

## Divorce In Kangean Islands: The Study on Judge's Legal Reasoning of Kangean Religious Court, 2020-2022

**Syaifuddin Zuhdi**

Universitas Muhammadiyah Surakarta  
sz123@ums.ac.id

**Khudzaifah Dimiyati**

Universitas Muhammadiyah Surakarta  
kd255@ums.ac.id

**Absori**

Universitas Muhammadiyah Surakarta  
abs154@ums.ac.id

**Kelik Wardiono**

Universitas Muhammadiyah Surakarta  
kw268@ums.ac.id

**Filzah Ilda Syafirah**

Universitas Muhammadiyah Surakarta  
C100190250@student.ums.ac.id

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#### ABSTRACT

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**Purpose of the study:** This article aims to find out how the divorce conditions in the Kangean Islands are and to see how the factors that influence it and the legal reasoning used by the judge in deciding the divorce case.

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**Methods:** the method used in this study is a normative juridical method with a decision approach, the data used is secondary data, namely the decisions of the religious courts in 2020-2022, which every year 30% of the decisions are taken, the data are analyzed descriptively

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**Results:** From the research conducted, it was found that the majority of divorces in Kangean Island were carried out by a contested divorce mechanism, while the factors behind the majority were due to disputes, then followed by economic factors, legal reasoning judges were divided into empathy, namely the use of legal norms, conformity between facts and norms. , interpretation of problems and norms, as well as the use of the rules of Islamic law in its legal opinion

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Corresponding  
Author:  
Syafuddin Zuhdi  
sz123@ums.ac.id

**Applications of this study:** This article is useful to support research on divorce and legal opinions, especially on Kangean Island and Indonesia in general

**Novelty:** The novelty of this research is that there are still very few people doing research on the Kangean Islands, as well as the discovery of several legal reasoning concepts for judges at the Kangean Religious Court.

**Keywords:** *Divorce; Kangean Islands, Court Decisions, Religious Court*

### **ABSTRAK**

**Tujuan :** *Artikel ini bertujuan untuk mengetahui bagaimana kondisi perceraian di Kepulauan Kangean dan melihat bagaimana faktor-faktor yang mempengaruhinya serta alasan hukum yang digunakan hakim dalam memutus perkara perceraian.*

**Metode :** *Metode yang digunakan dalam penelitian ini adalah metode yuridis normatif dengan pendekatan putusan, data yang digunakan adalah data sekunder yaitu putusan pengadilan agama tahun 2020-2022 yang setiap tahun diambil 30% putusannya, data tersebut dianalisis secara deskriptif*

**Hasil:** *Dari penelitian yang dilakukan diketahui bahwa mayoritas perceraian di Pulau Kangean dilakukan dengan mekanisme cerai gugat, sedangkan faktor penyebab mayoritas adalah karena perselisihan, kemudian disusul faktor ekonomi, pertimbangan hukum hakim terbagi menjadi empati, yaitu penggunaan norma hukum, kesesuaian antara fakta dan norma. , interpretasi masalah dan norma, serta penggunaan aturan hukum Islam dalam opini hukumnya*

**Aplikasi penelitian ini:** *Artikel ini bermanfaat untuk mendukung penelitian tentang perceraian dan opini hukum khususnya di Pulau Kangean dan Indonesia pada umumnya*

**Kebaruan:** *Kebaruan dari penelitian ini adalah masih sedikitnya orang yang melakukan penelitian di Kepulauan Kangean, serta ditemukannya beberapa konsep penalaran hukum bagi hakim di Pengadilan Agama Kangean.*

**Kata Kunci:** *Perceraian, Kepulauan Kangean, Putusan Pengadilan, Pengadilan Agama*

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## INTRODUCTION

Islam is a religion of *Rahmatan Lil-Alamin*, meaning that Islam is a religion that teaches and introduces peace, love, and compassion in the world (Arif, 2021). As a religion of *Rahmatan Lil-Alamin*, Islam regulates many things, both theological aspects worship, social and mu'amalah, and humanity. Islam illustrates that human relations are not only between human relations and Allah SWT as the creator of the universe, but also human relationships with other humans. One example of human relations with other humans is the marriage relationship.

Marriage in Islam is considered a sacred bond which means worship to Allah SWT, which is carried out as a form of obedience to the sunnah of the Prophet which is to do it sincerely and responsibly and follow the existing rules (Musyafah, 2020). This is in line with Article 2 of the Compilation of Islamic Law (KHI) which defines marriage as a very strong contract or *Mitsaqan Ghalidzan* which is carried out to obey Allah's commands and solely because of worship (Abdurrahman, 1992). Islam actually has ordered marriage in the Qur'an, one of which is Surah *An-Nur* verse 32 which means

" *And marry those who are single among you, and also those who are worthy (to marry) of your male and female slaves. If they are poor, Allah will empower them with His bounty. And Allah is Extensive (His gift), All-Knowing .*"

Marriage as a sacred bond ordered by religion certainly has the same sacred purpose, in the Compilation of Islamic Law (KHI) the purpose of marriage is solely to create a *sakinah*, *mawaddah*, and *rahmah* household, therefore marriage is an issue that will always be interesting to discuss. it does not only concern the life of one human being, but more than that, it also affects household relations which are the central institutions that become the defense wall of human dignity and noble moral principles (Mawahib, 2019). However, this goal is often not achieved due to various factors, this is evidenced by the very high divorce rate in Indonesia (Matondang, 2014).

