

GUIDELINES FOR PRESIDENTING WOMEN FACING THE LAW IN DIVORCE JUSTICE BASED

Trubus Wahyudi
Sultan Agung Islamic University
wahyudi@yahoo.co.id

Abstract

An effort to improve the quality of justice with a gender perspective on July 11, 2017 the Supreme Court of the Republic of Indonesia has issued PERMA Number 3 of 2017 concerning Guidelines for Judging Women Against the Law. In line with this study, researchers assume specifically the implementation of Perma Number 3 of 2017 is related to women dealing with law in divorce cases related to the protection of women's rights (ex-wife) along with children's rights due to divorce based on justice. the implementation of PERMA No. 3 of 2017 in the field of litigation duties in the Religious Courts. In the end, judges in trying women's cases dealing with the law must reveal factors based on principles: Appreciation for human dignity, Non-discrimination, Gender Equality, Equality before the law, Justice, Utilization, for the sake of legal certainty.

Keywords: Divorce, Islamic law, marriage law,

A. INTRODUCTION

The paradigm of protection of citizens from all acts of discrimination is the implementation of constitutional rights as stipulated in the 1945 Constitution of the Republic of Indonesia. In Indonesia, the provisions of Article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia have provided constitutional protection that women must be free from discrimination or treatment, especially as a result of their natural tendency to be more delicate than men.¹ For this purpose the Indonesian government has ratified the International Covenant on Civil and Political Rights (International Covenant on Civil and

Political Right / ICCPR) with Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Right.

In the Islamic view which is contained in the Compilation of Islamic Law, the word marriage is a contract or engagement to justify the sexual relationship between men and women in order to realize the happiness of family life covered by the sense of tranquility and affection in a way blessed by Allah SWT. Islamic law is one aspect of Islamic teachings that occupy an important position in the view of Muslims, because it is the most concrete manifestation of Islam as a

1 Read Article 28 paragraph (2) of the Republic of Indonesia Constitution 1945.

religion. It is impossible to understand Islam.²

Married is the sunna of the prophet, although marriage law is determined from its purpose, marriage can also be mandatory of sunna mubah and haram. Therefore, it is the nature for any human being to married.³

In an effort to improve the quality of justice with a gender perspective, on July 11, 2017 the Supreme Court of the Republic of Indonesia has issued PERMA Number 3 of 2017 concerning Guidelines for Judging Women Against the Law. While what is meant by women dealing with the law, is women who are in conflict with the law, women as victims, women as witnesses or women as parties.⁴

The role of a judge in completing a case is regulated in Article 5 of Law Number 48 Year 2009 concerning judicial authority stated that the judge is obliged to explore, follow, and understand the values and sense of justice that lives in the community.⁵

The issues surrounding the factors and principles of the Judge in prosecuting women's cases dealing with

the law and what the form of a justice-based verdict based on, regarding women's rights and children's rights due to divorce. The author will also review who is the holder of the hadhanah and is the underwriter of the living costs of children who are not yet mumayyiz for the protection of children's rights in the form of child welfare and the costs of continuing education and health, due to divorce based on justice.

B. DISCUSSION

1. The Role of Judges In the area of duty in uncovering the factors and principles Judges judge women in conflict with the law.

Law is a variety of values according to the type of value, namely: 1) materialist values related to the type of material values that exist; 2) ideal values that reveal the position of justice and loyalty; 3) sociological values that indicate the significance between practical life and other values;⁶

The judge's ruling is the "judge's crown". The decision must contain at least 3 [three] aspects in legal reasoning,⁷ as follows:

- a. Juridical aspect, that in divorce cases for example, legal considerations basically do not violate the existing legislation. Besides supported by PERMA No. 3 of 2017 this also referred to Law No. 48 of 2009 which states

2 Akhmad Khisni, RECONSTRUCTION OF ISLAMIC FAMILY LAW IN THE FIELD OF LEGAL INHERITANCE IN RELIGIOUS PLURALISM AND ITS CONTRIBUTION TO NATIONAL LAW (Ijtihad Study Of Judges Of Religious Court On Development Of Inheritance Law In The Compilation Of Islamic Law), *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017, P.121-140.

