

## Analysis of Judges' Decision on Witness Divorce Evidence in Donggala Religious Court

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### ABSTRACT

A judge's decision or commonly called court decision, is a written statement made by a judge as a government official who has been authorized to do so. The statement is made in a court case and it is open to the public after going through procedural law processes, to resolve or end a case to create legal certainty and justice for the disputing parties. This study used a qualitative case study approach. Data was collected through direct observation, in-depth interviews, and written material analysis. The results of this study show that the judges examining, deciding, and resolving divorce cases based on Indonesia marriage laws and regulations. Witness evidence considered by the Panel of Judges is a witness that meets the formal and material requirements. One of the material requirements is that the witness testifies to what he has seen, heard, and experienced, not to hear other people's stories. Civil procedural law witnesses who do not personally witness an event which is the reason for the parties to a lawsuit in court, is called *de auditu* testimony.

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### ARTICLE INFORMATION

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## 1. Introduction

Marriage is a sacred bond between two people who love each other and hope for eternal happiness in their household life.<sup>1</sup> Every husband and wife must maintain a harmonious household relationship by giving each other love and mutual understanding to maintain the integrity of their household. The Qur'an gives the term husband and wife with ties to *mitsaqhalizh* (steadfast promise). As Allah says in surah al-Nisa (4): {21}, which means: "And how are you going to take it back, even though you have been associating with each other (as husband and wife). and they (your wives) have taken a strong agreement (marriage bond from you)" (Ministry of Religion of the Republic of Indonesia, 2013).

When a husband and wife have disagreements and disputes, Islam provides a solution to the problems faced in the household, which in fiqh terms is called *talaq* or divorce<sup>2</sup>. In the laws and regulations regarding marriage, the term used is the dissolution of a marriage between husband and wife.<sup>3</sup> Divorce can be carried out at the will of the husband or the wife's request to the Religious Court (divorce suit).

The Donggala Religious Court has the authority to receive, examine, decide and settle cases at the first level between people who are Muslims in the fields of Marriage, Inheritance, Wills, Grants, Waqf, Zakat, Infaq, Sadaqah, and Sharia Economics (UU No.3/2006: article 49). Included in the authority of the Religious Courts is to examine certain civil cases in the field of marriage, including divorce cases between people of the religion of Islam who live and are domiciled in the Regions of Donggala Regency and Sigi Regency, Central Sulawesi Province (Article 118 HIR/ Article 142 RBg).

In civil cases, you need proof when you want to divorce. Evidence in divorce cases is the most important because courts enforce law and justice based on evidence (Abdul Manan, 2005: 227). One of the means of evidence in a trial is the evidence of witnesses (witness statement<sup>4</sup>Witness evidence that can be submitted as evidence will meet the Formal and Material requirements (KUHAP 2016: 400), while the formal requirements are: Proficient, statements submitted in court cases, witnesses examined one by one, swearing an oath or promise before giving a statement, while the conditions material are: The events that are conveyed are events that are seen, heard, felt, (not other people's stories), the events described are known to themselves, and the statements of other witnesses are appropriate.

Witness evidence submitted by the divorced party at the Donggala Religious Court is very important to add to the judge's confidence in examining and

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<sup>1</sup> Omar, S. (2007). Dissolution of Marriage: Practices, Laws and Islamic Teachings. *Policy Perspective, Institute of Policy Studies*, 4(1), 91.

<sup>2</sup>Soemiyati, Hukum Perkawinan Islam dan Undang-undang Perkawinan, (Yogyakarta: Liberty, 1982), 103

<sup>3</sup> Amir Syarifuddin, Hukum Perkawinan Islam di Indonesia Antara Fiqh Munakahat dan Undang-undang Perkawinan, Ed. 1, Cet. Ke-2, (Jakarta: Prenada Media, 2006), 201.

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<sup>4</sup> Retnowulan Sutantio, Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek* (Bandung: CV Mandar Maju, 2009), 58.

adjudicating a case in determining the conclusion of the event that was used as the reason for divorce by the Plaintiff. The witness statement is one factor determining whether a divorce case is granted or rejected by the panel of judges examining the case. In resolving a case, including a divorce case, the court must examine all the facts carefully and thoroughly before making a decision. In court proceedings, of course, problems cannot be separated from evidence because with evidence, the judge will get a clear picture of the disputed case.

