



License for Civil State Apparatus for Divorce (ASN) and Completion Religious Courts in Class in Padang based on Decision Number 270 / Pdt.G/2019/Pa.Pdg

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Abstract

State Civil Apparatus is a servant of the state and public servant should be a good example for the people in the behavior, actions and obedience to the laws and regulations in force, including promoting family life. Therefore each ASN will perform marriage and divorce must obtain permission from government agencies. Based on this, the author became interested in conducting research on How to Process Permit Divorce For Apparatus Civil State (ASN) in Instasi Government, How Proceedings Divorce Reform of Civil State (ASN) in the Religious Padang, and the legal consequences of divorce Apparatus State Civil Against Together treasure. The method used in this research is the empirical jurisdiction. Juridical empirical method for an approach that examines secondary data first, and then proceed to conduct research in the field of primary data. The research result shows that it can be deduced Each ASN will carry out a divorce must go through the permit process in the relevant institutions for which he serves as the claimant is obliged to submit a written application form Application for License to divorce and the reasons Permission to divorce can be granted by officials when, not contrary to the teachings or Regulation religion dianutnunya or belief against God Almighty. and if the application process has been completed, the ASN will get a license to perform Divorce approved by the supervisor. ASN divorce proceedings, ASN divorce after getting permission from a supervisor or director. Plaintiff subsequently registered the case and the defendant waited Mail Call to attend the trial. Furthermore, the plaintiffs and follow the stages of the trial terguggat peace efforts, the reading of the lawsuit, the defendant answers, evidence and conclusions and decisions.

Keywords: *License; Divorce; Civil State Apparatus*

Introduction

The state civil apparatus or abbreviated as ASN is a new term in the world of government. According to Article 1 of Law Number 5 Year 2014 concerning State Civil Apparatus (ASN) explains that:

"State civil servants, hereinafter referred to as ASN employees, are civil servants and government employees with an employment agreement appointed by the civil servant

development officer and entrusted with duties in a government position or assigned to other state duties and paid according to statutory regulations.¹

To be able to carry out their obligations and responsibilities in married life, the State Civil Apparatus must be supported by a harmonious, prosperous, and happy life, so that in carrying out their duties will not be much disturbed by problems that will arise in navigating the household ark. According to Article 7 of Law Number 5 of 2014 the types of ASN Employees consist of:

- a. ASN as referred to in Article 6 letter a is an ASN Employee who is appointed as a permanent employee by the Employee Trustee Officer and has a national employee ID number.
- b. PPPK as referred to in Article 6 letter b is an ASN Employee who is appointed as an employee with a work agreement by the Employee Trustee Officer in accordance with the needs of Government Agencies and the provisions of this Law.²

Being an ASN is very different from employees in private companies, especially related to marital matters, Islam requires marriages to meet basic human needs as worship and to combine love and to preserve human survival by giving birth to offspring as a generation in the future. According to Sajuti Thalib marriage is a strong and sturdy agreement to live together legally between a man and a woman forming an eternal, polite, loving, peaceful and happy family. In Islam, marriage issues have a place that is very respectable and highly esteemed by the rules set out in the scriptures. Likewise, countries that uphold moral values, the issue of marriage is a matter of principle in a community's life, and highly respected rules of implementation so that the implementation of marriage is in accordance with norms and principles that have been mutually agreed upon. Likewise with the Indonesian state the issue of marriage is a very important thing in the life of the nation and state, so that the Indonesian government since the Proclamation of Independence until now has paid very serious attention to this marriage. In the marriage linkup room also has the principles of marriage law, namely:

1. The principle of volunteerism is the most important principle in Islamic marriage. Volunteering was not only from the bride and groom but also the parents of both parties. Volunteering of parents who become guardians of a woman, is a fundamental joint of Islamic marriage.
2. The principle of freedom of choice of partners, also told in the sunnah of the Prophet, was told by Ibn Abbas that at one time a girl named Jariyah faced the Messenger of Allah and declared that she had been married by her father to someone she did not like. After hearing the complaint, the prophet asserted that he (Jariyah) could choose to continue the marriage with the person he did not like or request that his marriage be canceled to be able to choose a partner and marry someone else he liked.
3. The principle of agreement from both parties is a logical consequence of the first principle. This means that there should be no coercion in holding a marriage.

