasil;

Menimbang, bahwa selanjutnya dimulailah pemeriksaan perkara ini dengan membacakan gugatan Penggugat bertanggal 22 Februari 2016, yang isinya tetap dipertahankan oleh Penggugat;

Menimbang, bahwa terhadap gugatan Penggugat tersebut, Tergugat telah memberikan jawaban secara lisan yang pada pokoknya sebagai berikut :

- Bahwa posita angka 1 dan 2 benar, selanjutnya posita angka 3 dan seterusnya tidak benar;

Disclaimer

Kepanduan Mahkamah Agung Republik Indonesia berupaya untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas penyelenggaraan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi permasalahan teknis terkait dengan akurasi dan keterlambatan informasi yang kami sampaikan. Hal ini dapat terjadi karena keterbatasan waktu dan tenaga. Dalam hal Anda menemukan inkurasi informasi yang terdapat pada situs ini atau informasi yang seharusnya ada, namun belum terdapat, maka harap segera hubungi Kepanduan Mahkamah Agung RI melalui :

Email : kepanduan@mahkamahagung.go.id Telp : 021-394 3349 (juz 216)



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

- Bahwa Penggugat dengan Tergugat pada tanggal 9 dan 12 Juli 2016 masih melakukan hubungan badan sebagai suami istri, dan Tergugat keberatan bercerai dengan Penggugat karena merasa masih sayang dengan Penggugat dan kasihan kepada anak-anak;

Menimbang, bahwa terhadap jawaban Tergugat, Penggugat menyatakan benar, setelah lebaran masih melakukan hubungan suami istri sebanyak 2 (dua) kali karena atas desakan Tergugat;

Menimbang, bahwa selanjutnya untuk mempersingkat uraian putusan ini ditunjuk kepada hal-hal sebagaimana tercantum dalam Berita Acara Sidang merupakan bagian yang tak terpisahkan dari putusan ini;

PERTIMBANGAN HUKUM

Menimbang, bahwa maksud dan tujuan gugatan Penggugat adalah seperti diuraikan tersebut di atas;

Menimbang terlebih dahulu, bahwa sesuai dengan ketentuan Pasal 65 Undang-Undang Nomor 7 Tahun 1989 jo. Pasal 31 Peraturan Pemerintah Nomor 9 Tahun 1975 dan Pasal 115 Kompilasi Hukum Islam, Majelis Hakim telah berusaha mendamaikan kedua belah pihak, namun tidak berhasil;

Menimbang, bahwa sesuai Peraturan Mahkamah Agung RI Nomor 1 Tahun 2016 Tentang Mediasi di Pengadilan, majelis hakim telah menunjuk Dra. Juraidah sebagai mediator dalam perkara ini, selanjutnya dalam laporannya tertanggal 17 Juni 2016, menyatakan bahwa mediasi telah gagal menyelesaikan perkaranya secara damai;

Menimbang, bahwa dalam jawab jinawab antara kedua belah pihak ternyata antara Penggugat dengan Tergugat pada tanggal 09 Juli 2016 dan 12 Juli 2016 masih melakukan hubungan badan sebagai suami istri;

Menimbang, bahwa pernyataan Tergugat masih melakukan hubungan badan tersebut telah diakui benar oleh Penggugat, maka

Disclaimer

Kepaniteraan Mahkamah Agung Republik Indonesia berusaha untuk selalu mencantumkan informasi paling dini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih memungkinkan terdapat permasalahan teknis terkait dengan akurasi dan keterlambatan informasi yang kami sampaikan, hal mana akan terus kami perbaiki dari waktu ke waktu. Dalam hal Anda memerlukan informasi yang akurat pada titik ini atau informasi yang terakurasi lebih, mohon maaf terakurasi, maka harap segera hubungi Kepaniteraan Mahkamah Agung RI melalui Email : kepaniteraan@mahkamahagung.go.id / Telp : 021-384 2248 (pnc.224)



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

majelis berpendapat bahwa tidak ada perselisihan dan pertengkaran antara Penggugat dengan Tergugat, sebab oleh karena jika terbukti ada perselisihan/pertengkaran maka tentu di antara salah satu pihak di antara Penggugat ataupun Tergugat sudah tidak mau melakukan hubungan biologis lagi;

Menimbang, bahwa dalam rumah tangga Penggugat dengan Tergugat tidak ada terjadi perselisihan dan pertengkaran dengan indikasi bahwa antara kedua belah pihak masih melakukan hubungan badan, maka majelis menilai dalil-dalil gugatan Penggugat adalah prematur;

