

A REVIEW OF THE RIGHTS OF THE SECOND WIFE WHICH THE MARRIAGE IS CONDUCTED WITHOUT THE CONSENT OF THE FIRST WIFE TO DEMAND THE OBLIGATION OF THE HUSBAND IN THEIR LAW OF DIVORCE

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Abstract

Divorce is the breaking of the marriage rope between husband and wife in a family relationship. So that the divorce must be preceded by a marriage that is legal according to the laws of each religion and belief. If the marriage is illegal or does not have legal force such as the case in the East Jakarta Religious Court decision Number 495/Pdt.G/1996/PA-JT, then the marriage is about to break up with the filing for divorce, then the judge should reject the divorce suit. because the second marriage was carried out without the permission or consent of the first wife. Even though that permission or agreement is a condition for every second marriage for which permission is to be asked to the Religious Court. A second marriage that is carried out without the permission of the Religious Court is invalid or has no legal force as stated in article 4 of Law Number 1 of 1974 concerning Marriage and Articles 40 and 44 of the Republic of Indonesia Government Regulation. 9 of 1975 concerning the Implementation of the Marriage Law No. 1 of 1974 and article 56 verses 1 and 3 of the Compilation of Islamic Law. Thus it is obligatory for a husband who wants to marry both of them to first ask for permission to the Religious Court.

Keywords: Marriage, divorce, polygamy

INTRODUCTION

The birth of the compilation of Islamic Law through Presidential Instruction number 1 of 1991 and Decree of the Minister of Religion number 154 of 1991 fulfills the demands of the Indonesian Muslim community so far so that in the family sector there are positive Islamic legal provisions, so it is hoped that there will be no school war between religious courts and religious courts. the high religious court against a case being filed.

The family area that is mostly submitted to religious courts is divorce cases, and not all divorce cases have the same motive or are filed for the same reasons, for example, the case chosen by the author is the case study writing material.

In the reality of marriage among Indonesian Muslims, not all the aspirations of marriage can be carried out, sometimes a marriage ends in divorce.

Divorce is the breaking of the marriage rope between husband and wife in a family relationship. So that the divorce must be preceded by a marriage that is legal according to the laws of each religion and belief.

Divorces filed at the initiative of both husband and wife before the religious court have different specifications. Any reason that is submitted for divorce to a religious court will be considered reasonable if that reason is in accordance with Islamic law, thus the divorce institution can be justified as long as the reasons are not made up, although sometimes many divorces are also filed on artificial grounds .

In the decision of the Jakarta Tirnur Religious Court number 495/Pdt.G/1996/PA-JT, which is the material for the writing of the case study, there are several uniqueness:

1. Claims for divorce by the second wife, even though the marriage itself was carried out without the consent of the first wife.
2. The second marriage was also not asked for permission from the local Agama Court.

This uniqueness attracted the author's interest to raise the decision of the East Jakarta Religious Court number 495/Pdt.G/1996/PA-JT into a study.

The root of the dispute in this case study lies in Amrizal's admission that when he married Evi, he admitted that he was still a bachelor, but it turned out that after several months it was discovered that Amrizal was married. In each of his disputes with Evi, Amrizal persisted that he was still a bachelor. Amrizal stated that his marriage to his first wife was a Minangkabau traditional marriage, which was a marriage between a man and a woman where both did not live at home and the living expenses were borne by their respective parents. However, Evi Mirahati considered that Amrizal had deceived his status by claiming to be a bachelor, this was reinforced by Amrizal's statement of bachelor status on a stamped seal paper on 20 May 1995. Evi demands a divorce while Amrizal refuses.

Based on the description above, this journal is entitled "**A Review Of The Rights Of A Second Wife Which The Marriage Is Conducted Without The Consent Of The First Wife To Demand The Obligation Of The Husband When Divorce According To Islamic Law**".

RESEARCH METHODS

This research is included in the form of juridical normative research, namely research that provides an understanding of the norm problems experienced by dogmatic jurisprudence in its activities of describing legal norms, formulating legal norms (forming laws and regulations), and enforcing legal norms (judicial practice).¹ Normative research emphasizes the use of written legal norms which are expected to be able to answer in detail and systematically and thoroughly the case of a position from a decision of a religious court.