Related to the problem of testimony, namely witnesses who did not directly witness what is called *de auditu* testimony in the Civil Procedure Code. As complained by the Defendant or Respondent that occurred at the Donggala Religious Court, in practice, handling and deciding divorce cases using *de auditu* witnesses. The Plaintiff or Petitioner presented witnesses who did not know or witnessed firsthand the events which were the reasons for the divorce filed by the Plaintiff or Petitioner at the Donggala Religious Court. Or in other words, the party filing for divorce at the Donggala Religious Court in its evidence presents witnesses *testimonium de auditu*, and the judge uses these witnesses as evidence.

Meanwhile, the position of witness testimonial juridically does not meet the material requirements of witnesses as evidence. This is based on Article 171 HIR, Article 1907 of the Civil Code, that the information given must be based on a clear source of knowledge, and a source of knowledge justified by law must be experienced, sights, hearings that are direct and events or occurrences related to the subject matter disputed by the two parties. So it becomes a

consideration for researchers to examine in a study entitled Analysis of Judges' Decision on Witness Evidence in 2020 Divorce Case in Donggala Religious Court

## 2. Literature Review

### 2.1 Overview of Witness Evidence

Witness evidence is one of the pieces of evidence contained in evidentiary law. The word "witness" is a noun in Indonesian that means "a person who sees or knows". According to Abdul Rahman Umar, the definition of a witness is a person responsible because he witnessed something (event) that other people did not witness. At the same time, testimony is a term regarding the notification of someone right before the Court by giving testimony to establish a right against another person<sup>5</sup>.

Witness evidence in Islamic law is called *syāhid* (male witness) or *syahidah* (female witness), which is taken from the word *musyāhadah*, which means witnessing with your own eyes, and witnesses are living people. Testimony also comes from the word *i'lām* (notification). The word *syahida* is *alima* (knowing). *Syahida* is a person who brings testimony and conveys it because he witnesses what other people do not know<sup>6</sup>. To be a witness in a case, you must meet the formal requirements to become a witness<sup>7</sup>. According to the law,

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<sup>5</sup> Abdul Rahman Umar, *Kedudukan Saksi dalam Peradilan Menurut Hukum Islam*, (Jakarta: Pustaka Al-Husna, 1986), 37

<sup>6</sup> Sayyid Sabiq, *Fikih Sunnah*, Jilid 14, Alih bahasa, Imron AM, (Bandung: Al-Ma'arif, 1989), 55

<sup>7</sup> M. Natsir Asnawi, *Hukum Pembuktian Perkara Perdata di Indonesia* (Yogyakarta: UII Press, 2013), 31.

these conditions are a. Capable of being a witness, b. Information submitted at the trial court, c. Examination of witnesses is carried out one by one, d. Saying an oath or promise before giving testimony. In comparison, the material requirements are a. The information conveyed is an event that was seen, heard, and felt, not the result of conclusions, observations, and information from other parties (Article 171 paragraph (2) HIR/308 paragraph (2) Rbg). b. The information given must be given reasons and sources of knowledge (Article 171 paragraph (1) HIR/308 paragraph (1) Rbg). c. The statements of the witnesses must agree with each other (Article 172 HIR/309 Rbg).

Providing legal testimony is *fardlukifayah*, meaning that if two people have given testimony, everyone has dropped their obligations. But if everyone refuses and no one wants to be a witness, then everyone is sinful because the purpose of the testimony is to maintain rights<sup>8</sup>.

In terms of the value and strength of evidence or "the degree of evidence" of witness testimony, for witness testimony or testimony to have value and strength of evidence, it is necessary to pay attention to several main provisions that a witness must meet. This means that for the testimony of a witness to be considered valid as evidence that has evidentiary value, the following provisions must be fulfilled: First, an oath or promise must be made. Second, witness testimony is valuable as evidence. Third, witness testimony must be given in court. Fourth, the testimony

of a witness alone is considered insufficient.

