

## **The Divorce Causes of Couples with 30 Years Marriage Period or More in the View of Judges at Mojokerto Religious Court**

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### **Abstract**

For couples who have lived together for more than 30 years, feeling sad and happy together, and accepting weaknesses of each partner, are their habit in daily life. However, if they chose to divorce, this is a very unfortunate thing. In this thesis, the research questions are (1) What are the factors causing divorce of couples with 30 years marriage period or more in the view of judges at Mojokerto Religious Court? And (2) what are the judges' considerations in judging divorce of couples with 30 years marriage period or more? The type of research used in this thesis is a field research and the approach is a qualitative approach. The author uses two methods of data collecting those are interview and documentation. In result, the judges' say there are some divorce causes according to this matter, those are (1) financial problems, (2) infidelity, (3) boredom, (4) irresponsibility of their children, (5) emotionally disconnected, (6) failure of the husband to lead his family, (7) domestic violence, (8) major changes in priorities, (9) And unresolved conflict. None become their prime consideration, and nothing taken into account in judging this type of divorce case unless the facts and the proof which the spouses brought.

**Keywords: Divorce Causes; Marriage Period; Judge's View**

### **Introduction**

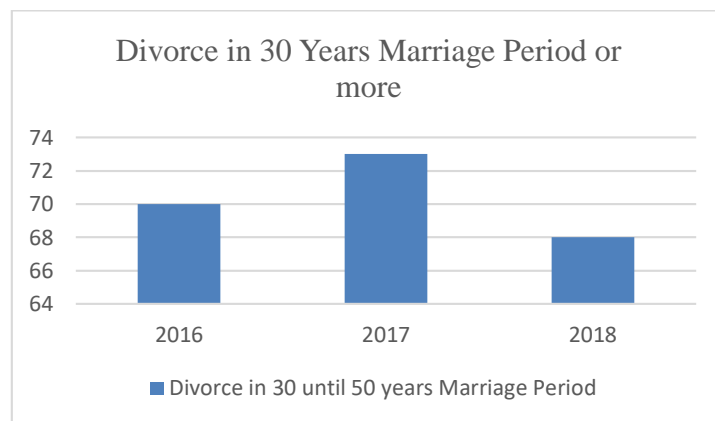
Divorce is never be expected in marriage. When man and woman agreed to be married, they never thought to do divorce in the future. However, in reality, household life is not always smooth and easy, lots of obstacles and difficulties for continuing marriage relationships. Therefore, a truly deep thought is needed prior to divorce, because divorce can be the worst way for families and their children, even though it could be a way out for couples who are not harmonious.

For couples who have lived together for more than 30 years, feeling sad and happy together, and accepting weaknesses of each partner, are their habit in daily life. However, if in the end they chose divorce as the best solution for their problems, this is a very unfortunate thing. Because living together for more than 30 years, the husband and wife should be more mature in facing household problems and have adapted to each other. In addition, divorce is very vulnerable to occur at the 0 to 30 years marriage period, because of the attitude of husband and wife who are still unstable. Conversely, at 30 years marriage period or more divorce is gradually become rare. However, in the past 10 years,

divorce of elderly couples are increasing every year. The data is presented by *Office for National Statistic*.<sup>1</sup>

The author chose Mojokerto Religious Court as the location of this research because the case of divorce of couples with 30 years marriage period or more is quite common in Mojokerto Religious Court. Even most of the judges and staff in Mojokerto Religious Court are not very astonished and treat that case just like a usual case in Mojokerto Religious Court. Below is the data of divorce that occurs in couples with a marriage period of 30 and more in the Mojokerto religious court for the last 3 years are as follows:<sup>2</sup>

**Chart 1:** Divorce cases in 30 years marriage period or more in Mojokerto Religious Court



That data covers whether in the case of husband who has the initiative to divorce (divorce applicant) or in the case of wife who has initiative to divorce (divorce claim), and whether the husband or wife were previously single or not. And among those divorces, there are some either the husband or the wife or maybe both who married while being a widow / widower. These data also show that divorce of couples with 30 years marriage period or more in Mojokerto Religious Court is quite common.

