

SUPERIOR PERMISSION IN DIVORCE FOR CIVIL SERVANTS FROM THE VIEW OF RELIGIOUS LAW

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Abstract: Divorce is a complex problem in married life. Whatever problems occur in the household, whether in state law or religious law in force in Indonesia, divorce is the last way to solve them. Divorce can only be carried out before the court if the court fails to reconcile the two parties through mediation. Basically, civil servant divorce is the same as other communities, but the difference is that civil servants must first obtain permission from their superiors before carrying out the divorce. Civil servants must ask their superiors for permission through a hierarchical system, which takes a long time to get permission to divorce. If you look at these requirements for civil servants who are going to divorce, it is very difficult, but if divorce is the only way, then it is certain that the civil servant will receive sanctions. And 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. Whereas in legal religious law in Indonesia, divorce can occur if the terms and conditions are met. This is the topic of the problem that the author wants to examine in this paper. What becomes the formulation of the problem is how is the superior's permission in civil servant divorce from the point of view of religious law? 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 related to the subject matter involved. If viewed from the point of view of religious law that is recognized in Indonesia (Islam and Non-Islam), divorce is indeed not recommended in the rules of religious law, but if circumstances demand this to happen then one must follow the rules and reasons determined by every legal religion in Indonesia. Because this concerns a person's right to determine a peaceful, secure and prosperous life. Through the research process above, it can be concluded that the decision in determining divorce is always given to the decision of each individual. Because freedom in determining life choices and being able to take responsibility for every risk of that choice. Every rule in the official religion in Indonesia considers divorce not a recommended action but if in reality divorce is the final solution, the rules in religion will not prevent it. This is the real basis for each individual, including State Civil Apparatus, in choosing a decision in their marriage, namely ending it in divorce. Permission from superiors is only an obstacle to solving problems in the household of an State Civil Apparatus. From this article, it is hoped that in the future, permission from superiors in the event of an State Civil Apparatusdivorce does not interfere in principled matters in the marital life of its employees, but is only administrative in nature. So that the goal of a peaceful and prosperous State Civil Apparatuslife can be carried out properly.

Keywords: *Divorce, Civil Servants, Religious Law*



INTRODUCTION

Divorce in terminology comes from the root word divorce which means to separate, then gets the prefix per which functions to form an abstract noun then becomes divorce which means the result of a divorce. The term divorce is contained in article 38 of Law no. 1 of 1974 which contains a facultative provision that "Marriage can be broken due to death, divorce and on a Court decision". So legally divorce means breaking up of a marriage, which results in breaking up of the relationship as husband and wife.¹ In Law Number 1 of 1974 Concerning Marriage there is no clear definition of divorce specifically. In accordance with the principle of marriage in the Marriage Law, namely the purpose of marriage is to form a happy and eternal family, the breakup of a marriage due to divorce must be prohibited, but in reality the Marriage Law does not emphasize this prohibition, but it is enough to make it difficult for a divorce to break up the marriage.²

Divorce can only be carried out before the court if the court fails to reconcile the two parties through mediation. A person who carries out a divorce must have clear grounds or reasons for why the two parties cannot live in harmony as a husband and wife. The impact of divorce not only ends the conflict between husband and wife but also has an impact on the children and families of both parties. 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:

- 1) One of the parties commits adultery, or becomes a drunkard, addict, gambler, and so on which is difficult to cure.
- 2) 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.

¹ Muhammad Syaifudin, 2012, *Hukum Perceraian Palembang*: Sinar Grafika, p. 15.

² Rusdi Malik, 2010, *Memahami Undang-Undang Perkawinan*, Jakarta : Penerbit Universitas Trisakti, p. 89.



- 3) One of the parties gets a five-year prison sentence or a more severe sentence after the marriage takes place.
- 4) One of the parties commits cruelty or serious abuse that endangers the other party.
- 5) 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. Conflicts can come to anyone, just as divorce can happen to anyone, because of these unresolved conflicts. Both from ordinary people, state officials, artists, community leaders, even civil servants (PNS) as servants of the State. Civil Servants (PNS) according to the general Indonesian dictionary, "Employee" means "people who work for the government, companies and so on while "Negeri" means the state or government, so PNS are people who work for the Government or the State.³

Observing the existence of the staffing subject, State Civil Apparatus employee is a new term that was raised in Law no. 5 of 2014 to accommodate 2 professions working in government agencies, both at central and regional levels.⁴ Basically, civil servant divorce is the same as other communities, but the difference is that civil servants must first obtain permission from their superiors before carrying out the divorce. As explained in PP No. 45 of 1990 amendment to PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants in Article 3 which reads:

- 1) Civil Servants who are going to carry out a divorce must first obtain permission or a statement from the official.