¹ Law Number 5 of 2014 concerning State Civil Apparatus (ASN)

² Moh. Idris Ramulyo, 1996 Islamic Marriage Law, Bumi Aksara, Jakarta, p. 2

4. Open monogamy in the An-Nisa verse verse 3 states that a Muslim man is allowed or may be married to more than one person, as long as he fulfills certain conditions, including the condition of being able to apply fairly to all women who become his wife.
5. The principle of eternity shows that marriage is carried out to carry out offspring and foster love and affection for life³.

Every husband and wife who has a marriage must have the same goal, but not always the purpose of the marriage can be carried out according to the ideals even though it has been attempted in such a way by a married couple. If there is a problem that disturbs the harmony of this couple to cause hostility then it will have an impact on divorce. The occurrence of divorce is the release of a marriage bond between a man and a woman as husband and wife conducted in front of a court of law, namely a State court for non-Muslims and a Religious court for Muslims.

Divorce does not look at social background, the State Civil Apparatus (ASN) also did a lot of divorce. But for the State Civil Apparatus (ASN) it has its own provisions, the Government considers that Indonesian citizens with the status of ASN have a very important role in national development because they are considered to have a quite dominant position and a large contribution.

For ASN divorce, there are laws and regulations that specifically regulate ASN divorce. In Article 3 paragraph (1) Government Regulation Number. 45 of 1990 amendments to Government Regulation Number. 10 of 1983 explains that:

"The ASN who is going to carry out the divorce is required to obtain a permit or statement from the official (superior) and this must be submitted in writing and in the letter requesting permission or notification of divorce lawsuit to obtain a certificate must include the full underlying reasons.⁴

Based on the existing provisions, that a person who wants to divorce must first do a number of provisions such as, submit a written application along with the reasons to the Religious Court in the area of his residence by bringing the previous Marriage Certificate Quotation, the required permits and so on. etc. in accordance with the provisions or requirements. After that, the Religious Court will examine matters that must be fulfilled by the applicant to issue a decision in the form of a divorce decision, and if the applicant has the status of an ASN then surely he must obtain permission from the authorized official. Article 5 paragraph 2 of Government Regulation Number 45 of 1990 changes to Government Regulation Number 10 of 1983, stating that:

"Every employer who receives a request for permission to divorce or to have more than one wife is required to give written consideration to officials. These considerations must include things that can be used by officials in making decisions, whether the permit request has a strong basis or not. As material in making considerations, the employer concerned may request information from the husband or wife concerned or from other parties deemed able to provide convincing information.⁵

Thus the rules set out in the legislation must be obeyed as things that must be done, especially by the ASN which is obliged to set a good example as a state government agency, but there are always things that create problems that sometimes the way out of a problem is not in accordance with what which has

³ Mohammad Daud Ali, Introduction to Islamic law and law in Indonesia, second edition, Rajawali Press Jakarta, 1991, p. 139

⁴ Government Regulation Number 45 of 1990 changes to PP No. 10 of 1983 concerning marriage and divorce licenses for ASN

⁵ Article 5 paragraph 2 Government Regulation Number 45 of 1990 changes to Government Regulation Number 10 of 1983

been recorded in the existing rules. There are many examples of marital problems that cannot be resolved by themselves in consultation, so they must take legal action, namely raising the problem to the court to get the best solution to the problem, which later is deemed the best way to solve the best problem.

Therefore the decision by the judge is very important where the decision issued by the judge is a statement made by the judge in the trial and aims to simultaneously resolve a case or dispute of the parties. On the other hand, the term decision can be interpreted as a statement by the judge as a State Official who is authorized to do so, and is pronounced in a trial that is open to the public with the aim of resolving a case or dispute between the party in question.