3 Peni Rinda Listiowati, Achid Ulfi Syukriya, JUDICIAL REVIEW OF DECISIONS OF POLYGAMIC POLICYIN SEMARANG RELIGIOUS COURT, *Jurnal Pembaharuan Hukum*, Volume IV No. 3 September-Desember 2017, P.328-337

4 Read Article 1 number (1) Perma No. 3 of 2017.

5 Read Article 5 of Law No. 48 of 2009.

6 Amran Suadi, *Filsafat Hukum Refleksi Filsafat Pancasila, Hak Asasi Manusia, dan Etika*, Prenadamedia Group, Cet. I, Jakarta, 2019, P.41

7 Ikatan Hakim Indonesi, *Varia Peradilan Majalah Hukum* Tahun XXXIII No. 391 Juni 2018, P. 124

that "the court is prohibited from refusing to examine, try, and decide on a case that is filed under the pretext that the law does not exist or is unclear, but it is obligatory to examine and try it"

- b. Sociological aspects, legal considerations in sociological aspects basically emphasize how the law can be accepted by the community which in this case for husband and wife, is related to the consequences of divorce. i.e. by not necessarily punishing to pay the specified amount, but seeing and considering the ability and suitability aspects.
- c. Philosophical aspects; this aspect emphasizes the suitability of the decision with the philosophy of society and in accordance with the principle of justice. The enactment of the rule of law itself does not escape from the basis of philosophical power regarding the view of the essence or nature of the rule of law in this case in order to guarantee justice, order and prosperity

With regard to children's rights due to the divorce of both parents, for the sake of legal certainty the Court can formulate decisions about who are holders of hadhanah or caretakers of children who have not been mumayyiz, as well as protecting the rights of children in the form of children's livelihood and the costs of survival, education and health, due to the divorce of his parents based on justice according to the ability of his father.

If a husband and wife have been bound in a marriage, there arises the rights and obligations as regulated in the Law. Article 30 of Law Number 1 of 1974 concerning Marriage states that "husband and wife bear the noble obligation to uphold the household which is the basic joint of the community structure"

Islamic Shari'ah has indicated that Allah SWT rewards and rewards the deeds of men and women are the same. In the Islamic Shari'ah divorce case, it also justifies a wife to file a divorce suit with the Judge by complaining about the reasons, and the Judge will conduct an examination, if the reasons for divorce are in accordance with the law, then the judge will render the decision proportionally. 3 of 2017, Judges need to consider "gender stereotypes" and "gender justice" for women as parties to divorce cases, so Judges who try divorce cases must render their decisions fairly.

Judges in prosecuting women's cases dealing with the law must disclose factors based on the principle of respect for human dignity, non-discrimination principle, the principle of gender equality, the principle of equality before the law, the principle of justice, the principle of expediency, and the principle of legal certainty.⁸

In examining women in conflict with the law, the judge must not show attitude or issue statements that

8 Achmad Sulchan, Juridical Review On The Requirement Of The Right To Land For Women Marketed Birds Marriage (Case Study Decision Of The Constitutional Court Number: 69 / Puu Xiii / 2015), *Jurnal Pembaharuan Hukum*, 2019, p. 224.

demean, blame and / or intimidate women in dealing with the law. In addition, the judge also did not justify the discrimination against women by using culture, customary rules and traditional practices, as well as using expert interpretations that were gender biased. The judge questions and / or considers the experience or background sexuality of the victim as a basis for releasing the offender or alleviating the sentence of the offender, issuing statements or views that contain Gender Stereotypes.⁹

In Islamic law, Allah SWT has determined the rights of a woman who is divorced or barred by her husband, both divorce/divorce is dropped after her husband is in dukhul, then the husband is obliged to give mut'ah and iddah income, or women who have never been touched (qabla dukhul), then her husband is required to give mut'ah.¹⁰

With regard to children's rights due to the divorce of both parents, for the sake of legal certainty the Court can formulate decisions about who are holders of hadhanah or carers of children who are not yet mumayyiz, as well as the protection of children's rights in the form of children's livelihood and the costs of survival, education and health, due to the divorce of his parents based on justice according to the ability of his father.¹¹