Menimbang, bahwa atas pertimbangan bahwa dalil gugatan Penggugat tersebut adalah prematur, maka gugatan Penggugat haruslah dinyatakan tidak dapat diterima (*Niet ontvankelijk verklaard*);

Menimbang, bahwa perkara ini termasuk dalam bidang perkawinan, maka sesuai ketentuan Pasal 89 Ayat (1) Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama yang telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009, maka biaya perkara harus dibebankan kepada Penggugat;

Mengingat, semua pasal dalam peraturan perundang-undangan dan hukum Islam yang berkaitan dengan perkara ini;

MENGADILI

1. Menyatakan gugatan Penggugat tidak dapat diterima;
2. Membebankan kepada Penggugat untuk membayar biaya perkara ini sejumlah Rp 371.000,- (tiga ratus tujuh puluh satu ribu rupiah);

Demikian dijatuhkan putusan ini dalam rapat permusyawaratan Majelis Hakim yang dilangsungkan pada hari Kamis tanggal 14 Juli 2016 Masehi bertepatan dengan tanggal 09 Syawal 1437 Hijriyah, oleh Drs. Muh. Yazid Yosa, S.H., M.H., sebagai Ketua Majelis, Drs. H. Ibrohim,



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

M.H., dan Drs. Sutejo, S.H., M.H., masing-masing sebagai Hakim Anggota, putusan tersebut diucapkan dalam sidang yang terbuka untuk umum pada hari itu juga oleh Ketua Majelis tersebut dengan didampingi oleh Hakim Anggota dan dibantu oleh Zakiah Darajah Muis, S.H., sebagai Panitera Pengganti dengan dihadiri oleh Penggugat dan Tergugat;

Hakim-Hakim Anggota,

Ketua Majelis,

Drs. H. Ibrahim, M.H.

Drs. Muh. Yazid Yosa, S.H., M.H.

Drs. Sutejo, S.H., M.H.

Panitera Pengganti,

Zakiah Darajah Muis, S.H.

Perincian biaya perkara:

- Pendaftaran	Rp	30.000,-
- Proses	Rp	50.000,-
- Panggilan	Rp	280.000,-
- Redaksi	Rp	5.000,-
- Materai	Rp	6.000,-
J u m l a h	Rp	371.000,-

Disclaimer

Kepanduan Mahkamah Agung Republik Indonesia berusaha untuk selalu mencantumkan informasi paling kini dan akurat sebagai bentuk komitmen Mahkamah Agung untuk pelayanan publik, transparansi dan akuntabilitas pelaksanaan fungsi peradilan. Namun dalam hal-hal tertentu masih dimungkinkan terjadi pemusatan berita tidak dengan akurat dan ketepatan informasi yang disampaikan. Hal ini dapat terjadi karena keterbatasan waktu dan tenaga. Dalam hal Anda menemukan informasi yang bertentangan dengan informasi yang tertera di atas, namun belum terdapat, maka harap segera hubungi Kepanduan Mahkamah Agung RI melalui :
Email : kepanduan@mahkamahagung.go.id Telp : 021-384 2348 (put.218)

No.8/Pdt.g/2022/PTA.Plg



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

Wijaya, Blok AG. 13, Perum Ogan Permata Indah
(OP.1), Jakabaring, Palembang, berdasarkan Surat
Kuasa Khusus tanggal 18 November 2021, dahulu
Penggugat, sekarang sebagai **Terbanding**;

Pengadilan Tinggi Agama tersebut;
Telah mempelajari berkas perkara dan semua surat yang
berhubungan dengan perkara ini;

DUDUK PERKARA

Mengutip segala uraian tentang hal ini sebagaimana termuat dalam
Putusan Pengadilan Agama Lahat Nomor [REDACTED]/Pdt.G/2021/PA.Lt tanggal 10
November 2021 Masehi, bertepatan dengan tanggal 4 Rabiul Awal 1443
Hijriah, yang amarnya berbunyi sebagai berikut:

1. Mengabulkan gugatan Penggugat;
2. Menjatuhkan talak 1 (satu) bain sughro Tergugat ([REDACTED])
[REDACTED] terhadap Penggugat ([REDACTED]);
3. Membebaskan kepada Penggugat untuk membayar biaya perkara ini
sebesar Rp370.000,00 (tiga ratus tujuh puluh ribu rupiah);

