

The Cause of High Number of Wife-Initiated Divorces among Civil Servants Reviewed From Government Regulation No. 10 of 1983 Jo. Government Regulation No. 45 Of 1990 (The Study in Syar'iah Court Of Banda Aceh)

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Abstract: Article 1 of Law No. 1 of 1974 concerning Marriage defines that marriage as "a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God." Based on the explanation of the Marriage Law, the purpose of a marriage is to form a happy, harmonious and not divorced family, so that before the two get married there are differences in background and opinions that must be united between the partners. In addition to the provisions mentioned above, there is one source of national marriage law that is specific in nature that regulates marital permits and divorce of civil servants, namely Government Regulation No. 10 of 1983 concerning Marriage Permit and Divorce of Civil Servants in conjunction with Government Regulation Number 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants. Therefore, it is necessary to further study about the causes of the high number of wife-initiated divorce among civil servants and how procedures of divorce for civil servants are, in accordance with Government Regulation No. 10 of 1983 in conjunction with (Jo.) the Government Regulation Number 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants. This research uses empirical juridical research type. Thus, the results of the analysis obtained regarding the cause of the high number of wife-initiated divorces among civil servants are dominated by conflict and infidelity committed by one of the parties, then, the divorce process for Civil Servants must firstly obtain a permit from the competent official. Without a permit from an authorized official, Judge of the District Court or Judge of Religious Court cannot decide on divorce between Civil Servants. According to article 8 paragraph (1) Government Regulation No. 10 of 1983 in conjunction with Government Regulation Number 45 of 1990 states that if a divorce occurs at the will of a male Civil Servant then he must surrender a portion of his salary for the livelihood of his ex-wife, if he has children, then it is divided by one third. If the divorce occurs at will of the wife, then she is not entitled to the distribution of salary from her ex-husband.

Keyword: Marriage, Divorce, wife-initiated divorces, Civil Servants.

Date of Submission: 06-09-2019

Date of Acceptance: 21-09-2019

I. INTRODUCTION

Humans are created by Allah SWT in pairs, both men and women are expected to be able to establish harmonious relationships with one another, full of love in fulfilling the needs of life, reproduce and have offspring in the bond of marriage. Every family in a marriage relationship living in this world always craves that the family is always happy, peaceful and prosperous which is the purpose of marriage that is to form a happy, eternal and prosperous family.¹

Article 1 of Law No. 1 of 1974 concerning Marriage defines that marriage as "a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God." Based on the explanation of the Marriage Law, the purpose of a marriage is to form a happy, harmonious and not divorced family, so that before the two get married there are differences in background and opinions that must be united between the partners.

¹ Abdul Azis dahlan, *Enkslopedia Hukum Islam (Encyclopedia of Islamic Law)*, Jakarta, Icthiar Baru, 2006. page. 156

In addition, Book 1 of the Compilation of Islamic Law (KHI) also regulates about marriage. Article 2 states that "Marriage according to Islamic law is marriage that is a very strong aqad or mitsaqan ghalidan to obey commands of Allah and carry out them is worship", and in Article 3 it is added that "Marriage aims to realize a family that is *sakinah*, *mawaddah*, and *rahmah* (peace, love and affection) ".

In accordance with the purpose of the law mentioned above, it can be interpreted that marriage is a bond that aims eternal, and should last for a lifetime and cannot be easily terminated, but in its principle Syara' Law and legislation still allows the occurrence of divorce. Even though divorce in principle remains as something that is not desired by all parties, but it is desirable or not that divorce is also one way to end the conflict in the household.

However, in the dynamics of household life, happiness is not always able to be maintained for a long period of time. This can be caused by various factors, one of which arises from a mismatch that results in a protracted conflict in the household. This situation causes suffering and unhappy household life, so that the purpose of marriage is no longer fulfilled, eventually household life must be forced to end in divorce.

