CONSIDERATION OF JUDGES IN THE ADJUDICATING OF MARRIAGE DIVORCE RATUM AND CONSUMMATUM

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Abstract

Two primary features of Catholic marriages are that they are monogamous and indissoluble, and so cannot be ended by divorce. Monogamous means that the marriage is between one man and one woman. Indissolubility, in the context of marriage, means that a marriage that has been carried out lawfully between two people who have been baptized ('ratum') and consummated by sexual intercourse ('consummatum') cannot be ended, except by death (Can. 1141). On August 15, 2015, Pope Francis issued an apostolic letter in the form of a 'motu proprio' – 'Mitis Iudex Dominus Iesus' - which reformed the canon law governing the process for the declaration of nullity of a marriage. This document changed the way that Catholics obtain an annulment of marriage. Pope Francis said that the Church had to find a way to give a 'real welcome' to Catholics who had found happiness in a second marriage after their first marriage had failed. He authorized bishops around the world to make their own judgements on requests for the annulment of marriages by a diocesan court, which made the process quicker and more efficient than it previously had been. In addition, those courts are now empowered to decide whether or not a marriage is 'ratum et consummatum', which they were not previously. In the state court of Klas IB Atambua, Belu Regency in East Nusa Tenggara Province, Indonesia, there were 33 petitions for the divorce of marriages that were 'ratum et consummatum'. This study aims to find out what are the essential considerations for judges when adjudicating whether a marriage is 'ratum et consummatum'. This research is socio-legal research, and the data used are primary data and secondary data. The data are analysed qualitatively. The results of the study indicated that the following considerations were essential in judging such cases: (1) a marriage is legitimately 'ratum et consummatum' if it was conducted according to laws of the religion and belief of the parties involved; (2) the divorce of a marriage which is 'ratum et consummatum' is not valid if it is not done according to the laws of the religion and belief of the parties involved; (3) the consideration of judges in the adjudication of whether a marriage is 'ratum et consummatum' is ultimately subject to the prevailing legal view in Indonesia.

Keywords: consideration of judges, divorce, marriage, ratum, consummatum

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1. Introduction

Two primary features of Catholic marriages are that they are monogamous and indissoluble and so cannot be ended by divorce. Monogamous means that the marriage is between one man and one woman. Indissolubility, in the context of marriage, means that a marriage that has been carried out lawfully between two people who have been baptized (*ratum*) and consummated by sexual intercourse (*consummatum*) cannot be ended, except by death (Can. 1141). The essential nature of marriage is monogamous and unending, which in Christian marriage carries a particular weight because marriage is a sacrament. Both of these intrinsic properties mean that a second marriage is not considered legitimate, even if the first marriage has been ended by a civil divorce or according to other (non-Catholic) religious laws, because the Catholic Church does not recognize the validity of such a divorce. The doctrine of the Catholic Church does not acknowledge divorce, and so divorced and remarried members are regarded as living in sin and are forbidden to receive communion and other sacraments [1]. However, on August 15, 2015, Pope Francis issued an apostolic letter - *Mitis Iudex Dominus Iesus* - in the form of a *motu proprio*, which in Latin means 'on his initiative'. This document was aimed at reforming the canon law governing the process for the declaration of nullity of a marriage and it changed the way Catholics obtain an annulment of marriage, though it did not go so far as to call this process a divorce [2]. The details of the document, which aimed to simplify the procedure, were released on September 8, 2015 at a Vatican press conference. "How do we treat people who are experiencing failures in the bonds of their marriages and do new marriages?" asked the Pope in a general meeting on September 9, 2015. Pope Francis said the Church had to find a way to give a 'real welcome' to Catholics who had found happiness in a second marriage after their first marriage had failed. "These people are obviously not to be excluded, and they should not be treated as long as it is", he said. "They are always members of the Church." [3]

Pope Francis authorized bishops around the world to make their own judgements on requests for the dissolving of marriages and eliminated the previous requirements for lengthy examinations of such cases by diocesan courts. The Pope's letter on the fundamental criteria that guided this work of reform mentioned that the single judge responsible in such cases is under the local bishop's authority. The creation of such a judge is the responsibility of the bishop, who, in the exercise of his judicial power, must ensure that the chosen judge will adhere to canon law. It can be said that the bishop is, himself, a judge. An important teaching of the Second Vatican Council was that the bishop, as shepherd and head of his church, is thereby judge among the faithful entrusted to him [2, 4].