Bahwa, terhadap putusan Pengadilan Agama Lahat tersebut,
Tergugat untuk selanjutnya disebut Pembanding telah mengajukan
permohonan banding dengan Akta Banding Nomor [REDACTED]/Pdt.G/2021/PA.Lt
tanggal 16 November 2021;

Bahwa, Pembanding telah mengajukan Memori Banding tanggal 22
November 2021 dan telah diberitahukan kepada Terbanding tanggal 23
November 2021, dan Terbanding ternyata tidak mengajukan Kontra Memori
Banding sebagaimana surat keterangan yang dibuat oleh Panitera Pengadilan
Agama Nomor [REDACTED]/Pdt.G/2021/PA.Lt tanggal 23 Desember 2021;

Bahwa, Pembanding dan Terbanding sama-sama tidak menggunakan
haknya untuk membaca berkas perkara banding (*inzage*) sesuai dengan surat
keterangan Panitera Pengadilan Agama Lahat yang sama yaitu tanggal 23
Desember 2021 Nomor [REDACTED]/Pdt.G/2021/PA.Lt;



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Bahwa permohonan banding *a quo* telah didaftar dalam register Pengadilan Tinggi Agama Palembang pada tanggal 11 Januari 2022 dengan Nomor **■**/Pdt.G/2022/PTA.Plg dan telah diberitahukan kepada Pembanding dan Terbanding dengan surat Nomor W6-A/229/HK.05/I/2022 tanggal 11 Januari 2022;

PERTIMBANGAN HUKUM

Menimbang, bahwa permohonan banding Pembanding tanggal 16 November 2021 disertai dengan menyerahkan bukti pembayaran biaya banding, telah diajukan dalam masa waktu banding sebagaimana ketentuan Pasal 199 ayat (1) R.Bg.. dan telah di tujukan ke Pengadilan Tinggi Agama Palembang sebagai yang berwenang mengadili perkara ini pada tingkat banding menurut ketentuan Perundang-Undangan yang berlaku, *in casu* Pasal 51 ayat (1) dan Pasal 61 Undang-Undang Nomor 7 Tahun 1989 yang telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009 Tentang Peradilan Agama Jo. Pasal 26 ayat (1) Undang- Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman. Dan atas dasar ketentuan Undang-Undang tersebut, maka secara formil permohonan banding tersebut dapat diterima;

Menimbang, bahwa Majelis Hakim Tingkat Banding setelah membaca, mempelajari dan meneliti secara seksama salinan resmi putusan Pengadilan Agama Lahat Nomor **■**/Pdt.G/2021/PA.Lt, tanggal 10 November 2021 *Masehi* bertepatan dengan tanggal 4 Rabiul Awal 1443 *Hijriyah*, serta surat-surat lainnya dalam berkas perkara *a quo*, akan memberikan pertimbangan sebagai berikut :

Menimbang, bahwa Majelis Hakim Tingkat Banding tidak sependapat dengan pertimbangan dan putusan Majelis Hakim Tingkat Pertama yang mengabulkan gugatan Penggugat dengan menerapkan Pasal 19 huruf (f) Peraturan Pemerintah Nomor 9 Tahun 1975 dengan pertimbangan sebagai berikut :



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Menimbang, bahwa dalil-dalil gugatan Penggugat/Terbanding dalam mengajukan gugatan cerai adalah sebagai berikut:

- Di dalam rumah tangganya sering terjadi pertengkaran dan perselisihan disebabkan Tergugat / Pembanding lebih memperdulikan keluarga dibandingkan Penggugat / Terbanding sebagai isteri;
- Perselisihan dan pertengkaran memuncak terjadi pada tanggal 15 September 2021;
- Antara Penggugat/Terbanding dengan Tergugat/Pembanding sudah berpisah satu hari;

Menimbang, bahwa atas dalil-dalil Penggugat / Terbanding *a quo* Tergugat / Pembanding telah memberikan jawaban sebagai berikut:

- Didalam rumah tangga Tergugat/Pembanding tidak ada masalah;
- Benar Tergugat/Pembanding lebih memperdulikan orang tua Tergugat/Pembanding karena sedang sakit;
- Tidak mau bercerai;

Menimbang, bahwa untuk menambah kuat dalil-dalilnya Penggugat / Terbanding telah menghadirkan 2 (dua) orang saksi masing-masing bernama 1. [REDACTED] 2. [REDACTED], saksi mana secara formil dan materil telah memenuhi persyaratan sebagaimana ketentuan Pasal 172, 138 dan 139 R.Bg;