As for why the author chose the marriage period in 30 years or more, because most of the spouses are married in their 20, then if they have been lived together for 30 years or more, that means their age is about over 50 years old. In that age, most likely man and woman begin to grow in stagnation stage,<sup>3</sup> a stage where man considered andropause, due to the gradual decline in testosterone level which can affect libido, moods and sexual performance, and woman considered menopause, marking the end of her reproductive period. In other word, most likely they will not able to give birth anymore, so they can focus only on educate their children and live peacefully. Moreover, in that midlife period, it is common for men and women to worry that their sex life is not what it was or that their interest in sex is waning. After all, so many factors can affect it, such as relationship

<sup>1</sup> "Marriage and divorce on the rise at 65 and over", <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/articles/marriageanddivorceontheriseat65andover/2017-07-18> accessed on September 4<sup>th</sup> 2018; Eny Kartikawati, "Pasangan Cerai Saat Usia 60-an Meningkat Dalam 10 Tahun" <https://wolipop.detik.com/read/2012/12/27/080844/2127505/854/pasangan-cerai-saat-usia-60-an-meningkat-dalam-10-tahun> accessed on September 3<sup>rd</sup> 2018.

<sup>2</sup> Mono, *Interview* (Mojokerto, October 8<sup>th</sup> 2018)

<sup>3</sup> F. J. Monks, *Psikologi perkembangan: pengantar dalam berbagai bagiannya*, (Yogyakarta: Gadjah Mada University Press, 1982), 326.

strain, the work-life juggle, financial pressures or looking after family. During the perimenopause, erratic ovarian function leads to varied estrogen levels.<sup>4</sup> Estrogen levels decline, causing a decrease of blood flow to the genitals. And that, in turn, can mean delayed arousal, delayed or absent orgasm, or diminished intensity of orgasm.<sup>5</sup> In midlife, men go through a decline in testosterone production as well as other changes, such as declines in libido, penile sensitivity, and blood flow to the genitals. The man may face performance anxiety where fear of failure leads to ongoing sexual dysfunction. If the pattern continues, a man may withdraw from sexual encounters or any expressions of intimacy.<sup>6</sup> Yet if they still choose to end their marital bond, at this point, lot of questions may arise, why?

Because of those circumstances, the author became curious and want to know and explain to the readers the causes of a couple who have lived together for 30 years or more, however they chose to divorce above anything. Then what are the reasons that cause them to think that divorce is the only solution and the best solution to do according to the judges, and how are the judges' considerations in judging the case, regardless they have lived together for more than 30 years, this will be answered in this thesis.

From previous research, the author did not find research with the same title as the author's research title. However, the author raised several studies as references in enriching the data in the author's research. In other word, previous research has become one of the author's references in conducting research so that the author can enrich the theory used to reviewing the research. The closest topic is thesis wrote by Khairil Latifah<sup>7</sup>, year 2013, in her undergraduate thesis entitled "Factors Causing High Divorce Claim Based on Marriage Period in Malang Religious Court".<sup>8</sup> The only similarity is both are discussing the causes of divorce with marriage period as a variable. The dissimilarities are, that thesis is only focus on divorce claim, while the author's thesis focus on divorce applicant and divorce claim, and that thesis in covering up all marriage period, meanwhile the author's focus only on divorced couples with 30 years marriage period or more. The aims of this thesis are to explain the matter causing divorce divorce of couples with 30 years marriage period or more in the Mojokerto Religioous Court and to explain the judges' considerations in judging divorce of couples with 30 years marriage period or more in the Mojokerto Religious Court.

## Research Method

The type of research used in this thesis is a field research (empirical research)<sup>9</sup>, and the approach used in this thesis is a qualitative approach.<sup>10</sup> Then based on source of data, the data in this thesis is divided into three groups, primary, secondary and tertiary.<sup>11</sup>

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<sup>4</sup> Navneet Magon, Monica Chauhan, Sonia Malik, and Duru Shah, "Sexuality in midlife: Where the passion goes?", *Journal of Mid-life Health*, Vol. 3 (Dec 2012), 63.