Article 117 KHI Defines divorce as a husband's pledge before a Religious Court hearing which is one of the reasons for the dissolution of a marriage, which was previously Article 113 of the Compilation of Islamic Law (KHI). Furthermore, divorce is defined by Imam Syafi'i as the release of the marriage contract with *lafadz talak* or what is similar, while Sheikh Muhamad bin Qosim Al Khozy (Huriyani, 2008) in the book *Fathul Qorieb* defines divorce as a term for a release of marriage ties. The Islamic view of divorce is explained in the Hadith narrated by Abu Daud and Ibn Majah which reads:

" From Ibn Umar. He said that the Messenger of Allah (saw) said, "The lawful thing which Allah hates the most is divorce ." (History of Abu Dawud and Ibn Majah).

As something that is hated but allowed, Divorce has pillars and conditions, Abd al-Rāḥmān al-Jazīrī mentions that there are four pillars of divorce, namely husband, wife, talak pronouncement and *qaṣḍu* (intention to divorce)(Dahwadin et al., 2020), further on the terms of divorce means something first must be fulfilled by the divorcing party, who will be divorced, the pronouncement and intent of the divorce. Therefore, the husband who divorces the law must be reasonable, mature, and not by coercion. Meanwhile, for conditionally divorced wives, women who are still legal wives and are still in the responsibility of their husbands, the pronouncement of conditional divorce must be expressions/utterances that have the meaning of divorce either in clear words or in the form of sarcasm(Binti Mohd Rijal & Muhammad Ali, 2020).

The divorce graph in Indonesia has increased every year, as reported by the databox based on the Central Statistics Agency (BPS) report released in February 2022, the number of divorce cases in Indonesia in 2021 reached 447,743 cases, which was an increase of 53.50% compared to 2020 which only reached 291,677 cases. If classified by province, the highest divorce cases in 2021 will be in West Java, with 98,088 cases, followed by East Java with 88,235 cases and Central Java with 75,509 cases(Annur, n.d.).

Kangean Islands is an island that is geographically located in the eastern part of the island of Madura and is located in the north of the island of Bali. East. The Kangean Islands are divided into three sub-districts, namely Arjasa District, Sapeken District and Kangayan District(Hasanah & Kuspriyanto, 2019). The Central Statistics Agency for Sumenep Regency in 2020, the data on the area and population of the Kangean Islands, are as follows(Badan Pusat Statistik (BPS), 2020).

Table 1.1

## Kangean Islands Area and Population

No	Subdistrict	District area	Total population
1.	Arjasa	241.99	76.225
2.	Sapeken	201.89	48,691
3.	Kangayan	204.68	23,147
	<b>TOTAL</b>	<b>648.56</b>	<b>148,063</b>

Regarding the history of the Kangean Islands, there is no literature or literature that definitely explains about these islands, but in several legendary stories in Kangean, these

islands are influenced by two ethnic groups, namely Sulawesi and Madura. with Madura, although in the implementation there is a shift or difference in the values contained in the original culture in Madura(Sulaiman, 2016).Talking about Religion in the Kangean Community, it is closely related to the existence of the islands that are still obedient and subject to religious traditions, the majority of the Kangean Community is Muslim where kyai and/or ulama have an important role in implementing and complying with the rules of religious law, especially in resolving marital problems. divorce, divorce, reconciliation and inheritance(Tim Redaksi PA Kangean, n.d.).

Based on data obtained from the Directory of Decisions of the Supreme Court, the Religious Courts have decided 4788 Religious Civil Cases(Mahkamah Agung, 2020).

Table 1.2  
 Religious Civil Case Kangean Religious Court

Number	Religious Civil Cases	Amount
1.	Divorce	4044
2.	Polygamy Permit	14
3.	Shared Property	6
4.	Marriage ratification	3
5.	Islamic inheritance	2.
6.	Trust Case	1

Source Mahkamah Agung(*Direktori Putusan Mahkamah Agung Republik Indonesia, 2022*)

Research on divorce in the Kangean Islands was previously written in 2014 through a thesis entitled Escalation of Divorce in Indonesian Migrant Workers (TKI) Kangean Island Community, Sumenep Regency (Case Study at the Kangean Religious Court)(Fauzi, 2014). The author's research is the Kangean Religious Court and discusses divorce in the Kangean Islands, but this research still has differences with the author's research because the study only examines how divorce in the Indonesian Migrant Workers (TKI) Kangean Island Community, while the author conducts research on divorce decisions individually. public at the Kangean Islands Religious Court from 2020-2022 and then classifying them based on court decisions, causes or reasons behind the divorce.