Menimbang, bahwa saksi saksi *a quo* telah memberikan keterangan dipersidangan yang masing-masing bersesuaian pada intinya membenarkan rumah tangga Penggugat/Terbanding dengan Tergugat/Pembanding sering bertengkar disebabkan karena Tergugat/Pembanding lebih mementingkan keluarganya, pertengkaran tersebut saksi pernah melihat sebanyak 2 (dua) kali dan Penggugat/Terbanding dengan Tergugat/Pembanding pisah tempat tinggal sudah 1 (satu) bulan lamanya;

Menimbang, bahwa Tergugat/Pembanding juga telah menghadirkan 2 (dua) orang saksi masing-masing bernama 1. [REDACTED] 2. [REDACTED], saksi mana secara formil maupun materil juga telah memenuhi persyaratan sebagaimana ketentuan Pasal 172, 308 dan 309 R.Bg;



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Menimbang, kedua saksi *a quo* telah memberikan keterangan dipersidangan yang pada intinya sama yaitu bahwa sekarang ini Tergugat/Pembanding sibuk mengurus orang tuanya yang sakit karena sudah diamputasi;

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut diatas Majelis Hakim Tingkat Banding menemukan fakta hukum sebagai berikut:

- Bahwa orang tua Tergugat/Pembanding sedang sakit karena sudah diamputasi sehingga Tergugat/Pembanding sibuk mengurus orang tuanya;
- Saksi Penggugat/Terbanding menyatakan pernah melihat Penggugat/Terbanding dan Tergugat/Pembanding bertengkar sebanyak dua kali;
- Penggugat/Terbanding dan Tergugat/Pembanding sudah pisah tempat tinggal kurang lebih satu bulan lamanya sampai dengan sekarang karena menurut Penggugat/Terbanding dalam surat gugatannya pisah satu hari dan menurut saksi satu bulan lamanya;

Menimbang, bahwa berdasarkan fakta-fakta tersebut Majelis Hakim Tingkat Banding berpendapat bahwa dalil-dalil gugatan Penggugat masih *prematur* untuk dihubungkan dengan pasal 19 huruf (f) Peraturan Pemerintah Nomor 9 Tahun 1975 dan Putusan Mahkamah Agung RI Nomor 273/K/AG/1998 tanggal 17 Maret 1999 dengan pertimbangan sebagai berikut:

- Bahwa pertengkaran yang dilihat oleh saksi Penggugat/Terbanding yang bernama [REDACTED] baru 2 (dua) kali, padahal usia perkawinan Penggugat/Terbanding dan Tergugat/Pembanding sudah berjalan 24 tahun jadi pertengkaran *a quo* tidak dapat dikategorikan terus menerus;
- Kalau Tergugat/Pembanding lebih memperdulikan orang tuanya dari pada Penggugat/Terbanding adalah wajar karena orang tua Tergugat/Pembanding dalam keadaan sakit karena sudah diamputasi, bahkan seharusnya Penggugat/Terbanding juga ikut merawat, karena orang tua Tergugat/Pembanding sama kedudukannya dengan orang tua Penggugat/Terbanding sendiri begitu juga sebaliknya, bukan malahan disaat Tergugat/



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Pembanding sibuk mengurus orang tua yang sakit justru Penggugat/ Terbanding menggugat cerai;

- Berpisah 1 (satu) bulan lamanya juga wajar karena Tergugat/Pembanding lagi mengurus orang tuanya yang sedang sakit;

Menimbang, bahwa sesuai dengan Surat Edaran Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2014 bahwa Hakim Banding mempertimbangkan secara cukup dan seksama dalam mengadili perkara perceraian, karena perceraian itu akan mengakhiri lembaga perkawinan yang bersifat sakral, mengubah status hukum dari halal menjadi haram, berdampak luas bagi struktur masyarakat dan menyangkut pertanggung jawaban dunia akhirat. Oleh karena itu perceraian hanya dapat dikabulkan jika perkawinan itu sudah pecah (*broken marriage*) dengan indikator yang secara nyata sudah terbukti;

Menimbang, bahwa indikator rumah tangga sudah pecah antara lain sudah diupayakan damai tetapi tidak berhasil, salah satu pihak meninggalkan pihak lain secara sengaja, tidak ada komunikasi yang baik antara suami istri, telah terjadi pisah ranjang/pisah rumah dalam waktu sekurang-kurangnya satu bulan dan lain-lain;