The type of research used in this research is descriptive analysis, in order to obtain clarity on problem solving and conclusions, namely from things that are general in nature to things that are specific in nature to describe the case of a position from a religious court decision.

The types of data used are primary data and secondary data. In secondary data, the author divides it into 3 (three), namely:

- a. Primary sources of law, namely the source of law which binds / its legal basis, such as the 1945 Constitution of the Republic of Indonesia.
- b. Secondary sources of law, namely materials that provide an explanation of primary sources of law, such as materials in the form of books, diaries / magazines and scientific papers related to this case.

¹ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, (Jakarta: Prenada Media Group, 2016), hlm. 84.

c. Tertiary Law Sources, namely materials that provide guidance on primary and secondary sources of law such as legal dictionaries, encyclopedias, and bibliographies.

All data obtained will be analyzed by means of qualitative descriptive analysis. The data obtained will be processed, then described in the form of a logical and systematic description to describe the case of a position from a decision of a religious court.

DISCUSSION

A. The Law of Marriage of a Second Wife and a Man Who Has a Wife, Whose Marriage is Conducted Without the Permission and Knowledge of the First Wife According to Islamic Law

Legitimate if the permission or consent is difficult to obtain according to the order of the Marriage Law.

Law Number 1 Year 1974 Concerning Marriage. Article 5 paragraph 2:

The consent referred to in paragraph 1 letter a of this article is not required for a husband if his wife or wives cannot be asked for consent and cannot be parties to the agreement, or there is no news from his wife for at least 2 (two) years or because other reasons that need to be assessed by the court judge.

Compilation of Islamic Law. Article 58 paragraph 3:

The consent referred to in paragraph 1 letter a is no longer necessary for a husband if his wife or wives cannot be asked for consent and cannot be parties to the agreement, or there is no news that his wife or wives have been at least 2 years old or for other reasons. who need to be judged by a judge.

However, the marriage is NOT LEGAL if the permission or consent is easily obtained and the second marriage must be asked for permission first to the local Religious Court. Because the first wife's permission is a requirement for submitting a second marriage request for a husband to the Religious Court.

Amrizal and Evi's marriage was carried out without the permission of the Religious Court, even though Amrizal is still married to Juwita, his first wife, although Juwita's whereabouts are not known in the sense that Juwita's permission or agreement is difficult for Amrizal to obtain because Juwita has been missing for 7 years but that is not an excuse for did not apply for a second marriage to the Religious Court. It is wrong if Amrizal claims to be single to Evi, because Amrizal's marriage to Juwita is registered at the Padang Religious Affairs Office with proof of marriage certificate number E6/K3/196/08/1988. So permission from the Religious Court is mandatory for a husband who carries out his second marriage.

Law Number 1 Year 1974 Concerning Marriage. Article 4 paragraph 1:

In the event that a husband will have more than one wife as mentioned in Article 3 paragraph (2) of this law, he is obliged to submit an application to the court in the area where he lives.

PP R.I. Number 9 of Year concerning Implementation of Law Number 1 of 1974 Concerning Marriage. Article 40:

If the husband intends to have more than one wife, he is obliged to submit a written application to the court.

Compilation of Islamic Law. Article 56 paragraph 1:

Husbands who wish to have more than one wife must obtain permission from the Religious Court.

Then, if the second marriage is carried out by a husband without the permission of the religious court, the marriage has no legal force.

Compilation of Islamic Law. Article 56 paragraph 3:

Marriages carried out with a second, third, or fourth wife without permission from the Religious Court have no legal force.

According to R. Abdul Djamali SH: a marriage gives a reflection that is eternal and even continues in the afterlife. It means that the marriage bond is formed with a sincere conscience in a good form between husband and wife. The manifestation of a good relationship between the two extended families of the husband and wife can also avoid all forms of perversion and individual passions.² So the purpose of this law regulating polygamy is to orderly administration and prevent a marriage from mere individual lust.