If a husband and wife have been bound in a marriage, rights and obligations arise as stipulated in the

law. Article 30 of Law Number 1 of 1974 concerning Marriage states that "husband and wife bear the noble obligation to uphold the household which is the basic joint of the community structure."¹² Islamic Shari'a has indicated that Allah SWT rewards and rewards the deeds of men and women are the same.¹³

Even though Islamic values are the basis of its culture and civilization, some people may assume the values of Islam are no longer relevant and they are against modernized western values.¹⁴ In the Islamic Shari'ah divorce case, it also justifies a wife to file a divorce suit with the Judge by complaining about the reasons, and the Judge will conduct an examination, if the reasons for divorce are in accordance with the law, then the judge will render the decision proportionally. 3 of 2017, Judges need to consider "gender stereotypes" and "gender justice" for women as parties to divorce cases, so Judges who try divorce cases must render their decisions fairly.¹⁵

2. Forms of a Justice-based Decision Dictum Formula, on Women's Rights in Confronting Law as a result of Divorce.

12 Read Article 30 of Law Number 1 of 1974 concerning Marriage.

13 Read Q.S. Al Ahzab verse: 35.

14 Nur Fareha, ROLE OF ISLAM IN MALAYSIA'S PUBLIC DIPLOMACY: ABDULLAH BADAWI ADMINISTRATIONS, *International Journal of Law Reconstruction*, Volume II, Issue 1, March 2018, P.14-30.

15 A.Choiri, *Creating Justice with a Gender Perspective and Protection of Divorced Children*, [PTA Semarang, New Mediation Edition 02, January 2019] p. 25.

9 Read Article 5 Perma Number 3 of 2017;

10 Read Surah Al Baqarah verse 236, and Surah Al Ahzab verse 49.

11 Article 149 letter d and Article 156 letter d of the Islamic Law Compilation can be seen.

a. In the Case of Position of Decision Position in Divorce Divorce Case with Number.167 / Pdt.G / 2018 / PA. Um. the formula of the dictum is as follows: :

- 1) Stating that the Respondent who had been formally summoned and was appropriate to appear before the court was not present;
- 2) Grant the Petitioner's request with *verstek*;
- 3) Giving permission to the Petitioner (Ganang Fajar Pamungkas Bin Agus Budi Haryono) to drop one divorce against the Respondent (Pungky Destasari Binti Eko Santoso) in front of the Kebumen Religious Court hearing;
- 4) Punishes the Petitioner to provide the Respondent in the form of *mut'ah* in the amount of Rp. 1,500,000 (one million five hundred thousand rupiah) and money during the period of *Idah* amounting to Rp. 3,000,000 (three million rupiah), which is paid when before the divorce pledge is pronounced;

b. Case number 2 on Divorce Divorce Case with Number 194 / Pdt.G / 2018 / PA. Um. the formula of the dictum is as follows:

- 1) Stating that the Respondent who had been formally summoned and was appropriate to appear before the court was not present;

- 2) Grant the Petitioner's request with *verstek*;
- 3) Giving permission to the Petitioner (Admin bin Madisno) to drop divorce from the Respondent (Waryuni binti Waryono) in front of the Kebumen Religious Court;
- 4) Punishes the Petitioner to give the Respondent to pay *Mut'ah* in the form of Rp.500,000 (five hundred thousand rupiah) and Rp. 1,500,000 (one million five hundred thousand rupiahs) paid before the pledge of divorce was pronounced;¹⁶

Based on both Case Position of Divorce, Case Number 167 and Number 194 relating to the implementation of PERMA 3 of 2017 concerning Guidelines for Judging Women in Confronting the Law, it can be explained that although the Respondent or the woman (wife) who is dealing with the law in the divorce case "Divorced Divorce ", from a woman's side (wife) not present at the hearing after being legally and properly summoned, the Panel of Judges who tried the *a quo* case issued a decision granting permission to the Petitioner / husband to pronounce the divorce pledge; The Panel of Judges in *ex officio* has condemned the *Condemnatour* decision to punish the Petitioner or ex-husband who divorced his wife, to pay for *Iddah* money and give *Mut'ah*

