

## JURIDICAL ANALYSIS OF JUDGES' DECISIONS ON DIVORCE CIVIL SERVANTS WITHOUT PERMISSION FROM THE SUPERIOR

Dumaria Evi Mawartiku Palamarta Br. Gultom<sup>1</sup>, Rosnidar Sembiring<sup>2</sup>, Yefrizawati<sup>3</sup>,  
Afnila<sup>4</sup>

Universitas Sumatera Utara<sup>1234</sup>

dumariaevi@students.usu.ac.id, oni\_usu@yahoo.com, yefrizawati@usu.ac.id, afnila@usu.ac.id

### ABSTRACT

Divorce is the release of the marriage bond or the dissolution of the marriage relationship. Law No. 1 of 1974 concerning Marriage defines divorce as the dissolution of a marriage, this explanation can be read in Chapter VIII (dissolution of marriage and its consequences). Anyone can experience marriage and divorce, including those who have jobs as civil servants. In accordance with PP No. 45 of 1990, if a Civil Servant wants to divorce beforehand he must report and ask for permission from his superiors to carry out the divorce. But in practice, permission from superiors as a requirement for civil servant divorce is difficult to issue from superiors who wish to divorce. So that in some cases the court gave divorce decisions to Civil Servants without a letter of permission from their superiors. This is the topic of the problem that the author wants to examine in this paper. The formulation of the problem is how and what is the basis for judges in deciding divorce cases for civil servants who do not have permission from their superiors? The legal research method used is normative juridical, namely a scientific research procedure to find the truth based on the scientific logic of law from a normative perspective. The approach used is a statutory approach that relates to the main issues related to the judge's decision in civil servant divorce cases without the permission of the leadership. Legal materials in this writing use primary legal materials and secondary legal materials. From the results of the study it was concluded that the powers of the judiciary as stipulated in Law no. No. 48 of 2009 provides power and freedom for judges to decide civil servant divorce cases whose goal is to achieve justice with legal considerations and also supporting evidence, so that whether or not there is a statement of permission from superiors to divorce, is not the main guideline in determining a judge's decision.

**Keywords:** Divorce, Civil Servants

### INTRODUCTION

Divorce is the release of the marriage bond or the dissolution of the marriage relationship. Law No. 1 of 1974 concerning Marriage defines divorce as the dissolution of a marriage, this explanation can be read in Chapter VIII (dissolution of marriage and its consequences). In Article 38 it is stated that a marriage can break up because: Death, Divorce, By court decision.

Divorce is the breaking of family ties caused by one or two partners deciding to leave each other, thereby stopping both husband and wife from fulfilling their role obligations in the household including domestic chaos. And divorce can only be done through a trial process at the Religious/State Court if the two parties cannot be reconciled in the negotiation process. Because the impact of divorce is huge, not only for the parties (husband and wife) but also for the children and families of both parties. As explained in article 39 of the Marriage Law, namely: Divorce can only be carried out before a court session after the court concerned has tried and failed to reconcile the two parties. To carry out a divorce there must be sufficient reasons, that the husband and wife will not be able to live in harmony as husband and wife The reason for the divorce according to the provisions of Article 19 PP No. 9 of 1975 concerning the Implementation of the Marriage Law are as follows: One of the parties commits adultery, or becomes a drunkard, addict, gambler, and

so on which is difficult to cure. One party leaves the other for two consecutive years without the other party's permission and without a valid reason, or for other reasons beyond his control. One of the parties gets a five-year prison sentence or a more severe sentence after the marriage takes place. One of the parties commits cruelty or serious abuse that endangers the other party. One of the parties has a disability or illness with the result that they cannot carry out their obligations as husband and wife. Between husband and wife there are constant disputes and fights and there is no hope of living in harmony again in the household.

Anyone can experience marriage and divorce, including those who have jobs as civil servants. According to the Indonesian General Dictionary, Civil Servants consist of the word "employee" which means people who work for the government (company or so on) while "negeri" means the state or government, so Civil Servants are people who work for the government or the State.