² R. Abdul Djamali, *Hukum Islam*, (Bandung: CV Mandar Maju, 1992), hlm. 74.

Abdurrachman, S.H., M.H. and Riduan Syah Rani, S.H., said: That polygamy is only intended for those whose laws and religions allow one husband to have more and one wife. Islam allows a husband to have more than one wife.³ Based on the Qur'anic Verse in Chapter (4) An-Nisa verse 3:⁴

Marry several girls that you like, two or three and four but if you are afraid that you cannot be fair then just marry one person.

In the author's interview with Drs. K.H. Miftah Faridh at the Bandung Islamic University Campus, he expressed his opinion on this case:

Sinful The law in the eyes of ALLAH SWT is a man who does not take care of his divorce from a woman who leaves the man, especially if he then marries another woman claiming to be a bachelor. Pity for the first and second wives.⁵

According to the author of the second marriage, what Amrizal and Evi did was NOT LEGAL and DO NOT HAVE LEGAL STRENGTH according to the Compilation of Islamic Law Article 56 paragraph 3, even marriage registrar employees at the KUA are prohibited from registering a second marriage, which is carried out by a husband, without the permission of the Religious Court.

PP R.1. Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. Article 44:

Registration employees are prohibited from registering a husband who will have more than one wife before there is court permission as referred to in article 43.

B. Decision of Religious Court Judge If Second Wife Demands Divorce, According to Islamic Law

Decision of the Religious Court Number 495/Pdt.G/1996/PA-JT. chaired by Drs. Hasan Bisri, S.H. apparently granted Evi's divorce suit. The judge's consideration was in Law Number 1 of 1974 concerning Marriage article 39 paragraphs 1 and 2 in conjunction with PP R.I Number 9 of 1975 concerning the Implementation of the Marriage Law article 19 letter f Jo Compilation of Islamic Law article 116 letter f. It implies that if a husband and wife are no longer able to live in harmony, then the marriage is always shrouded in constant quarrels. The constant bickering was due to Amrizal's status who claimed to be single or bachelor, even though he was married, so that Evi as his second wife could not hide his feelings.

According to the author, Evi's divorce suit was not quite right. He should have applied for a marriage annulment, because Amrizal's marriage with Evi himself was not asked for permission from Amrizal's first wife even though it was not absolute according to Law Number 1 of 1974 concerning marriage article 5 paragraph 2 jo Compilation of Islamic Law article 58 paragraph 3. Marriage cancellation can occur if a man marries a woman it turns out that the man is already married.

Law Number 1 Year 1974 Concerning Marriage. Article 24:

Whoever because of marriage is still bound by one of the two parties and on the basis of the existence of a marriage can propose a cancellation of a new marriage without prejudice to the provisions of article 3 paragraph 2 and article 4 of this law.

PP R.I Number 9 of 1975 concerning Implementation of Marriage Law Number 1 of 1974 concerning Marriage. Article 37:

The cancellation of a marriage can only be decided by a court.

Decree of the Minister of Religion Number 154 of 1991 concerning the Implementation of Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law Article 71 letter a:

A marriage can be canceled if:

a) A husband commits polygamy without permission from a religious court.

From the statement of the above statutory regulations the judge should have rejected the divorce suit filed by Evi. The judge may have misinterpreted the reasons for claiming divorce, namely not being observant in seeing the legal basis of a dispute. In addition, there was a status defect in Amrizal's marriage certificate with Evi; deed Number 291/19/VI/1995, namely Amrizal's status that he is in a state of marriage, not a boy.

C. The Second Wife Can Demand The Husband's Obligation To Provide For His Child In The Case Of Divorce According To Islamic Law

If a marriage breaks up due to divorce, according to the Decision of the Religious Court Number 495/Pdt.G/1996/PA-JT it is based on Law Number 1 of 1974 concerning Marriage Article 41

³ Abdurrachman dan Ridwan, *Masalah-Masalah Hukum Perkawinan di Indonesia*, (Bandung, Alumni, 1978), hlm. 83.

