

JUDGE'S PERSPECTIVE ON THE CONCEPT OF JUSTICE IN DIVORCE FOR CIVIL SERVANTS

Dumaria Evi Mawartiku Palamarta Br. Gultom¹, Rosnidar Sembiring², Yefrizawati³,
Afnila⁴

Universitas Sumatera Utara¹²³⁴

dumariaevi@students.usu.ac.id¹, oni_usu@yahoo.com², yefrizawati@usu.ac.id³,
afnila@usu.ac.id⁴

ABSTRACT

The reason Judges give decisions for civil servants who get divorced without superiors' permission is because the principle function of court decisions is to protect in realizing social justice for all Indonesian people, trials are carried out for the sake of justice based on belief in one and only God, the principle of independence of judges, that judicial power is state power. which is independent, the principle of the court may not refuse cases, the judge is obliged to explore, follow and understand the value of law and the sense of justice that lives in society. Divorce perpetrators, both those with Civil Servant and Non-Civil Servant status, are expected to really understand and know the implications (legal consequences) for violations, in the form of not fulfilling the requirements and procedural divorce, for example for Civil Servants who will divorce and do not attach permission from his superiors.

Keywords: Divorce, Civil Servants, Justice

INTRODUCTION

Law Number 1 of 1974 confirms that the dissolution of a marriage is caused by three factors, namely, death, divorce, and because of a judge's decision. As the embodiment of the rule of law (rechstaat), and based on the supremacy of existing law, divorce in Indonesia can only be carried out before a court hearing, after the court concerned has tried and failed to reconcile the two parties. Where juridically, the Court is considered as a last resort to reunite the husband and wife who intend to divorce earlier by reopening the door of peace, by way of deliberation, and the judge as the mediator.

The government considers that Indonesian citizens with Civil Servant status have a very urgent and crucial role in national development because they are considered to have a fairly dominant position and a large contribution. In Law Number 8 of 1974 as amended into Law Number 43 of 1999 Concerning Personnel Fundamentals it states that: "Public Servants have the position of being an element of the state apparatus whose duty is to provide services to the community in a professional, honest, fair and equitable manner in carrying out state, government and development tasks."

The position and duties of Civil Servants are further emphasized in the general explanation of Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990, it is stated that: "Civil Servants are elements of the state apparatus, servants of the state and servants of the public who must be a good role model for the community in behavior, actions and obedience to applicable laws and regulations."

Departing from some of the substance of the Article above, to be able to carry out such obligations, the life of a Civil Servant must be supported by a harmonious family life, so that every Civil Servant in carrying out his duties is not much disturbed by problems in the family. Based on the consideration of the position of Civil Servants as servants of the state and also in the context of increasing discipline, exemplary, and to provide legal certainty and justice, the government has established provisions governing all activities for Civil Servants, whether related

to their duties and obligations. as state apparatus as well as those related to social tasks and activities even in matters of family and household life which have been set forth in the body of statutory regulations.

All provisions governing the activities and or life of Civil Servants are intended so that every Civil Servant will become more disciplined and avoid disgraceful acts that will eliminate the meaning of example. One of the provisions that is closely related to increasing discipline for Civil Servants is the provision governing the procedures for carrying out and or granting permission by superiors for a Civil Servant who will conduct a divorce in the Religious Courts. Article 3 paragraph (1) of Government Regulation Number 45 of 1990 concerning amendments to Government Regulation Number 10 of 1983 concerning marriage and divorce permits for Civil Servants states that: Civil Servants who wish to carry out a divorce must obtain prior permission or information from officials. For Civil Servants who are domiciled as plaintiffs or for Civil Servants who are domiciled as defendants to obtain a permit or statement as referred to in paragraph (1) must submit a request in writing.