<sup>5</sup> Joyce Flory, PhD, *Female Sexuality at Midlife: Helping women deal with sexual dysfunction*, (Chicago: American Osteopathic Association, n.d.), 16.

<sup>6</sup> Barbara Bartlik, M.D. and Marion Zucker Goldstein, M.D., "Men's Sexual Health After Midlife", *Psychiatric Services*. Vol. 52, 261.

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<sup>8</sup> <http://etheses.uin-malang.ac.id/88/>, accessed on September 4<sup>th</sup> 2018.

<sup>9</sup> Husaini Usman, et al. *Metodologi Penelitian Sosial*, (Jakarta: PT Bumi Rosdakarya, 2006), 5.

<sup>10</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2002), 3.

<sup>11</sup> Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik* (Jakarta: Rineka Cipta, 2006), 129.

Primary data represents data obtained directly by interviewing the judges of the Mojokerto religious court. Secondary data represents data obtained through divorce certificates that recorded a couple who have lived together in marital bond for 30 years or more and from books, theses, journals, magazines, and website. Tertiary data represents guidebooks and dictionaries.

To obtain data in this thesis, the author uses 2 data collection techniques, Interview and Documentation<sup>12</sup>. The author conducted interviews with 3 judges of the Mojokerto religious court among 4 judges available. The interviewer will ask several open-ended questions, and the interviewees are freely to give an answer responding to the question of research. The author made an outline of the topic, so the interview would not stray too far from the main topic. In other words, the author uses unstructured interview, and the questions will vary and depend on the judges' answers. Documentation is reviewing data from existing record, that is divorce certificate of couples who have lived together in marital bond for 30 years or more. Verifying data is done by analyze between the answers of the judges' and the divorce certificates.<sup>13</sup>

## **Findings and Discussions**

### **First Discussion**

Divorce is common nowadays, but that does not mean making the decision to end a marriage has gotten any easier. Often, there are a number of factors to consider, from children to finances, and sometimes the answer is not always in black and white. Infidelity, lack of communication, financial troubles, sparing sessions of sex and intimacy are some of the common reasons for divorce.

Apparently, all of the judges' said that the household problems is almost the same whether they are new-wed couple or not. Even though they are more mature than new-wed couple, and have a better ability in controlling emotion than new-wed couple.<sup>14</sup> But even it is said that there are no difference in divorce causes of any couple, there are some causes for couples who have lived together in marital bond for 30 years or more that stated directly by judges'. those are (1) financial problems, (2) infidelity, (3) boredom, (4) irresponsibility of their children, (5) emotionally disconnected, (6) failure of the husband to lead his family, (7) domestic violence, (8) major changes in priorities, (9) And unresolved conflict.

Financial problems: The digital economy has made the spouses easier than ever to spend money and engage in bad financial habits. Three things that relate directly to financial issues: household debt, shopaholic spouse, and a spouse who cannot work anymore or refuses to work. When household debt levels surpass the income, stress is created in the home. Stress builds as the household takes on more debt to pay current debt. In result, wife report more dissatisfaction with marriage than do husband. Because the economic dependence of wife towards her husband, the wife will not try to help the husband for finding a new source of income. The longer the debt still unpaid, the higher the chance to bring an end in this circumstance.

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<sup>12</sup> Abu Achmadi and Cholid Narkubo, *Metode Penelitian* (Jakarta: PT. Bumi Aksara, 2005), 83

<sup>13</sup> Lexy, *Metodologi Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2002), 190.

<sup>14</sup> S.L. Willis, J.D. Reid., *Life in the Middle: Psychological and Social Development in Middle Age*. (San Diego: Academic Press, 1999), 233.

