

ABSTRACT

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The basis for divorce (complicating the divorce) is not explicitly mentioned in the legislation as well as law principles of other civil regulations. However, this principle is contained in the general explanation of the Regulation of Marriage Number 1 of year 1974 article 4 letter (e). In addition, increasing divorce rate in East Java each year, it seems that divorce in a Religious Courts is very easy. Therefore, complicating the divorce is proper to further analyzed regarding its implementation within proceedings in a Religion Court to know the position of its principle to settle a divorce case in Religious Courts.

The purposes of this research are: *first* to understand judge's opinion in East Java Religious Courts concerning complicating the divorce. *Second*, to understand the implementation of complicating the divorce in East Java Religious Courts. This research is empirical research or field reserach using qualitative approach. The method of data collection was interview and documentation. The method of data analysis is deskriptive qualitative.

The results of this research points out that: 1). The principle of undermines divorce actually exists as a principle that implied in the legislation (Act Number 1 in 1974 and Act Number 7 in 1989). The principle of divorce undermines is a *lex specialis* from principles that exist in a civil law. Its principle was not seen from the complicate proceedings in a Religious Courts. But rather is seen from the door that make the divorce strung out. 2). The application of the principle in the divorce undermines contained in optimization proceedings in court, if conditions still allow family or is there hope for the harmonious, then its principle of divorce can be applied. However, if the condition of the family has been totally unable to drive to harmony, then, its principle of divorce cannot be applied with more considering about the goodness of both side through the principle of *jalbul mashaalih wa dar'ul mafaasid*.