According to Article 1 of Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants (hereinafter abbreviated PP No. 10 of 1983), what is meant by Civil Servants is "Civil Servants as referred to in Law Number 8 of 1983". 1974 concerning Personnel Principles in conjunction with Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning Personnel Principles" the two Laws provide the same understanding regarding Civil Servants, namely: Every citizen of the Republic of Indonesia Indonesia, which has fulfilled the requirements specified in the applicable laws and regulations, is appointed by an authorized official and entrusted with a position in a state position or entrusted with other state duties stipulated based on the applicable laws and regulations.

Observing the existence of the staffing subject, ASN employee is a new term that was raised in Law no. 5 of 2014 to accommodate 2 professionals who work in government agencies, both at the central and regional levels. As explained in Article 3 PP No. 45 of 1990 amendment to PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants which reads: Civil Servants who are going to carry out a divorce must first obtain permission or a statement from the official. 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 written request. In a letter requesting permission or notification of a divorce lawsuit to obtain a statement, the complete reasons behind it must be stated.

But in practice, permission from superiors as a requirement for civil servant divorce is difficult to issue from superiors who wish to divorce. So that in some cases the court gave divorce decisions to Civil Servants without a letter of permission from their superiors. This is the topic of the problem that the author wants to examine in this paper. The formulation of the problem is how and what is the basis for judges in deciding divorce cases for civil servants who do not have permission from their superiors?.

## **RESEARCH METHOD**

Legal research is a research that has a legal object, both law as a science or rules that are dogmatic in nature or laws related to behavior and people's lives. The type of research used is normative law. The normative legal research method is a scientific research procedure to find the truth based on the scientific logic of law from its normative side. Normative legal research is legal research conducted by examining literature or secondary data. In this type of legal research, law is often conceptualized as what is written in laws and regulations or law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate. Researchers apply qualitative data analysis methods. This is because in analyzing a research object, this method is used to explain the data used. The data referred to are in terms of explanation of interview data,

legal regulations related to research problems, literature study data, namely literature related to research problems.

## RESULTS AND DISCUSSION

Accepting civil servant divorce cases without the permission of superiors is actually the same as accepting other divorce cases in court. It's just that the difference is that civil servants who file a lawsuit should include a statement of permission from their superiors. However, there are still civil servants who file divorce suits in court but do not include a letter of permission from their superiors. This is because civil servants have asked permission from their superiors but have not been given permission to divorce. Because the data required by the court in accepting the case has fulfilled the requirements and is complete, the lawsuit can be accepted into court even though civil servants do not include permission from their superiors. The requirements for filing a lawsuit that must be completed are as follows: Original marriage certificate. Photocopy of 2 (two) sheets of marriage certificate in stamped condition and has been legalized. Photocopy of the child's birth certificate that has been legalized and stamped (if you already have children). Photocopy of Identity Card (KTP). Copy of family card.

If the above file requirements have been completely fulfilled then the claim can be accepted even if the Civil Servants do not include a statement of permission from their superiors. Because of the *ius curia novit* principle, which means that judges are considered to know all laws, so courts may not refuse to examine and adjudicate cases. In giving his decision, the judge is free and without being bound, so that when trying a civil servant divorce case, the judge can decide to grant the divorce request, postpone it or NO.

Even though at this time the court has appealed to civil servants who wish to file a lawsuit to complete the permission from the supervisor first. However, there are still civil servants who filed lawsuits and have not received permission from their superiors. Whether it's a lawsuit filed by the plaintiff directly or through his attorney.

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that this judge's consideration must be addressed carefully, both , and careful. If the judge's consideration is not thorough, good and careful, then the judge's decision originating from the judge's consideration will be canceled by the High Court of the Supreme Court.

In examining a case, it also requires evidence, where the results of the evidence will be used as material for consideration in deciding the case. Proof is the most important stage in the examination at trial. Proof aims to obtain certainty that the proposed event/fact actually occurred, in order to obtain a correct and fair judge's decision. The judge cannot pass a decision before it becomes clear to him that the event/fact has actually happened, that is, the truth has been proven, so that a legal relationship exists between the parties.