The couple whose marriage is *ratum et consummatum* and who had not been able to submit a lawsuit for divorce due to various requirements may now be able to do so. As a result, the following questions have arisen in the District Court of Klas IB, Atambua:

1. When is a divorce for a marriage *ratum et consummatum* not granted because there has been no annulment from the marriage tribunal of the Bishopric of Atambua?
2. When is a divorce for a marriage *ratum et consummatum* granted even when there has been no annulment from the marriage tribunal of the Bishopric of Atambua?

Are these contradictions natural? One of the criticisms made by seekers of justice, in general, and judicial observers, in particular, is that the judgement of the Supreme Court can be overturned by the Court of Cassation or by judicial review. The same or similar legal issues can result in different verdicts [5]. Therefore, this research is vital in order to know what the essential considerations of judges are when adjudicating cases regarding marriage *ratum et consummatum.*

2. Methods

This research is a socio-legal research [6]; the socio-legal study explains the legal issues more meaningful, theoretical and practical. This study aims to explain the work of law in citizens' daily lives because this approach can be described the relationship between law and society. To this study, the judge's verdict is an essential text to be examined to be known how the parties in dispute are placed in consideration of judges. Besides, the court documents can be found whether the judges actually become funnels of the law and bind themselves firmly to formal procedural ordinances or therein there is a legal breakthrough, a new initiative of judges aiming to be able to further grant justice access to the parties [7]. The data used are primary data and secondary data. The primary data is obtained by the researchers directly; secondary data in the form of a judge's decision year 2016-2018 amounted to 33 verdicts, to know the consideration given by the judges in adjudicating marriage *ratum et consummatum*. Researchers obtain data/information by reading and analysing the decision of the judge and the search for the library materials online. The collected data is analysed qualitatively. Qualitative data analysis is a form of analysis by interpreting and describing the data through words in a narrative with scientific logic. The steps of the analysis used in this study are: first, choose texts relevant to the study's purpose; second, codes the messages embedded in the text according to marriage divorce *ratum et consummatum* [Z.A. Dami. International Journal of Leadership in Education, in press (2021) 1-30].

3. Results

3.1. Description of judge's considerations

The word 'consideration' in the Bahasa Indonesia dictionary [8] is interpreted as having an excellent thought to determine or decide something. So consideration is the basis of a verdict. Consideration judges are an essential

aspect in determining the value of a judge's decision to have justice (*ex aequo et bono*) and contain legal certainty. Besides, it also includes benefits for the parties concerned so that the consideration judge should be seen carefully, well, and carefully [9].

The consideration in the civil verdict consists of two parts, namely the consideration of sitting on the subject or event and reference of its law. After the judges know the events that have occurred and have found the law, the judge dropped the verdict. In its verdict the judge are obliged to prosecute all the plaintiff's lawsuit and all the reasons expressed by the parties. This means the court shall award the verdict in reality for all parts of the plaintiff's demands. The court is forbidden to impose decisions on matters not required or granted more than needed [10]. Law number 48, 2009 of the judicial authority in article 11 paragraph (3) mandated that a judge must accept, examine, prosecute and adjudicate the matters posed by him based on the foundations of the considerations and beliefs. In carrying out its duties, the judge is required to prosecute and examine the matter accurately and thoroughly from each lawsuit filed to him [9, p. 22]. The judge is authorized by law to receive, inspect, prosecute and adjudicating based on the theory of authority is as an ability given by the legislation to create legitimate consequences [10, p. 84].

Etymologically the authority comes from the author's word with a variation of the suffix to authority [8]. Authority means having the right, ability and power to do something [11]. The authority of judges examining and adjudicating, in our judicial system, the free judge in deciding the cause, he cannot and should not be influenced by anyone; he is only responsible to his conscience and God [12]. Saleh argued that the judge was the only law enforcement official who could act on behalf of God to make a verdict [13]. The judge must administer the law according to law because it is in control of the freedom of the judge. After all, without any obligation to administer the law according to law, the judge may act arbitrarily in dropping the verdict. In contrast, each decision judges should be deemed correct and should be respected (*res judicata of provaritate habitur*). The verdict of a judge who *res judicata provaritate habitur* is a verdict that considers the juridical, philosophical and sociological aspects so that justice to be accomplished, realized and accounted for in the judgment of judges is the justice legal justice, moral justice and social justice [14].

