



DIVORCE OF CIVIL SERVANTS WITHOUT SUPERIOR PERMISSION IN MASLAHA ANALYSIS

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Abstract: This study discusses the divorce of Civil Servants without the permission of superiors in the analysis of Maslaha (case study of decision No. 678/pdt.g/2021/PA.Wsb in the Wonosobo Religious Court) which aims to answer the problem of: (1) What is the judge's consideration in deciding a civil servant divorce case without the superior's permission at the Wonosobo Religious Court? and (2) How is the analysis of Maslaha in the determination of case number 678/pdt.g/2021/Pa.Wsb. The method used is a field study. The data sources used are primary data sources, namely sources obtained directly from the Wonosobo religious court. And secondary data sources are sources of data obtained from books, documents related to research. The method used is the interview method by applying the interview. The results of the study concluded that: (1) Judge's considerations in deciding case number: 678/pdt.g/2021/Pa.Wsb. regarding the divorce of civil servants without the superior's permission by the Wonosobo Religious Court, the court granted the plaintiff's claim. Dismissed the divorce of one *ba'in sughra* of the defendant (defendant) against the plaintiff (plaintiff). Even without a letter of permission from superiors, on a warning from the judge, the applicant has stated that he is ready to bear all the risks that have been made according to the certificate dated April 13, 2021. (2) Analysis of Maslaha in case determination number 678/pdt.g/2021/Pa.Wsb . This is in accordance with legal norms and does not conflict with *syara'* which is the basis for proceedings at the Wonosobo Religious Court.

Keywords: Civil Servants, Divorce, Maslaha.

INTRODUCTION

Human beings are created in pairs in a marriage bond. Marriage is a sunatullah that applies to humans to maintain their existence. At the time of marriage, each couple hopes to form a prosperous, *sakinah*, eternal household until death picks up. This is in line with the ideal goal of marriage, as confirmed in Law Number 1 of 1974 that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a family (household), which is happy and eternal based on the belief in God Almighty". (Muslim Zainuddin, 2018).

Happy there is harmony in the relationship between husband and wife and children in the household. The happiness that is achieved is not temporary, but eternal happiness. Therefore, the expected marriage is an eternal marriage, which can end in the death of one of the partners and may not be decided or dissolved according to the will of the parties. (Muhammad Fauzinuddin Faiz, 2015).

Divorce is the final way that must be taken in resolving household disputes and crises, resolving household rifts that are no longer possible to restore, and even if allowed to drag on, it is feared that it will cause a split in the families of both parties. (Rusdi Rizki Lubis, 2015).

Divorce is an Islamic legal institution that is used as the final solution for disputes that occur between husband and wife in a household that is no longer sustainable, and can even bring harm to the husband and wife. Therefore divorce according to Islamic law is a lawful act but is hated by Allah. Substantially divorce is the last alternative taken by husband and wife if the marriage bond cannot be

maintained intact, after a maximum effort to anticipate that divorce does not occur. (Miti Yarmunida, 2019).

So divorce is something that is permissible but is hated by Allah. Divorce is not forbidden according to Islamic law, and does not necessarily give someone the freedom to do so. A person may carry out a divorce with the reasons as stipulated in Article 39 paragraph (2) of Law No. 1 of 1974 concerning Marriage, that:

"In order 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" (Desi Asmaret, 2018).

The Compilation of Islamic Law (KHI) added "*Husbands violate the taklik divorce, change of religion or apostasy which causes disharmony in the household*" "as a reason for divorce. In addition to regulating the reasons for divorce, positive law also regulates conditions, procedures, or other matters related to divorce issues. Basically, the laws in Indonesia, mainly those that regulate divorce, are general in nature, that is, they are intended for all Indonesian people. (Latifah Ratnawaty, 2017).

However, in reality, there are special regulations that apply to Civil Servants (PNS) such as Government Regulation no. 45 of 1990 concerning Amendments to Government Regulation No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. (Asniar Khumas, 2015). As explained in PP no. 45 of 1990 amendment to PP No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants which reads:

"First, civil servants who are going to carry out a divorce must first obtain permission or a statement from the official. "Second, for Civil Servants

who are domiciled as plaintiffs or for Civil Servants who are domiciled as defendants to obtain permits or certificates as referred to in paragraph (1) must submit a written request". "Third, in a letter requesting permission or notification of a divorce lawsuit to obtain a statement, the complete reasons behind it must be stated. The purpose of the contents of PP No. 45 of 1990 article 3 paragraphs (1), (2), and (3) above stipulates that civil servants who are going to carry out a divorce must obtain written permission or a statement from officials, both male and female civil servants. (Husin Anang Kabalmay, 2015).