Infidelity: Motivations for extramarital affairs are vast and can vary by gender. Frustration in the marriage is one common trigger and neither had the skill set to communicate these feelings. Men are more likely to have affairs than women and are often seeking more attention or even sex. Men express their love in a more physical way, they often do not have the perfect feeling words for their wives.<sup>15</sup> So sex becomes an important path to connection and intimacy. If men are not sexually satisfied they take that rejection to heart, and it can easily translate to feeling unloved. In fact, men are more likely to cheat than women due to a feeling of insecurity. Moreover many research have shown that woman in midlife and later-life, ranging from 45 years old and more, experienced to declined estrogen level and of course her body and face are aging, and may lead to changing her personalities and eventually become bored with the sexual routine. A communication between each other is also play a big role in this problem. Women are more likely to feel unappreciated or ignored, and seek the emotional intimacy of an extramarital relationship.<sup>16</sup> With or without individual or marital risk factors there are a number of possible reasons for marital infidelity. One is the role of unmet needs. One partner may be incapable of fulfilling their partner's needs, but far too often, those needs have not been expressed. Marital partners are not mind readers. Another is the lack of addressing problems directly.

Boredom: In the first year of marriage, a married couple should learn to adjust. Do not forget to understand each other's shortcomings and accept them sincerely. When the relationship is stable and the marriage period is getting longer, the next problem is overcoming boredom due to repetitive routines.<sup>17</sup> Spouses that are in a long-term marriage they become more familiar and comfortable with each other. Moreover, once married, couples too often forget the importance of continuing to woo and flirt one another. Couples need to re-kindle their love, no matter how buried it may appear. Even if one has divorced, and a new relationship initially seems exciting, this issue of boredom will eventually creep into any new relationship unless it is addressed.

Irresponsibility of their children: Due to physical disabilities, mental disability, and old age, elderly people cannot always cope with a rapidly growing technology and changing social situation, they will need special assistance. The caring for their elderly parents belongs to the fundamental duties of adult children. The issue of why children tend to leave home later is the problem and also one of the divorce causes for elderly couples. It is obvious that in the world of consumption the measure of a man becomes the situation in which what one's have, not the one that should be taking care of, decides upon one's prestige. In the other hand, the author does not use the phrase "responsibility", but "filial" instead. Because children does not bear any responsibility to their parent, just like what did judge state.

Emotionally disconnected: It is very heartbreaking to see two people who loved each other so much slowly drift apart. But it is how things are sometimes. Differences start to creep up slowly and when the spouse become aware of how much things have changed,

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<sup>15</sup> Navneet Magon, Monica Chauhan, Sonia Malik, and Duru Shah, "Sexuality in midlife: Where the passion goes?", *Journal of Mid-life Health*, Vol. 3 (Dec 2012), 63.

<sup>16</sup> Sharon J. Price, Christine A. Price and Patrick C. McKenry, eds., *Families and Change: Coping with Stressful events and Transitions*, (London: SAGE Publications Inc, 2010), 215.

<sup>17</sup> Irene Tsapelas, Arthur Aron, and Terri Orbuch, "Marital Boredom Now Predicts Less Satisfaction 9 Years Later", *Psychological Science*, Vol. 20 (2010), 543.

it is already too late to do anything to salvage the relationship. There can be several reasons which might have brought that relationship to that point. The partner may have become interested in someone else which may have caused this sudden loss of interest in him/her. The spouses may have had a fight over some differences which were irreconcilable and it may have caused them to drift further apart. The first thing that couple must do to restore intimacy to their most important relationship is to increase the amount of time that they have spend together. It is not only the first thing that they must do, it is also the most important thing they must do if they want to recover that sense of “us-ness”.

Failure of husband to lead his family: When the man, who is considered the provider and maintainer of the family,<sup>18</sup> fails to shoulder his responsibilities then the wife decides that she cannot continue tolerating his shirking of responsibility, this is grounds for divorce. Moreover, Middle adulthood is also regarded in terms of gradual physical decline. So the husband who does not have a fixed-wage job will find harder to make a living as well as maintaining his family so that they can live without financial stress. However, it seems the interpretation of the judges’ according to this matter is based on traditional thinking. In modern or contemporary thinking, the household responsibilities are not borne alone by the husband, the wife is also obliged to help her husband<sup>19</sup> when the husband cannot borne the full responsibilities.