Similar research has also been studied by Erinda Larasati (Larasati et al., 2021), et al in a study entitled Divorce in Rembang Regency, this research has similarities with the author's research which also discusses the issue of divorce in an area, but what distinguishes it from the author's research, of course, is a different area apart from that in the study. It only

focuses on the quarrel factor, in contrast to the author who generally analyzes the decisions for the year 2020-2022, which then only classifies them based on the causes of divorce.

Wijayanti in ramadhani (Ramadhani & Nurwati, 2021) explains that there has been an increase in divorce cases during the pandemic, departing from this the author is interested in using the decision from 2020-2022 against the backdrop of the beginning of the COVID-19 pandemic in Indonesia, as it is known that it started in March 2020, which was none other than responding to the impact of the COVID-19 pandemic on the divorce rate in the Kangean Islands. Furthermore, the divorce rate in the Kangean Islands can be categorized as high, considering that the population is only 148,063 people, but the divorce rate reaches 4044, this research is important because previously there was no recent research on the practice of divorce in the Kangean Islands, even though the number of divorces was very high. It is very important to know how divorce practices in the Kangean Islands include the factors that cause divorce, types of decisions and also the *Legal Reasoning* Judges in giving divorce decisions at the Kangean Religious Court. with other problems, so that the Sumenep Regency government with this data can easily take a stance to minimize divorce through guidance or other ways that can be taken and in accordance with the existing problems.

## **RESEARCH METHOD**

This research is a type of normative research with a juridical approach, because in this study the author uses secondary data as the main material for research (Ali, 2021), where the main material is the decisions of the Kangean religious court in 2020-2022 which had previously been determined using a sample of 30% from the number of decisions each year, the data is obtained by downloading on the website of the Supreme Court's decision directory based on the year in which the decision was made. The author continues to use other literature and other supporting materials related to this research. In connection with these data, the data analysis technique used by the author is descriptive, with the aim that this data analysis will not exceed the sample limit (Gunawan, 2022), this data analysis is deductive in nature, namely based on general theories or concepts used to explain a data set or to show comparisons. or the relationship between one data set with another, or with another language by drawing conclusions from general data to be specific (Dimiyati & Wardiono, 2004).

## RESULTS & DISCUSSION

### A. Divorce at Kangean Religious Court 2020-2022

Before analyzing divorce, it is important to know about the difference between talak divorce and sued divorce, the difference between the decision being granted and the decision being rejected, as well as the *verstek* and non *verstek* decisions. If it is based on the KHI, article 117 explains that talak is a husband's pledge before a religious court which is the reason for the breakup of a marriage, as for divorce lawsuits in article 132 paragraph (1) KHI is a divorce filed by the wife on her behalf in a religious court based on her territory. Talking about the presence of the litigating parties (Plaintiff and Defendant or Petitioner and Respondent) is something that affects the agenda of the trial and of course the decision, therefore the parties must be officially and appropriately summoned (Pasaribu, 2021). The absence of the parties may be due to certain valid reasons, but if the defendant is suspected of or has intentionally not been present at the first trial, even though he has been legally and properly summoned and has not appointed a power of attorney or represented his proxies, the Judge may declare the lawsuit/application. The parties are granted or rejected by *verstek* (Jamil & Nur, 2022). An application or lawsuit with a verdict granted means that the plaintiff or applicant can legally prove and convince the arguments of his lawsuit, on the contrary it is rejected if he cannot prove and convince his arguments (Wahyuni, 2021).

From these three important things, the author classifies divorce in the Kangean Islands with the data as shown in the table below (Direktori Putusan Mahkamah Agung Republik Indonesia, 2022).

Table: 3.1.1

Divorce Verdict at Kangean Religious Court

Year	Number of Divorce sue	Types of Divorce	Number of Orders granted	of Decision Rejected	Number of Decision Types Verstek	Non Verstek
2020	70.6%	29.4%	100%	0%	93.9%	6.1%
2021	67.3%	32.7%	99.3%	0.7%	81%	19%
2022	72.2%	27.8%	99.2%	0.8%	86.6%	13.4%

Source Mahkamah Agung(*Direktori Putusan Mahkamah Agung Republik Indonesia, 2022*)

From the data above, it can be seen that divorce lawsuits at the Kangean Religious Court dominate every year, in 2020 divorce lawsuits dominate 70.6%, from divorce divorces which are only 29.4%, the decision in that year was also 100% granted and 93.9% decided by verstek and the remaining 6.1% was attended by the parties. This is also the same in 2021 where litigation dominates around 67.3% while divorce divorces are only 32.7%, of which 99.3% of the decisions are granted and 0.7% are rejected, 81% of these decisions are decided verstek and 19% attended by the parties. Furthermore, in 2022, lawsuits continue to show a high number of 72.2% and 27.8% are divorced divorces, of these cases 99.2% were granted and 0.8% were rejected, 86.6% were decided verstek and 13.4% attended by the parties.

