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PLAINTIFF SUES FOR DIVORCE FROM ABROAD AGAINST DEFENDANT IN INDONESIA

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Abstract:

Background. Based on the authors' experience of various cases handled and resolved in the judicial environment, both in the District Court and the Religious Court, it can be concluded that divorce cases quite dominate the cases filed.

Aims. On this basis, the authors became interested in studying more deeply through the writing of scientific journals that focus on the phenomenon of divorce, especially the case of a wife who works as a Female Worker (TKW) in Singapore who filed a divorce lawsuit against her husband in

Indonesia. Referring to official data uploaded by the Central Statistics Agency (BPS), there will be 399,921 divorce cases in all regions of the Unitary State of the Republic of Indonesia (NKRI) in 2024.

Methods. A normative juridical approach is used in this study which refers to applicable laws and regulations, expert opinions, and empirical data.

Result. The results of the study show that both the plaintiff and the defendant have reached an agreement to dissolve their marriage on the grounds that the principle of harmonious and sustainable domestic life as regulated and mandated in the marriage law is no longer fulfilled.

Conclusion.

Implementation.

Keywords: Indonesia, Divorce, Justice, Court, TKW

INTRODUCTION

Marriage is a sacred bond that contains sacred value in human life. In the Islamic perspective, marriage serves as the main foundation for the formation of a harmonious family as well as a noble covenant (*mitsaqan ghalizhan*) between husband and wife. Marriage not only creates tranquility (*sakinah*), happiness (*mawaddah*), and affection (*rahmah*) in the household, but also acts as a natural mechanism to maintain the sustainability of the human generation and strengthen human values.

Legally, the principles of ideal marriage in Indonesia are regulated in Law Number 1 of 1974 concerning Marriage, which emphasizes forming a happy, eternal, and Godhead family. This regulation is the legal basis for implementing marriage, with the aim of realizing family harmony in a sustainable manner, in line with the ideals of building a stable and dignified social order.

However, in practice, not all marriages are harmonious. Household dynamics in new couples and those who have been married for a long time are often colored by conflicts, even leading to divorce. Various factors can be the cause, one of which is the economy.

Based on data we took from the Central Statistics Agency (BPS), the number of divorces in Indonesia in 2024 was 399,921 cases, a decrease of around 2.06% compared to the previous year. Economic factors were recorded as the second highest cause of divorce, with 100,198 cases, after "Persistent Disputes and Quarrels."

As the country with the fourth-largest number of citizens in the world, Indonesia still experiences difficulties and limitations in creating jobs. This phenomenon is increasingly evident in its development, especially after the sluggish Indonesian economy due to mismanagement that led to the depreciation or plummeting value of the rupiah against the US dollar. This strengthens people's tendency to work abroad in response to domestic

economic challenges. Therefore, working abroad remains an attractive option for those eyeing better economic and life prospects.

Problem Formulation

Based on the background we have gathered above, the formulation of the problem can be stated as follows:

1. What are the factors of divorce?
2. What are the consequences of divorce?

Purpose and Benefits

This study aims to provide education to the young generation who are not financially stable, both married and those who plan to get married, as well as individuals or couples who work abroad to provide for their families in Indonesia.

This research benefits students, academics, and the general public by helping them understand several factors that explain the high divorce rate among female workers (TKW) with their partners in Indonesia.

METHODS

In this study, the authors applied a normative juridical research methodology. This approach analyzes law as a structured system of norms, focusing on studying the regulatory aspects and applicable legal principles.

In normative juridical research methodology, problem identification is done by determining legal issues requiring resolution. The collection of legal sources is carried out by collecting laws and regulations, jurisprudence, and various other relevant written legal sources. The process of legal interpretation is realized through the interpretation of legal texts to understand their scope, which can include grammatical interpretation methods, systematic interpretation, teleological interpretation, and historical interpretation. At the stage of legal analysis, the relevant legal norms are examined for their relevance and then applied to the facts of the case.