According to fiqh scholars, in a dispute before a panel of judges, the plaintiff must present evidence that can support his lawsuit, or the judge must request evidence from the plaintiff so that the judge can examine the issue in dispute and determine the law fairly by convincing evidence. The claim cannot be accepted if a lawsuit is not accompanied by convincing evidence. Thus, in deciding a case, the judge is bound by the evidence submitted by the plaintiff. If the evidence submitted by the plaintiff is convincing and the Defendant cannot refute or weaken the evidence, the judge will decide the case according to the available evidence. Jumhur from Imam Hanafi, Syafi' and Hambali in, In fact, the view of the Companions about this school of thought is that the *qarinah* is not taken into account in the evidentiary limits and the judges depend on valid evidence or witness statements.

## 2.2 General Overview of the Judge's Decision

A judge's decision is a statement made in written form by a judge as a state official who is authorized to do so and uttered in front of a court of civil cases, which is open to the public after going through the process and procedures of civil procedural law, in general, to resolve or end a civil case to create legal certainty and justice for the parties to the dispute.<sup>9</sup>

Judges, in making decisions, are guided by principles, a set of tools that are mandatory for judges to use. The

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<sup>8</sup> Anshoruddin, *Hukum Pembuktian Menurut Hukum Acara Islam dan Hukum Positif*, (Yogyakarta: Pustaka Pelajar, 2004), 73

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<sup>9</sup> Muhammad Nasir, *Hukum acara perdata* (Jakarta: Djambatan, 2005), 121

principles are as follows: 1. Contains clear and detailed reasons. That is, decisions handed down must be based on clear and detailed considerations, with legal reasons which form the basis of the considerations starting from provisions, articles of laws, and regulations. Constitution, customary law, jurisprudence, and legal doctrine. 2. Obligation to adjudicate all parts of the lawsuit, i.e., the verdict must totally and thoroughly examine and adjudicate every aspect of the lawsuit filed. 3. Cannot grant more than demands; the decision may not grant or exceed the demands in the lawsuit. 4. Pronounced in public, i.e., the decision is pronounced in a hearing open to the public.

In addition to the principle, the judge's decision also has stages which consist of three stages<sup>10</sup>, namely: First, the constant stage, which is to evaluate the legal events submitted by the parties to him by seeing, acknowledging or justifying the occurrence of events that have been submitted, which is based on evidence in evidence. Second, the qualification stage, namely assessing the events that are considered to have occurred, including which legal relationship and what law, in other words, the legal relationship must be found for the events that have been confirmed. The three constituent stages, namely establishing the law or providing justice to the litigants<sup>11</sup>.

The judge's decision is divided into interlocutory and final decisions. The interlocutory decision is a decision taken or dropped by a judge during the

examination process<sup>12</sup>, not final, while a final decision is a decision to end a dispute that occurs between the disputing parties or commonly called the end verdict.

### 2.3 Overview of Divorce

Divorce is the end of a marriage bond fostered by a husband and wife caused by several things, such as death and a court decision.<sup>13</sup> In this case, divorce is seen as the end of an unstable marital relationship where the husband and wife live separately and are officially recognized by applicable law. This must be acknowledged and cannot be denied when there is a breakdown in a household, and maintaining it is also futile. If in a marriage bond, the essence of a marriage is not found and a divorce occurs, then Islam regulates the law of *talaq* (divorce) and arguments and wisdom in marriage.

Divorce is only valid after a court decision has permanent legal force. The reason for the divorce has been regulated in article 39 paragraph (2) of Law no. 1 of 1974 concerning marriage Jo article 19 of government regulation No. 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning marriage, namely as follows: 1. One of the parties commits adultery or becomes a drunkard, a connoisseur, a gambler and so on which is difficult to cure, 2. One party leaves the other for 2 consecutive

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<sup>10</sup>Sudikno Mertokusumo, *Faktor- faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: Raja Grafindo Persada, 1988), 87-89

<sup>11</sup> Ibid...p.385

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<sup>12</sup> Abdul Kadir Muhammad, *Hukum Acara Perdata Indonesia*, (Bandung: P.T. Citra Aditya Bakti, 1992), hal. 165