Based on the terms, divorce is called with the term of "*thalaq*", which is based on *lughah* (language) means "untied", or more completely means to break the bond of marriage.² According to Islamic law divorce can occur for several reasons, as stated by Rofiq that there are four main reasons of the occurrence of divorce, namely:

1. The occurrence of *nusyuz* from the wife, (an-Nisa' 34 verse 34)
2. The occurrence of *nusyuz* from the husband (an-Nisa' verse 128)
3. The occurrence of conflict and squabbling between husband and wife, which is termed with *syiqaq* (an-Nisa' verse 28)
4. The occurrence of one of the parties commits adultery or *fakhisyah*, which causes mutual accusation between the two.³

In the discussion of *fiqh*, the divorce that occurs at the will of the wife is categorized as *khulu'* (talak tebus or a divorce by redemption), where the wife and husband are willing and want this divorce to occur so that the legal consequences that can be caused is where the ex-husband cannot reconcile again with the ex-wife.⁴

Divorce can be carried out by a married husband or wife at the Religious Court or the Sharia Court for couples who are Muslim and at the District Court for couples whose religion is other than Islam. In article 39 of the Marriage Law concerning termination of marriage, it states that:

1. Divorce can only be conducted in front of the court hearing after related party has tried and failed to reconcile the two parties;
2. To conduct divorce there must be sufficient reasons that between the husband and wife will not be able to live as husband and wife;
3. The procedure for divorce in a court hearing is regulated in its own legislation, namely Government Regulation No. 9 of 1975 concerning the Implementation of the Marriage Law.

By considering the legislation that adheres to one of the principles that complicates the divorce, the termination of a marriage because the divorce is actually very difficult to do. This is in line with the teachings of Islam which is very concerned to maintain marriage so that marriage that has been carried out is in accordance with the purpose of marriage that is to form an eternal happy family.

In Article 19 of Government Regulation No. 9 of 1975 mentioned that marriage terminated by the divorce can be occurred because of several reasons:

1. One of the parties commits adultery or becomes a drunkard, Junkie, gambler and others who are difficult to cure.
2. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond its ability.
3. One of the parties received a sentence of 5 (five) years in prison or severe torture after the marriage took place.
4. One of the parties commits cruelty or severe persecution that harms the other party.
5. One of the parties has a physical disability or illness with the result of not being able to carry out the obligations as husband or wife.

² Ahmad Rofiq. M.A., *Hukum Islam di Indonesia (Islamic law in Indonesia)*, Rajawali Press, Jakarta, 2000. page 25

³ *Ibid*, page 269-274

⁴ Sulaiman Rasyid, *Fiqh Islam*, Sinar Baru Algesindo, Jakarta, cet XXXV, 2000, page 409.

6. Between husband and wife there is continual conflict or quarrels and there is no hope of harmony in the household anymore.

Furthermore, Article 116 KHI also states that:

1. Husband violates conditional divorce (taklik talak).
2. Transition or apostasy causes no harmony in the household.

In addition to the provisions mentioned above, there is one source of national marriage law that is specific in nature that regulates marital permits and divorce of civil servants, namely Government Regulation No. 10 of 1983 concerning Marriage Permit and Divorce of Civil Servants in conjunction with Government Regulation Number 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants.

Data from the Syar'iah Court of Banda Aceh, from 2014 to February 2019 the number of divorce among Civil Servants reached 451 cases⁵. Data from the Syar'iah Court of Banda Aceh shows that the divorce that dominates the divorce among Civil Servants was the divorce case from 2014 to February 2019 reaching 314 cases, while the divorce by talaq 137 cases. By the existence of Government Regulation No. 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants, this should become the benchmark for the civil servant to not conduct the divorce because of a minor problem.

It is not the same as the society in general. For civil servants who want a divorce as mentioned in article 3 of Government Regulation No. 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants states that the civil servant who is going to divorce must obtain a permit or written statement in advance from the official and must state the complete reasons that is the basis of the divorce. By these requirements, it seems that divorce for civil servants is a difficult thing to do, because without a permit from the official or supervisor, the civil servant cannot do the divorce.

The complicated divorce process for civil servants is not only because civil servants as a role model for the community, but there are other factors that are considered by the superiors (the head) of the relevant civil servants so that the divorce process for civil servants looks more difficult. One of the consequences arising from the divorce is the transfer of part of the salary of civil servants to the wife party as the obligation to provide for living after divorce.