Normative juridical research focuses mainly on legal concepts, legal principles, and legal principles. From the existing doctrine, it can be concluded that normative juridical research is a methodology that bases its analysis on laws and regulations that are relevant to the legal issue under investigation.

Normative juridical research examines three fundamental elements: legal concepts, principles, and rules. Based on doctrinal studies, the normative approach in legal research is

a scientific method that makes laws and regulations the main basis for analyzing legal problems that are the object of research.

DISCUSSION

Among the cases entrusted to the Adil Bersatu Indonesia Legal Aid Institute is one concerning the divorce of a non-Muslim married couple. In this case, the plaintiff (wife) who is earning a living abroad (Women's Workers) gives power of attorney to the United Indonesia Adil Bersatu Legal Aid Institute to represent the divorce to be resolved in the Class IA Source District Court.

Definition of Legal Aid Institution

Legal Aid Institutions are organizations that provide legal services for the public to protect the constitutional rights of citizens and facilitate equal access to justice. This institution provides legal assistance on a pro bono basis, especially for economically disadvantaged groups. The main functions of this institution include resolving legal disputes, sheltering people's aspirations, and advocating for the fulfillment of citizens' legal rights. The existence of Legal Aid Institutions is expected to contribute to improving the quality of life of the community, especially in socio-legal and governance aspects. In addition, this institution plays a strategic role in realizing a judicial system that is transparent, accountable, and oriented to the principles of substantive justice.

The strategic function of the Legal Aid Institution also includes the protection of the constitutional rights of the community in obtaining justice in a non-discriminatory manner, regardless of primordial factors such as ethnicity, race, or belief. Furthermore, this institution carries out multifunctional roles that include: legal education, judicial consultation services, alternative dispute resolution through mediation and negotiation, community empowerment programs, preparation of legal documents, legal academic studies, case investigations, and legal assistance in non-litigation processes.

Legal Aid Institutions have several main objectives, namely: facilitating equitable access to the judicial system; provide legal protection for the rights of individuals; supporting the realization of community-based justice; improving people's legal literacy; encourage alternative dispute resolution through non-litigation channels; reducing the financial burden in legal proceedings for vulnerable economic groups; increasing the capacity of the community to understand, anticipate, and resolve legal issues; make preventive efforts

against potential rights violations; and provide legal protection when there is a violation of citizens' rights.

The United Indonesia Adil Bersatu Legal Aid Institute has several branches. The authors' Field Experience Practice Place is at Jalan Sunan Drajat No. 05, RT 05, RW 05, Sumber Village, Sumber District, Cirebon Regency, West Java. The General Chairman of the United Fair Indonesia Legal Aid Institute is H. Hasan Bisri M.S., S.Pd.I., S.H., M.H., C.PS., C.HL., C.NS., and C.IRP. supervise many advocates affiliated with their branch. The Adil Bersatu Indonesia Legal Aid Institute comprehensively handles various legal cases, including legal assistance, advocacy representation, conflict mediation, and various services related to the legal field, both in the civil and criminal realms. The institution actively plays a role in human rights protection efforts, focusing on the defense of marginalized groups and communities that experience structural discrimination.

Definition of Divorce

Divorce is the legal termination of a marital relationship between two parties who were previously bound in a matrimonial bond so that their marital status is no longer juridically recognized. This process has multidimensional implications, including legal, social, and economic aspects for former married couples, and can significantly impact the rights and welfare of children resulting from the marriage. In essence, divorce occurs due to disharmony in the husband-wife relationship and is carried out through a legal mechanism.

Juridically, the Marriage Law does not provide an explicit definition of divorce, but only mentions some causes or factors for the breakdown of the marriage, in addition to other factors such as death or court decision. According to Prof. Subekti, S.H., divorce can be defined as: "The official dissolution of a marriage can occur through a court decision or a unilateral request from the husband/wife." Thus, divorce is not just a personal termination of a relationship, but a legal process that has far-reaching consequences for all parties involved.