<sup>13</sup> Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia Antara Fiqh Munakahat dan Undang-undang Perkawinan*, Ed. 1, Cet. Ke-2, (Jakarta: Prenada Media, 2006), 201.

years without the other party's permission and valid reasons or for other reasons beyond his control. 3. One of the parties received a prison sentence of 5 years or a more severe sentence after the marriage occurred. 4. One of the parties committed cruelty or severe abuse that endangered the other party. 5. One of the parties has a disability or illness, which causes them to be unable to carry out their obligations as husband/wife. 6. Between husbands and wives, there are constant disputes and fights, and there is no hope of living in harmony in the household again. Specifically for those who are Muslim, there are two additional reasons for divorce as stipulated in article 116 of the compilation of Islamic law: The husband violates the taklik-divorce and converts religion or apostasy, which causes disharmony in the household.

Divorce Procedures, a divorce request can be filed by either the husband or wife to the Religious Court in the jurisdiction where they live. The husband applies for the mental divorce of his wife, while the wife files for divorce, then the Religious Court holds a hearing to examine the divorce application and Law suit.<sup>14</sup>

As a result of divorce, the impact of divorce carried out by husband and wife, both those who already have children and those who have not, are as follows: husband and wife live separately, husband/wife can freely remarry with another person, offspring, children will lose a safe place of life, which can result in hampering the growth of his life either directly or indirectly. Another consequence has been the great turmoil

of the soul, which the children directly feel; even though these children are guaranteed a life with good service by selected relatives, assets should be divided into two parts, one half for the ex-wife and the other for the ex-husband.

### 3. Methodology

This study used a qualitative case study. The case study is marriage custom in Gorontalo province. We studied judges' decision on witness divorce evidence in Donggala religious court. Data was gathered through direct observation, in-depth interviews and written material analysis<sup>15, 16</sup>. The interviews were conducted judges and employees in the religious court. The data, then, was analyzed through data reduction, data presentation, and verification. From the data analysis, the researchers built themes by categorizing the data according the similarities of phenomena<sup>17, 18</sup>. The researcher also

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<sup>15</sup> Rusli, R., & Nurdin, N. (2021). Understanding Indonesia millennia Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*. doi:10.1007/s10639-021-10779-7

<sup>16</sup> Rusli, R., Hasyim, M. S., & Nurdin, N. (2021). A New Islamic Knowledge Production And Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact With Online Sources. *Journal of Indonesian Islam*, 14(2), 499-518.

<sup>17</sup> Nurdin, N., & Pettalongi, S. S. (2022). Interpretive case study to understand online communication in an e-tendering project implementation. *Jurnal Manajemen Komunikasi*, 7(1), 39-54.

<sup>18</sup> Nurdin, N., & Pettalongi, S. S. (2022). Menggunakan Paradigma Studi Kasus Kualitatif Interpretatif Online dan Offline Untuk Memahami Efektivitas Penerapan E-Procurement. *Coopetition: Jurnal Ilmiah Manajemen*, 13(2), 155-168.

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<sup>14</sup> K. Wantjik Saleh, *Hukum Perkawinan Indonesia* (Jakarta : Ghilia Indonesia, 1982), 40

checks the validity of the data through the verification of the data from different sources.

#### **4. Results and Discussion**

##### **4.1 Types of Witness Evidence in Divorce Cases**

The embodiment of legal norms in the application of Civil Procedure Law related to evidence is very important in the judicial process in Indonesia because the evidence will determine the position between Plaintiff and the Defendant so that the judge can consider the legal facts and existing evidence.

Legal evidence, according to the provisions of the Civil Procedure Law in article 164 HIR/284 RBg, valid evidence is letters, witnesses, confessions, oaths, and judges' presumption of each piece of evidence.

In connection with the stages of proof in examining the main case, there are 2 (two) types of evidence must be met by the litigants, both against the Plaintiff and the Defendant.

Evidence in the form of witness testimony is the most important evidence in handling a case, so it cannot be ignored. The information given by a witness is intended to find out whether the Defendant committed an act or not. The formulation of witness statements is placed in the first order of other evidence, not only because of the degree of truth but also because humans give witness statements, so that witness statements are not equated with other evidence.

