
Analysis of Court Decision on The Burden of Proof as A Legal Requirement for Divorce, based on The Civil Code and The Compilation of Islamic Law

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Abstract

Marital life between husband and wife does not always go smoothly; couples experience numerous obstacles that drive them to opt for divorce. This situation also affects Catholic couples, many of whom choose to file for divorce through state courts even though the Catholic Church forbids and does not recognize divorce. The normative juridical research method with a case study approach utilizing primary, secondary, and tertiary legal materials is the research methodology employed. The application of the burden of proof in divorce proceedings, as well as the perspectives of positive law and the Catholic Church regarding the legitimate requirements for divorce, are the research issues investigated. The findings demonstrate that the judge's reasoning in the ruling — which states that the plaintiff must prove the grounds for divorce as outlined in Article 163 HIR — is satisfied by written evidence and two witnesses who attest that the Catholic couple seeking a divorce has, in fact, not lived together for an extended period. Positive law views divorce as a right of married couples, in contrast to Catholicism, which regards marriage as sacred and indissoluble and holds that a Catholic marriage can only be dissolved by death. In other words, if one of the Catholic parties remarries after the state court has dissolved the first marriage, the Catholic Church still considers the prior marriage to be valid and the new marriage to be invalid, classifying it as adultery.

INTRODUCTION

Living a married life is not an uncomplicated matter for husband and wife couples. We can see how difficult it is for husband-and-wife couples to go through the adjustment process in married life. In the process of adjusting to married life, many husband and wife couples find their marriage ending in divorce. When problems arise early in marriage, such as work issues and having children, couples always try to resolve conflicts by discussing their problems with each other, compromising first with each other to open their minds during conversations, and always working together to find solutions to their conflicts (Rendri, 2022). This shows that the strength of a marriage is not measured by the absence of problems but rather by the synergy of communication and humility to place solutions above personal ego for the common good (Kaur, 2022; Nance, 2020; Prakken & Sartor, 2016; Suryani, 2025).

In Article 26 of the Civil Code, marriage is viewed solely in a civil context, and in Article 81 of the BW, it is stated that no religious ceremony may be held until both parties prove to their religious officials that the marriage has taken place before the civil registry officer. Thus, it is clear that marriage according to the Civil Code is merely a civil obligation. Article 28 of

the Civil Code states that the principle of marriage requires the freedom of agreement between both prospective spouses. The phrase 'the freedom of agreement between both prospective spouses' means that those entering into marriage are free to express their consent. Of course, the BW regulates age limits for those who are going to get married. In Article 29 of the BW, it is stated that young men who have not yet reached the age of 18, as well as young women who have not yet reached the age of 15, are not allowed to enter into marriage.

Article 19 of Government Regulation Number 9 of 1975 outlines several reasons why married couples seek divorce, namely:

One party commits adultery or becomes an alcoholic, drug addict, gambler, and so on, which is difficult to cure; one party leaves the other for two consecutive years without the other party's consent and without valid reasons or due to circumstances beyond their control. One party receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place; one party commits acts of cruelty or severe abuse that endanger the other party; one party suffers from a physical disability or illness that prevents them from fulfilling their duties as a husband/wife; there are continuous disputes and quarrels between the husband and wife, and there is no hope of living in harmony again in the household (Fadhilah et al., 2025; Hududillah et al., 2025; Nafisah et al., 2024).

These reasons then become the fundamental requirements for the court to file and grant a divorce (Sema, 2021). The marriage law allows married couples to file for divorce in court when both parties can no longer reconcile. Article 38 of the Marriage Law states that a court can dissolve a marriage, in addition to death and divorce. Then, in Article 39 paragraph (1), it is emphasized that divorce is conducted in front of a court session after the relevant court has attempted and failed to reconcile both parties. Furthermore, Article 40, paragraph (1), states that the court files the divorce lawsuit. According to Article 63, letter b of the Marriage Law, the court that has jurisdiction over non-Islamic religions is either the general court or the district court (Azizi, 2021).

The burden of proof in divorce cases based on continuous disputes and quarrels often becomes the main reason for couples deciding to divorce (Adiman & Wiraguna, 2026; Juanda, 2019). The judge in handling divorce cases must listen to the testimonies of close family members or people who are close to the husband and wife. There is a valid authentic piece of evidence, namely, the marriage certificate, and formally, a written piece of evidence that has been photocopied and stamped with a revenue stamp. There is written evidence to indicate sufficient proof that a dispute and argument have occurred between the plaintiff and the defendant, which are the reasons for the divorce. The witnesses used have been accurate and in accordance with Article 22, paragraph (2) of Government Regulation Number 9 of 1975.