In Indonesian marriage law, there are differences in legal terminology based on the initiative to file for divorce. If the husband files for divorce, this legal process is referred to as talaq divorce, where the husband is positioned as the applicant and the wife as the respondent. On the other hand, when the wife files for a divorce, the process is legally referred to as a divorce lawsuit, with the wife's legal position as the plaintiff and the husband

as the defendant. These differences in terminology reflect different legal constructions in divorce mechanisms based on the initiative of the filing party.

In the Indonesian judicial system, the jurisdiction to settle divorce cases is determined based on the spouse's religion. For non-Muslim couples, the divorce proceedings are carried out in the District Court, while for Muslim couples, the authority to settle is under the Religious Court. Both the application for divorce and the divorce lawsuit must be submitted to the competent court by: the marital status of the parties; the area of legal domicile of the applicant/plaintiff; and the religion embraced by the couple, as a prerequisite for absolute competence of the court.

Factors of Divorce

Indonesia's multicultural and multi-religious socio-cultural conditions are often a determining factor in the domestic dynamics of married couples. This cultural plurality and significant differences in beliefs contribute substantively to the high divorce rate in Indonesia.

Economic, social, and technological changes have significantly influenced the dynamics of marital relationships in Indonesia. Transformations in these three areas have created a new paradigm in marital interaction. In particular, the massive penetration of digital technology and social media has changed the patterns of communication and interaction between couples, creating new challenges and opportunities in domestic life.

The causes of divorce arise from various factors that encourage a person to file a lawsuit. Some of these factors include:

- a. Moral damage;
- b. Infidelity or infidelity;
- c. Forced marriage/involuntary;
- d. Poverty or financial instability;
- e. Selfish/irresponsible;
- f. Child marriage;
- g. Domestic Violence (Domestic Violence);
- h. Involved in legal cases;
- i. Sexual health problems;
- j. Marriage on the basis of political interests.

Consequences of Divorce

The breakup of a marriage has various legal consequences that must be carried out by the parties involved. For wives, the main obligations include: in Article 41 of Law No. 1 of 1974, if the child is not even 12 years old, then the mother is obliged to maintain and educate the child until she is allowed to choose. On the other hand, the husband has legal obligations in the form of; in Article 35 of Law No. 1 of 1974 for the distribution of gono-gini property; In Article 41 of Law No. 1 of 1974, parents are required to be responsible for their children's education.

These provisions affirm that the legal consequences of divorce are reciprocal and comprehensively regulated in the Indonesian legal system, taking into account the principles of justice and welfare for all parties involved, especially children.

Divorce Process

There are some requirements that must be met for married couples, including:

1. Proof of marriage certificate issued by the Population and Civil Registration Office, and 2 (two) witnesses who know.
2. Proof: If the baby is gifted, it must include a birth certificate issued by the Population and Civil Registration Office and two (two) witnesses who know.
3. Evidence that the marriage was initially fine and harmonious in the form of photos and 2 (two) witnesses who knew.
4. The evidence of the couple's marriage arose problems that met the requirements for divorce and 2 (two) witnesses who knew.

There is evidence of letters and witnesses that the plaintiff (wife) or applicant (husband) has tried to maintain the marital relationship, but the defendant (husband) or respondent (wife) still commits acts that make the household break and difficult to reunite, for example, evidence of communication and 2 (two) witnesses who know.

The other requirements for the plaintiff (wife) or applicant (husband) who are abroad to provide a power of attorney for divorce or divorce are to the defendant (husband) or respondent (wife) who is in the Unitary State of the Republic of Indonesia through the Legal Aid Institution, namely giving two powers of attorney to the Legal Aid Institution that is given the power of attorney, namely: Divorce power of attorney, and a power of attorney that has been legalized by the Embassy of the Republic of Indonesia in their country of work or location. Plus, the principal's approval to proceed electronically through e-court.