³ W.J.S Poerwadarminta, *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, 1986, p. 478

⁴ Sri Hartini dan Tedi Sudrajat, *Hukum Kepegawaian di Indonesia*, Jakarta: Sinar Grafika, 2017, p.27



- 2) 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.
- 3) In a letter requesting permission or notification of a divorce lawsuit to obtain a certificate, the complete reasons behind it must be stated.

If the above requirements have been met and permission has been obtained from the official, then he carries out a divorce according to the applicable law, then he is obliged to report it to the official through the hierarchical channel no later than one month from the date of the divorce.⁵ Regarding the request for permission from superiors, it is not easy, instead civil servants must ask permission from their superiors through a hierarchical system, which takes quite a long time to be given permission to divorce. If you look at these requirements for civil servants who are getting a divorce, it is very difficult, but if the divorce is the only way, then it is certain that the civil servant will receive sanctions as stipulated in PP No. 45 of 1990. If viewed from the point of view of religious law that is recognized in Indonesia (Islam and Non-Islam), divorce is indeed not recommended in the rules of religious law, but if circumstances demand this to happen then one must follow the rules and reasons determined by every legal religion in Indonesia. Because this concerns a person's right to determine a peaceful, secure and prosperous life.

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. Whereas in legal religious law in Indonesia, divorce can occur if the terms and conditions are met. This is the topic of the problem that the author wants to examine

⁵ Riduan Syahrani, *Perkawinan dan Perceraian bagi Pegawai Negeri Sipil*, (Jakarta: Media Sarana Press, 1986), p. 65



in this paper. What becomes the formulation of the problem is how is the superior's permission in civil servant divorce from the point of view of religious law?

RESEARCH METHODS

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 people's behavior and life. 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.⁶ 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.⁷ 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

Ideally a marriage is an eternal marriage in the afterlife. The vow that is spoken between two human beings before God according to their respective religions signifies one of the majesty of His creation. It is because of this essential purpose that Law Number 1 of 1974 concerning Marriage makes it difficult for divorce to occur. The principle of complicating this Law views that a marriage should be maintained, divorce is only possible if there is no other way to reconcile the husband and wife, or in other words divorce is the last alternative if a household can no longer be maintained intact. This divorce legal process is contained in Article 39 paragraph 1 of the 1974 Law which requires a judge before a court session to reconcile husband and wife.

⁶ Soerjono Soekanto & Sri Mamudji, 2003, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Jakarta : Raja Grafindo Persada, p. 13.

⁷ Amiruddin dan H. Zainal Asikin, 2006, *Pengantar Metode Penelitian Hukum*, Jakarta : PT. Raja Grafindo Persada, p. 118



The theoretical study of this paper is focused on the effectiveness of divorce in the context of law and divorce provisions for the State Civil Apparatus. Soerjono Soekanto said that effectiveness is the extent to which a group can achieve its goals. Law can be said to be effective if there is a positive legal impact, at that time the law reaches its target in guiding or changing human behavior so that it becomes legal behavior. In relation to the issue of legal effectiveness, the identification of law is not only with elements of external coercion but also with the court process. The threat of coercion is also an absolute element so that a rule can be categorized as law, so of course this element of coercion is closely related to the effectiveness or failure of a legal provision or rule.⁸

Legal effectiveness means discussing the working power of the law in regulating and or forcing people to obey the law. The law can be effective if the factors that influence the law can function as well as possible. The effective measure of whether or not an applicable law and regulation can be seen from people's behavior. A law or legislation will be effective if members of the public behave in accordance with what is expected or desired by or the legislation achieves the desired goal, then the effectiveness of the law or legislation has been achieved. The principle of complicating divorce by involving court supervision, when compared with the principles of Islamic law regarding divorce, there is a similar view between the Marriage Law and Islamic law. In Islam even though divorce is permissible, divorce is still an act that is not commendable before Allah. This is a warning to mankind not to drop or use their divorce rights too much. The difficulties encountered in divorce are closely related to the nobility of marriage. Creating a peaceful household based on love which is the dream of every husband and wife is not an easy endeavor, not a few couples fail and end in a divorce.