Domestic violence: Violence and the abuse of power are evident in all types of families with many men viewing their partners and children as their property, and no equality between the spouses. There is plenty of evidence that violence is one of the major contributors to the breakdown in relationships. Where issues of power are dominant, the result is often violence, trauma, sexual abuse or social isolation affecting mainly women and children. Starting a relationship with a new intimate partner usually comes with hopes of a happy, long-lasting and well-functioning relationship. However, in far too many cases, such dreams fail to materialize as it is gradually disclosed that the new partner has a violent nature and will repeatedly engage in verbal and physical abuse.<sup>20</sup>

Major changes in priorities (change of balance): Major changes in priorities can cause an end in a marriage. People grow and change; sometimes they grow together in the same direction and other times they grow apart. There are other people who never change and are the same person fifty years into the marriage. What can be problematic and end relationships is when one or both partners change their priorities in ways that are unacceptable to their spouse. Some people mentioned a major change in religious understandings and practices could strain the relationship, some people talked about putting jobs or children before the intimacy of the spouses and yet others complained of drastic changes in friendships or relationships with in-laws. Keeping the balance in relationship plays an important role to maintain a good relationship.<sup>21</sup>

Unresolved conflict: In a marriage relationship, there are certainly problems that arise. Every problem that arises in the family becomes shared responsibility of husband and

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<sup>18</sup> QS. Al-Nisâ’ (4): 34.

<sup>19</sup> QS. Al-Taubah (9): 71.

<sup>20</sup> Dan Anderberg, Noemi Mantovan, and Robert M. Sauer. *The Dynamics of Domestic Violence: Learning about the Match*, (London: The Institute for Fiscal Studies, 2018), 48.

<sup>21</sup> Dr. Ulin Na’ mah, *Talaq Divorce: Its Meaning According to the Actor of Matrilocal Residence in Muslim Society*. (Yogyakarta: Pustaka Pelajar, 2015), 82.

wife in finding solutions without ignoring the existence of each other. However, husband and wife are often reluctant to solve problems with clear thoughts. Conflicts occur because of conflict between two parties, which remains unresolved. There is no mutual apology and mutual forgiveness. This condition is like a time bomb which could explode any given time and create a bigger conflict.

## Second Discussion

The judges' opinion regarding the considerations in judging divorce claim or divorce applicant for a couple who have lived together in marital bond for 30 years or more, is they just judge as usual, by looking at the facts and proof that the couple provide in trial. Nothing specific consideration is needed, because it is just an everyday divorce case. The judges' just use the Law No. 1 of 1974 concerning Marriage, Compilation of Islamic Law, which says divorce can only be conducted based on reasons as follows: (a) One of the spouses has committed adultery, is an alcoholic, is addicted to drugs, and is a gambler or other vices which are difficult to cure; (b) One of the spouses has left the other spouse for two consecutive years, without consent and without legitimate reasons or the absence of reasons beyond his control; (c) One of the spouses has been sentenced to imprisonment for five years or a longer period; (d) One of the spouses has resorted to cruelty or severe ill-treatment, endangering the life of the other spouse; (e) One of the spouses has developed a disability or disease, preventing from fulfilling the duties of husband or wife; (f) The spouse has irreconcilable difference; (g) Husband breaks the Conditional Divorce (*taklik talak*); (h) Apostate.