In relation to Catholic marriage, Joko [15] explained that Catholic marriages are *unitas et indissolubilitas*. *Unitas*: (1) to-one: both become one persona 'husband-wife', one soul, *seraga-garwa* or soulmate; (2) *Monogam*: between a male and a female; *Indissolubilitas* (can't be divorced), meaning: (1) Effect: once the marriage is legally committed, it has a permanent and exclusive result - (a) Fixed: the bonds of marriage endure to the end of life (no separation or divorce); (b) Exclusive: such bonds occur only between the spouses (faithful only with his spouse, until at any time cannot be separated by anyone, no third parties and so on); (2) *Absoluta*: can't be divorced except for death (Mark 10.9) (Can. 1141); (3) *Relativa*: the marriage bond cannot be broken based on

consensus and the will of husband and wife but can be broken by the Church's authority after fulfilling the provisions required by the regulation (Can. 1143-1149). The nature of permanence and cannot be divorced is either intrinsically (by the husband's wife) and extrinsic (by outside parties) [1]. The nature of permanence and cannot be divorced is due to the *ratum et consummatum*/Catholic marriage conducted on the following conditions:

A. Free of canonical obstacles

There are about 12 canonical obstacles discussed specifically in KHK 1983, namely:

1) not yet reached the canonical age (Can. 1083),
2) impotence (Can. 1084),
3) the previous ligament/marriage association (Can. 1085),
4) the marriage of religious differences/disparity of cults (Can. 1086),
5) holy ordination (Can. 1087),
6) the vow of the purity of public and eternal (Can. 1088),
7) kidnapping (Can. 1089),
8) the murder of a married friend (Can. 1090),
9) consanguinity/blood relations (Can. 1091),
10) Semenda (related by marriage) relations/affinities (Can. 1092),
11) public worthiness (Can. 1093),
12) adoption relationship (Can. 1094).

B. The existence of consensus or marriage agreement

C. Celebrations in the '*Forma Canonika*' (Can. 1108-1123)

Couples who want to divorce, the reason for divorce according to Can. 1142-1 that: "Marriages that are not perfected with copulation among those who have been baptized, or between parties baptized with parties are not baptized, can be decided by Pope for reasonable reasons, at the request of both or one of between them, even though the other party does not approve it". Furthermore, in Can. 1143 it is asserted that:

a) The marriage held by two unbaptized persons is decided based on the *Paulinum Privalegi*, in favour of the faith of the baptism party, by itself by the fact that it has held a new marriage, as long as the unbaptized party goes.
b) The party is not baptized is deemed to go, if he does not want to live with the party who has been baptized, or does not want to live together peacefully without insulting the Creator unless the person after being baptized gives reasonable reason to the other party to go.

In terms of the Catholic religion, referring to this Canon provision provides the possibility, or permits the divorce made by its people, based on the terms or reason that the marriage is *legitimum* and not the sacramental performed through the Pope's supreme power. It must be understood that the divorce in the provisions of the Catholic law, significantly determined by the sacramental nature of the marriage, by the rule of the Pope, which uses *Potstas Vicaria* means to represent God.

From 2015, marriage *ratum et consummatum* can be cancelled. On the condition there must be a recommendation/permit from the marriage Tribunal where the marriage was executed.

Table 1. Data on the divorce cases of *ratum et consummatum* in 2016-2018 at the state court of Klas IB Atambua.

No.	Case number	Verdict	Description
1	2/Pdt.G/2016/PN Atb	Acceded	Default judgement
2	7/Pdt.G/2016/PN Atb	-	Reconciled
3	12/Pdt.G/2016/PN Atb	Acceded	-
4	19/Pdt.G/2016/PN Atb	Acceded	Default judgement
5	23/Pdt.G/2016/PN Atb	Acceded	Default judgement
6	24/Pdt.G/2016/PN Atb	Acceded	-
7	26/Pdt.G/2016/PN Atb	Acceded	Default judgement
8	28/Pdt.G/2016/PN Atb	Acceded	Default judgement
9	30/Pdt.G/2016/PN Atb	Acceded	Default judgement
10	31/Pdt.G/2016/PN Atb	Acceded	Default judgement
11	32/Pdt.G/2016/PN Atb	Acceded	-
12	38/Pdt.G/2016/PN Atb	Acceded	-
13	40/Pdt.G/2016/PN Atb	Repudiated	-
14	1/Pdt.G/2017/PN Atb	Acceded	Default judgement
15	14/Pdt.G/2017/PN Atb	Acceded	Default judgement
16	22/Pdt.G/2017/PN Atb	Acceded	Default judgement
17	24/Pdt.G/2017/PN Atb	Acceded	Default judgement
18	26/Pdt.G/2017/PN Atb	Acceded	-
19	31/Pdt.G/2017/PN Atb	Acceded	-
20	33/Pdt.G/2017/PN Atb	Acceded	Default judgement
21	36/Pdt.G/2017/PN Atb	Acceded	Default judgement
22	45/Pdt.G/2017/PN Atb	No	Unacceptable
23	3/Pdt.G/2018/PN Atb	Repudiated	-
24	8/Pdt.G/2018/PN Atb	Acceded	-
25	9/Pdt.G/2018/PN Atb	Acceded	-
26	18/Pdt.G/2018/PN Atb	Acceded	Default judgement
27	21/Pdt.G/2018/PN Atb	Acceded	Default judgement
28	22/Pdt.G/2018/PN Atb	Acceded	Default judgement
29	23/Pdt.G/2018/PN Atb	Acceded	Default judgement
30	24/Pdt.G/2018/PN Atb	Acceded	Default judgement
31	30/Pdt.G/2018/PN Atb	Acceded	Default judgement
32	36/Pdt.G/2018/PN Atb	Acceded	Default judgement
33	37/Pdt.G/2018/PN Atb	Acceded	-