Based on the explanation above, it is interesting for researchers to examine the causes of high number of wife-initiated divorce among Civil Servants, and the divorce process for Civil Servants.

II. RESEARCH METHOD

The type of research used in this study is empirical juridical research, which is law as a phenomenon of society, as a social institution or patterned behavior. This approach is known as empirical legal research or sociological legal research.⁶ The method of this research approach is a qualitative approach that is the research conducted by examining library materials, secondary data that consists of primary legal materials and secondary legal materials which are reviewed. The conclusions are drawn then in relation to the problem of study.⁷ Data collection methods are through library research and field research in the form of interviews with judges who decide wife-initiated divorce cases among civil servants.

Study Location: Syar'iah Court of Banda Aceh.

III. DISCUSSION

A. The causes of high number of wife-initiated divorce among Civil Servants.

wife-initiated divorce is the termination of marriage caused by a wife's lawsuit district court or religious court. Divorce or wife-initiated divorce that occurs among civil servants is not easy. The civil servants must follow the procedures in accordance with Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990.

Data from the Syar'iah Court of Banda Aceh shows that the divorce that dominates the divorce among Civil Servants was the divorce case from 2014 to February 2019 reaching 314 cases, while the divorce by *thalaq* 137 cases. The causes of divorce that often occur are caused by conflict, infidelity and domestic violence. As happened in the decision of the case below:

⁵ Data from Syar'iah Court of Banda Aceh.

⁶ Ronny Hanitjo Soemitro, *Metode Penelitian Hukum dan Jurimetri (Legal and Jurimetry Research Methods)*, Ghalia Indonesia, Jakarta, 1990, page. 34

⁷ Sri Mamudji, et al, *Metode Penelitian dan Penulisan Hukum (Methods of Legal Research and Writing)*, (Jakarta: Badan Penerbit Fakultas Hukum Indonesia, 2005), page. 4.

1. The decision with Number 80/Pdt.G /2019/MS. Bna, in the case of wife-initiated divorce, this is a case of wife-initiated divorce of a member of National Police (Polri) Civil Servant who is divorced because of frequent conflicts.
2. The decision with Number 78/Pdt.G/2019/MS. Bna, in the case of wife-initiated divorce, this is a case of wife-initiated divorce of housewife who sued her husband (Civil Servant), in this case the cause of the divorce is a lack of conjugal needs provided for the plaintiff, and suspicion of an affair.
3. The decision with Number 59/Pdt.G/2019/MS. Bna, in the case of wife-initiated divorce, this is a wife-initiated divorce case of a housewife who sues her husband who is a Civil Servant, in this case the cause of divorce is caused by misunderstanding and physical violence.
4. The decision with Number 58/Pdt.G/2019/MS. Bna, in the case of wife-initiated divorce, this is a wife-initiated divorce case of a housewife who sues her husband who is a Civil Servant, in this case the cause of divorce is due to an affair committed by the husband.
5. The decision with Number 52/Pdt.G/2019/MS. Bna, in the case of wife-initiated divorce, this is a wife-initiated divorce case of a housewife who has the status as Civil Servant sues her husband who is also a civil servant, in this case the cause of divorce is due to an affair committed by the husband.
6. The decision with Number 51/Pdt.G/2019/MS. Bna, in the case of wife-initiated divorce, this is a wife-initiated divorce case between housewife who has works as a midwife sues her husband who is a civil servant, in this case the cause of divorce is due to conflicts and quarrels.
7. The decision with Number 46/Pdt. G/2019/MS. Bna, in the case of wife-initiated divorce, this is a wife-initiated divorce case between housewife who has the status as Civil Servant sues her husband who is also a civil servant, in this case the cause of divorce is due to conflict and poor communication.

According to Judge of Syar'iah Court of Banda Aceh, Dr. Yusri, S.H., M.H. the cause of the divorce between Civil Servants is due to conflicts, suspicion, housing factors, economic factors, and because of the presence of a third party. However, the most common cause is because of conflict and squabbling.

It is recorded that the cause that is dominant as the cause of wife-initiated divorce is conflict and infidelity committed by the husband that causes a wife to sue for her husband to divorce. However, the divorce that occurred among these civil servants must comply with the rules that have been made namely Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants.