Divorce is the last resort for married couples after all efforts have been taken to maintain the integrity of the household, this happens to ordinary people or among Civil Servants or what is called the State Civil Apparatus. Regarding divorce cases without superiors' permission, the author conducted interviews at the Lubuk Pakam Religious Court, it turned out that there was an increase in the

⁸ Soerjono Soekanto, 1988, *Efektivitas Hukum dan Penerapan Sanksi*, Bandung : CV. Ramadja Karya, p. 80



number of State Civil Apparatus divorce cases with a period of 2019-2022. Nearly 60% of the State Civil Apparatus divorce cases received did not attach a letter of permission from their superiors. The several reasons for not attaching a supervisor's permit are the lack of moral support from superiors for the household problems experienced by the State Civil Apparatus and the reason is that there are insufficient terms and conditions that have been set. Even though the Official who received the request for permission to carry out the divorce as referred to in Article 3 PP No. 45 of 1990, required by Article 6 PP No. 45 of 1990 "pays close attention to" the reasons stated in the request for divorce permission and the considerations from the superiors of the civil servant concern.

There are things that develop from predetermined forms of misconduct ed. State Civil Apparatus can only carry out a divorce if there is one or more reasons, where one party has committed adultery, drunkenness, compaction and/or gambling which is difficult to cure and matters regulated in the Marriage Law. In its development, there are many other reasons beyond what have been determined by regulations that occur in the household. One of them is verbal abuse or verbal violence. This is not regulated in statutory regulations but it is real. And this is often one of the reasons for divorce among State Civil Apparatus. Domestic life is never free from family problems. Not infrequently small problems can lead to divorce. But even so, divorce is Islamic law as the top step to solve problems in the family.⁹ Judging from the perpetrators of divorce, there are two types of divorce, namely talak divorce, namely divorce carried out by the husband to the wife. This is the most common divorce. This type of divorce status without having to wait for a court decision. As soon as the husband said the words of divorce to his wife, the divorce had already fallen and happened. The religious court's decision is just a formality. Claimed divorce is a divorce made by a wife to her husband. This model of divorce is carried out by submitting a request for divorce to the religious court and divorce cannot occur before the religious court decides officially.

Talak/divorce laws vary: it can be obligatory, sunnah, makruh, haram, permissible. The details are as follows:

⁹ Abdul Wasik, 2015, *Fiqh Keluarga Antara Konsep dan Realita*, Yogyakarta: Deepublish, p.113.



Divorce is obligatory in the first instance, if the husband and wife cannot be reconciled. Second, two representatives from the husband and wife failed to reach an agreement for peace in their household. Third, if the court is of the opinion that divorce is better, if it is not divorced in such circumstances, then the husband is guilty. Divorce is unlawful if: First, divorcing his wife during menstruation or childbirth. Second, when the pure state that has been fucked. Third, when the husband is sick, the aim is to prevent his wife from demanding his inheritance. Fourth, divorcing his wife with three divorces at once or one but saying divorce repeatedly so that three or more times are sufficient.

Divorce is a sunnah law if: First, the husband is unable to support his wife and secondly, the wife does not maintain her dignity. Divorce is considered makruh if: the husband divorces his wife who is good, has noble character and has religious knowledge. Divorce is permissible if: the husband is weak in his desire for lust or the wife has not started her period or has stopped her period.¹⁰ Because there are problems in the family that give rise to the obligatory talaq law, divorces submitted to the Religious Courts (in this case those who are Muslim and use Islamic Religious Law) can be terminated without permission from their superiors.

For those who are of a religion other than Islam, filing a divorce suit is delegated to the District Court. In Christian and Catholic Religious Law the meaning of marriage and divorce is the same, because they are taken from the Bible as a holy book as a guide in carrying out beliefs and procedures for worship as well as rules for carrying out one's life. The principle of the Christian faith regarding marriage is monogamy (one partner). Changing the rules through the church cannot be done in Indonesia, because the church is not an institution that makes rules because there is already an institution appointed by the state to make rules regarding marriage. The church is a religious forum that does not have the authority to change the legal rules contained in the Marriage Law, including in matters of divorce.