Menimbang, bahwa disamping itu Majelis Hakim Tingkat Banding menilai bahwa keinginan bercerai dari Penggugat/Terbanding hanya luapan emosi setelah Tergugat/Pembanding sibuk mengurus orang tuanya yang sakit, padahal selama ini berjalan baik terlebih kedua pihak sudah mempunyai 3 (tiga) orang anak yang beranjak dewasa yang akan sangat terpukul jika kedua orang tuanya bercerai, karenanya perselisihan yang didalilkan Penggugat belum dapat dikategorikan sangat prinsip dan terus menerus;

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut di atas Majelis Hakim Tingkat Banding sependapat dengan abstrak hukum yang tercantum dalam putusan Mahkamah Agung RI. Nomor 81/K/AG/1993 tanggal 26 Februari 1994 yang pada pokoknya menyatakan bahwa " *pisah meja dan tempat tidur kurang dari satu bulan belum memenuhi maksud pasal 19 huruf (f) Peraturan Pemerintah Nomor 9 tahun 1975*;



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Menimbang, bahwa berdasarkan uraian tersebut diatas, maka Majelis Hakim Tingkat Banding berpendapat bahwa karena dalil-dalil gugatan Penggugat/Terbanding belum memenuhi unsur-unsur alasan perceraian sebagaimana yang dimaksud Pasal 19 huruf (f) Peraturan Pemerintah Nomor 9 Tahun 1975 dan pasal 116 huruf (f) Kompilasi Hukum Islam karenanya dalil Penggugat tersebut dinyatakan tidak terbukti;

Menimbang, bahwa dengan tidak terbuktinya alasan perceraian yang dijadikan dasar gugatan cerai Penggugat/Terbanding, maka gugatan cerai yang diajukan oleh Penggugat/Terbanding harus ditolak;

Menimbang bahwa karena perkara ini masuk bidang perkawinan, maka sesuai dengan Pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun 1989 yang telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009 tentang Peradilan Agama maka semua biaya yang timbul dalam perkara ini pada tingkat pertama dibebankan kepada Penggugat/Terbanding, dan pada tingkat banding dibebankan kepada Tergugat/Pembanding;

Memperhatikan segala peraturan perundang-undangan yang berlaku serta dalil-dalil hukum syara' yang berkaitan dengan perkara ini

MENGADILI

1. Menerima permohonan banding Pembanding ;
2. Membatalkan putusan Pengadilan Agama Lahat Nomor [REDACTED] Pdt.G/2021/PA.Lt tanggal 10 November 2021 *Masehi* bertepatan dengan tanggal 4 *Rabiul Awal* 1443 *Hijriah*, dan

Dengan Mengadili Sendiri

1. Menolak gugatan Penggugat
2. Membebankan kepada Penggugat untuk membayar biaya perkara pada tingkat pertama sejumlah Rp370.000,00 (tiga ratus tujuh puluh ribu rupiah);
3. Membebankan kepada Pembanding untuk membayar biaya perkara pada tingkat banding sejumlah Rp150.000,00 (seratus lima puluh ribu rupiah);



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

Demikianlah diputuskan dalam rapat permusyawaratan Majelis Hakim Pengadilan Tinggi Agama Palembang pada hari Senin tanggal 31 Januari 2022 Masehi, bertepatan dengan tanggal 28 Jumadil Akhir 1443 Hijriyah oleh kami **Drs. H. Abu Bakar S.H, M.Hum**, Hakim Tinggi yang ditetapkan oleh Ketua Pengadilan Tinggi Agama Palembang sebagai Ketua Majelis, **Drs. H. Rusdi, S.H, M.H.**, dan **Drs. Johan Arifin, S.H., M.H.**, masing-masing sebagai Hakim Anggota, putusan tersebut diucapkan dalam sidang terbuka untuk umum pada hari itu juga oleh Ketua Majelis tersebut dengan didampingi oleh para Hakim Anggota, serta dibantu oleh **Sukna Dewi, S.H**, sebagai Panitera Pengganti dengan tidak dihadiri oleh pihak-pihak yang berperkara;

Ketua Majelis,

Drs. H. Abu Bakar, S.H., M.Hum.

Hakim Anggota,

Hakim Anggota,

Drs. H. Rusdi, S.H. M.H.

Drs. Johan Arifin, S.H., M.H.