Based on Article 164 HIR, it is stated that the types of evidence include documentary evidence, witnesses, presumptions, confessions, and oaths. This principle applies to cases in general. Divorce cases based on disputes or quarrels differ from other cases in terms of evidence. Divorce cases based on continuous disputes or quarrels occur where the husband and wife are constantly at odds, and it is no longer possible for them to reconcile (Donohue, 2023). However, the wife does not have strong grounds for divorce, while the husband insists on not divorcing her. However, the conflict between husband and wife here is a matter of a secretive nature and tends to be concealed. Household life will certainly not be documented in writing

for proof, like other civil events. Only those at the scene can know the incident, witnessing and hearing it themselves.

Divorce is prohibited in religious teachings, especially Catholicism, which adheres to monogamy, meaning marriage occurs only between one man and one woman. "Holy" means that Catholic marriage truly reflects the participation of humans as God's creation in the work of salvation and in God's creation in the world, making it sacred. Therefore, in the Church, marriage is one of the seven sacraments. The eternal and indissoluble nature of marriage means that an indissoluble marriage is eternal, and only death can separate a marriage or end its indissolubility (divorce) (Zai, 2023).

Although Catholic teachings strictly prohibit divorce for married couples who adhere to the Catholic faith, there are still many Catholic couples who subsequently file for divorce and are granted a divorce by the district court. As happened in the Bekasi District Court, there was a Catholic couple where the husband filed for divorce against his wife, citing frequent arguments, incompatibility, economic problems, and having been separated for months. The husband, as the plaintiff in the divorce case, has presented two witnesses who confirmed that the Catholic couple had indeed been living apart and even resided in different countries. However, there is an issue that has arisen in the divorce process, namely that the panel of judges at the Bekasi District Court believes there must be a clear burden of proof regarding the reasons for the divorce presented by the husband. as the plaintiff. The plaintiff's lawsuit became the reason for the panel of judges to reject the plaintiff's lawsuit for divorce, although later at the appellate level, the plaintiff's lawsuit was granted by the Bandung High Court, which disagreed with the Bekasi District Court regarding the burden of proof in divorce cases.

Meanwhile, in a comparative ruling, the South Jakarta District Court handled another divorce case involving a Catholic couple. In this divorce case, the wife filed as the plaintiff. She filed for divorce against her husband on the grounds that he failed to provide the financial support necessary for her living needs, which he, as the head of the household, is responsible for. The disagreement then became the reason for continuous arguments until the plaintiff decided to file for divorce against her husband. In this case, the defendant was absent until the panel of judges read the divorce decree. The plaintiff presented two witnesses to support her divorce petition and attached several pieces of evidence, including the marriage certificate and other documents required for the divorce petition, except for the family card. The panel of judges then decided to grant the plaintiff's lawsuit in its entirety and simultaneously awarded custody of the child to the plaintiff. In this ruling, the plaintiff does not need to provide any burden of proof; the testimony of just two witnesses is sufficient for the case to be granted. Then, in the jurisdiction of the West Jakarta court, a Catholic couple also filed for divorce. The reason for the divorce was the failure to fulfill emotional needs and the continuous arguments between the plaintiff and the defendant. In this case, the plaintiff (the wife) presented two witnesses in court who confirmed the reasons for her divorce petition. The panel of judges granted her petition in absentia because the defendant was absent without cause, placing the burden of proof on the plaintiff, which was satisfied by the testimony of at least two witnesses.

The urgency of this research is driven by the inconsistency in judicial decisions regarding the burden of proof in divorce cases involving Catholic couples, as evidenced by the contrasting outcomes in the Bekasi, South Jakarta, and West Jakarta District Courts. Without a clear understanding of how judges interpret and apply the burden of proof, legal uncertainty persists

for Catholic couples seeking divorce. Furthermore, the conflict between positive law and Catholic doctrine creates additional legal and social complications, particularly regarding remarriage and child custody. The novelty of this research lies in its comparative case study approach, analyzing three distinct court decisions to identify patterns and inconsistencies in judicial reasoning. Unlike previous studies that focused on religious courts or general civil procedure, this research specifically examines general court decisions involving Catholic couples, providing unique insights into the intersection of civil law, procedural law, and religious doctrine. The purpose of this study is to analyze the implementation of the burden of proof in divorce cases in Indonesia and to compare the perspectives of positive law and the Catholic Church on the validity requirements for divorce. The contribution of this research is to provide clarity for legal practitioners, judges, and Catholic couples regarding the burden of proof requirements and the legal consequences of divorce under both state law and religious law. The benefits include improved legal certainty, better guidance for judges in applying Article 163 HIR, and enhanced understanding for Catholic couples considering divorce.