In Law no. 16 of 2019 in lieu of Law no. 1 of 1974 concerning Marriage, which mentions the effects of breaking up a marriage due to divorce, is only regulated in one article, namely in Article 41 that divorce carries legal consequences or consequences, namely that the husband and wife are legally no

¹⁰ *Ibid*, hal.118



longer in marriage. In the broad view of the church that in the Bible there is only one condition, that is adultery. It is permissible to divorce, but there is no definition of divorce itself. The Church does not desire, does not allow, and does not administer Divorce. The church's first attempt to deal with domestic disputes is assistance so that the couple concerned can get along again. However, it needs to be acknowledged that divorce is also a civil right for every citizen, including State Civil Apparatus, which the church cannot prevent. For those who take legal action, the church continues to provide pastoral assistance.

However, if followers of Protestant and Catholic Christianity continue to carry out the Divorce they will not receive severe sanctions from the church. In Matthew 19:6 which says that what God has put together, man must not separate, this talks about how marriage is very sacred, not carelessly, in other words, God hates divorce. In this way, the husband and wife will experience the consequences directly given by God to those who are divorced, namely sin.

Divorce is not forbidden in Buddhism, although all religions deplore divorce. Because this religion considers marriage and divorce to be personal human affairs, if a couple is no longer able to live together, then a divorce may take place. Marriage is something every human being wants to live happily and continue their offspring. Religion never obliges or forbids its followers to marry. Buddhism also does not require, allow, or prohibit monogamy or polygamy. Buddhism also has no special rules for divorce. From this it can be understood that adherents of Buddhism give freedom to determine peace and happiness based on good karma and bad karma. Hinduism also does not directly explain the meaning of divorce because it is not recommended to do so. The reason for this is because the marriage process in Hinduism is very sacred because it presents a witness god, human witness to buta witness in a series of ceremonies. Through the presence of these three witnesses, he continued, marriage in Hinduism has bound two human beings, not just their bodies, but their Atmannya.¹¹

So there are no rules in Hinduism for divorce, it's just that it is considered that a woman will leave her husband's house and return to her extended family. So that it can be said that the divorce decision is given in its entirety to each

¹¹ Bali Express, *Hindu Tak Kenal Cerai, Menikah Ikatkan Atman*, <https://baliexpress.jawapos.com/balinese/04/06/2020/hindu-tak-kenal-cerai-menikah-ikatkan-atman/>, 1 April 2022, pukul 12.30 WIB



individual, and follows every divorce process determined by the State. Through the research process above, it can be concluded that the decision in determining divorce is always given to the decision of each individual. Because freedom in making life choices and being able to take responsibility for every risk of that choice. Every rule in the official religion in Indonesia considers divorce not a recommended action but if in reality divorce is the final solution, the rules in religion will not prevent it. This is the real basis for each individual, including State Civil Apparatus, in choosing a decision in their marriage, namely ending it in divorce. And if the reasons for a real divorce are supported by a court decision, the supervisor's permission in State Civil Apparatus divorce does not have a big contribution, or it can also be felt to be ineffective. Permission from superiors is only an obstacle to solving problems in the household of an State Civil Apparatus, in this case the termination of his marriage relationship.

CONCLUSION

Rules in the applicable religious law in Indonesia give freedom to determine the direction of solving problems in marriage. Divorce is no exception as a last resort, even though divorce is not recommended for every religion. It's just that in general there is no specified process in taking a divorce other than counseling and mediation before the divorce decision takes place. Court decisions in the case of divorce have legal force which is recognized by every legal religion in Indonesia. So that in the procedure for divorce in general, state law takes a bigger role. And because that is also the true basis for each individual, including State Civil Apparatus, in choosing a decision in their marriage, namely ending it in divorce. And if the reasons in favor of a real Divorce Are Supported By A Court Decision, The Supervisor's Permission In The State Civil Apparatus divorce does not have a big contribution, or it can also be felt to be useless. Permission from superiors is only an obstacle to solving problems in the household of an State Civil Apparatus, in this case the termination of his marriage relationship. From this writing, the author hopes that in the future, permission from superiors in the case of State Civil Apparatus divorce does not interfere with matters that are of a principle nature in the marital life of its employees, but only of an administrative nature. So that the goal of a peaceful and prosperous State Civil Apparatus life can be carried out properly.



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