Panitera Pengganti,

Sukna Dewi, S.H

Rincian Biaya Perkara :

- | | |
|----------------|---|
| - Biaya Proses | : Rp130.000,00 |
| - Meterai | : Rp 10.000,00 |
| - Redaksi | : <u>Rp 10.000,00</u> |
| Jumlah | : Rp150.000,00 (seratus lima puluh ribu rupiah). |

D. Supreme Court No.881/K/Ag/2022



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

PUTUSAN
Nomor 881 K/Ag/2022
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA
MAHKAMAH AGUNG

Memeriksa perkara perdata agama pada tingkat kasasi telah memutus sebagai berikut dalam perkara:

PEMOHON, bertempat tinggal di Kabupaten Lahat, dalam hal ini memberi kuasa kepada: Abdurahman Ralibi, S.H. dan kawan, para Advokat, berkantor di Jalan Mayor Zen Lr. Abadi Ujung Nomor 1 RT. 037 RW. 003 Kelurahan Sungai Selincih Kecamatan Kalidoni Kota Palembang, berdasarkan Surat Kuasa Khusus tanggal 26 Februari 2022;
Pemohon Kasasi;

L a w a n
TERMOHON, bertempat tinggal di Kabupaten Lahat;
Termohon Kasasi;

Mahkamah Agung tersebut;
Membaca surat-surat yang bersangkutan yang merupakan bagian tidak terpisahkan dari Putusan ini;
Menimbang, bahwa berdasarkan surat-surat yang bersangkutan, Penggugat dalam gugatannya memohon kepada Pengadilan untuk memberikan putusan sebagai berikut:

Primer:

1. Menerima dan mengabulkan gugatan Penggugat;
2. Menceraikan Penggugat (PEMOHON) dengan Tergugat (TERMOHON);
3. Membebaskan biaya perkara sesuai dengan ketentuan hukum yang berlaku;

Subsider

Apabila Majelis Hakim berpendapat lain, **mohon** putusan yang seadil-adilnya;
Bahwa terhadap gugatan tersebut dikabulkan oleh Pengadilan Agama Lahat dengan Putusan Nomor/Pdt.G/2021/PA.Lt. tanggal 10 November 2021 Masehi bertepatan dengan tanggal 4 Rabiulawal 1443 Hijriah,

Halaman 1 dari 5 hal. Put. Nomor 881 K/Ag/2022



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

kemudian Putusan tersebut dibatalkan oleh Pengadilan Tinggi Agama Palembang dengan Putusan Nomor/Pdt.G/2022/PTA.Plg. tanggal 31 Januari 2022 Masehi bertepatan dengan tanggal 28 Jumadilakhir 1443 Hijriah;

Menimbang, bahwa sesudah Putusan terakhir ini diberitahukan kepada Pemohon Kasasi pada tanggal 21 Februari 2022, kemudian terhadapnya oleh Pemohon Kasasi dengan perantaraan kuasanya, berdasarkan Surat Kuasa Khusus tanggal 26 Februari 2022 diajukan permohonan kasasi pada tanggal 2 Maret 2022 sebagaimana ternyata dari Akta Permohonan Kasasi yang dibuat oleh Panitera Pengadilan Agama Lahat, permohonan tersebut diikuti dengan memori kasasi yang memuat alasan-alasan yang diterima di Kepaniteraan Pengadilan tersebut pada tanggal 2 Maret 2022;

Menimbang, bahwa permohonan kasasi *a quo* beserta alasan-alasannya telah diberitahukan kepada pihak lawan dengan saksama, diajukan dalam tenggang waktu dan dengan cara yang ditentukan dalam undang-undang, oleh karena itu permohonan kasasi tersebut secara formal dapat diterima;

Menimbang, bahwa berdasarkan memori kasasi yang diterima tanggal 2 Maret 2022 yang merupakan bagian tidak terpisahkan dari Putusan ini, Pemohon Kasasi meminta agar:

1. Mengabulkan permohonan kasasi dari Pemohon Kasasi;
2. Membatalkan Putusan Pengadilan Tinggi Agama Palembang Nomor/Pdt.G/2022/PTA.Plg. tanggal 31 Januari 2022 bertepatan dengan tanggal 28 Jumadilakhir 1443 Hijriah dan mengadili sendiri yaitu menguatkan Putusan Pengadilan Agama Lahat Nomor/Pdt.G/2021/PA.Lt. tanggal 10 November 2021;
3. Menetapkan biaya perkara menurut hukum;

Menimbang, bahwa setelah meneliti memori kasasi dihubungkan dengan pertimbangan *Judex Facti*/Pengadilan Tinggi Agama Palembang, Mahkamah Agung mempertimbangkan sebagai berikut:

Mengenai alasan-alasan kasasi:

Menimbang, bahwa terlepas dari alasan-alasan kasasi yang diajukan Pemohon Kasasi, Mahkamah Agung menilai *Judex Facti*/Pengadilan Tinggi

Halaman 2 dari 5 hal. Put. Nomor 881 K/Ag/2022



Direktori Putusan Mahkamah Agung Republik Indonesia

putusan.mahkamahagung.go.id

Agama Palembang telah salah menerapkan hukum dengan pertimbangan bahwa *Judex Facti*/Pengadilan Tinggi Agama Palembang keliru dalam mengkonstruksi keterangan saksi atas nama SAKSI 1 dan saksi atas nama SAKSI 2 karena saksi atas nama SAKSI 1 mengetahui dan melihat langsung pertengkaran antara Penggugat dan Tergugat. Selain itu, kedua saksi tersebut juga mengetahui bahwa Tergugat tidak lagi memberikan nafkah batin kepada Penggugat selama lebih kurang 8 (delapan) tahun karena sakit stroke. Oleh karena itu, Penggugat dinilai dapat membuktikan dalil-dalil gugatannya, sehingga gugatan Penggugat patut untuk dikabulkan;

Bahwa oleh karena itu putusan *Judex Facti*/Pengadilan Tinggi Agama Palembang harus dibatalkan dan Mahkamah Agung akan mengadili sendiri perkara ini dengan pertimbangan berikut:

Bahwa suasana rumah tangga Penggugat dan Tergugat tidak harmonis dan perkawinan Penggugat dengan Tergugat telah pecah, hal tersebut dapat dilihat dari fakta bahwa Penggugat dan Tergugat telah pisah tempat tinggal, selain itu antara Penggugat dan Tergugat telah diupayakan untuk rukun kembali baik melalui proses mediasi di Pengadilan oleh mediator, di persidangan oleh majelis hakim, termasuk oleh anak Penggugat dan Tergugat di luar persidangan, akan tetapi tidak berhasil merukunkan Penggugat dan Tergugat;

Bahwa pertimbangan Pengadilan Agama Lahat telah tepat dan benar, sehingga diambil alih menjadi pertimbangan Mahkamah Agung;

Menimbang, bahwa berdasarkan pertimbangan di atas, dengan tanpa mempertimbangkan alasan-alasan kasasi, Mahkamah Agung berpendapat terdapat cukup alasan untuk mengabulkan permohonan kasasi dari Pemohon Kasasi, **PEMOHON**, tersebut dan membatalkan Putusan Pengadilan Tinggi Agama Palembang Nomor/Pdt.G/2022/PTA.Plg. tanggal 31 Januari 2022 Masehi bertepatan dengan tanggal 28 Jumadilakhir 1443 Hijriah yang membatalkan Putusan Pengadilan Agama Lahat Nomor/Pdt.G/2021/PA.Lt. tanggal 10 November 2021 Masehi bertepatan dengan tanggal 4 Rabiulawal 1443 Hijriah serta Mahkamah Agung mengadili sendiri perkara ini dengan amar putusan sebagaimana yang akan disebutkan di bawah ini;

Halaman 3 dari 5 hal. Put. Nomor 881 K/Ag/2022



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

Menimbang, bahwa oleh karena perkara ini masuk dalam bidang perkawinan, sesuai Pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009, maka biaya perkara dalam tingkat pertama dibebankan kepada Penggugat, dalam tingkat banding kepada Pembanding dan dalam tingkat kasasi kepada Pemohon Kasasi;

Memperhatikan Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung sebagaimana telah diubah dengan Undang-Undang Nomor 5 Tahun 2004 dan perubahan kedua dengan Undang-Undang Nomor 3 Tahun 2009, Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009 serta peraturan perundangan lain yang bersangkutan;

MENGADILI:

Mengabulkan permohonan kasasi dari Pemohon Kasasi, **PEMOHON**, tersebut;

Membatalkan Putusan Pengadilan Tinggi Agama Palembang Nomor 8/Pdt.G/2022/PTA.Plg. tanggal 31 Januari 2022 Masehi bertepatan dengan tanggal 28 Jumadilakhir 1443 Hijriah;

MENGADILI SENDIRI:

1. Mengabulkan gugatan Penggugat;
2. Menjatuhkan talak satu bain *shughra* Tergugat (**TERMOHON**) terhadap Penggugat (**PEMOHON**);
3. Membebaskan kepada Penggugat untuk membayar biaya perkara dalam tingkat pertama sejumlah Rp370.000,00 (tiga ratus tujuh puluh ribu rupiah);
- Membebaskan kepada Pembanding untuk membayar biaya perkara dalam tingkat banding sejumlah Rp150.000,00 (seratus lima puluh ribu rupiah);