So the witness evidence in question is a witness who gives information before the trial, by fulfilling certain conditions, about an event or situation that has been seen, heard, and experienced by himself as evidence of

the occurrence of certain events or conditions that can be used as evidence about the existence of an event or incident. Witnesses in civil law have been regulated in several statutory articles, namely Articles 169-172 HIR, 306-309 Rbg, and Articles 1895, 1902, 1904-1912 of the Civil Code.

The formal requirements to become a witness according to the law are being capable of being a witness, having statements submitted in court hearings, having witness examinations carried out one by one, and taking an oath before giving testimony, while the material requirements are that the information conveyed is an event that was seen, heard, and felt, based on reasons and sources of knowledge, as well as the statements of the witnesses agree with one another.

In addition to the material requirements for a witness, formal requirements are also required. This is intended so that the existence of a witness can actually provide correct information and is far from falsehood, so that witnesses, before giving testimony before a court hearing, the Panel of Judges reminds witnesses that giving false testimony is Witnesses in court cases can be imprisoned for a maximum of seven years, Article 242 paragraph (1) of the Criminal Code.

Meanwhile, regarding the evidence submitted at trial by the Plaintiff, sometimes some witnesses did not know exactly the household case problems experienced by the Plaintiff (Wife) and the Defendant Petitioner (husband) and the Respondent (wife). Still, the Panel of Judges gave a statement the witness was considered to argue that the reasons for divorce submitted by the Plaintiff were correct and proven so that the divorce

application was granted with a divorce decision.

Based on the description above, the examination of witness evidence in the 2020 divorce case at the Donggala Religious Court shows that the witnesses submitted by the litigants did not meet the material requirements. These witnesses did not experience directly what was explained before the court but only heard from the Plaintiff/Petitioner or another person (*testimonium de auditu*), even though the number was relatively small.

So the form of witness evidence in the 2020 Divorce Case at the Donggala Religious Court is that the witnesses presented by the Plaintiff, on average, witnesses know the household cases of the Plaintiff. Hence they filed a lawsuit for divorce, but among them, there were witnesses presented by The Plaintiff did not know about the Plaintiff's household cases, and the household case issues experienced by the Plaintiff were known to him only from the stories of the Plaintiff or from the stories of the Plaintiff's family, and from a total of 390 divorce cases that were decided were granted in Donggala Religious Court in 2020, there were seven cases where the witness evidence presented by the Plaintiff was that the witness did not see or hear directly the domestic problems experienced by the Plaintiff and Defendant (wife and husband).

#### **4.2 Legal Position and Considerations for Witness Evidence**

The evident is the most important part of deciding a case because the procedural law regulates how the State, through its means, exercises its rights. The proof is the central point of examining cases in court proceedings

because of that proof are provisions that contain outlines and guidelines on ways justified by law to prove the guilt of the accused party against the opposing party. Furthermore, the Panel of Judges considered whether the statements of the litigants, the statements of the witnesses, and the documentary evidence submitted by the Plaintiff and the Defendant were compatible with one another.

One of the pieces of evidence used in court proceedings, both in civil and criminal cases, is witness evidence. Before giving testimony at trial, witnesses must first take an oath according to their religion or belief to provide true information or provide information that can provide clues of a case or matter because this oath is used as a guarantee so that what is explained by a witness is true and nothing other than what is. The legal power of an oath as a moral basis for testimony is one of the elements that must be fulfilled to strengthen the truth of evidence before God. The purpose of having an oath so that witnesses can be accountable for their words is not only in front of humans, but even the sanctions are binding themselves before their Lord.

The reasons put forward by Plaintiff, accompanied by witnesses and strong evidence, influence the judge's consideration to decide on a divorce case after deliberation.

Every law, be it procedural or material law, must have a legal reason or a logical ratio, namely the motives or reasons that underlie a law. Therefore, in determining the law, every judge must examine the legal intent of a legal provision and the legal illat of a concrete event to which the legal provision will be applied. In this case, there is also a fiqh



rule, "*Al-hukmuyaduruma' aillatihi Jadianwa' adaman*" which is a law that applies together with whether there is an illat law in a concrete event.