One of the ASN divorce cases in the Padang IA Religious Court class No. 270 / Pdt.G / 2019 / PA.Pdg who had a divorce permit from his superiors to divorce in divorce cases in accordance with Government Regulation No. 45 of 1990 amending Government Regulation Number 10 of 1983 which regulates ASN marriage and divorce licenses. However, the writer also got a case that contradicted Government Regulation No. 45 of 1990, from the results of an interview with the Registrar of Young Yelti Mufti, SH who said that there were ASNs who had not obtained divorce licenses from their superiors or leaders but the panel of judges had given the applicant the opportunity to obtain permission boss. for this reason the examination of the petition for the petition is postponed for 6 (six) months, but for six months the applicant has not received a divorce license and the applicant continues to insist on continuing the divorce application on condition that the applicant must make a statement and be willing to bear all risks from his superiors.

Based on the description mentioned above, the authors are interested in examining problems arising from ASN divorce based on the Decision of the Religion Court Class Padang Padang No. 270 / Pdt.G / 2019 / PA.Pdg starting from the divorce permit process for ASN in Government Agencies, Case Process ASN Divorce in the Padang Religious Court and the legal consequences of the ASN Divorce on shared assets, to then be made into scientific papers with the title: "Divorce Permit for State Registry of Countries (ASN) AND THE COMPLETION OF COMPLETION IN THE PRIVATE RELIGION COORDINATION BASED ON DECISION DECREE NO. 270 / .G / 2019 / PA.Pdg. Based on the background description of the problem above, the main issues can be formulated as follows: 1. What is the Process of Divorce Permit for State Civil Apparatus (ASN) in Government Institutions? 2. What is the Process for the Divorce of State Civil Apparatus (ASN) in the Padang Religious Court? 3. The legal consequences of the Divorce of the State Civil Apparatus Against Shared Assets?

Research Method

Research is a scientific activity that is based on certain methods, systematics and thoughts aimed at studying one or several specific legal phenomena by analyzing them. so the research method can be interpreted as principles and procedures for solving the problems faced in conducting research. The method used in a truth. So that it will be able to answer the questions that arise about an object of research⁶

The Process of Divorce Permit for State Civil Apparatus (ASN) in Government Institutions

In the marriage law stated a principle that the purpose of marriage is to form a happy, eternal and prosperous family. With the intention of making it difficult to divorce, then it is determined to divorce there must be enough reasons, that the husband and wife will not live in harmony anymore. ASN

⁶ Bambang Sugono, 2001, Legal Research Methods, Raja Grafindo Persada, Jakarta, 2001, p. 29.

intending to divorce must be based on special provisions for ASN contained in Government Regulation Number 45 of 1990 amending Government Regulation Number 10 of 1983 governing marital and divorce licenses. Permission to divorce for ASN is regulated in PP No.45 year 1990 article 3 paragraph 1, 2, and 3, as follows:

- a). The ASN who is going to divorce is required to obtain prior permission or statement from the official.
- b). For ASN domiciled or claimant, ASN Employees domiciled to obtain a permit or certificate as referred to in paragraph (1) must submit a written request.
- c). In the permit request or notification of a divorce suit to obtain a certificate, a complete underlying reason must be stated.⁷

ASN who will apply for a divorce permit, must complete the following administrative requirements:

1. Male or female State Civil Apparatus (ASN) submit a written application for permission to divorce in writing through a hierarchical channel to the Official if the Plaintiff is located or a letter of notification of a lawsuit from his husband or wife in writing through the hierarchical channel to the Official at the latest at the latest 6 (six) working days after he receives the divorce claim.
2. Photocopy of Marriage Certificate
3. Photocopy of the latest decree SK
4. Statement from the Head of the Village or Lurah stating the relationship between husband or wife, there are often disputes or quarrels with the knowledge of the Camat or other valid reasons according to the laws and regulations accompanied by valid evidence for divorce.
5. Salary Distribution Statement (specifically for ASN Men if needed).⁸