Understanding the words obligatory and must as actions that encourage or may not be carried out, then it is appropriate to obtain a permit or certificate from an official as an obligation that must be fulfilled for every Civil Servant who will carry out a divorce at the Religious Courts. Based on the understanding of these provisions which constitute an obligation that must be carried out, so what is meant by obedience to an obligation is also the embodiment or implementation of the provisions of Article 5 of Law Number 8 of 1974 which has been amended into Law Number 43 of 1999 Concerning the Principles of Personnel which reads: "Every Civil Servant is obliged to comply with all applicable laws and regulations and carry out the official duties entrusted to him with full dedication, awareness and responsibility." The article above indirectly explains that, violations of civil servants against an obligation that has been regulated (specified) in a statutory regulation will be provided with sanctions in the form of deprivation, as a result of the law and according to applicable regulations. Based on the existing provisions, that a person who wants to divorce must first carry out several provisions such as submitting a written application accompanied by reasons to the Religious Court in the area where he lives by bringing excerpts of the previous Marriage Certificate, the necessary permits and others. so on in accordance with existing terms or conditions. After that, the Religious Court will examine the matters that must be fulfilled by the applicant to issue a stipulation in the form of a divorce decision, and if the applicant has the status of a Civil Servant, of course he must obtain permission from the competent authority based on the provisions of Article 3 paragraph (1) of the Regulation Government Regulation Number 45 of 1990 in conjunction with Government Regulation Number 10 of 1983 concerning marriage and divorce permits for Civil Servants, while in Article 5 paragraph 2 it is still with Government Regulation Number 10 of 1983, it states: "Every superior who receives a request for permission from a Civil Servant in his environment, whether to carry out a Divorce, or to have more than one wife, or to become a second or third or fourth wife, is obliged to give consideration and forward it to the official through the hierarchical channel within a period of no later than - no later than 3 months from the date he received the request for the said permit. The purpose of the substance of the Article above is that, for a Civil Servant who wants to divorce, to fulfill the conditions set out (in accordance with the description above), and is required to submit an application for permission to carry out a divorce to the authorized official by providing proper reasons and clear. So for every official who receives an application for permission from his subordinates who will carry out a divorce, he must first provide written considerations and the official must include and contain the matters used by the official in making a decision, whether the request has a strong basis or not. Then as material in making considerations, the supervisor concerned can request

information from the husband or wife concerned or from other parties who are deemed able to provide convincing information. It is clearly stated in the Laws and Regulations that Civil Servants who are about to divorce are required to obtain permission from their superiors as a fulfillment of one of the cumulative requirements, but based on the reality in the practice of proceedings in the Religious Courts, that the judge will still examine, also adjudicate the divorce application. even issued a stipulation in the form of a divorce decision, even though the Petitioner did not include a certificate of permission for divorce from his superiors.

In fact, if it is found that there is a lack of one of the conditions, in the form of a certificate of permission from superiors, then the judge, as the commander of the forefront of law enforcement in the realm of court, should have the authority to be able to refuse to examine the case filed, even not to give a divorce decision on the pretext and reason the application submitted by the applicant is conditionally disabled.

In response to this phenomenon, it tends to appear that there is an indication of the probability of deviation (deviation) of the legitimacy of the law and the authority of judges, for several reasons there is no permission letter from a superior by a Civil Servant who is about to divorce, the judge's consideration above is used as a determination of the permissibility of divorce carry out a divorce, then it is not enough to serve as a condition for receiving an application for divorce, in this case the author further based on the substance of Government Regulation Number 45 of 1990 Article 3 concerning the obligation to obtain a divorce permit for Civil Servants to their superiors, considers that the judge in his considerations should taking into account the existence of permission from the superior of a Petitioner with the status of a Civil Servant who will conduct a divorce.

Based on the results of research related to Divorce Problems for Civil Servants, which was carried out through a study of the views of judges at the Medan Religious Court, it ultimately led the author to the conclusion, that although there are rules regarding the obligation of Civil Servants to attach a letter of permission from their superiors before filing a lawsuit for divorce to the Religious Court, in fact in judicial practice, the permit certificate does not affect the proceedings at the Religious Court, because it is not a juridical obligation (a cumulative requirement in proceedings at the Religious Court), and the decision given by the judge, is an *inkracht* decision and independent, where the judge has the authority that is independent and free from any interference to carry out legal discoveries and reforms, including the agency in charge of Civil Servants (Petitioners), but thus the judge will still question the existence of the permit claim and oblige the applicant to sign a letter willing to bear the risk, as an implementation form, in order to maintain the stability of the fundamental substance of Article 3 of Government Regulation Number 10 of 1983 concerning Permits for Marriage and Divorce for Civil Servants.

RESEARCH METHOD

This study uses a type of method normative juridical. Normative legal research done with the intention of giving legal argumentation as the basis for determining whether an event has been right or wrong as well how should the event according to the law.

RESULTS AND DISCUSSION

Not all marriages succeed in achieving their goals, this is caused by the many problems that arise, so that in married life sometimes disharmony occurs between husband and wife, so that the integrity of the household is threatened to collapse and it is difficult to maintain. Such a situation can result in the dissolution of marital relations, in Law Number 1 of 1974 itself confirms that the dissolution of a marriage is caused by three factors, including: death, divorce, and due to a judge's decision. The dynamics of the breakdown of a marriage bond in Indonesia,

the majority of the main causes are caused by the implications of divorce between husband and wife, where we can see for ourselves that the phenomenon of divorce in Indonesia has become something that is increasingly seen as normal and is increasingly mushrooming, especially in the phenomenon of individual divorce. Civil Servants are increasing every year. Thus divorce is the biggest factor in breaking up a marriage bond, as in the contents of Law Number 1 of 1974 which explains that the breakup of a marriage is caused by three factors, including: death, divorce, and because of a judge's decision.