As is known, 2020 is the initial phase of the COVID-19 pandemic and 2021 is the year of the middle to the end in Indonesia, while 2022 can be said to be the first year of Indonesian society being free from Covid-19 and of course starting a new adaptation after previously having to get used to it. quarantine. From 2020 to 2021, it has quite a lot of influence on individuals and society in carrying out social life (Fauziah & Afrizal, 2021) one aspect that is quite influenced is the relationship between partners. According to data from the Supreme Court, during the COVID-19 pandemic, the number of divorce cases also increased from 20 thousand cases to 57,000 cases in June and July 2020. 80% of lawsuit cases were carried out by the wife. If we narrow it down by province, Divorce on the island of Java also experienced a significant increase in 2020, one of which was in East Java(Tristanto, 2020), Based on data from the East Java Religious High Court, in 2020 there were 18,034 divorce cases filed in court religion in 38 regencies/cities in East Java, in 2021 the divorce rate continues to rise(Fatubun, 2021).

As a survey conducted by Komnas Perempuan in April-May 2020 with 2,385 respondents in 34 provinces, it can be concluded that women are prone to feeling depression or stress due to their husbands not working or because they have lost their jobs(Saputra, 2022). Continuous disputes and quarrels clearly trigger divorce, so that it is clearly one of the factors that can be considered as the reason for the increase in divorce lawsuits in religious courts. Many factors cause divorce. In general, the cause of divorce during the COVID-19 pandemic was due to family conflicts caused by household financial economic problems, misalignment between activities and time spent together, domestic violence (KDRT), changes

in communication methods, and age to raise a family(Puspitawati et al., 2021). Economic problems become a serious disturbance in home life because the wife's responsibility increases to meet family needs that exceed the limits of a wife's ability(Ramdania, 2020), so it makes sense that divorce lawsuits also dominate in the Kangean Religious Court.

Furthermore, if it is based on the reasons for divorce according to article 116 of the KHI and on Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage and KHI, the causes of divorce in 2020 at the Kangean Religious Court can be classified as shown in the table below.

Table: 3.1.2

Reason for Divorce at Kangean Religious Court

Year	Reason for Divorce			
	Disputes/Squabbles	Leave	Persecution	Compactors/Gamblers
2020	77.2%	12.8%	9.4%	0.6%
2021	79.6%	6.1%	13.6%	0.7%
2022	89%	8.6%	1.7%	0.8%

Source Mahkamah Agung(*Direktori Putusan Mahkamah Agung Republik Indonesia, 2022*)

In 2020, the reasons for divorce at the Kangean Religious Court were dominated by disputes and quarrels with a percentage of 77.2%, leaving 12.8%, domestic violence 9.4%, and compacting 0.6%. Whereas in 2021, Discord and Quarrel with a presentation of 79.6%, Leaving 6.1%, Persecution 13.6%, and Gamblers 0.7%. By mid-2022, Discord still dominates 89%, followed by maltreatment 8.6%, then excuses for abandonment 1.7% and Gamblers 0.8%(*Direktori Putusan Mahkamah Agung Republik Indonesia, 2022*).

These disputes and/or fights are of course motivated by various factors, of course, starting from economic factors (no income and insufficient income, as well as work problems), psychological factors (cheating spouses, accusations of cheating and remarrying without permission) , and sociological factors (relationships between each partner's family, housing disputes), and moral factors (ignorance and lack of attention and disobedience to partners and abandonment).

Factors causing disputes and quarrels can also encourage physical and psychological abuse, can also be a reason to leave without news and a valid reason considering that the Kangean Islands community on average work as TKI or TKW and other entrepreneurs who require them to migrate, not something that should be done. It is surprising again that the percentage of divorces due to being left without news is quite high in the Kangean Islands.

these factors made sense with the pandemic conditions at that time which was supported by the PSBB (Large-Scale Social Restrictions), where the scale of meeting each other's spouse every day was very possible to encourage friction of opinion or squabbles within the household. , starting from a reduced income to feeling bored with their respective partners.

If we re-classify based on these factors, we can find the following data.

Table 3.1.3

Year	Economic Factor	
	Living	Work
2020	38	4
2021	22	2
2022	33	3

Divorce due to economic factors dominates in the Kangean Religious Court, on average due to the absence of a living or the income provided is not sufficient for daily needs. In addition to living, another aspect is employment issues, although the divorce rate due to work is not high enough, based on the available data, several divorces are filed because of work disputes that are not in accordance with the wishes of each party of the couple. This is clearly related to the pandemic, which can be said to be a factor driving divorce, considering that during the pandemic, many workers were laid off and ended up being laid off and several others lost their jobs, causing unemployment.