Concerning divorce lawsuits, data from 2016 to 2018 on marital divorce lawsuits *ratum et consummatum* referred to judges in the state court of Klas IB Atambua, Belu Regency in East Nusa Tenggara Province, Indonesia, found there were two cases repudiated, one case was unacceptable, one case of the parties reconciled, and the most cases acceded. Out of the 29 cases there are 20 cases

adjudicated by the judge without the presence of the defendant or default judgement (Table 1).

3.2. The reasons for marriage divorce ratum et consummatum

The party who wants to make a marriage prepares all things so that marriage can be performed smoothly and build a happy home that is eternally based on the realization of the almighty Godhead. However, this kind of hope often stops and even ends. The reason for divorce, according to Government Regulation number 9, the 1975, is:

1. one of the parties commits adultery or becomes a drunkard, gambler and so on, that is difficult to heal;
2. either party leaves the other party for 2 (two) consecutive years without the other party's permission and any legitimate reason due to anything else beyond its merits;
3. either party received a 5 (five) years imprisonment sentence or heavier punishment after the marriage;
4. either party commits violence or severe persecution that endangers the other;
5. either party got disability or illness due to not exercising its obligations as a husband and wife;
6. there is an on-going dispute between husbands and wives and a hopeless quarrel that will live in the household again.

One of the additional requirements for the Catholic couple is to get a letter of recommendation in the annulation of marriage from the bishopric marriage Tribunal. The results of the study of 33 marriage divorce cases *ratum et consummatum* can be illustrated in Figure 1.

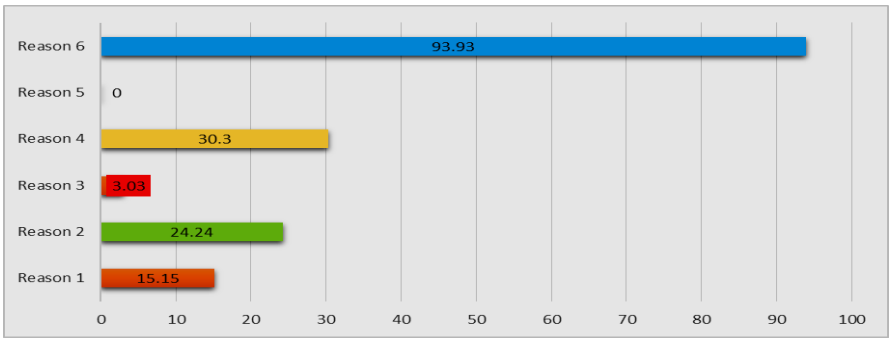

Figure 1. Divorce reasons.

Data in Figure 1 show that the most dominant reason used by the parties to bring divorce lawsuits is the sixth reason (93.93%), namely, there are disputes and quarrels between husband and wife so that they can no longer live in harmony. The Supreme Court of the Republic of Indonesia in Jurisprudence No. 534/K/PDT/1996 dated June 18, 1996, in essence, argues that: "In divorce, there

is no need to be seen from whom the cause of mischief or because one party has left the other party but needs to be seen is the marriage itself. Whether the marriage is still retained or not, because if the hearts of both sides are broken, then the marriage itself is already broken. It is impossible to be united again even though one party still wants the marriage to be intact, if the marriage is retained then the party who wants the marriage broke still doing the not good so that the marriage remains broke."

Observing the jurisprudence of the Supreme Court of the Republic of Indonesia, it is seen that one reason for disagreement/conflict with several trigger factors, proved at court trial then the judge can decide the marriage. According to the author of the reason formulated in government Regulation number 9, 1975 is too light to allow people so easy to divorce. The terms of this divorce must be reformulated. Urgency reformulation of divorce terms because:

1. The mandate of the Republic of Indonesia's founders in the Constitution (Undang-Undang Dasar) of the Republic of Indonesia of 1945 preamble contains a message in its meaning. How to make the people of Indonesia can implement a free and independent life concerning legal devices, legislation and social relations systems in people's lives with various aspects of life. But with the validity of the rule of law in society, it does not form a pattern of public relations that corresponds with the ideal expectation of the Constitution (Undang-Undang Dasar) of the Republic of Indonesia of 1945 preamble. The existence of various laws and regulations in the community does not automatically realize the pattern of relationship and the life of society is justice [16].
2. Suppose there is a legal regulation, but the divorce case continues to increase. In that case, it can be seen as a clue or an indicator that is not exactly anymore from the policy of existing legislation.
3. The terms of the divorce, which are mandated in Law number 1 of 1974, government regulation number 9, 1975 and the compilation of Islamic law, are no longer effective in maintaining a marriage.