Requests for permission to divorce or a statement to do the divorce are conveyed to his superiors or the Director of the Padang State Polytechnic accompanied by complete reasons underlying the request for divorce. The Head of General Affairs that receives the request for divorce continues and gives consideration to officials or Directors who are authorized in a hierarchical manner. The official or director of the Padang State Polytechnic who receives the request, must follow up by processing the request together with the disciplinary guidance development team at the Padang state Polytechnic by making a Minutes of Examination (BAP). Before making a decision the Director or team must first try to reconcile ASN NW (husband) and MS (wife), but if both parties still want to continue the divorce process, the request can be further processed with supporting documents as required.

⁷ Article 3 Government Regulation Number 45 of 1990 changes to Government Regulation Number 10 of 1983 governing marital and divorce licenses for ASN

⁸ The results of an interview with Mr. Boy, the Head of General Affairs of the Padang Polytechnic on Monday, November 11, 2019

The Process for the Divorce of State Civil Apparatus (ASN) in the Padang Religious Court

In summary the process is as follows:

1. Registration to The Court
2. Panel of Judges
3. Peaceful Efforts
4. Lawsuit Reading
5. Defendant's Answer
6. Proof of the Plaintiff and Defendant
7. Conclusions
8. Judge's Decision

After the case is registered, the Plaintiff and the Defendant await a summons to attend the hearing. Furthermore, the plaintiffs and defendants followed the trial stages which consisted of:

1. Peace efforts at this session the panel of judges took the initiative to reconcile the parties. The peace effort was also taken by giving the opportunity to the parties to choose the mediator in the effort to go through the mediation process, if the mediation process was unsuccessful then the trial would proceed with the next stage.
2. The claim reading at this stage the plaintiff or the applicant has the right to re-examine whether (the reason or the arguments of the lawsuit and petitum) are correct and complete.
3. Answer was delayed. The defendant or the respondent is given the opportunity to defend themselves and submit their interests to the plaintiff or the petitioner through the panel of judges in the trial.
4. Replaint of the applicant's plaintiff or plaintiff. The plaintiff or applicant can reaffirm his claim or request that is denied by the defendant or the respondent and also defend himself from the defendant's or the respondent's refutation
5. Duplicate of the defendant, the defendant explains the number of answers denied by the plaintiff or applicant of a replica and the duplicate can be repeated so that finally the panel of judges considers sufficiently over the replica and duplicate
6. Proof of the (plaintiff and defendant) filing all the evidence to support the arguments of the lawsuit. Likewise, the plaintiff and the defendant submit evidence to support the answer (refutation) of each party entitled to judge the opponent's evidence.
7. Conclusions (the plaintiff and defendant) submit a final opinion about the results of the examination
8. Deliberation and reading of the verdict, the judge submits all his opinions about the case and concludes in the verdict, as the end of the sangketa that occurred between the plaintiff and the defendant.

The legal consequences of the Divorce of the State Civil Apparatus Against Shared Assets

Divorce has broad legal consequences, both in the field of family law and in material and contract law. The main effect of divorce is the ex-husband and ex-wife, then live separately. In terminating a marriage through a divorce institution, it will certainly have legal consequences between the divorced husband and wife, and the child and property in the marriage which is the result that they both obtained during the marriage. The breaking up of a marital relationship due to divorce will lead to various obligations imposed on each husband and wife towards him.