In addition to economic factors, there are also psychological factors, which have been recorded as follows:

Table 3.1.4

Year	Psychological Factor			
	Jealous	Affair	Married without permission	again forced marriage
2020	10	14	26	1
2021	13	15	11	2
2022	11	15	18	0

Source Data Putusan Pengadilan Agama Kangean(*Direktori Putusan Mahkamah Agung Republik Indonesia, 2022*)

This psychological factor, the author divides into 3 aspects based on the reasons for divorce in the Kangean religious court, the *first aspect* , namely jealousy or in some reasons divorce is mentioned as an accusation of cheating, divorce due to excessive jealousy results in disputes and quarrels, this is because feelings of jealousy cause someone to be jealous. turns

possessive and distrustful of their partner, jealousy can be caused by several things, such as loss of trust in a partner due to bad prejudice or negative thinking that causes a person to look subjectively, resulting in anxiety, suspicion, and quarrels (Batoebara, 2018), of quarrels and disputes that occur continuously and then lead to divorce. *Second Aspect* , Infidelity or unfaithfulness to a partner, Divorce cases on the grounds of infidelity are quite common, some of which are due to the absence of *forgiveness* to their partner or by McCulloch in McCulloch, Fincham, & Tsang, 2003 (Sari, 2012) which is referred to as an attempt to forgive by people. who have been hurt by not staying away from and making peace with the perpetrator, some other divorce cases for this reason are because the infidelity has been carried out repeatedly so that *Mawaddah is injured* in the marital relationship. *Third*, couples remarry without permission, the number of divorces for this reason dominates than the two previous aspects. Remarriage without permission is not limitedly included in the reasons for divorce based on article 116 of the KHI, even though there is an offense " *One of the parties commits adultery or becomes a drunkard....* ", which is based on the requirements for polygamy in the KHI which states that polygamy must be carried out with the wife's consent. So it can be said that those who marry without permission can enter the category of adultery because the marriage is not legally valid. *Fourth* , forced marriages, if based on law, marriages carried out because of coercion, the forced party can cancel the marriage in the Religious Courts, but in the data that the author examines, generally couples who marry because of coercion lead to disputes and quarrels about incompatibility and others. so that the basis for filing a divorce in court.

Furthermore, there are also sociological factors, moral factors and biological factors, as shown in the table below:

Table: 3.1.5

Year	Sociological Factor	
	Family	Residence
2020	7	10
2021	12	13
2022	7	2

Sociological factors by the author are divided into two aspects, including the family aspect, based on divorce data at the Kangean Religious Court, divorce on the grounds of disharmony between the son-in-law and the in-laws or between family members and one

partner is the axis of problems in marriage in the Kangean Islands, such as parents. the overly intrusive spouse and the couple's parents forcing a divorce. The next aspect is the problem of housing, from several divorce cases in the religious court, some of them are due to housing disputes, such as a husband who wants to live with his parents, while his wife wants to live with his mother.

Table: 3.1.6

Year	Moral Factor			
	Personal	News	domestic violence	Criminal
2020	31	21	15	1
2021	28	8	20	1
2022	16	2	10	1

Moral factors are divided into 4 parts by the author, the *first aspect* is personal, such as disappointment because of other things that lead to quarrels, misunderstandings and disobedience and lack of love and love in the household. The *second aspect* is the news or one of the parties leaving without a clear reason and not notifying, this is a common occurrence considering that in this case most of the partners work as migrants, both migrant workers, migrant workers and inter-city migrants , this happens due to low commitment to partners and forms of partner's irresponsibility(Prianto et al., 2014). The *third aspect* is domestic violence. Domestic violence does not only include physical violence but also psychological violence, sexual violence and economic violence. From the data that the writer found in the divorce case at the Kangean religious court, the most prominent violence as a reason for divorce was physical violence and psychological violence, such as beatings by a partner, swearing and abusive and dirty language. The *fourth aspect* is criminal, namely the reason for divorce based on criminal behavior such as drunkards, gamblers, drug users, thieves and other criminal behavior that makes the partner uncomfortable and decides to divorce.

Table: 3.1.7

Year	Biological Factor
2020	2
2021	0
2022	1

Marriage in Islam can be interpreted as channeling biological desires so that it can avoid heinous acts, although basically marriage in Islam is not only in the form of channeling sexual desires but many other aspects such as worshiping Allah SWT, but it cannot be denied that human sexual needs also color the reasons for divorce in religious courts are missed, although they are few and rare. Biological desire or sexual desire includes the inner support that a husband must give to his wife and it is the wife's obligation to serve her well. So if these rights and obligations cannot be fulfilled, it can lead to divorce (Basalama, 2013).

Based on the results of the classification of the factors above, it can be found results where the factors that most influence the reasons for divorce or the causes of divorce at the Kangean Islands Religious Court are problems with living on economic factors, remarriage without permission, infidelity on psychological factors, and personal aspects, news and domestic violence in moral factors.