If divorce cases continue to increase because the condition of divorce is very easy, the fundamental value of the law is that the legal benefit does not materialize [17].

Reformulation of terms of divorce:

1. Additional requirements:

a) Must be considered as a religious leader for divorced couples. The reason is that those who are Catholic at the time of divorce under the law of the Republic of Indonesia number 1 the year 1974 and government Regulation No. 9 the year 1975 but ignore religious law and belief. The author argues that the judge in adjudicating the marriage of *ratum et consummatum* not only considers the requirements, reasons, and procedures but also must consider whether the religious law of the parties involved allow the divorce to be done or not.Otherwise the judge is not allowed to adjudicate the marriage *ratum et consummatum* - the divorce of the marriage of *ratum et consummatum* is invalid.

b) Must hear the child's opinion. Children (aged 6-18 years) of a divorced couple must be heard in court. It is based on children's rights protected by parents, families, communities and countries. In the Law of the Republic of Indonesia number 35, 2014 of the amendment to law number 23 of 2002 on child protection mentioned in article 24 reads: "State, government and local governments warrant that children use his right to convey opinion according to the age and level of the child's intelligence." In the Law of the Republic of Indonesia number 39, 1999 of Human Rights Article 52, Subsection 1: Each child is entitled to the protection of parents, family, society and country; Subsection 2: the child's right is a human right and the importance of the child's right is recognized and protected by law even from the mother's womb. Article 59: Each child has the right not to be separated from his or her parents in opposition to his child's will unless there are a legitimate reason and the rule of law indicating that the separation is in the child's best interest. The judge must hear the child's opinion (aged 6-18 years) related to the divorce of both parents. The author sets the age limit of 18 years because the Child Protection Act article 1 number 1 mentioned: "A child is a person who is not yet 18 (eighteen) years, including a child who is still in the womb - related to the divorce of both parents". Consideration of the minimum age limit of children six years is because some experts explain the psychological ability of children at this time. According to Erikson, the child's developmental phase at school age (6-12 years) the child's social world extends out of the family world, the child associating with peers, teachers and other adults [18]. At this age, curiosity became very strong and it was related to the fundamental struggle of being capable (competence). In school, children learn about the system, rules, methods that make a job can be done effectively and efficiently. Piaget, a Switzerland psychologist living in 1896-1980, explains the phases of cognitive development [19]. Piaget divides the scheme that children use to understand the world through the four main periods that correlate with age: sensory period (age 0-2 years), preoperative period (age 2-7 years), concrete operational period (age 7-11 years), formal operational period (age 11 years to adulthood). In this writing, the author chooses and discusses the period of concrete operations (ages 7-11 years) fundamental reasons because the author only wants to support the psychology expert's opinion about the child's age and the ability to argue. This stage, by Piaget, is a concrete operational phase; one of the processes is decentring the child started to consider some aspects of a problem to solve it. Then, the stage of formal operationalization began to experience children at the age of 11. This stage's characteristic is thinking abstractly, logically, drawing conclusions from the information available and critical thinking [20]. In this stage, one can understand things like love, logical evidence and value. It does not see everything in black and white, but there is a 'grey gradation' between them. Another opinion from Montessori about the developmental phase of children aged 7-12 years, the abstract period, where the child

began to pay attention to the moral problem, began to function an ethical feeling derived from his heart's word. He begans to know about the needs of others. Age 12-18 years, the time of self-discovery and satisfaction of social problems [21]. From these opinions, the authors conclude that psychologically children aged six years to 18 years can be asked for their opinion by judges in both parents' divorce trial, whether they agree or disagree.

2. Used minimum terms in the filing of the lawsuit

Implementation of Government Regulation number 9, 1975, it is possible to use only one condition to submit a divorce lawsuit. According to the author, the divorce case can be pressed and must be applied at least 3 (three) conditions for divorce. For example, the minimum requirements are:

a) between a husband and wife who have strife persistently and quarrel and there is no hope of living in the household again,
b) one party commits cruelty or severe persecution that endangers the other party,
c) one of the parties commits adultery or becomes a drunkard, condenser, gambler, etc. that isn't very easy to heal.