Based on the substance of the contents of the statement above, it can be concluded that divorce is one of the main factors causing the dissolution of marriages in Indonesia. Meanwhile, the implementation (divorce procedure) can only be carried out in front of the Court for the sake of validity and legal certainty based on the applicable laws and regulations, then for those who are Muslim to be able to bring and resolve their divorce cases to the local Religious Court, while for those who are adhere to a religion other than Islam, then the divorce case can be referred to the District Court where they are domiciled.

M. Quraish Shihab argued that the word fair was originally defined as Equal or Equality, Balance, that is what makes the perpetrators impartial or on the side of the right. This meaning shows that justice involves several parties, which sometimes face each other, namely: two or more, each party has the rights that it deserves, and vice versa, each party has obligations that must be fulfilled. The last obstacle in the implementation of divorce for civil servants is very relevant and correlative to the discourse on the concept of justice. Departing from a review and study of the substance of Article 7 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, the following:

Article 7

(2) Permission to divorce due to the reason that the wife has a disability or illness with the result that she is unable to carry out her obligations as a wife is not granted by the official. In fact, based on the substance of Article 7 above, if an in-depth study and review is carried out, and analyzed sharply using an analytical knife in the form of a theory of justice, and comparing it with the principles of justice and equality, as meant in the theory of justice, the principles of justice contained in the Compilation of Laws Regarding the reasons for divorce in Islam, it is alleged that in the substance of 7 above, there is a tendency to harm justice, between the rights of the husband and the rights of the wife (civil servants) in submitting reasons for divorce permits to their superiors. Which then raises a question and a critical statement. One of them was from a judge at the Medan Religious Court.

"Then how about submitting an application for a divorce permit for the wife (Civil Servant) to her boss, on the grounds that the husband has a disability and cannot carry out his obligations as a husband? if the husband's permission will be refused on the grounds that the wife is disabled and unable to carry out her obligations as a wife, then on the other hand the wife's permission on the grounds that the husband is disabled or unable to carry out his obligations will automatically be granted by his superiors, why is that? This is because the substance of Article 7 only states that the husband's permission must be refused if the wife is disabled and unable to carry out her obligations, and not for the husband, this substance is not equal. Husband and wife should have the same opportunities and equal and ideal rights.

Automatically the request for divorce permit above will be granted by the supervisor. Thus in its rules (substance), it only intimidates and prohibits husbands from carrying out divorces on the grounds that the wife has a disability and cannot fulfill her obligations as a wife, and not vice versa. The substance of Article 7 is clearly more partial and very profitable for women, who then, according to the concept of justice, are suspected of amputating their rights more than

husbands. The reasons for the divorce submitted by the husband and the woman should both have equal and fair legal weights, and uphold the creation of equality and equality in rights and obligations between the two. Therefore it is appropriate for legislators to pay more attention to the existence of Article 7 in Government Regulation Number 10 of 1983, then carry out a detailed study and review, if necessary, the substance of Article 7 is revised based on the parameters of the ideal portion of justice, and with logical, relevant, compatible, clear, and firm reasons for the intended target object (justice seekers). So that later it does not cause tendencies and the possibility of legal injury.

This reason is as stated and quoted from the essence of the theory of justice promoted by John Rawls, on the grounds that a regulation, no matter how efficient and neat, must be reformed or abolished if in fact it cannot present an equal dish of regulations and refers to ideal justice based on the concept of justice contained and mandated in the 1945 Constitution, as well as the substance of the basic building blocks of Pancasila as the pillars of the state, namely "Social Justice for All Indonesian People. The divorce decision was handed down by the judge to the litigating parties, after the Court concerned had tried and failed to reconcile the two parties or mediate.

The court as a state institution which is *de jure* and *de facto*, is the place of last resort to unite and reconcile the relationship between the husband and wife who intend to divorce earlier, by opening the door to reconciliation again, using the method and system of deliberation through the intermediary of the judge as the intermediary of the problems faced, in order to obtain maximum results and solutions for solving cases win-win solutions, besides that for PNS there are special rules and requirements in divorce cases for Civil Servants, one of which is in the matter of the time interval given by the judge to obtain permission from superiors which is relatively long enough.

However, in the reality of narratives in practice before court hearings, it is not uncommon and not a few to find Civil Servants who do not attach conditions in the form of a statement from their superiors, while the panel of judges still examines, and even gives a decision on the case, which is *inkracht*. Responding to this problem, there are several things and fundamental reasons that form the basis for the judge's consideration in giving a divorce decision for an applicant with the status of a Civil Servant. One of them is the aspect of justice (equal), which is the parameter to be able to grant or not a Civil Servant divorce application at the Medan Religious Court, even though justice itself does not have an absolute standard or measure that is patent in nature. Furthermore, for the Medan Religious Court, to continue to provide maximum service, in order to realize the vision and mission that has been proclaimed as an applicable manifestation of the ideal movement of the wheels of organizational activity.