Subsistence in the Compilation of Islamic Law Article 80 paragraphs (2) and (4) as part of the husband's dependents, which is fully explained that the husband is obliged to protect and provide for all household needs in accordance with the limits of his ability and income, the husband's dependents include maintenance, *kiswah* and housing, household expenses, treatment costs and medical expenses. Basically, the problem of living is not something new as a reason for divorce (Agi & Dwiprigitaningtias, 2020), but being a living problem is the biggest reason for divorce in the Kangean Religious Court. When viewed from work as the basis for providing a living, people who in fact work as entrepreneurs with middle to lower salaries in meeting household needs are often not sufficient or in their language is called a simple and mediocre life. However, when examined again, the majority of the Kangean Society is still influenced by patriarchal culture, it can be seen from their partner or in this case the wife, after marriage she only works as an ordinary housewife and generally when she works only as a trader in the market or home trader, therefore income in the household only depends on the husband, so that if the husband has problems at work or in the previous two years, namely in 2020 and 2021, with the Covid-19, the financial aspect or living becomes an aspect that is greatly influenced, causing disputes that lead to divorce.

The next highest aspect is domestic violence in moral factors, in the Kangean Religious Court the most frequent aspect of domestic violence is physical violence, although it cannot be denied that psychological violence is also a problem. The most common forms of physical violence in the reason for divorce are beatings and slaps, the causes are based on

several things, Andang Sari (Andang Sari & Haryani Putri, 2020) explains several social factors that cause domestic violence to increase in Indonesia, inequality between men and women, wife's dependence on husbands, the stigma of women in society is low and the attitude of society is indifferent, and several others (Kirana & Ni'ami, 2022). In the Kangean Island Community as previously mentioned, patriarchal culture such as inequality between men and women and the dependence of wives on their husbands due to financial inadequacy causes men to feel entitled to behave as they please, including feeling entitled to do domestic violence, even though there have been many who have done so. Now that physical violence is no longer a personal problem but a state problem, where there is a special law that regulates it, namely Law no. 23 of 2004 concerning the Elimination of Domestic Violence, but the public misses or those who apply for divorce or divorce are generally because the domestic violence is rarely brought to the criminal realm.

### **B. *Legal Reasoning* Kangean Religious Court Judge in Divorcing Divorce 2020-2022**

Judges have an important role in resolving legal issues, especially those whose resolutions go through the trial process (litigation) (Sulistiyawan & Permana Atmaja, 2021), besides that judges in accordance with their authority in each decision must of course contain elements of law enforcement (Azizah, 2021). Talking about judges and their decisions, it is closely related to *Legal Reasoning*. Understanding *Legal Reasoning* (Legal reasoning) the key is to know in advance the meaning contained in each word arrangement. If we examine the meaning, reasoning can be interpreted as an effort to get to the truth or also referred to as a thinking process with (logical) reasoning to find the truth, while legal reasoning is essentially a thinking activity that intersects with the multi-faceted meaning of law, including multidimensional and multifaceted (Taqiuddin, 2017).

According to Sudikno Mertokusumo (Isnantiana, 2017) *legal reasoning* used by judges to consider a case before making a decision, previously the judge was also obliged to pay attention and try to prevent new cases or problems from arising against the decision. Kenneth J. Vandavelde has shared five steps of legal reasoning, including: *First*, Identify possible sources of law, usually in the form of regulations, legislation and court decisions; *Second*, Analyzing the sources of the law to determine the possible legal rules and policies in these rules; *Third*, synthesizing the rule of law into a coherent structure, namely a structure that groups specific rules under general rules; *Fourth*, examine the available facts; *Fifth*,

apply the structure of the rules to the facts to ensure the rights or obligations arising from those facts, by using the policy that lies in the rules of law in solving difficult cases.

Therefore, there are two points that must be underlined, namely the use of legal norms and the existence of legal facts in carrying out legal reasoning to produce a decision. While it is not unusual in certain cases, especially divorce judges are sometimes faced with a legal vacuum that requires judges to find the law, this is in line with the *Ius Curia Novit Principle* , in which judges may not refuse to examine, hear and decide cases on the pretext of not knowing (Hidayat, 2013). the law. the true meaning of legal discovery itself is closely related to how judges build patterns of legal reasoning as outlined in the form of juridical arguments. Therefore, to decide cases, judges can make legal discoveries with the *interpretation method* (Marbun & Armilius, 2018) .