If the condition of divorce is reformulated, then it is added: 'The judge shall hear the opinion of the child (aged 6-18 years) relating to the divorce of both parents'. The authors recommend at least 4 of these terms based on the study of on-going disputes that there is no hope of living in households always followed by household violence, both physical and psychic.

Table 2. The divorce lawsuit domination.

No.	Year	Number of lawsuits	Plaintiff	
			Wife	Husband
1	2016	13	8	6
2	2017	9	4	5
3	2018	11	5	6
Total		33	17	16

Indonesian society is generally a patriarchate. Patriarchate is a community structure where males were holding power, which can be perceived as structures that degrade females both present in government policy and reflected in society's behaviour. Female are positioned as weak, helpless and sensitive to cases of violence. Data in Table 2 show that in 2016 wives were more dominant in putting forward a divorce lawsuit (62%) than husbands. On the contrary in 2017 (56%) and 2018 (55%), husbands are more dominant in proposing a divorce lawsuit. This condition proves that the wife has always experienced injustice in the household to bring a divorce lawsuit. This social phenomenon shows that there is a shift in value in people's lives where the courage of the wife in putting forward a divorce lawsuit indicates the positive development of female's awareness of their rights.

3.3. Marriage divorce ratum et consummatum according to positive law

Marriage, according to article 1 of the Republic of Indonesia number 1, 1974 is "Bond born and inner between a male and a female as the husband of wife to establish a happy and eternal family (households) based on the deity Almighty".

Although initially, the parties agreed to achieve eternal happiness until the end of life, sometimes expectations were not suitable to reality. The Law of the Republic of Indonesia, number 1, 1974, article 38 found three reasons that resulted in the break of marriage: death, divorce and/or Court Judgement. In particular, about divorce, the law of the Republic of Indonesia number 1, 1974 adheres to monogamy (a husband can have only one wife instead of a wife can have only one husband) and complicate the occurrence of divorce, meaning that those who want to divorce are allowed but the reasons used are as stated in article 39 of the Law of the Republic of Indonesia number 1, 1974 pointed out that "divorce can be done in front of the court, in accordance with the applicable rules both requirements, reasons and procedures and conducted by independent institutions (judicial institutions) based on the teachings of *Indeenjurisprudenz* (legism), *Freirechtlerhre* (free law theory) and *Interessanjurisprudenz*" [22].

Practically in Indonesia, these three teachings are applied where *Indeenjurisprudenz* (legalism) achieves legal certainty, *Freirechtlerhre* (Free law theory) to complete the legal benefits and *Interessanjurisprudenz* in order to achieve legal justice. Concerning the divorce of the marriage of *ratum et consummatum*, under the provisions of the Constitution and the prevailing laws and regulations, it is clear that any institution, including religious institutions Catholic, cannot intervene the judge in making decisions.

3.4. Divorce of the marriage of ratum et consummatum according to Catholic law

In article 2, Subsection 1 of the Republic of Indonesia Law, number 1, 1974, is written: "Marriage is valid when done according to the laws of each religion and its beliefs". The laws of each religion and its beliefs are included in the provisions of legislation applicable to religious groups and beliefs as long as they are not determined differently in the law. This provision also applies to those who are Catholic meaning when they do the marriage or divorce shall be based on the provisions of the Law of the Republic of Indonesia number 1, 1974 on marriage and regulation Government number 9, 1975 of the implementation of the Law of the Republic of Indonesia number 1, 1974, as well as complying with the provisions of the religious law 'Canonic Law' (*Codex Iuris Canonici*).

The fact is that those who are Catholic at the time of divorce are conducted according to the Law of the Republic of Indonesia number 1 the year 1974 and government Regulation number 9, 1975, but ignore religious law and belief. According to the author, the judge in deciding the marriage of *ratum et consummatum* not only considers the terms, reason, and procedure alone but

should also consider whether the religious laws and beliefs of the parties will be divorced granting the divorce to be implemented or not executed.

According to the authors, the divorce of *ratum et consummatum* marriage from the view or dogma or teachings of Catholicism is unlawful because the law of religion and belief does not become a consider of judges in deciding marriage. Indeed there is no article in the Law of the Republic of Indonesia number 1 the year 1974 and government Regulation number 9, 1975, mentioning that the divorce is valid when conducted according to the laws of each religion and its beliefs, but this is implied in article 2, Subsection 1 of the Law of the Republic of Indonesia number 1, 1974, because there can be no divorce without any marriage. The provisions of 'Canonic Law' (*Codex Iuris Canonici*) do not allow Catholics to divorce. This paradigm changed after Pope Francis gave authority to the bishops around the world to judge their own quickly the request for the cancellation of marriage and to eliminate the old requirements for a lengthy examination of such cases by the diocesan court. On September 7, 2015, the Vatican said the Pope had written a document known as *Motu Proprio* in Latin, which means 'on his initiative', which changes the way Catholics obtain an annulment of marriage. That means Catholics can divorce after examining the marriage tribunal where the marriage was made and provide recommendations for marriage annulation. That would be why the court could decide Catholic marriages.

