

Analysis of Court Decisions on Divorce Cases Based on Timor Leste's Civil Code

JOSÉ ANDRADE

Postgraduate Program of Legal Study Universidade Da Paz

Abstract: Marriage and divorce laws in Timor-Leste, focusing on how marriage is viewed as a partnership to build a family, but challenges like dishonesty, infidelity, or financial irresponsibility can lead to separation. It highlights how some men may abandon their families without communication, prompting legal action. Divorce cases are rooted in constitutional rights, ensuring access to courts and justice regardless of economic status. References to John Rawls's principles of justice emphasize equal rights and tackling social inequality. Article 1665 of the Timor-Leste Civil Code specifies three causes for ending marriage: death, divorce, and court decisions, with interpretations suggesting motives linked to mutual will to divorce.

This legal framework underscores the importance of equality, fairness, and protection of individual rights in marriage and its dissolution. It demonstrates Timor-Leste's commitment to addressing social challenges through justice, ensuring that even vulnerable parties can access legal recourse. This approach reflects both the societal and constitutional values underlying marriage and divorce laws in the country.

I. Introduction

Marriage and divorce laws in Timor-Leste reflect a balance between cultural traditions and legal frameworks, emphasizing the importance of family discussions when people from different cultural backgrounds marry. These discussions include conversations about customs, which help maintain the bond between the bride and groom, while also preserving cultural identity. In cases of divorce, Timor-Leste employs a civil law system where judges and juries determine the rights and appropriate legal outcomes for the parties involved, ensuring justice is upheld.

The historical and cultural significance of marriage in Timor-Leste is deeply tied to community values, with parents playing a vital role in guiding their children to honor their heritage. The legal system further supports this by addressing social challenges and protecting individual rights during marital disputes. This approach showcases the country's commitment to fairness, equality, and cultural preservation in the context of family and marriage.

II. Divorce has two aspects, namely:

a) Cultural aspects, namely aspects related to cultural elements with the definition being something related to the culture of a particular group and their customs which include beliefs, traditions, etc. or things related to art such as music, painting, etc.

The definition of cultural culture is all cultural scopes that have existed from generation to generation which include the fields of art, knowledge, law, beliefs, customs, community habits and other related things that exist in a particular community area.

b) Normative Aspect

Normative is fighting firmly on the norms, rules and provisions that apply. In this case the word normative itself refers to a person's attitude, loyalty and allegiance to the rules or the Timor-Leste Civil Process Code, in accordance with article 64 of the Court's jurisdiction in relation to incidental matters:

1) The court that has the authority for the action is also authorized to try the events that arise in it and the questions raised by the defendant as a defense.

2) Decisions on the issues and events raised do not constitute *resjudicata* outside the case concerned, unless one of the parties requests a decision with such amplitude and the court is competent from an international point of view and because of the material and hierarchy.

The divorce lawsuit process in Timor-Leste involves both the plaintiff and defendant attending court proceedings with their legal representatives. They receive a notification letter and participate in hearings to determine the outcome based on the Constitution of Timor-Leste, specifically Article 121, which guarantees judicial independence and outlines the roles of judges.

From a broader perspective, divorce is seen as the legal termination of marriage, where the husband and wife officially decide to separate and forgo their marital duties and obligations. The decision to divorce is often influenced by specific circumstances, reflecting sociological and theoretical views on the dissolution of marriage.

The divorce process in Timor-Leste involves both parties attending court hearings with their legal representatives based on constitutional guarantees of judicial independence. Judges handle cases impartially, adhering to the Constitution and legal principles to ensure justice is served. Divorce is viewed as a formal dissolution of marital bonds, where couples decide to separate due to specific reasons, reflecting a balance between individual rights and legal fairness.

If from the provisions of the civil law of the Timor-Leste Civil Code, with article: 1675, Conversion of separation into divorce is:

1. Divorce proceedings in Timor-Leste are conducted under a structured legal framework, ensuring the independence of judges who are guided solely by the Constitution, laws, and their conscience.
2. Judges hold crucial responsibilities and are protected under the law from arbitrary actions, ensuring fairness and impartiality in their roles.
3. Divorce is legally defined as the termination of marriage, requiring valid reasoning and adherence to specific conditions for its approval, reflecting a balance between individual rights and legal principles.

Marriage is a human process built on agreements and relationships, while divorce procedures vary significantly across societies. In some cultures, divorce is straightforward and occurs with minimal difficulty, whereas in others, it involves more complex and challenging steps. Social and family structures play a vital role in determining the ease of divorce, and in societies where romantic love is less emphasized, divorce often causes less emotional upheaval or societal disruption.

III. Objective/ Purpose

In relation to this Thesis will have the following objectives:

- a) To find out the regulations that have been in effect in accordance with the follow-up of article 121 in the RDTL constitution of 20002.
- b) To find out the applicable regulations that the judge will use to process this divorce case in the Dili District Court of Timor-Leste in accordance with article 309 n. 1 Civil Code Process of Timor-Leste.
- c) The provisions in Articles 1775 and 1779 of the Civil Code outline two types of divorce: mutual consent and legal divorce without the consent of one spouse. Mutual consent divorce occurs when both spouses request

separation or share a mutual will, which can be handled administratively or jurisdictionally. Legal divorce, on the other hand, is initiated by one spouse against the other based on specific reasons that must be alleged and proven in court, ensuring a fair and justified resolution according to the law.