In making a decision at a trial, a judge must put forward legal considerations as accountability for the decision made, because in making a decision a judge must pay attention to 3 principles, namely justice, expediency and legal certainty. The judicial power is an independent power in this provision implies that the judicial power is free from all interference from extra-judicial authorities, except for matters as stated in the 1945 Constitution. Freedom in exercising judicial authority is not absolute because the judge's job is to uphold law and justice based on Pancasila, so that the decision reflects the sense of justice of the Indonesian people.

The freedom of judges also needs to be explained by the position of impartial judges (impartial judge). The term impartial here must not be literal, because in making a decision the

judge must take the right side. In this case it does not mean that it is not one-sided in its considerations and judgments.

Divorce of civil servants without the permission of their superiors, which is decided by a judge, is actually not in accordance with the provisions of PP No. 45 of 1990. However, the judge can still decide on the divorce based on the considerations of the civil servants themselves. If civil servants want to continue their divorce, they must accept the risks that will be obtained. If civil servants are willing to accept the risks they will get by divorcing without the permission of their superiors, the judicial process will proceed with a note that the requirements required by the court for a divorce are complete.

Regarding cases of civil servants who have not received permission from their superiors, the judicial process remains the same as the divorce court process in general. It's just that the judge will give time to postpone the trial for 3 months for civil servants who are going to divorce to obtain permission from the superior. Although in fact it was a waste of time for the trial while the Supreme Court demanded that the case be completed for a maximum of 5 months.

After 3 months of the time given by the judge to the civil servant, the trial will continue. When the trial continues, the judge will ask the results obtained by the civil servant whether he has received permission from his superiors or not. So if civil servants have received permission from their superiors, the trial process will continue. However, if there are still those who have not received permission from their superiors, there will be two possibilities, namely the judge will extend the trial not for a long time or ensure that there is no further delay. Then the judge will adjourn the trial and provide information regarding the risks that will be faced by civil servants in accordance with article 50 of PP No. 53 of 2010 concerning civil servant discipline. Because civil servants have their own disciplinary rules regarding marriage and divorce.

## CONCLUSION

Judicial Power as regulated in Law no. No. 48 of 2009 concerning Judicial Power provides power and freedom for judges to decide civil servant divorce cases with the goal of achieving justice with legal considerations and also supporting evidence, so whether or not there is a statement of permission from superiors to divorce, is not the main guideline in determining a decision judge. The author's suggestion in writing this time is that in the process of embracing Civil Servants who want a divorce by their superiors, if the superiors pay close attention to the reasons permitted by PP No. 45 of 1990 for no other reasons beyond the responsibility of the superior as a leader in an agency. So that it can make it easier for Civil Servants to get their rights which is meant here is divorce.

## REFERENCES

- Amiruddin dan H. Zainal Asikin, Pengantar Metode Penelitian Hukum, Jakarta : PT. Raja Grafindo Persada, 2006.
- Arto, Mukti, Praktek Perkara Perdata pada Pengadilan Agama Cetakan ke V, Yogyakarta: Pustaka Pelajar, 2004.
- Farida, Anik, dkk, Perempuan dalam Sistem Perkawinan dan Perceraian di Berbagai Komunitas Adat, Jakarta : Balai Penelitian dan Pengembangan Agama Jakarta, 2007.
- Hartini, Sri dan Tedi Sudrajat, Hukum Kepegawaian di Indonesia, Jakarta: Sinar Grafika, 2017
- Ishaq, H., Pengantar Hukum Indonesia, Jakarta: Rajawali, 2014.
- Poerwadarminta, W.J.S., Kamus Besar Bahasa Indonesia, Jakarta : Balai Pustaka, 1986.
- Soekanto, Soerjono, Faktor-Faktor yang Mempengaruhi Penegakan Hukum, Jakarta : PT. Raja Grafindo Persada, 2008.
- Undang-undang No. 1 Tahun 1974 tentang Perkawinan

---

Undang-undang No. 5 Tahun 2014 tentang Aparatur Sipil Negara  
Peraturan Pemerintah No. 45 Tahun 1990 tentang Perubahan atas Peraturan Pemerintah No. 10  
Tahun 1983 tentang Ijin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil  
Undang-undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman  
Penjelasan Umum Undang-Undang Nomor 1 Tahun 1974