Based on the data obtained by writing, in the decision of the Kangean religious court there are four important points of *Legal Reasoning* judges in deciding a case including Legal Facts, Legal Norms, Judge Interpretation and Islamic Law Rules. Furthermore, regarding the decision of the Kangean Religious Court for 2020-2022, the use of legal facts and legal norms is as follows:

Table: 3.2.1

Year	Legal Reasoning Judge	
	Legals norm	Legal Facts
2020	100%	100%
2021	100%	100%
2022	100%	100%

Based on the data above, 100% of divorce decisions at the Kangean Religious Court have elements of legal norms and legal facts. As mentioned above, the first line of legal reasoning is to identify the rule of law and systematize it against existing legal facts. In order for a legal fact to be granted, it must have complied with Article 39 paragraph 2 of Law Number 1 of 1974 and Article 19 letter ( f) Government Regulation No. 9/1975 jo. Article 116 letter (f) Compilation of Islamic Law, witnesses as proof of legal facts are also required to have complied with articles 171 and 172 of the HIR.

If we analyze using the stages of the judge in giving a decision, in this case the judge has gone through two stages, namely: *Constantizing* , meaning the judge sees, knows, and

justifies the occurrence of events, which are not conjectures but are certain based on evidence in evidence. In this stage, the judge must be logical and the mastery of the judge's proof of law is very much needed. *Qualifying* means that the judge acts to find the law against the events that have been confirmed. In this stage, the judge evaluates the arguments that have been proven and/or those that have not been proven by looking for the right application of the law.

However, based on the data that the author has analyzed the application of legal norms to one decision with another, there is no difference, on the issue of divorce with different reasons, it is still based on Article 39 paragraph 2 of Law Number 1 of 1974 and Article 19 letter (f) Government Regulation Number 9 of 1975 jo. Article 116 letter (f) Compilation of Islamic Law. For example, Decision Number 97/Pdt.G/2021/PA.Kgn on the grounds that the defendant remarried without permission with Decision Number 137/Pdt.G/2020/PA.Kgn who had work problems. So that the author concludes the legal norms in divorce cases with different reasons, by the Kangean religious court judge based on Article 39 paragraph 2 of Law Number 1 of 1974 and Article 19 letter (f) Government Regulation Number 9 of 1975 jo. Article 116 letter (f) Compilation of Islamic Law.

Next is the use of Judge's *Interpretation*, as has been explained that in deciding cases the judge is juxtaposed with the principle of *Ius Curia Novit*, so that if there are cases where the rules are unclear or there are no special regulations to be applied to a legal case or event, the judge can carry out Interpretation. law (*interpretation*) to examine and adjudicate the case. At the Kangean Religious Court, it was found that not all decisions have Judge's Interpretation in them. The use of legal interpretation in the Kangean religious court is usually influenced by the existence of requests or claims for reconvention, both regarding mut'ah or iddah income, distribution of joint assets, child care and child maintenance, as for other things that are not conventions, some judges provide interpretations, but these interpretations have the same editorial on each other's decisions. Furthermore, the use of judges' interpretations and the rules of Islamic law are as follows:

Table: 3.2.2

Year	Legal Reasoning	
	Interpretation	Rule
2020	13.9%	23.9%,
2021	21.8%	73.5%
2022	33.6%.	63.9%

Based on the data above, it was found that the judge's interpretation of the Kangean Religious Court Decision in 2020 was only 13.9%, then in 2021 it was only 21.8% and in 2022 it touched 33.6%. On the Divorce Decision at the Kangean Religious Court in 2020-2022.

Judges at the Kangean Religious Court in their 2020-2022 decisions in interpreting reconvention claims related to iddah living, mut'ah living and child custody, generally based on 4 things, namely: Ability, Social Conditions, Work and Nusyuz from the Wife. Aspects of ability include income (salary) and burdens borne, Social Conditions include lifestyle and surrounding conditions. So that in giving a decision not only gives the value of justice but also wisdom. As in the decision Number 354/Pdt.G/2022/PA.Kgn, the judge, through his interpretation process, decided in his decision that Nafkah Mut'ah to the plaintiff was Rp. 1,000,000. Plaintiffs for counterclaims in the amount of Rp.5,000,000.00 (five million rupiahs) and other requests. The judge in his interpretation based on the ability and occupation of the counter-convention defendant who only worked as a ludruk performer with an average income of Rp.2,250.000,00 (two million two hundred and fifty thousand rupiah) for 15 (fifteen) performances in one month and not have another job.

Another judge's interpretation can be found in decision No. 509/Pdt.G/2021/PA.Kgn which is based on divorce because the wife likes to argue when advised and sometimes swears at the applicant. Before discussing further, it is important to note that *nusyuz* is not the main reason for divorce as stated in Article 116 of the KHI but as a reinforcing reason. However, in Article 152 of the KHI it is explained that the wife or ex-wife is not entitled to the iddah of her husband if she is nusyuz. In language, *nusyuz* comes from the word *an-nasyz* or *annasyaaz* which means a high place or the disobedient attitude of one of the husband and wife or a change in the attitude of the husband or wife (Zuhdi et al., 2019). In its use, Nusyuz in terms can be interpreted as the wife's actions which can be interpreted as opposing or stubbornly against the husband's will which does not conflict with religious law (Chintya, 2018), therefore the attitude of denying when advised is the same as disobeying her husband or Nusyuz and the wife has no right for his iddah. However, in decision 509/Pdt.G/2021/PA.Kgn the judge decided to charge iddah support to the counter-convention defendant with the consideration that only the first witness to the counter-convention Defendant gave a statement that the counter-convention Plaintiff often dared and argued against the Petitioner every time he was advised, but the information did not come from from

the Witness's own experience, hearing, and vision, but from the defendant's narration or story, and the fact that at the trial there was no witness who knew about the dispute between the Plaintiff of Reconvention and the Defendant of Reconvention, but all witnesses only knew the consequences of the quarrel.