And in the results of the author's research field interview with Judge Mrs. Nurhaida based on the Verdict Number 270 / Pdt.G / 2019 / PA.Pdg on shared assets NW and MS do not have shared property but NW has 1 unit of the house that they share together and their three children but NW is not willing to give up the house because the house is a treasure that bought NW before marriage and MS also Nusyuz told NW the results of the author's interview with Judge Mrs. Nurhaida who said NW only got

After the divorce will occur due to legal consequences therein, namely the legal consequences of marriage to wealth Judging from the origin of the assets of husband and wife can be classified in three groups, namely:

- 1). Property obtained during marriage becomes shared property.
- 2). The inheritance of each husband and wife and property obtained as a gift or inheritance respectively, is under the control of each other as long as the parties do not specify otherwise.
- 3). Regarding joint property, a husband or wife can act on the agreement of both parties.
- 4). Regarding their respective belongings, the husband and wife have full rights to carry out legal actions regarding their property⁹

Basically husband's and wife's assets are separate, either their respective belongings or assets obtained by one husband or wife for their own business or grant assets obtained by one of them because of gifts or inheritance after they are bound in marital relations.¹⁰ Whereas the principles of the way of sharing common assets in the event of divorce in the Compilation of Islamic Law Articles 96 and 97.¹¹

- a. In the event of a divorce, half the joint property becomes the right of the couple who lives longer
- b. Distribution of joint property for a husband or wife who is a wife or husband is lost must be postponed until there is certainty of the ultimate death or legal death based on the decision of the Religious Court.
- c. Widows or widowers are each entitled to one half of the joint property as long as there is no other stipulation in the marriage agreement.

And then Judging from the origin of the husband and wife's wealth can be classified in three groups, namely the assets of each husband and wife who had before they married either comes from inheritance, grants, and their own business or also called inherited property. The assets of each husband

⁹ Marriage Law No. 1 of 1974 Article 35 and 36 paragraph (2).

¹⁰ Sayuti Thalib, 2010 Indonesian Family Law, University of Indonesia, Jakarta, hml. 83-84.

¹¹ Compilation of Islamic Law Article 96 and Article 97.

and wife that they have after they are in a marital relationship are still obtained not from their business, either individually or together, but change grants, wills, or inheritance for each. and Assets obtained after they are in a marital relationship or their joint venture or the business of one of their people or are called search property.

Basically husband's and wife's assets are separate, either their respective belongings or assets obtained by one husband or wife for their own business or grant assets obtained by one of them because of gifts or inheritance after they are bound in marital relations.

Conclusion

1. ASN who will divorce must go through a permit process at the relevant institution for those who are located as plaintiffs are required to submit a written request in the form of an application for permission to divorce and the reason for permission to divorce can be granted by the official if, not contrary to the teachings or regulations of his religion or belief. against God Almighty, There are valid reasons according to applicable regulations, and if the application process has been completed, ASN will get a Permit to Divorce approved by the Boss.
2. ASN divorce case proceedings, After ASN obtained the divorce permit from the supervisor or director. Subsequently the case was registered by the Plaintiff and the Defendant awaited the Summons to attend the hearing. Furthermore, the plaintiffs and defendants follow the stages of the trial of peace efforts, the reading of the lawsuit, the answers of the defendant, replicas, duplicates of the plaintiff and the defendant, proof and conclusions and decisions.
3. Legal consequences of divorce according to Decision Number 270 / Pdt.G / 2019 / PA.Pdg hadhanah or nurturing of children who have already been granted to the father or the plaintiff further on the distribution of joint property they do not have joint property but the plaintiff's inheritance before marriage and The judge decides the wife's right to get muth'ah, iddah, Maskan and kiswah income and is paid in front of the Padang IA Religious Class hearing. Shortly before NW made the pledge of divorce.

Suggestion

1. In view of the provisions of PP No. 45 of 1990 concerning Amendments to Government Regulation No. 10 of 1983 the Marriage and Divorce Permit for the State Civil Apparatus should ASN comply with these rules so as not to deviate in the future and also require strict legal instruments to avoid compromise in sanctions so that it does not provide a gap for the ASN and officials to violate.
2. Given the increasing number of ASN Divorce, parties who will divorce should rethink the legal consequences that will occur later as maintaining and educating their children to be responsible for the cost of their lives in the future. and also the legal consequences that will arise are the distribution of salaries or shared assets. A husband and wife understands that each person's inheritance and property are obtained as a gift or inheritance are under the control of each other as long as the parties do not determine otherwise.

Reference

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