

Analysis of Women's Protection Law in Divorce Case

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ABSTRACT

The Supreme Court Regulation Number 3 of 2017 has not been implemented as a whole in divorce cases in the Religious Courts, women who file for divorce (divorce lawsuits) have not fully obtained their rights due to divorce, and divorces that occur in religious courts are mostly divorce lawsuits. The purpose of the study is to find out the extent to which judges apply Supreme Court Regulation Number 3 of 2017 in deciding cases, especially divorce cases against Verstek's decision, and the obstacles faced by judges in implementing Supreme Court regulations Number 3 of 2017. This study uses empirical normative research methods, while data collection techniques are carried out by interviewing, observing and reviewing literature, books and other information relevant to the study. The results of the study show that the Supreme Court Regulation Number 3 of 2017 is very important and very helpful for judges in making decisions but until now Judges are still having difficulty executing Verstek Divorce Decisions if in the decision there are ex-wife rights due to divorce, especially non-civil servants.

ABSTRAK

Peraturan Mahkamah Agung Nomor 3 Tahun 2017 belum dilaksanakan secara utuh dalam perkara perceraian di Pengadilan Agama, perempuan yang mengajukan gugatan cerai (gugatan cerai) belum sepenuhnya memperoleh haknya akibat perceraian, dan perceraian yang terjadi di pengadilan agama adalah kebanyakan gugatan cerai. Tujuan dari penelitian ini adalah untuk mengetahui sejauh mana hakim menerapkan Peraturan Mahkamah Agung Nomor 3 Tahun 2017 dalam memutus perkara khususnya perkara perceraian terhadap putusan Verstek, dan kendala yang dihadapi hakim dalam melaksanakan Peraturan Mahkamah Agung Nomor 3 Tahun 2017. Hal ini Penelitian menggunakan metode penelitian normatif empiris, sedangkan teknik pengumpulan data dilakukan dengan wawancara, observasi dan telaah literatur, buku dan informasi lain yang relevan dengan penelitian. Hasil penelitian menunjukkan bahwa Peraturan Mahkamah Agung Nomor 3 Tahun 2017 sangat penting dan sangat membantu hakim dalam mengambil keputusan namun sampai saat ini Hakim masih kesulitan mengeksekusi Putusan Verstek Cerai jika dalam putusan tersebut terdapat hak mantan istri karena perceraian, khususnya non-PNS.

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I. INTRODUCTION

Women are often likened to a weak figure, not the same as men who are considered as strong figures to do everything that requires physical strength. (Trisnawati & Widiensyah, 2022). This opinion is influenced by several factors, including the cultural and social system in Indonesia. In Indonesia, women are still limited in various fields, limited in their work and trying to improve their standard of

living, this limitation departs from the understanding that women are very subtle and sensitive figures, besides that women are also very synonymous with adversity and oppression.

Departing from this, the demand for gender equality is getting stronger day by day. Gender equality is one of the sustainable development goals (SDGs) that have been determined by the United Nations to be reported in the form of a Voluntary National Review. (Koran Tempo, 2017). The goal of gender equality has 6 (six) targets, namely, First, to end all forms of discrimination against women. Indonesia already has many policies that support gender equality, such as the Law on the Elimination of Domestic Violence, Presidential Instruction No. 9/2000 on Gender Mainstreaming, and regulations issued by regional heads. Second, eliminating all forms of violence against women, trafficking in persons and sexual exploitation, as well as various other types of exploitation. Third, eliminating all harmful practices, such as early and forced marriage and female circumcision, these two issues are still controversial in Indonesia. Fourth, recognize and appreciate parenting and housework. Fifth, ensure full and effective participation and equal opportunities for women to lead at all levels of decision-making in political, economic and community life. Sixth, ensure universal access to sexual and reproductive health and reproductive rights (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 2017).

The existence of the mandate of gender equality has not been able to make women's position change significantly, there are still many examples of women who are in conflict with the law are often still filled with problems, be it women as victims, as witnesses, even as perpetrators. (Suryarandika, 2022). The state has an obligation to ensure that women get justice and are free from all discrimination in the justice system, because often women do not get this at every level of the legal process and often women are in conflict with the law, such as women who experience cases of sexual violence, economic neglect, unpleasant treatment from husbands, family or society, women who do not get their rights as wives or are treated arbitrarily by their husbands and so on (Center, 2021). When women experience all of the above, in particular, they almost do not see a bright spot in resolving the cases they experience in the eyes of the law and sometimes even lack support from the community.