Whatever the circumstances, maintaining an irreconcilable relationship clearly will not bring any benefits, and at least it will bring any dangers, that is, the relationship between husband and wife is not harmonious as a married couple should be. And this circumstance violates Islamic teachings, as Prophet Muhammad, Peace be upon him, once said:

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى قَالَ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ قَالَ: أَنْبَأَنَا مَعْمَرٌ، عَنْ جَابِرِ الْجُعْفِيِّ، عَنْ عِكْرِمَةَ، عَنْ  
ابْنِ عَبَّاسٍ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا ضَرَرَ وَلَا ضِرَارَ

“Narrated by Muhammad bin Yahya. he said, Narrated by Abdurrozzaq, he said, from Jabir al-Ju’fi, from ‘Ikramah, from Ibn Abbas, he said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: Do no harm, and no foul.”<sup>22</sup>

Thus, Abdurrahman al-Shabuni in says in his book, *Mâdzâ Hurriyyat al-Zaujaini fi al-Thalaq*.<sup>23</sup>

وقد اختار السلم نظام الطلاق حين تضطرب الحياة الزوجين ولم يعد ينفع فيها نصائح ول صلح وحيث  
تصبح الربطة الزواج صورة من غير روح لن الاستمرار معناه أن يحكم على أحد الزوجين بالسجن المؤبد  
وهذا ظلم تأباه روح العدالة

<sup>22</sup> Ibn Mājah, *Sunan Ibn Mājah*, 784.

<sup>23</sup> Pengadilan Agama Mojokerto, Putusan Nomor 0043/Pdt.G/2018/PA.Mr., 34.

“The choice of divorce is an open one when the life of the couple is disturbed and no advice or sermon is heard. Where the bond becomes a non-spiritual image, so by requiring the couple to continue to preserve the marriage is the same as punishing one spouse with a life sentence, and this is tyranny which is against the spirit of justice.”

And in Qur'an, Allah says:

وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

“And if they decide on divorce - then indeed, Allah is Hearing and Knowing.”<sup>24</sup>

And:

وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ ۚ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

“But if they separate [by divorce], Allah will enrich each [of them] from His abundance. And ever is Allah Encompassing and Wise.”<sup>25</sup>

Then Syeikh Al-Majedy says in his book, *Ghâyat al-Marâm*:<sup>26</sup>

وإذا اشتد عدم رغبة الزوجة لزوجها طلق عليه القاضي طلاقاً

“If the wife has been very displeased with her husband, then the Judge is allowed to grant husband's divorce with one divorce”

So as long as the spouses follows the rule to litigate a divorce, then the judges' also follow the Law and rules to grant them a best decision for them.

## Conclusion

Although the judges' says there are no differences in divorce causes of new-wed couples or couples who have lived together for 30 years or more, there are some divorce causes that directly stated by the judges: (1) Financial problems, (2) Infidelity, (3) Boredom, (4) Irresponsibility of their children, (5) Emotionally disconnected, (6) Failure of the husband to lead his family, (7) Domestic violence, (8) Major changes in priorities, (9) Unresolved conflict. Hereby, the author deliberately says that the problem is not in their marriage period and their age, but any family that lacks intimacy, mutual caring, support and understanding will have a higher probability in end up with divorce

The judges' opinion regarding the considerations in judging divorce claim or divorce applicant for a couple who have lived together in marital bond for 30 years or more, is they just judge as usual, by looking at the facts and proof that the couple provide in trial nothing specific consideration is needed. This is another problem in Judiciary in Indonesia, that is the irresponsibility of the judge. The function of a judge is to disclose the truth of what is stated by the parties without exceeding or lessening the petition. In,

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<sup>24</sup> QS. Al-Baqârah (2): 227.

<sup>25</sup> QS. Al-Nisâ' (4): 130.

<sup>26</sup> Pengadilan Agama Mojokerto, Putusan Nomor 0667/Pdt.G/2018/PA.Mr., 13.



here the judge's intellectuality will be tested with the exertion of all the abilities and knowledge they have all of which will be seen in the trial process whether there are still disobedience in the judicial technique or not and whether there are still made-up evidence or not. Moreover in author's judgment, the judges are putting divorce cases as trivial things. Even though judges are to be supposed to make divorce cases difficult to happen. Divorce is indeed allowed in Islam, but Allah hate the couple who are divorced. Which is worse, being sinful or receiving God's wrath? However, the author's also understand that this circumstance is very common in every Religious Court. And for other researcher hopefully they can do further findings with similar topic of this thesis or even they can criticize the judges for their behavior.

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