The legal provisions contained in Article 20 paragraph (1) of Government Regulation Number 9 of 1975, which is the implementing regulation of Law Number 1 of 1974 concerning Marriage, affirms that: "The process of filing for divorce is carried out by one of the spouses or their legal representatives to the Court in the jurisdiction where the defendant is domiciled." Thus, juridically, the competent forum for divorce proceedings is determined based on the legal domicile of the defendant as stated in the official identity document.

The divorce process is a legal mechanism specifically regulated by laws and regulations in each jurisdiction of a sovereign state, including in the legal system of the Unitary State of the Republic of Indonesia. Normatively, the law regarding divorce in Indonesia is explicitly regulated in Referring to the legal provisions in the Marriage Law, precisely Article 39 paragraph (1) of Law Number 1 of 1974, which states that: "The divorce process can only be carried out legally after passing a court hearing, where previously the court had tried to mediate between husband and wife but failed to achieve reconciliation." Paragraph (2) reads: "A marriage can only be decided through divorce when it is proven that there are strong foundations that show the inability of the couple to continue to build a harmonious married life." Furthermore, paragraph (3) reads: "The implementation of divorce through a court session is subject to the provisions of the law that specifically govern it," which is the main legal basis in implementing the dissolution of marriage.

Divorce procedures are regulated in Article 16 of Government Regulation No. 9 of 1975 which reads: "In considering the holding of an Article 14 divorce hearing, the Court must conduct two substantive assessments: verification of the fulfillment of the grounds of Article 19, and proof that the marital relationship in question has reached the point of irreconcilable differences." Furthermore, Article 17 of Government Regulation Number 9 of 1975 reads: "As soon as the divorce trial based on Article 16 is completed, the Chief Justice is obliged to issue a divorce certificate. For administrative registration, the official document must then be submitted to the marriage registrar in the jurisdiction where the divorce occurred."

In this divorce lawsuit, the Defendant (husband) has continuously neglected to provide maintenance to the family, resulting in a protracted domestic dispute for more than three years. This condition forced the Plaintiff (wife) to work as a Female Worker (TKW) in Singapore to meet the economic needs of her children and family. In addition, there was testimony from a neighbor who lived close to the couple who stated that there were

indications that the Defendant (husband) was suspected of having an illicit relationship outside of marriage.

These facts have met the requirements for divorce as stipulated in Article 19 letter (f) of Government Regulation No. 9 of 1975, which mentions the condition in which married couples experience continuous disputes and quarrels as one of the bases in the household without the hope of living in harmony again. In addition, there is an allegation that the Defendant (husband) also fulfills the elements of Article 19 letter (a) related to adultery or bad habits that are difficult to cure, such as drunkenness, stuffing, gambling, or similar acts. Although the allegations of infidelity have not been supported by concrete evidence, they remain relevant to consider in the context of this lawsuit.

Therefore, the Plaintiff (wife) has officially provided legal representation to the Legal Aid Institute (LBH) Indonesia Adil Bersatu to represent and care for the entire divorce process. The primary consideration is that their household has been in trouble for over three years, where various reconciliation efforts made by families and local community leaders have not yielded results. Both parties, the Plaintiff and the Defendant, agreed to end their marriage, considering that maintaining a harmonious marital relationship was no longer possible. The trial process was delayed because the witnesses did not bring official identity documents (Identity Card or Driver's License). However, after rescheduling the trial, the Court finally issued a divorce verdict.

This legal event has fulfilled the elements stipulated in Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage, stating, "Divorce can only be carried out in front of a Court session". Furthermore, according to paragraph (2) of the same article, divorce must be based on specific reasons, including circumstances where the husband and wife cannot live a peaceful domestic life as expected in a marriage.

CONCLUSION

Based on observations and analysis during the study, it can be concluded that the factors of divorce in Indonesia are dominated by "Continuous Disputes and Quarrels", followed by "Economic" factors.

The consequences of divorce are not only felt by ex-spouses, but also have a major impact on the psychological development of the baby. Those who experience parental divorce are prone to emotional trauma due to having to separate from one of the caregivers

or face a situation of choosing a place to live. This condition has the potential to cause long-term psychological disorders if not treated appropriately.

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