Instead of solving their cases in the eyes of the law, women who are often in the position of victims are far from being protected. The legal process experienced by women is not easy and short. From the background of bitterness felt by women who are in conflict with the law, several regulations were then issued in order to ensure access to justice and justice that is free from discrimination for women and children, namely the Decree of the Chief Justice of the Supreme Court Number 88/KMA/SK/V/2016 concerning the Establishment of the Women and Children Working Group.

On August 4, 2017 the Supreme Court (MA) finally ratified Supreme Court Regulation (Perma) Number 03 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law (Komnas Perempuan, 2021). In general, the law enforcement process must be based on four principles, namely the principle of equality before the law (equality before law), the principle of legal certainty (*rechtssicherheit*), the principle of justice (*gerechtigkei*t), and the principle of expediency (*zweckmasigkneit*) (Wantu, 2012). However, it is a positive progress that in Article 2 of Perma Number 3 of 2017 in addition to the four principles above, it is now added with the principle of respect for human dignity, non-discrimination and the principle of gender equality (Indriyani, 2021). So that under the principle of non-discrimination, judges are prohibited from making distinctions, exclusions, or restrictions on the basis of gender (Center, 2021). In addition, this PERMA in article 4 also regulates and provides the basis for how judges should act and behave towards women's cases in court. What can be considered by judges in examining and adjudicating women's cases, such as inequality in social status between the two litigants, inequality in legal protection, physical and mental powerlessness, power relations, history of violence from perpetrators to victims or witnesses, and also the impact psychic.

Based on the description above, the case that occurred in the Labuha Religious Court with case Number 369/Pdt.G/2021/PA.Lbh where a woman who filed for divorce from her husband received legal protection by granting the divorce suit submitted to the Labuha Religious Court, but the large number of The researcher said that the divorce filed by the wife at the Labuha Religious Court was due to the treatment of men who made a wife unable to stand the treatment, the number of wives who still persisted despite receiving bad treatment due to many factors, one of which was One of them is that it is very difficult to prove that the husband commits violence, both psychologically and physically, because he thinks that the husband has the right to beat his wife if his wife is considered "incompetent" in serving or taking care of the household, in addition to the case of Case Number 369/Pdt.G/2021 /PA. Moreover, the number of husbands when his wife throws g the divorce lawsuit seems to want to complicate or procrastinate or even prevent the wife's lawsuit from being canceled and so on.

Based on the description of the background above, the researchers are very interested in conducting further research on legal protection for women who are in conflict with the law, especially in terms of divorce, continuing other previous studies, on protection for women in various aspects. previously described above.

There is an attitude of making it difficult or even trying to prevent a wife from continuing her lawsuit so that a wife has to fight for justice and the spearhead of hope is in the judge's decision, even though there are regulations, it must be remembered that PERMA Number 3 of 2017 is only in court.

The legal process that women go through both inside and outside the court is still a big concern for all groups with the aim that women still feel safe and get equal protection and justice. Based on this, the researcher is interested in raising the title, namely: "Legal Analysis of Supreme Court Regulation Number 3 of 2017 concerning Protection of Women Facing the Law in Divorce Cases at the Labuha Religious Court" to be used as thesis research.

II. RESEARCH METHOD

The method in writing this thesis is a description of how to write a thesis with the best possible effort, and the research methods used in collecting data for writing this thesis are as follows:

a) Types and Nature of Research

This type of research is an empirical normative type, which is a research method which in this case combines elements of normative law, namely seeing normative elements supported by additional data or empirical elements (Diantha, 2015).