3.5. Marriage annulation - reasons and basics

The dictionary of canonical law defines the annulation of marriage as a process in an ecclesiastical tribunal that seeks to prove a litigant marriage is valid or not. There are three primary applications for marriage annulation, namely exposed to marriage barriers (*impedimentum matrimonii*), defectus consensus, and defectus canonical forma (*defectus formae canonicae*) [23]. Annulation supposes an illegitimate and failed marriage and is used as a last resort in the pastoral work of marriage. On the one hand, annulation is a pastoral policy of the Church that aims to maintain the nature of monogamous and divorce impossibility; on the other hand, annulation must truly realize God's saving mercy and love, especially for families who fail in married life. In the context of the Catholic Church's official teaching on marriage, annulation is a declaration or an official declaration of the Church (through a tribunal or a Court of the Church) that a marriage is invalid from the beginning. With this statement, the male and female couples who de facto never lived together as husband and wife were declared to have never existed *de jure*. Their togetherness is not seen as an actual marriage as per Church law demands but only as a pseudo-marriage [24]. Discussions about the marital annulation of Beal, Corriden, and Green mention that marriage nullity cases form the vast majority of ecclesiastical trials. Procedures governing these cases are means employed by the Church to serve its mission. In particular, the procedural law governing marriage nullity processes was designed to foster and to protect critically important value such as fidelity to

truth, the protection of the right and spiritual welfare of persons, the Church's witness to the sacredness of marriage, canonical equity and the Church's common good. Thus, to avoid legalism or a pure juridical formalism, these procedures must always be understood and implemented in light of those foundational values [25].

The juridical basis of the marriage annulation process in the ecclesiastical tribunal is stipulated in Can. 1501-1655. This reflects that the annulation of marriage not only emphasizes the reality aspect of the failure of marriage, but more than that, the annulation of marriage is the duty of the Church to safeguard the welfare of the people, demonstrating the faithfulness of the Church to the nature of truth and justice that should be obtained in the marriage [26]. Thus the parties whose marriage has been regulated can hold a second marriage, according to Can. 1682. After the judgment that declared the nullity of marriage has become enforceable, the parties whose marriage was declared null can contract a new marriage unless it prohibits a prohibition attached to the sentence or established by the place [2].

The results showed that from 33 divorce cases (2016-2018) there were only 3 cases that filed a divorce lawsuit by attaching a recommendation letter to annulation marriage from the Atambua diocese. Because the plaintiff's status is the civil apparatus of the state and because the civil state apparatus supervisor will give a permit to divorce if the application of license with the recommendation letter annulation of marriage from the bishopric Tribunal of Atambua.

4. Discussion

4.1. Analysis of judges' considerations in the adjudicating of marriage ratum et consummatum

The end of a judicial settlement process is if the judge has dropped its verdict, both verdict and the determination of peace following the type of case, process and final settlement result according to the procedure of civil law. The judges examining the matter should strive to be its verdict as may be accepted by the wider community or at least accepted by the environment of those who accept its verdict [27].

Thus the judge must convince the other party that his reasons or considerations are appropriate and correct or a qualified verdict [28]. A quality verdict is a verdict capable of seeing or resolving matters holistically both quantitatively and complementarily, both from the theoretical and practical aspects. Theoretical means verdict can be accounted for, practically meaning verdict it reaches the expected goal.

The theoretical requirement of the judge's verdict must meet seven conditions [29]:

1. Scientific: the judge's verdict is essentially a report of scientific research in the form of a case, which is the report of results of the examination and its discussion (analysis) in consideration of its law and the conclusion that pour in the verdict.
2. Reflect the philosophical values of *Pancasila*: the mandate of Law number 48, 2009, that the state judiciary implements and establishes laws and justice based on *Pancasila*.
3. According to national law, national law's purpose is the same as the purpose of the Indonesian state formulated by the state Constitution (*Undang-undang Dasar*) of 1945.
4. Fulfilling the juridical terms: these are the main terms and features and the core framework of the verdict. Components of juridical terms are: to have a legal basis, give legal certainty and protect the law. Special regarding the legal basis, if the judge finds no written law, the judge must dig.
5. Meet sociological requirements.
6. Meet psychological requirements.
7. Meet religious requirements.