Based on the previous discussion, the author is interested in conducting research on how the burden of proof actually works in civil law, particularly in divorce cases in Indonesia, and how positive law in Indonesia and the Catholic religion view the validity requirements for divorce. A judge can adjudicate a civil case by determining the existence of the legal relationship that underpins the complaint. The plaintiff must demonstrate the existence of this legal tie to prevail in the case (Risdiana & Taqiuddin, 2021). Consequently, the legal status of a marriage must be substantiated by a marriage certificate or documentation issued by an authorized entity.

The burden of proof in divorce cases is important because there are differences in the judge's considerations and decisions regarding it, even though both parties have presented witnesses to support the plaintiff's claim. Additionally, specifically for the case decided by the author, the case was directly handled by the author as the legal representative of the plaintiff at the Bekasi District Court until the legal appeal was made to the Bandung High Court. So the author wants to clarify the actual burden of proof in divorce cases involving Catholic couples in Indonesia.

Problem Formulation: 1) How is the burden of proof implemented in civil law, particularly in divorce cases in Indonesia? 2) What is the perspective of positive law in Indonesia and the Catholic Church on the validity requirements for divorce?

Research Objectives 1) To analyze and understand the implementation of the burden of proof in civil law, particularly in divorce cases in Indonesia. 2) To analyze and understand the perspective of positive law in Indonesia and the Catholic religion regarding the validity requirements for divorce.

METHOD

This study employs a normative juridical research methodology with a case study approach. The research focuses on analyzing the application of the burden of proof in divorce cases involving Catholic couples in Indonesia, and on examining the perspectives of positive Indonesian law and the Catholic Church regarding the validity requirements for divorce.

The study uses a normative legal approach, analyzing relevant legislation including the Civil Code (BW), the Compilation of Islamic Law (KHI), and applicable government

regulations. This approach aims to provide a clear understanding of the legal framework governing divorce, the procedural requirements for presenting evidence, and the legal obligations of the parties involved.

A case study approach is applied to examine specific court decisions, such as Bekasi District Court Case No. 560/Pdt.G/2022/PN Bks, South Jakarta District Court Case No. 816/Pdt.G/2022/PN.Jkt.Sel, and West Jakarta District Court Case No. 184/Pdt.G/2023/PN Jkt.Brt. These cases provide concrete examples of how judges interpret and apply the burden of proof in practice, highlighting variations in judicial reasoning and the interaction between civil law and Catholic principles.

Data sources for the study include primary sources in the form of judicial rulings, secondary sources such as legal journals, textbooks, and regulations, and tertiary sources including relevant legal commentaries and doctrinal materials. Analysis is conducted using a descriptive qualitative method, emphasizing interpretation and synthesis of legal provisions, court decisions, and doctrinal opinions to understand the implementation and implications of the burden of proof in divorce proceedings.

Through this approach, the study aims to provide a comprehensive understanding of how the burden of proof operates in civil law divorce cases in Indonesia, particularly for Catholic couples, and to identify the alignment or divergence between state law and religious teachings.

RESULT AND DISCUSSION

Implementation of the Burden of Proof in Civil Law, Especially in Divorce Cases in Indonesia (BW and KHI)

1. Evidence Tools in Proof in HIR

In strengthening or denying someone's rights in court, we are governed by legal regulations. The law clearly stipulates which types of evidence the parties can present in the process of resolving civil lawsuits. This is specifically regulated in the provisions of HIR Article 164, which includes written evidence, witness testimony, presumptions, confessions, and oaths. The binding power of each type of evidence varies; some are binding on the judge, while others are not mandatory and entirely depend on the judge's discretion. Here is an explanation of the various types of evidence: (Septiawan, 2018).

(1) Written evidence

This definition refers to any document that contains written signs intended to convey thoughts or emotions. Someone who is used as evidence in legal proceedings is referred to as a witness. This type of evidence is regulated in the following:

Article 138 HIR

- a. If one party disputes the validity of the document submitted by the opposing party, the district court is authorized to examine this issue. After the examination, a decision must be made on whether the document can be accepted as evidence.
- b. If this examination finds relevant documents held by the public custodian need to be used, the district court must order their presentation to the court for inspection and consideration in the case. With these guidelines, we evaluate and accept documentary evidence in the judicial process.