⁴ *Al Qur-an*, Departemen Agama, hlm. 115.

⁵ Wawancara, Tanggal 10 Mei 1997, Kampus UNISBA.

letter a and the compilation of Islamic law that the article does not mention in the judge's decision. That caring for only one child is a collective obligation. If there is a marriage cancellation, the legal relationship between the child and the parents will not be cut off.

Law Number 1 of 1974 concerning Marriage. Article 28 paragraph 2 letter a:

Decisions do not apply retroactively to:

a. *The children born and the marriage.*

Compilation of Islamic Law. Article 76:

The annulment of a marriage does not break the legal relationship between the child and his parents.

According to the author, the obligation of parents to children in case of marriage cancellation is in accordance with Law Number 1 of 1974 concerning Marriage Article 45 paragraph 1: namely the obligation of both parents to care for him and provide for the child.

In statutory regulations, there is no clear requirement or regulation regarding who takes care of the child and provides for the child in the event of a marriage annulment. However, because the cancellation of marriage does not break the legal relationship between the child and the parents, the appropriate article is Article 45 paragraph 1 of Law Number 1 Year 1974 concerning marriage, namely that parents are required to educate and care for their children.

According to the author, a child born in a marriage that is illegitimate or has no legal force can be declared a legal child. Because the definition of illegitimate child is a child born outside of marriage in the sense of being born and having an immoral relationship. As Prof. DR.J.Prins that the Shari'a teaches that between the husband and his illegitimate children (meaning fertilized in immorality) there can be no legal relationship whatsoever, no blood family relationship, no inheritance rights, no rights or obligations regarding giving the required living expenses.⁶

According to Abdurrahman, S.H., M.H. Islamic law only recognizes a legal marriage and an illegitimate marriage. An illegitimate marriage is considered a marriage that never existed. A legal marriage may only be broken because of death, divorce, *khuluq*, *fasakh*, *syiqaq*, and violations of *ta'lik talak*. Marriage annulment can occur in unlawful marriages.⁷

CONCLUSION

Based on the above analysis regarding this case study, the authors conclude that:

1. The Decision of the East Jakarta Religious Court No. 495/Pdt.G/1996/ PA-JT is inaccurate because the use of Article 19 letter f of PP RI Number 9 of 1975 in conjunction with Article 116 letter f of the compilation of Islamic Law which is the basis for the Judge's consideration in pronouncing a decision has no proper relevance to the root of the problem stated by the plaintiff.
2. Therefore, the East Jakarta Religious Court Judge who handled this case should have rejected the divorce suit filed by Evi Mirahati bint Econ Absari, because the divorce suit filed by the second wife who was married without the consent and knowledge of the first wife and not being asked for permission to the Religious Court was not appropriate. with Islamic law in effect in Indonesia.
3. Article which has relevance to this case is Article 4 paragraph 1 of Law Number 1 year 1 974 in conjunction with Article 56 paragraph 1 compilation of Islamic Law in conjunction with Article 56 paragraph 3 compilation of Islamic Law. Hakim the Religious Court can decide this case based on article 24 of Law Number 1 of 1974 in conjunction with article 71 letter a compilation of Islamic Law if Evi submits a request to annul the marriage.

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⁶ J. Prins, *Tentang Hukum Perkawinan di Indonesia*, (Jakarta: Ghalia Indonesia, 1982), hlm. 73.

⁷ *Ibid.*, hlm. 41.

THE REGULATION:

UU Nomor 14 Tahun 1970 Tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman.

UU Nomor 1 Tahun 1974 Tentang Perkawinan dan Penjelasannya.

UU Nomor 7 Tahun 1989 Tentang Peradilan Agama.

PP R.I. Nomor 9 Tahun 1975 Tentang Pelaksanaan UU Nomor 1 Tahun 1974.

Keputusan Menteri Agama Nomor 154 Tahun 1991 Tentang Pelaksanaan Instruksi Presiden Nomor I Tahun 1991 Tentang Kompilasi Hukum Islam.

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AL-Qur'an

INTERVIEW:

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