16 Case data from the Verdict completed by Kebumen Religious Court in 2018.

money as stated in the formula of the dictum of the ruling above.

c. Case Position 3 of Divorce Divorce Case Number 630 / Pdt.G / 2018 / PA.Kbm, the formula of Diktum is as follows:

- 1) In Convention:
 - a) Grant the Petitioner's petition;
 - b) Giving permission to the Petitioner (Anggi Fariyanto bin Amad Supardi) to pledge to drop one king's divorce on the Respondent (Sumirah binti Sirun) before the Kebumen Religious Court hearing;
- 2) In reconvention:
 - a) To grant the plaintiff's claim for part of the reconciliation by punishing the Defendant's defendant by paying the living of a child named Farida Alia Anggraeni bint Anggi Feriyanto every month in the amount of Rp. 1,000,000 (one million rupiahs) until the child is an adult, with an increase of 10% every year and paying Iddah for the Plaintiff's reconciliation for 3 months x Rp. 1,000,000 = Rp. 3,000,000 (three million rupiah). Defendants of the reconciliation are also required to pay Madhiyah for the 12 months of Rp. 1,000,000 = Rp.

12,000,000 (twelve million rupiahs) and gave a mutation to the Plaintiff in a sum of Rp. 5,000,000 (five million rupiah);

- b) Refuse for the rest; In Conventions and Reconventions, it imposes upon the Conventions / Defendants of the Reconvention to pay a case fee of Rp. 341,000 (three hundred forty-one thousand rupiah).

The formula of the dictum in the case above is in addition to the declarative ruling which allows the Petitioner/Defendant to Reconpendence to pronounce the pledge of divorce, also the dictum of the ramar contains a condemnature ruling that the Petitioner/Defendant is sentenced to pay to the Respondent/Defendant of the Reconciliation in the form of a divorce pledge, also the dictum of the ramar contains a condemnature ruling that the Petitioner/Defendant is sentenced to pay to the Respondent/Plaintiff, iddah income and mut'ah giving;

d. Case Position 4 of Divorce Divorce Case with Number 1977/Pdt.G / 2018 / PA. Um. The formula of the dictum is as follows:

- 1) In convention:
 - a) Grant the petition of the Convention Applicant;
 - b) Giving permission to the Petitioners of the Convention (Sugeng bin M Sahri) to drop divorce divorce from the

Respondent of the Convention (Anjar Sawitri bint Pujo Suharto) in front of the Kebumen Religious Court hearing;

- 2) In Reconvention:
 - a) Grant the Plaintiff's Plaintiff's claim in part;
 - b) Punish the Reconvention Defendant to pay the Reconvention Plaintiff in the form of an obligation to provide iddah income of Rp. 4,500,000 (four million five hundred thousand rupiah); and Mut'ah in the form of Rp. 7,500,000 (seven million five hundred thousand rupiah). Besides that, the defendant was also obliged to provide past 9 months of income in the amount of Rp. 13,500,000 - - Rp. 1,800,000 = Rp. 11,700,000 (eleven million seven hundred thousand rupiah), which was paid directly and in cash at the time of the pronouncement of the divorce pledge;
 - c) Rejecting the Plaintiff's Plaintiff's lawsuit for the rest and the rest, both in the Convention and the Reconvention, the Judge charged the Convention / Defendant Defendant to pay this case fee of Rp. 641,000.00 (six hundred forty-one rupiah);

The formula of the dictum of the case decision above contains the

Declaration giving permission of the Petitioner / Defendant to Reconpendence to pledge divorce, as well as a condemnature decision that the Petitioner / Defendant of the Reconstruction was sentenced to pay to the Respondent / Claimant Defendant in the form of Maddalah (past living), livelihood and reconciliation. giving mut'ah, with the clause "must be paid directly in cash at the time the trial of the divorce pledge is pronounced".