Direktori Putusan Mahkamah Agung Republik Indonesia
putusan.mahkamahagung.go.id

Membebaskan kepada Pemohon Kasasi untuk membayar biaya perkara dalam tingkat kasasi ini sejumlah Rp500.000,00 (lima ratus ribu rupiah);

Demikianlah diputuskan dalam rapat musyawarah Majelis Hakim pada hari Selasa, tanggal 18 Oktober 2022 oleh Dr. H. Yasardin, S.H., M.Hum., Hakim Agung yang ditetapkan oleh Ketua Mahkamah Agung sebagai Ketua Majelis, Dr. H. Abdul Manaf, M.H. dan Drs. H. Busra, S.H., M.H., Hakim-Hakim Agung sebagai anggota dan diucapkan dalam sidang terbuka untuk umum pada hari itu juga oleh Ketua Majelis dengan dihadiri para Hakim Anggota tersebut dan Dr. Muhammad Iqbal, S.H.I., S.H., M.H.I., Panitera Pengganti dan tidak dihadiri oleh para pihak.

Hakim-Hakim Anggota:

Ketua Majelis,

Ttd

Ttd

Dr. H. Abdul Manaf, M.H.

Dr. H. Yasardin, S.H., M.Hum.

Ttd

Drs. H. Busra, S.H., M.H.

Panitera Pengganti,

Ttd

Dr. Muhammad Iqbal, S.H.I., S.H., M.H.I.

Biaya-biaya Kasasi:

1. Meterai	Rp 10.000,00
2. Redaksi	Rp 10.000,00
3. Administrasi kasasi	Rp480.000,00
Jumlah	<u>Rp500.000,00</u>

CURRICULUM VITAE



PERSONAL IDENTITY

Name : Zahrah Salsabillha Ashari
SIN : 200201110099
DoB : Pasuruan, 30 April 2002
Address : Jl. Citarum 1 No.17 Keringan Kel.
Mangundikaran Kab. Nganjuk Jawa Timur
No. HP : 085736446855
Email : zahrahsalsabillah01@gmail.com

EDUCATION HISTORY

2007 – 2008 : TKIT Baitul Izzah Nganjuk
2008 – 2014 : SDIT Baitul Izzah Nganjuk
2014 – 2017 : Pondok Modern Darul Ihsan Nganjuk
2017 – 2020 : SMA Darul Ulum 1 BPP-T Jombang
2020 – 2024 : Universitas Islam Negeri Maulana Malik Ibrahim Malang

ORGANISATION HISTORY

1. 2021 – 2022 : Anggota Club Bahasa Fakultas Syariah, Ainusyams Club (ASC)
2. 2022 – 2023 : Anggota Divisi Dakwah dan Tradisi Pondok IMADU Malang Raya
3. 2022 – 2024 : CO Redaksi Pelaksana Website, Unit Aktivitas Pers Mahasiswa (UAPM) Inovasi



CONSULTATION PROOF

Name : Zahrah Salsabillah Ashari
 Student Number/Department : 200201110099/ Islamic Family Law
 Supervisor : 1. Jamilah, MA.
 2. Dr. Suparmi, M.Pd
 Thesis Title : Legal Considerations by the Panel of Judges in Deciding
 Exceptio Dilatoria in The Case of Female Initiated-Divorce
 (Study of Decision No.1389/Pdt.G/2021/ PA.Gm)

No	Day / Date	Consultation	Signature
1.	Wednesday, 8 November 2023	Consultation of Proposal	
2.	Monday, 13 November 2023	Fixing point of view for The Thesis	
3.	Thursday, 23 November 2023	Proposal ACC	
4.	Thursday, 18 January 2024	Discussion proposal seminar exam results	
5.	Monday, 4 March 2024	Outline of discussion Chapter III	
6.	Friday, 15 March 2024	Consultation Chapter I and III	
7.	Monday, 25 March 2024	Consultation and Revision Chapter II and III	
8.	Monday, 1 April 2024	Consultation Chapter II, III, IV	
9.	Monday, 6 May 2024	Fixing Thesis and Translation Consultation to English	
10.	Tuesday, 7 May 2024	Thesis ACC	

Malang, 21 June 2024
 Acknowledged,
 Head of Islamic Family Law Department

Erik Sabti Rahmawati, MA, M.Ag
 NIP 197511082009012003