This research uses a statutory approach, the rules in the Marriage Law, the Human Rights Law, Law No. 35 of 2014, KHI and Perma No. 3 of 2017 for the concept and case approach. Especially in this case regarding the analysis of the problems faced by women who are dealing with the law/trial.

b) Types and Sources of Data

The data collected in this study can be classified into 3 (three), namely:

- 1) Primary data (field research) in the form of data obtained directly by researchers in the field by means of interviews or observations of several women who filed for divorce at the Labuha Religious Court and several judges as samples of this study.
- 2) Secondary data (library research) in the form of literature and other library sources, namely the Marriage Law Number 1 of 1974, the Human Rights Law. Law on the Protection of Women Number 35 of 2014. Perma Number 3 of 2017. Law Number 50 of 2009 concerning Religious Courts and the Compilation of Islamic Law (KHI) and important archives in the form of decisions at the Labuha Religious Court.'
- 3) Tertiary Data in the form of materials providing explanations for primary and secondary data such as internet materials, judicial varia magazines.

c) Data Collection Techniques

The data collection techniques of this research consisted of the main data collection techniques and the supporting data collection techniques. The main data collection technique is the researcher himself while the supporting data collection techniques are a list of questions, field notes and tape recorder recordings (Anufia, 2019).

Field data collection will be carried out by means of interviews, both in a structured manner. Structured interviews were conducted with guidelines on a list of questions that had been provided by the researcher. The material is expected to develop according to the answers of the informants and the developing situation.

d) Data Analysis Techniques

Data analysis in this study was carried out qualitatively, namely from the data obtained and then compiled systematically, then analyzed qualitatively to achieve clarity of the problems discussed. Qualitative data analysis is a research method that produces descriptive data analysis, namely what is stated by the respondent in writing or verbally as well as real behavior, researched and studied as a whole (Danim, 2002)

The meaning in the analysis here is intended as an explanation and interpretation in a logical, systematic manner with a sociological approach. Systematic logic shows a deductive way of thinking by following the rules in writing scientific research reports, after the data analysis is complete, the results will be presented descriptively, namely by telling and describing what is in accordance with the problems studied (Sigit, 2017). The results are then drawn a conclusion which is the answer to the problems raised in this study.

III. Results and Discussion

In order to achieve equality, it is not by giving the same burden between men and women, but by opening opportunities without any intervention from any party to one of the genders to actualize themselves. Equality is not equalizing the position of men and women but equalizing the rights of men to women. Every citizen has the same place before the law. Because Indonesia is a democratic country, it is this legal equality that bridges the rights that men have with the rights that can be obtained by women in the eyes of the law.

The 1945 Constitution contained in Chapter XA Article 28 28J, that the state will always guarantee and protect all rights and dignity of human beings as a whole without being reduced when and where even the protection of rights and dignity is always placed in all needs other (Wulandari, 2021). From this statement, it can be seen and defined that both men, women, children or adolescents who are classified as individuals are entitled to rights and justice in the eyes of the law regardless of their status.

It has been explained in PERMA No. 3 of 2017 Article 3 guidelines for adjudicating women's cases in conflict with the law, which aims and is shown so that judges can identify situations of unequal treatment so that it results in discriminatory treatment against women and guarantees women's rights to equal access in obtaining justice. (Mahkamah Agung, 2017) . In detail, it is explained in Article 5 PERMA No. 3 of 2017 judges handling cases of examining women who are in conflict with the law may not show attitudes or issue derogatory statements, light and/or intimidate women, question and/or consider the victim's sexuality or background as basis for acquitting the perpetrator or reducing the sentence of the perpetrator (Azis, 2021).

As for women who are in conflict with the law, they experience physical and psychological barriers that require assistance, in this case the judge has the right to grant women's requests to present a companion. Another important thing related to PERMA is not only involving judges in court, but also requiring other legal powers such as the police or prosecutors who play an important role in protecting women outside the court.

IV. CONCLUSION

In Indonesia, especially in the case of trying women in conflict with the law, there is still a lot of controversy. Even though it has been stated in the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning the rights that women get when dealing with the law, there are still many women who are blamed for the lawsuit that was filed first. Lack of knowledge and understanding of gender equality, discrimination against women is still common and difficult to deal with in society. In this case, the role of Komnas Perempuan also plays an important role in improving the image that women have when they have experienced cases like the case above. Both physically and psychologically are often women harmed. Whether in domestic violence or any other reason, if it has violated the law, women are obliged to follow up on the case and get justice. However, if the court and/or judge follow up the case fairly and in accordance with the applicable law and place the perpetrator on the guilty line, receive the sanctions determined by the court, in this case women will feel that their rights have been given by law and their country..

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