In this regard, civil servants (PNS) are given high disciplinary provisions. To carry out marriages and divorces Civil Servants (PNS) must obtain prior permission from the officials concerned. Based on the background of the problems above, the researcher is interested in conducting research to find out more about the considerations of the Wonosobo Religious Court Judge in deciding divorce cases for Civil Servants without a divorce permit from their superiors, as well as the position of the decision in the case.

MAIN PROBLEM

The main problem in this study is about the considerations of the Wonosobo Religious Court Judge in deciding divorce cases for civil servants without a divorce permit from their superiors, as well as regarding the position of the decision in the case based on maslaha value.

METHOD OF RESEARCH

The type of research used in this study is field research, which means that this research was carried out by

way of case studies or direct research originating from the field on civil servant divorce decisions without permission from the superiors of the Wonosobo Religious Court. This research is descriptive-analytic in nature, namely a study that has the aim of systematically and accurately describing the facts of what is happening at the moment, then an analysis of the images is carried out to produce a concrete understanding. (Mardaris, 2018).

The data source is the subject from which the data is obtained. The data sources needed are primary data sources, namely data obtained from data obtained directly through an interview process or interviews from the Wonosobo Religious Court. Secondary data was also obtained from legal materials, namely the stipulation of "Divorce of Civil Servants Without Superiors Permission in Maslaha Analysis (Case Study of Decision Number (678/Pdt.G/2021/PA.Wsb)".

In this study there are several methods that researchers use in collecting the necessary data, namely, documentation is a way of collecting data that is done by the method of collecting data through written records. (Afrizal, 2017) and interviews are data collection techniques used by researchers to obtain information or verbal information face-to-face and communicate directly with people who can provide information related to the object of research. (Suharsimi Arikunto, 2016).

RESEARCH RESULT AND DISCUSSION

In making decisions at trial, a judge must submit legal considerations as accountability for the decisions he

makes, because in making a decision a judge must pay attention to 3 principles, namely justice, expediency, and legal certainty. There are 3 things that include the judge's consideration, including: (Copy of Decision Number 678/Pdt.G/2021/PA.Wsb).

1. Regarding the absolute and relative authority of the Religious Courts.
2. Application of Formal Law.
3. Application of Material Law.

Imam Al-Ghazali provides several requirements so that the Maslaha can be used as evidence in legal istibath, namely as follows:

The Maslaha of the Judge's decision is in line with the types of syara' actions. In the case that occurred at the Wonosobo Religious Court, the judge's decision did not conflict with the syara' with the consideration that the panel of judges had tried to reconcile the two parties so that they would not divorce but was unsuccessful, then the examination was continued by reading out the plaintiff's lawsuit whose contents were retained by the plaintiff.

The Maslaha of the Judge's decision does not leave or contradict the syara' text. Considering, that for a family that has been broken up in such a way, the assembly is of the opinion that if it is maintained, it will not be happiness that will be obtained, but the burden of suffering both physical and psychological that will be felt by both parties, both the Plaintiff and the Defendant, this must be ended immediately so that philosophically divorce is seen as fair enough to be used as a way out, and hopefully with this divorce, Allah SWT. bestow mercy and grace on the Plaintiff and the Defendant as Allah says in the letter

Al-Nisa 'verse 130: meaning: "If the two are divorced, then Allah will provide sufficiency for each of them from the abundance of His gifts. and is Allah Most Extensive (His grace), Most Wise." (Q.S. An-Nisa'4: verse 130). (Ministry of Religion of the Republic of Indonesia, 1993)

Considering, that the legal facts have complied with the norms of Islamic law contained in the Book of Fiqh Sunah Juz II page 290:

فَاعِدَا تَبْتَت دَعَوَاهَا لَدَى الْقَاضِي بَبَيِّنَةِ الزَّوْجَةِ، أَوْ
اعْتَرَفَ الزَّوْجُ، وَكَانَ الْإِيْدَاءُ مِمَّا لَا يُطَاقُ مَعَهُ دَوَامُ
الْعُشْرَةِ بَيْنَ امْتَالِهِمَا وَعَجَزَ الْقَاضِي عَنِ الْإِصْلَاحِ
بَيْنَهُمَا طَلَّقَهَا طَلَّقَةً بَآئِنَةً

Meaning: If the argument for a lawsuit is proven before the court either with evidence submitted by the wife or husband's confession, and the domestic conflict has become so severe that there is no hope of getting back together and the judge is also unable to reconcile the two parties, then the judge must pronounce divorce husband's affection towards his wife. (Aminuddin, 2015).