IV. Methodology/ Method

Research methodology encompasses the systematic study of regulations, procedures, and tools used in research. It focuses on activities such as searching, recording, formulating, analyzing, and compiling reports to achieve the goal of solving specific problems effectively. The process ensures a structured approach to understanding the object of study and achieving targeted outcomes.

According to Cholid Narbuko and H. Abu Achmad, research methodology is a scientific branch dedicated to conducting research based on facts or symptoms. It involves a comprehensive process that includes searching, recording, formulating, analyzing, and reporting findings in a scientifically valid manner, guiding researchers in maintaining accuracy and objectivity throughout their studies.

In other words, the research methodology is basically the steps and procedures that will be carried out in collecting data and/or information empirically and scientific books concerning the analysis of divorce decisions in order to solve problems and/or test research hypotheses

There are two research methods, namely:

a) Normative

Definition of normative method: is legal research that places law as a building of normative systems.

b) Empirical

Definition of empirical method: Empirical is an understanding that has an object of study regarding community behavior.

Difference: Culture has differences both in terms of approach and method. Normative legal research, examines law as an autonomous norm (lawin books), while the understanding of empirical law uses the lawin action approach.

Methodology is a study in studying the regulations of a method. The word method comes from Greek, namely *methodos* which means a way to find out something that has systematic steps.

V. Concepts and research framework/ concept and research framework

Through the research, the author will obtain divorce data for three years to compare the data to obtain an increase and decrease in divorce cases in three years,

Here are three important points:

1. The Dili District Court handled 21 divorce cases in 2019, a number considered quite high by the author.
2. In 2020, the number of divorce cases decreased slightly, with the court processing 9 cases.
3. By 2021, divorce cases rose to 12, and the author predicts a future increase in such cases while recommending community outreach to address this issue.

1.5. Discussion and finding/discussion and findings/discussion

Discussing the steps to resolve divorce cases in the Timor-Leste District Court.

The divorce process in Timor-Leste involves systematic court procedures guided by constitutional principles to ensure fairness and justice. It begins with both parties submitting necessary documents, followed by a hearing where their views are considered. If mutual consent is achieved, they are given 90 days to finalize

agreements on asset division and parental responsibilities. Otherwise, the court proceeds with standard processes until a legal verdict is reached, ensuring the rights of both parties are upheld throughout.

Marriage and divorce in Timor-Leste are governed by the Constitution, which ensures the rights of citizens to form a family and seek legal resolutions in case of disputes. If a couple can no longer live together due to mutual issues, they may file for divorce at the Dili District Court. The court's decision is guided by Article 48 of the Constitution, which guarantees every citizen the right to defend their interests through lawsuits or legal claims, maintaining fairness and justice.

The process of registering a divorce case in Dili District Court follows the Timor-Leste Civil Process Code and requires specific documents such as marriage and birth certificates, details of the family home and property, agreements on joint property division and maintenance, and arrangements for minor children. Once the application is submitted, it is reviewed by a judge who schedules a meeting between the husband and wife to initiate the legal proceedings.

The divorce case procedure requires the judge to assess the completeness of documents provided by the plaintiff and offer a 10-day period for submitting missing ones. Once the initial review is completed, the judge sets a conference date to determine whether the divorce proceeds through mutual consent or litigation. If both parties consent, the plaintiff must finalize additional agreements, including property division and paternal responsibilities.

Within 90 days, the plaintiff is required to submit the necessary agreements, following Article 828, paragraph 3 of the Timor-Leste Civil Process Code. After the documents are verified, the judge conducts both conferences, ensuring that the legal provisions are met and the divorce process adheres to proper judicial procedures. This structured timeline reflects the focus on fairness and thoroughness in handling divorce cases.

The divorce process in Timor-Leste involves systematic steps guided by the Civil Process Code. Initially, the judge evaluates the completeness of the documents submitted by the plaintiff and provides a 10-day period to address any deficiencies. Once this is done, the judge schedules the first conference to determine whether the divorce proceeds through mutual consent or litigation. If mutual consent is achieved, the plaintiff must finalize agreements, such as property division and paternal responsibilities, within 90 days.

If reconciliation is unsuccessful, the judge proceeds to hold definitive conferences in accordance with articles 828 and 829 of the Civil Process Code. The decision, after thorough review, is submitted to the Civil Registry Office to ensure proper documentation and recordkeeping. Throughout the process, fairness and adherence to legal principles are emphasized to protect the rights of both parties and ensure justice is served.

VI. Conclusion

The author will analysis the divorce case according to the decision of the Timor-Leste district court, namely:

1. The process of resolving divorce cases in Timor-Leste begins with filing the case at the court, following Article 827 of the Civil Process Code. The initial petition must include specific details such as property agreements, child custody arrangements, and evidence supporting the request for separation.
2. Once the case is filed, the judge reviews the documentation and allows a 10-day period for any missing documents to be submitted. If reconciliation attempts fail, the judge proceeds with further conferences to finalize the agreement on joint assets and parental responsibilities within 90 days, as stated in Article 828.
3. If reconciliation is unsuccessful, the case advances to a definitive hearing where the judge declares the divorce. The decision is then submitted to the Civil Registry Office to formalize the separation, ensuring fairness and compliance with the Civil Process Code throughout the legal proceedings.

REFERENCE

- [1] RDTL Constitution, 2002
- [2] Timor Leste Civil Code, 2010
- [3] Timor-Leste Civil Prose Code, 2006