Regarding the procedural law that applies within the religious courts, specifically related to divorce cases, there are procedural law provisions both in article 22 paragraph 2 PP No.9 of 1975 and in article 76 paragraph 1 of Law No.7 of 1989, which essentially states that in matters Divorce lawsuits are based on the reason that between husband and wife there are continuous disputes and fights. There is no hope of living in harmony in the household or syiqaq. In deciding the divorce case, the testimony of witnesses from the family or people close to the husband must be heard. From these provisions, it can be understood explicitly that proof in a divorce case, for this reason, must be with witness evidence.

The position of the witness's evidence in the divorce case at the Donggala Religious Court is crucial to the acceptance or rejection of the plaintiff's application for divorce, one of the pieces of evidence was the rejection of the Petitioner's divorce application due to being unable to submit witness evidence at the trial, which can be seen in the decision of case number: 124/Pdt.G/2020/PA.Dgl neighbor July 15, 2020, for more details on the decision, can be seen in the attachment to the Thesis.

In deciding a case, the judge will make a judgment by assessing the witnesses and evidence submitted. The meaning of the word material for consideration in the Big Indonesian Dictionary is material for thought

In a divorce trial, the judge must carefully consider the case faced by the

Plaintiff and may not side with one of the parties for the common good. So if the Plaintiff has insisted on suing accompanied by strong witnesses and evidence, meets the legal requirements criteria, and mediation has been carried out between the two parties. Still, it has not produced results to reunite the household. The judge can grant the Plaintiff's lawsuit.

So that the analysis of the judge's decision on witness evidence in the 2020 divorce case at the Donggala Religious Court is that the Panel of Judges in examining and adjudicating divorce cases at the Donggala Religious Court is very thorough and careful and applies all laws and regulations that apply both formal and legal material related to divorce cases, however, even though in such a way the Panel of Judges has implemented all applicable laws and regulations in handling divorce cases at the Donggala Religious Court, it is still conveyed to both the Plaintiff and the Defendant if they are not satisfied or object to the decision of the Panel of Judges in Religious Court, to submit an Appeal, cassation, and judicial review remedy. And from the beginning of the year to the end of 2020, not a single case has been pursued by appeal, cassation, and Judicial Review, indicating that formal and material application of law in handling divorce cases at the Donggala Religious Court has followed legal provisions applicable.

As for the parties who complained and objected to the divorce case decision at the Donggala Religious Court, this was because there was materially defective witness evidence, namely the testimonial *de auditu* testimony, although it was admitted that the divorce case decision using materially

disabled witness evidence was very low when compared to with testimony that fulfills formal and material requirements. So that the complaints and objections of the party are also an outlet and emotional outburst because they feel they have been betrayed and abandoned by their partner. Still, legally what is done or the path taken by the couple who filed for divorce at the Donggala Religious Court is valid and reasonable.

## 5. Conclusion

The form of witness evidence in the 2020 divorce case at the Donggala Religious Court is witness evidence presented by the Plaintiff and Defendant, who are witnesses who meet the formal and material requirements. Still, there is also witness evidence presented by the Plaintiff who did not meet the material requirements, namely the testimonium of the de auditu testimony. There were 7 cases out of 390 cases were granted divorce in 2020 at the Donggala Religious Court.

The position of witness evidence in the 2020 divorce case at the Donggala Religious Court plays a very important role. It is a requirement for a lawsuit or application to be granted so that if the plaintiff concerned cannot present strong witness evidence, the lawsuit will be rejected by the Donggala Religious Court judges. In contrast, the legal considerations for witness evidence in the 2020 divorce case at the Donggala Religious Court are witness evidence presented by the Plaintiff and Defendant who are witnesses who meet the formal and material requirements, as well as the information submitted by the first witness and the second witness when connected support and conform to one

another and do not conflict with the arguments of the Plaintiff's lawsuit, so that it fulfills the requirements for the granting of the lawsuit or divorce application, or on the contrary, the lawsuit for divorce is rejected.

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