- c. In certain circumstances, if there is an unwillingness to present the documents in question due to their confidential nature or because of the distance from the custodian's place of residence, the district court will order that the examination be conducted either by the district court or by the local head of government (assistant resident) at the custodian's place of residence or that the documents be sent to the chairman in a manner to be determined by him. The latter district court or the local government head must create the examination report and send it to the former district court.
- d. The custodian who, without valid reason, does not comply with the order to show or send the letter may be compelled by physical force to show or send the letter, namely at the request of the interested party and by the order of the chief district court, which is obliged to examine the letter or the order of the local government head (assistant resident) requested to conduct the examination.
- e. If the letter is not part of a list, then the custodian, before showing or sending it, must make a copy as a substitute for the original letter until the original letter is returned. Below that copy, the custodian must note the reason for its creation, and that note must be mentioned on the gross and on the copy to be provided from that letter.
- f. All costs must be paid to the custodian by the party submitting the disputed letter, as determined by the presiding judge of the district court handling the case.
- g. If the examination of the submitted letter raises suspicion that the letter was forged by a living person, then the district court will forward all case documents to the authority responsible for prosecuting the crime.
- h. The case submitted to the district court is postponed until a decision is made regarding the criminal case.

"Article 165 HIR"

An authentic deed, made by or in the presence of an authorized public officer, constitutes sufficient evidence for both parties and their heirs, as well as for all who can derive rights from it, regarding all matters mentioned in the letter and about the matter, which is mentioned in the letter as a notification; the latter notification mentioned is the one that directly pertains to the essence of the deed.

"Article 167 HIR"

"For the benefit of anyone, the bookkeeping can be granted by the district court the strength of evidence it deems appropriate in each special case."

"Article 1867 Number 29"

"Ordinance 1867 Number 29 outlines the Civil Procedure Law regarding the evidentiary strength of handwritten documents from native Indonesians or those equated with them." The formation of the Rechtsreglement voor de Buitengewesten (RBg) included the articles in this ordinance. Documents used as written evidence can be categorized into deeds and non-deed documents. Deeds themselves are divided into authentic deeds and private deeds, so there are three types of written evidence

recognized in the law of proof, namely authentic deeds, private deeds, and private letters.

Material requirements

Material requirements: Describing what has been seen, heard, and personally experienced; Knowing the reasons why the witness is aware of an event that will be examined; Not being the witness's own opinion or conclusion; Describing what has been seen, heard, and personally experienced; Knowing the reasons why the witness is aware of an event that will be examined; The statement is not the witness's own opinion or conclusion, is mutually consistent with other statements, and does not contradict common sense (Bantara, 2020). Even though the Indonesian Civil Procedure Law does not specifically restrict their status; legal advisors play a crucial role in the presentation of evidence in civil trials (Ginting, 2020). This ensures that the proof meets its material requirements, enabling the judge to make a well-founded decision.

The following table presents previous research related to the burden of proof in divorce cases, specifically in the context of divorce in Catholicism, and highlights the advantages of the research conducted by the author in this paper.

CONCLUSION

The burden of proof in civil law (BW and KHI), particularly in divorce cases in Indonesia, consists of pieces of evidence such as written evidence, witness testimony, presumptions, confessions, and oaths. The pieces of evidence must then be proven in accordance with Article 163 HIR. This proof plays an important role in influencing the judge's decision. Its application in divorce cases is regulated by the marriage law and its implementing regulations. In the divorce case with decision number In case number 560/Pdt.G/2022/PN Bks, the judge first issued a default judgment because the defendant was absent. Later, the judge rejected the plaintiff's lawsuit, stating that the plaintiff needed to prove the basis of their claim. Although the plaintiff presented The judge opined that the witnesses in the case were not valuable in supporting the plaintiff's reasons for the divorce. This was due to the continuous arguments and the fact that the plaintiff and defendant had been in the same house for a long time.

The perspective of positive law (BW and KHI) and the Catholic Church on the divorce of Catholic couples differs. Positive law regulates the divorce of married couples who can no longer maintain their marriage for reasons outlined in marriage laws, such as the death of one partner, domestic violence, adultery, drug use, economic problems, and so on. Based on these reasons, the court will grant the divorce, unlike the Catholic Church, which views marriage between husband and wife as sacred and indissoluble, thus strictly prohibiting divorce among Catholics. If a Catholic couple divorces civilly, the Catholic Church prohibits each partner from remarrying because it would be considered adultery. Meanwhile, regarding the division of joint property and prenuptial agreements, the regulations are almost the same in both the Civil Code (BW) and the Islamic Law Compilation (KHI). However, concerning child custody in the KHI, before the child reaches the age of 12, custody will be granted to the mother (considering her economic and psychological capabilities). In contrast, the BW, used by other religions, including Catholicism, does not specifically regulate child custody until a certain age but usually considers the parenting capabilities of either the husband or wife over the child.

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