Another aspect of Legal Reasoning found in the decision of the Kangean religious court in 2020-2022 is the use of Islamic legal rules, although there are no statutory regulations or rules that explicitly regulate the use of Islamic legal rules in legal considerations, but with regard to Article 27 of the Law Number 14 of 1970 and Article 50 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, these articles are related to the use of Islamic legal rules, in which it is explained that judges must understand, follow, and explore legal values that live and exist in society based on positive law but also unwritten law contained in statutory regulations, including the rules of Islamic law contained in *fiqh*.

The explanation above is in line with the rules of Islamic law which is a source of law that is not written in the books of *fiqh* that comes from the community and becomes a source of law, especially for people who are Muslim (Zuhdi & Widyawati, 2022). The use of Islamic legal rules in legal considerations in the decisions of the Kangean Religious Court in 2020-2022 is very varied and dynamic. The use of Islamic law rules applied by judges to court decisions, especially on legal considerations, in the 2020 Kangean Religious Court Divorce Decision is only 23.9%, then in 2021 it will increase to 73.5%, which in 2020 will be 63, 9%. The use of Islamic Law Rules in Divorce Decisions at the Kangean Religious Court generally uses the *ushuliyah rules*, which read:

درء المفسد مقدم على جلب المصالح

*Meaning: "Avoiding (stopping) damage takes precedence over" hope (the creation of) benefit (which is not certain).*

In addition, the rules of the *Fiqhiyah Rule* in the book *al-Asybah wa an Nadzair fi al-Furu'* page 63 as the opinion of the Panel of Judges, which has the meaning, Rejecting damage takes precedence over obtaining benefit. After looking at the divorce decision of the Kangean Religious Court from 2020-2022, it was found the fact that the use of Islamic legal rules depends on the chairman of the panel, because some judges in their decisions do not include Islamic legal rules while several other judges in each of their decisions include one or both of the rules. the Islamic law.

The use of Islamic legal rules is used as a complement and reinforcement of legal arguments or legal norms as outlined in the decision so that it is more actual, concrete, perfect

and can be accounted for by law enforcers. where it aims so that the legal arguments in the judge's decision can foster a conscious attitude that seeks only the pleasure of Allah SWT.

## CONCLUSION

Divorce at the Kangean Religious Court in 2020-2022 is dominated by litigation in which the majority of the applications or lawsuits are granted *verstek*, in 2020 divorce lawsuits dominate 70.6%, of divorce divorces which is only 29.4%, As for in 2021 Divorces dominate around 67.3% while divorce divorces are only 32.7. Furthermore, in 2022, divorce lawsuits still show a high number of 72.2% and 27.8% are divorced divorces. The reasons for the divorce at the Kangean Religious Court in that year were broadly based on the reasons for divorce in article 116 of the KHI including Disputes/ Quarrels, Leaving without news, Persecution, Consolidation/Gamblers. Among the four, disputes and quarrels show a high rate of 77.2% in 2020, 79.6% in 2021 and 89% in 2022. If divided based on the factors that cause divorce, Economic Factors in this case Livelihood and Psychological Factors in this case Marrying again without permission and Moral Factors in this case domestic violence are the top three factors with the highest number of divorces. This is based on the still strong patriarchal culture in the Kangean Islands and the Kangean people who in fact work as entrepreneurs who require them to migrate.

In the Kangean Religious Court Decision, judges in making decisions are based on Legal Facts, Legal Norms, Interpretation, and Islamic Law Rules. 100% of the decisions of the Kangean Religious Courts contain legal facts and legal norms, legal facts on divorce decisions at the Kangean religious courts are based on the legal norms of Article 39 paragraph 2 of Law Number 1 of 1974 and Article 19 letter (f) Government Regulation Number 9 of 1975 jo. Article 116 letter (f) Compilation of Islamic Law. However, in several decisions, several editorials are found that are the same even though the reasons for the divorce are different. In addition, the judge uses his *interpretation* related to re-convention lawsuits related to *iddah*, *mut'ah* and child custody, which are generally based on 4 things, namely: Ability, Social Conditions, Work and *Nusyuz* from the Wife. used as a complement and reinforcement of legal arguments or legal norms as outlined in decisions, some judges also use Islamic legal rules such as *fihiyyah rules* and *ushuliyyah rules* .

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