B. The procedures of the divorce for Civil Servants

Specific divorce legal arrangements for Civil Servants are contained in Government Regulation Number 10 of 1983 in conjunction with (Jo.) Government Regulation Number 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants. Therefore, the consideration of special legal arrangements for Civil Servants can be understood from the consideration of the enactment of the Government Regulation.

The Government Regulation Number 10 of 1983 Jo. Government Regulation Number 45 of 1990 is applied specifically for Civil Servants who will divorce based on considerations, as follows; 1. Legal considerations (legislation) of the application of Government Regulation Number 10 of 1983 revised with Government Regulation Number 45 of 1990 is a legal explanation of the Law Number 1 of 1974 and synchronization of Government Regulation Number 9 of 1975 which is based on the principles of to complicate the legal process of divorce, principle of institutional certainty and divorce legal institutions, and the principle of balanced legal protection during and after the legal process of divorce. The divorce can only be done if there are certain reasons as stated in the legislation. The rights and position of wife are balanced with the rights and position of the husband, both in domestic life and in social relations, so that everything in the family can be negotiated.

Provisions in Article 3 paragraph (1) of the Government Regulation Number 10 of 1983 in conjunction with (Jo.) Government Regulation Number 45 of 1990 concerning Marriage Permit and Divorce for Civil Servants, it is stated that Civil Servants who are going to divorce must obtain permission in advance from officials. For Civil Servants who are both plaintiffs and defendants, in order to obtain the permit or the certificate, they must submit a written request. In a letter of requesting permission or notification of the lawsuit for divorce in order to obtain a certificate, a complete reason must be stated as the basis.

Permission request as referred in Article 3 of Government Regulation No. 45 of 1990 submitted to officials through the hierarchical channel. It means that the application for a permit to divorce submitted to an official is carried out according to an internal process within the institution or agency and pay attention to the level of position in the structure of the institution or agency of the related party.

Every employer who receives a request for permission from a Civil Servant in his environment, to do the divorce, is required by Article 5 of the government regulation Number 45 of 1990 to give consideration and forward it to officials through the hierarchical channel within a period of not later than three months from the date he/she receives the request the permission.

It is specifically regulated in Article 8 of Government Regulation Number 10 of 1983 in conjunction with (juncto) Government Regulation Number 45 of 1990.

1. If the divorce occurs at the will of the male Civil Servant, he is obliged to give the portion of his salary for the living of his ex-wife and children.
2. Civil Servants who are required to give the portion of his salary for the living of his ex-wife and children are required to make a written statement. The salary distribution is one third for the related male Civil Servants, one third for his ex-wife and one third for his children.
3. If from the marriage there are no children, the part of the salary required for the male Civil Servant to be given to his ex-wife is half of his salary.
4. If the divorce occurs at will of the wife, then she is not entitled to part of the income from her ex-husband.
5. The provisions referred to in paragraph (4) do not apply, if the wife asks for divorce because of being co-wife.
6. If the ex-wife of related Civil Servant concerned remarries, then her right to part of the salary of her ex-husband will be abolished starting from she remarries.

According to Dr. Yusri, SH, . M.H. Civil Servants may submit divorce claims to the district court or religious court even though they have not obtained a permit but the trial will be postponed for 6 months, for 6 months the court is waiting for a permit from the competent official but before the process of trial the plaintiff and the defendant will be mediated first in the Syar'iah court of Banda Aceh, Mediation at the Syar'iah Court in Banda Aceh usually takes 40 working days.

IV. CONCLUSION

Based on the explanation above, it can be concluded that the cause of the high number of divorce among Civil Servants are the first because of conflicts that occur between the two and also caused by infidelity committed by the husband. Furthermore, the divorce process for Civil Servants must obtain a permit from the competent official, the judge cannot process or decide the divorce of Civil Servants without a permit from the competent official, if the wife sues for the divorce, then she is not entitled to part or one third of the salary of her ex-husband.

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IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

Syarifah Rizki Anggraini. " The Cause of High Number of Wife-Initiated Divorces among Civil Servants Reviewed From Government Regulation No. 10 of 1983 Jo. Government Regulation No. 45 Of 1990." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 09, 2019, pp. 14-18.