- e. Case Position 5 of Divorce Case with Number 1021 / Pdt.G / 2018 / PA.Kbm Its dictum formula reads:
 - 1) In convention;
 - a) Granting the Petitioner's request;
 - b) Giving permission to the Petitioner (Dedi Rahman bin Mardjonet) to drop divorce divorce from the Respondent (Ari Priyaningsih bint Sarino) in front of the Kebumen Religious Court hearing;
 - 2) In Reconvention:
 - a) Respond to the Plaintiff's claim for reconciliation in part by punishing the Defendant's defendant:
 - b) The Defendant is obliged to provide mut'ah to the Plaintiff in the sum of Rp. 12,000,000 (twelve million

thousand rupiahs) and paid the Iddah income to the Plaintiff for reconvention for 3 months x Rp. 1,000,000 = Rp. 3,000,000 (three million five hundred thousand rupiah). In addition the defendant also paid a living for 2 children named Rahma Nur Azizah and Alim Ibadurrahman every month in the amount of Rp. 2,000,000 (two million rupiah) to adults, with an annual increase of 10%;

- c) Determine the Reconciliation Plaintiff as a caregiver for children named Rahma Nur Azizah and Alim Ibadurrahman to adult children;
- d) Refusing to do the rest in both the Convention and the Reconvention, the Judge imposes on the Convention / Defendant's Respondent the Petitioner to pay the court fee in the amount of Rp.411,000 (four hundred and eleven thousand rupiah);

The formula for the case decision dictum above is that the Civil Servants' (PNS) litigation contains a Declaratory decision which permits the Petitioner to pledge divorce, and also contains a condemnature decision dictum that the Petitioner / Defendant for a Reconstruction is sentenced to pay to the Respondent / Plaintiff's Reconciliation in the form of divorce, and also contains a condemnature decision dictum that the Petitioner /

Defendant of a Reconstruction is punished to pay to the Respondent / Plaintiff of the Reconstruction in the form of a divorce. Madliyah livelihood (past living), iddah livelihood and mut'ah giving, and the Plaintiff of the Reconstruction are given the right to care for children who are not yet mumayyiz; while the maintenance costs are borne by the Applicant / Defendant of the Reconstruction as his biological father. The holder of the hadhanah and the person who is responsible for the living costs of the child who has not yet been mumayyiz for the protection of children's rights in the form of children's livelihood and the costs of continuing education and health, due to the divorce of his parents based on justice.

The hadlonah holders for children who are not yet mumayyiz and are responsible for the cost of living for the sake of survival due to divorce "Divorce divorce", regarding the implementation of Perma Number 3 of 2017 concerning Guidelines for Judging Women's Cases Against the Law in Justice-Based Divorce Cases, in the application of judicial or divorce practices litigation, after being considered proportionally for the future benefit of the child, the formula of the dictum of the court's decision as the holder of the hadhonah of the child which is not yet mumayyiz is on the side of the Respondent or his ex-wife as his biological mother; while the cost of living as a child's living is the responsibility of the Petitioner as his biological father, of course according to ability.

C. CONCLUSION

Based on the results of the investigative report that the researcher described above with regard to this research, it can be concluded that the role of the Judge in the field of duty in uncovering the factors and principles of the Judge to try women against the law, in connection with the Implementation of PERMA Number 3 of 2017 Concerning Guidelines for Trying Cases of Women Who Face Law in Divorce Cases on Divorce Divorce Based on Justice is that Judges in adjudicating women cases dealing with law must disclose factors based on principles: Appreciation for human dignity, Non-discrimination, Gender Equality, Equality before the law, Justice, Utilization, for the sake of legal certainty.

The form of Justice-based Decision Dictum Formula, regarding Women's Rights in Legal Conflict due to Divorce "Divorce Divorce", is related to the Implementation of PERMA Number 3 of 2017 Concerning Guidelines for Judging Women's Cases Confronting Laws in Divorce Divorce Divorce Laws is F, Declaration of case dictum formula which is Declaratory which allows the Petitioner to pledge divorce, and also contains a decision dictum which is condemnatoir that the Applicant / Defendant for the Reconstruction is sentenced to pay to the Respondent / Plaintiff. Ah, with the clause on the order to hand over Madliyah's living money, Iddah's living and Mut'ah's gift must be submitted shortly before the pledge of divorce is made before the court hearing, for the benefit of the decision.