Making quality decisions to the seekers of justice is the responsibility of the judges in Article 53, Act number 48 the year 2009:

1. In examining and adjudicating the case, the judges are responsible for the stipulation and verdict that has been made.
2. The determination and verdict are referred to in subsection (1) according to the consideration of the judge's law based on the appropriate and correct legal basis.

4.2. Analysis of the judge's verdict - not acceded

Based on the verdicts of Judge number 40/Pdt.G/2016/PN Atb, No. 45/Pdt.G/2017/PN Atb and 3/Pdt.G/2018/PN Atb, it is stated that the defendant and plaintiff have been officially married in the Catholic Church and recorded by the state. Catholicism requires that there should be the annulment of marriage from the marriage tribunal. The requirement is not met by the plaintiff so that the plaintiff's lawsuit is categorized as an untimely lawsuit, an unacceptable lawsuit (*niet onvankelijke verklaard*) or a lawsuit is rejected. On article 2 paragraph 1 of the Law of the Republic of Indonesia Number 1 of 1974, it is written that "marriage is valid if performed according to the laws of each religion and belief".

The judge's verdicts need to be reviewed based on the above mentioned article. The author argues that in deciding the marriage of *ratum et consummatum*, the judge should consider two aspects: 1) requirements, reasons and procedures for decision-making and 2) religious law and beliefs of the parties involved. These aspects are important so that no lawsuit is ultimately unacceptable (*niet onvankelijk verklaard*) as a result of the non-fulfilment of the annulation requirements of the marriage Tribunal of the Diocese of Atambua.

4.3. Analysis of the Judge's verdict - acceded

Based on the 29 judges' decisions that have been acceded in 2016-2018 (Table 1), it was found that the judge considers the defendant's answers and conclusions about "what God has united can't be divorced by man" is a dogma or a religious norm of both Catholics and Protestants. While the norm considered by the judge is the legal norm that allows divorce based on legal considerations that are valid according to positive laws applicable in Indonesia.

The results showed that in consideration, the judge did not offend about annulation of marriage from the Diocese of Atambua marriage Tribunal. The consideration of judges is based on freedom of judge (independence of the judiciary). Indeed, the judicial independence is free from outside interference and free of any form of physical or psychic pressure. In the Constitution of the Republic of Indonesia, 1945, chapter IX concerning judicial power, article 24 paragraph 1, pointed out that "Judicial power is an independent power to administer the judiciary to realize and uphold justice". The author argues that judges as the core executors of judicial power are obliged to maintain their independence, to ensure the quality of their verdicts. However, there is no absolute freedom without accountability. Judges are not in a vacuum but in a state of laws that have many regulations that essentially regulate their behaviour. Therefore, in making a judgment, the freedom of judges is balanced with accountability; accountability horizontally (to man) and vertically (to God) [12]. In a public discussion of the Indonesian Judicial Commission on the theme of independence and accountability of judges in adjudicating a case, it was stated that a judge was not truly independent because the independence of judges was influenced by ideology, consistency to previous verdicts and public opinion [29, p. 17].

As Indonesian citizens, the ideology of judges should not be contrary to the ideology of Pancasila - the consideration of judges should be based on the values of Pancasila [30]. In the case of divorce, the Judge must consider the religious law and beliefs of the divorced party to not contradict with *Sila* 'Believe in the one supreme GOD (*Ketuhanan Yang Maha Esa*)' - for justice based on the One True God. If, the judge considers the legal norms that allow to adjudicate the marriage of *ratum et consummatum* in Indonesia, the author concludes that the judge only attempted to realize *indeenjurisprudenz* (legism), and ignore *Freirechtlerhre* (free law theory) and *Interessanjurisprudenz* (synthesis between *Indeenjurisprudenz* and *Freirechtlerhre*). In principle, the defendant's answer is "what God has united can't be divorced by man". This sentence indicates that the judge's verdict is unfair and useless to the defendant.

5. Conclusions

As a logical consequence of the judge in examining and adjudicating a case, he is responsible for the determination and verdict made vertically (to God) and horizontally to (man or seeker of justice) based on evidence and reasons that

can be accounted for correctly and appropriately. The results of the study showed that: (1) a marriage is legitimately *ratum et consummatum* if it was conducted according to laws of the religion and belief of the parties involved; (2) the divorce of a marriage which is *ratum et consummatum* is not valid if it is not done according to the laws of the religion and belief of the parties involved; (3) the consideration of judges in the adjudication of whether a marriage is *ratum et consummatum* is ultimately subject to the prevailing legal view in Indonesia.

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