Especially regarding licensing and divorce procedures for civil servants, as well as non-civil servants in general. Thus, the final suggestion is that the perpetrators of divorce, both from applicants with the status of Civil Servants and Non-Civil Servants, are expected to really understand and know the implications (legal consequences) for violations, in the form of not fulfilling the requirements and divorce procedures, for example for Civil Servants who will carry out a divorce and do not attach permission from their superiors.

CONCLUSION

The divorce decision was handed down by the judge to the litigating parties, after the Court concerned had tried and failed to reconcile the two parties or mediate. The court as a *de jure* and *de facto* state institution,³⁷ is the place of last resort to unite and reconcile the relationship between the husband and wife who intend to divorce earlier, by opening the door to

reconciliation again, using the deliberation method and system through intermediary judges as intermediaries. of the problems encountered, in order to obtain maximum results and solutions for solving cases of win-win solutions, besides that for PNS there are special rules and requirements in divorce cases for Civil Servants, one of which is in the matter of the time interval given it takes relatively long time for a judge to obtain permission from a superior. However, in the reality of the narrative in practice before a trial court, it is not uncommon and not a few to find Civil Servants who do not attach the conditions in the form of a statement from their superiors, while the panel of judges still inspect, even give a decision on the case, which is *inkracht*. Responding to this problem, there are several things and fundamental reasons that form the basis for the judge's consideration in giving a divorce decision for an applicant with the status of a Civil Servant. One of them is the aspect of justice (equal), which is the parameter to be able to grant or not a Civil Servant divorce application at the Medan Religious Court, even though justice itself does not have an absolute standard or measure that is patent in nature.

REFERENCES

- Abdurrahman. 1985, *Usaha-Usaha Penyempurnaan Pelaksanaan Undang-Undang Perkawinan*, Jakarta: Awara Karya.
- Achmadi. Abu dan Cholid. Narkubo. 2005, *Metode Penelitian* Jakarta: PT. Bumi Aksara, 2005 dan M. Nazir, *Metode Penelitian* Jakarta: Ghalia Indonesia.
- Ahmad. Zainal Abidin. 1974, *Negara Adil Makmur Menurut Ibnu Siena*, Jakarta: Bulan Bintang.
- Ardhiwisastra. Yudha Bhakti. 2008, *Penafsiran dan Konstruksi Hukum*, Bandung: Alumni.
- Arifin. Busthanul. 2001, *Transformasi Hukum Islam ke Hukum Nasional*, Jakarta: al-Hikmah.
- Bismar. Siregar. 1995, *Hukum Hakim Dan Keadilan Tuhan*, Jakarta: Gema Insani Press.
- Cansil. C. S. T. 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, cet. II Jakarta: Balai Pustaka.
- Effendi. Satria. 2004. *Problematika Hukum Keluarga Islam Kontemporer*, Jakarta: Kencana.
- Hamidi. Jazim. 2004, *Hermeneutika Hukum, Teori Penemuan Hukum Baru Dengan Interpretasi Teks*, Yogyakarta: UII Pres, Yogyakarta.
- Harahap. Yahya. 1975, *Beberapa Permasalahan Hukum Acara pada Peradilan Agama*, Jakarta: al-Hikmah.
- Latif. H. M. Djamil. 1985, *Aneka Hukum Perceraian di Indonesia*, Jakarta: Ghalia Indonesia.
- M Zein. Satria Effendi. 2004, *Problematika Hukum Keluarga Islam Kontemporer*, Jakarta: Kencana.
- Mertokusumo. Sudikno. 2002. *Mengenal Hukum Suatu Pengantar*, Cetakan Ketiga, Yogyakarta: Liberty.
- Musanef. 1984. *Manajemen Kepegawaian di Indonesia*, Jakarta: Gunung Agung.
- Nainggolan. 1987, *Pembinaan Pegawai Negeri Sipil*, Jakarta: PT Pertja.
- Prawirohamidjojo. R. Soetojo dan Safioedin. Azis. 1986 *Hukum Orang Dan Keluarga*, Bandung: Alumni.
- Rawls. John. 2006, *A Theory of Justice Teori Keadilan*. Yogyakarta: Pustaka Pelajar.
- Rifai. Ahmad, 2010, *Penemuan Hukum oleh Hakim Dalam Perspektif Hukum Progresif*, Jakarta: Sinar Grafika