The Maslaha of the judge's decision is included in the category of Maslaha that is dharuriyyah, both regarding personal benefit and public benefit and universal, that is, it applies equally to everyone. In the case at the Wonosobo Religious Court, the judge's consideration in granting civil servants divorce without permission from their superiors is to protect religion and protect offspring. Protecting religion, the purpose of protecting religion is that the Wonosobo Religious Court Judge tries to protect the religion of the parties so that they do not continue to commit ongoing sins that are difficult to avoid. Because if they are constantly fighting

and there is no compatibility in the household it will damage their religion.

Meanwhile, Imam Syātībī offers several conditions for the Maslaha to be used as evidence, namely:

The Maslaha of the judge's decision is in accordance with the intention of *syara'*, so that there will be no conflict between the Maslaha and the arguments of Islamic law in the first condition that the Maslaha can be used as evidence the same as Imam al-Ghazali and the explanation has been explained above.

The Maslaha of the judge's decision is indeed reasonable, so when faced with someone who has a high reason, he will accept it. In the divorce case of a Civil Servant without a supervisor's permission that occurred at the Wonosobo Religious Court, the Plaintiff's claim was based on reasons which were principally stated in Article 19 letter (f) of Government Regulation Number 9 of 1975, namely between the Plaintiff and the Defendant there were continuous disputes and fights and no hope of living together again.

The results of implementing the Maslaha of the judge's decision will be able to eliminate narrowness or pettiness, which is not what *syara'* wants. From the case at the Wonosobo Religious Court, if the divorce is not granted, it becomes a burden for the wife to be able to remarry.

Likewise, in the consideration of the Judge in the decision of the Wonosobo Religious Court Number: 678/Pdt.G/2021/PA.Wsb, the Petitioner submitted his case to the Wonosobo Religious Court because in absolute competence it was in accordance with Article 49 of law number 7 of 1989 concerning Religious Courts which was amended

by Law Number 3 of 2006 article 1 number 37 article 49 letter (a) and its explanation number (8) because the applicant conducted a marriage based on Islamic law while choosing the Religious Court located in Wonosobo because relatively the applicant stated the place of residence the respondent is within the jurisdiction of the Wonosobo Religious Court and this is also in accordance with Article 66 paragraph (2) of Law Number 7 of 1989 concerning Religious Courts in conjunction with Article 118 HIR the case *a quo* is the relative authority of the Wonosobo Religious Court.

Among the applicant and the respondent are civil servants (PNS), the panel of judges has given the applicant the opportunity to apply for a divorce permit from the applicant's supervisor, but the applicant stated that he was ready to bear all the risks.

In the next trial, the applicant and the respondent participated in attending the trial and the respondent made a statement that he was ready to bear all the risks and sanctions as stated in the regulations but based on the principles of upholding truth and justice and to comply with the provisions of Article 76 of Law Number 7 of 1989 jo. Article 22 Government Regulation Number 9 of 1970, the assembly is of the opinion that the applicant is obliged to prove the arguments of his application. So that finally, the applicant has submitted written evidence, namely evidence P-1, P-2, and P-3 as well as witness 1 and witness 2 which will be considered in full. (Jaih Mubarak, 2004).

The judge himself in deciding this divorce case considered that in a divorce there must be an element of *mitsaqan ghalidah* to be able to achieve sacred and noble goals in

going through a joint household as husband and wife, but in such complicated circumstances where it is felt that compatibility and the common good for those who are only in these circumstances there are always fights and disputes.

Juridical Analysis of Divorce of Civil Servants without superiors' permission (Decision Study Number: 678/Pdt.G/2021/PA.Wsb). In the case of decision Number 678/Pdt.G/2021/PA.Wsb is a civil servant divorce where the divorce is without permission from superiors.

The first discussion is about civil servants applying for divorce without a supervisor's permit, civil servants have separate regulations governing order and legal certainty for civil servants themselves, these regulations are contained in Number 10 of 1983 concerning marriage and divorce permits for civil servants, in article 3 paragraph (1) "*Civil Servants who are going to carry out a divorce must obtain permission from their superiors*". In this article, it is clear that every civil servant who is going to carry out a divorce must obtain permission from his superior, so without the permission of his superior, a civil servant cannot file a divorce suit.

The second is the strength of the statement, the statement is a statement written by someone in a piece of writing containing a statement that he is legally responsible for what he said. The strength of the statement letter, if it is signed on stamp duty, then the letter is strong in the eyes of the law.

Issues with permission from superiors are part of administrative procedures, where administrative issues are at the table's authority. The problem in this decision is not the

application of material law but the application of formal law.