Holders of hadhanah and underwriters of child living costs that

are not yet mumayyiz for the protection of children's rights in the form of children's livelihoods and the costs of sustaining education and health, due to divorce between parents based on justice are: After proportional consideration for the future benefit of the child the court as the holder of the hadhonah of a child who has not yet been mumayyiz is on the part of the Respondent or his ex-wife as his biological mother; while the cost of living as a child's survival is the responsibility of the Petitioner as his biological father.

The legal practitioners in this case the judge, as the implementation of PERMA Number 3 of 2017 in the examination of the Women's Case Faced with the law, the judge must pay attention to prohibitions that must be avoided, ie the judge may not: Show attitude or issue a statement that is condescending, condemning and / or intimidate women in dealing with the Law; discrimination against women by not using culture, customary rules and traditional practices, or using the interpretation of experts who are gender biased. In the ruling, when the divorce case cannot be reconciled anymore, in the dictum of the ruling the ruling should pay attention to women's rights not to be harmed, including children's rights, including the guaranteed cost of survival of the child, due to divorce divorce from both parents.

For the community it should not be easy to file a divorce case, perhaps just a trivial reason or problem, unless the household really cannot be maintained anymore, so that the effects of the divorce can be avoided;

BIBLIOGRAPHY

- A.Choiri, *Creating Justice with a Gender Perspective and Protection of Divorced Children*, PTA Semarang, New Mediation Edition 02, January 2019;
- Abdullah Saeed, 2013, *Bank Islam dan Bunga*, terj. Muhammad Ufuqul Mubin, Nurul Huda, Ahmad Sahidah, Yogyakarta: Pustaka Pelajar;
- Achmad Sulchan, Juriddicial Review On The Requirement Of The Right To Land For Women Marketed Birds Marriage (Case Study Decision Of The Constitutional Court Number: 69 / Puu Xiii / 2015), *Jurnal Pembaharuan Hukum*, 2019;
- Akhmad Khisni, RECONSTRUCTION OF ISLAMIC FAMILY LAW IN THE FIELD OF LEGAL INHERITANCE IN RELIGIOUS PLURALISM AND ITS CONTRIBUTION TO NATIONAL LAW (Ijtihad Study Of Judges Of Religious Court On Development Of Inheritance Law In The Compilation Of Islamic Law), *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017;
- Andi Aina Ilmih, A.Zulkarnain, IDEAL ELECTRONIC CONTRACT MODEL AS A FORM OF E-COMMERCE DISPUTES SETTLEMENT, *Jurnal Pembaharuan Hukum*, Volume VI No.1 Januari-April 2019;
- Amran Suadi, 2019, *Filsafat Hukum Refleksi Filsafat Pancasila, Hak Asasi Manusia, dan Etika*, Prenadamedia Group, Cet. I, Jakarta;
- Djauhari, STUDY THE THEORY OF WELFARE STATE IN WEST AND ISLAMIC PERSPECTIVE, *Jurnal Pembaharuan Hukum*, Volume V No.3 September-Desember 2018;
- Elvira Fitriyani Pakpahan, LEGAL PROTECTION AGAINST DEPOSITORS' CUSTOMERS WITH MUDHARABAH CONTRACT ON ISLAMIC BANKS, *Jurnal Pembaharuan Hukum*, Volume VI No.1 Januari-April 2019;
- Ikatan Hakim Indonesi, *Varia Peradilan Majalah Hukum* Tahun XXXIII No. 391 Juni 2018;
- Nur Fareha, ROLE OF ISLAM IN MALAYSIA'S PUBLIC DIPLOMACY: ABDULLAH BADAWI ADMINISTRATIONS, *International Journal of Law Reconstruction*, Volume II, Issue 1, March 2018;
- Peni Rinda Listiowati, Achid Ulfi Syukriya, JUDICIAL REVIEW OF DECISIONS OF POLYGAMIC POLICYIN SEMARANG RELIGIOUS COURT, *Jurnal Pembaharuan Hukum*, Volume IV No. 3 September-Desember 2017