The results of the interview with Drs. Mubisi, M.H. as Chairman of the Assembly, stated that:

"In Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, it requires the use of superiors' permission in divorce permits, but PP Number 10 of 1984 states that if the Judge has warned but remains in his position, the Court will continue the examination with consequences borne by the applicant himself because the application of the legal principle of each Judge's decision or statutory regulations must fulfill 3 things; Benefit, Fairness, Legal Certainty. (Mubisi, 2021).

The results of the interview with Drs. H. Machmud, S.H., M.H. as a Member Judge stated that:

"According to the sound of point 5 of SEMA Number 10 of 1984, it is: To give time for the Civil Servant to obtain the said Officer's permit, the trial is adjourned forever for 6 (six) months and will not be extended again. If after the time allotted according to point 4 above has passed, and the Civil Servant does not withdraw the divorce suit or application for permission to marry more than one person, the Judge is required to give a warning to the person concerned by referring to the provisions of Government Regulation Number 10 of 1983 which contains sanctions for dismissal as a Civil Servant". (Machmud, 2021).

It has been explained in advance regarding the considerations of the Judge who also decided on case No. 678/Pdt.G/2021/PA.Wsb in the previous chapter, that the Petitioner and Respondent were no longer compatible in the household, there

were frequent disputes and fights and there was no hope of living in harmony in the household again.

It is feared that if the Religious Courts do not grant the divorce there will be adultery outside the knowledge of the Petitioner and the Respondent to fulfill their biological needs, later if they get offspring they will not have clear legal force. Thus, the Judge's philosophy, in this case, is a sense of justice for both parties who want to formalize their divorce because the Petitioner and Respondent can no longer continue their marital relationship because there is no compatibility and the purpose of the marriage cannot be realized, in fact, it is appropriate that the Petitioner and Respondent separate so that each party can freely determine their own future.

Considering, that the Panel of Judges has tried to reconcile the two parties to the dispute as stipulated in Article 82 paragraph (1) and paragraph (4) of Law Number 7 of 1989 concerning Religious Courts, which has been amended by Law Number 3 of 2006, and amended for the second time by Law Number 50 of 2009 in conjunction with Article 31 paragraph (1) and (2) of Government Regulation Number 9 of 1975 but the attempt was not successful and to comply with the provisions of the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016, has been carried out mediation in this case through the mediator Drs. SUPANGAT, M.H. However, this attempt was also unsuccessful because Plaintiff persisted in his stance.

Considering, that the Plaintiff's lawsuit is based on the reasons which are basically as stated in Article 19

letter (f) of Government Regulation Number 9 of 1975, namely between the Plaintiff and the Defendant there are continuous disputes and quarrels and there is no hope of living in harmony again.

In the analysis of Maslaha, the judge's consideration for deciding divorce cases of civil servants without superiors' permission at the Wonosobo Court is included in Maslaha *ḍharuriyyah*, therefore the researcher uses Maslaha analysis according to Imam Al-Ghazali

So the Wonosobo Religious Court granted the Plaintiff's lawsuit, imposing one *ba'in sughra* divorce on the Defendant against the Plaintiff. Because if the Wonosobo Religious Court does not divorce the two parties, the two parties will not be able to live in harmony in the household again.

The results of the interview with Mr. H. Wakhid Salim, S.Ag. as a substitute Registrar, stating the result of a Civil Servant divorce decision without the permission of a superior:

"Thus it was decided in the Assembly's deliberative meeting which was held on Tuesday, July 6, 2021 AD, coinciding with the 25th of Dzulqoidah 1442 Hijriyah. By us Drs. Mubisi, M.H. as Chairman of the Assembly, and Drs. Ihsan Wahyudi, M.H. and Drs. H. Machmud, S.H., M.H. respectively as Member Judges, the decision was pronounced in a hearing open to the public on Tuesday 06 July 2021 AD. coincides with the 25th of Dzulqoidah 1442 Hijriyah. by the Chairman of the Panel accompanied by Member Judges and assisted by H. Wakhid Salim, S.Ag. as a replacement Registrar and attended by the Plaintiff and the Defendant". (Wakhid Salim, 2021).

CONCLUSION

The judge's consideration is an important thing in realizing the value of a judge's decision which contains legal certainty and also justice, besides that it also contains benefits and benefits for the parties concerned, so the judge's consideration must be addressed carefully and properly. The judge's considerations are used to produce a decision No. 678/Pdt.G/2021/PA.Wsb). namely considering the reasons for the Petitioner filing for divorce. Judging from the Maslaha, the determination of Judge No. 678/Pdt.G/2021/PA.Wsb Pa.Wsb), is in accordance with the theory of Maslaha *daruriyyah*, namely to protect religion. The Judges of the Wonosobo Religious Court have considered that the parties should be divorced immediately because their relationship was irreconcilable.

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