

Legal review of the Soreang Religious Court Decision on Divorce Suit of A Soldier's Wife in The Army Without Permission from The Unit Commander (Case Study of the Soreang Religious Court Decision Number 363/Pdt.G/2021/PA.Sor)

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Abstract

Purpose: This study aims to analyze the legal procedures related to divorce lawsuits filed by the wives of Indonesian Army soldiers without permission from the Unit Commander.

Research Methodology: The author uses a normative legal approach. According to Soerjono Soekanto, a normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied.

Results: The results of the author's research found that there had been a Divorce Suit filed by the wife of an Indonesian Army soldier against her husband without permission from the Commander and was considered not in accordance with procedures in the soldier's environment, but the facts on the ground by the Soreang Religious Court the case was still processed and decided. This happens because there is a lack of synchronization regarding the granting of a letter of permission from superiors/officials where the TNI Commander Regulation Number 50 of 2014 does not regulate the deadline for when a divorce permit letter must be issued, while PP Number 45 of 1990 concerning amendments to PP Number 10 of 1983 which is the basis in the Religious Court environment in handling PNS divorce cases including Soldiers regulates the deadline for superiors to provide consideration and continue within a maximum period of three months and SEMA Number 5 of 1984 provides time for Civil Servants to obtain official permission, the trial is postponed for a maximum of 6 (six) months and will not be extended again.

Suggestions: The author suggests that Adjustment and Synchronization of Rules are needed between the Religious Court and the TNI, especially the TNI AD, to ensure that divorce procedures run in accordance with applicable regulations. For example, revisions to the TNI Commander Regulation and the Army Chief of Staff Decree to be more in line with SEMA Number 10 of 2020, so that the time given to complete divorce administration is clearer and more consistent.

Keywords: *Divorce Lawsuit, Divorce Permit, TNI AD soldiers*

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1. Introduction

Divorce itself According to the Great Dictionary of the Indonesian Language, "divorce" means to separate or end a husband and wife relationship. Law Number 1 of 1974 concerning Marriage states that divorce is one of the reasons that causes the end of a marriage. Article 38 of the Law explains that a marriage can end due to death, divorce, or a court decision. The problem that often arises in the Indonesian Army Environment in the end of a marriage is due to a Court Decision. The Indonesian Army, which is a State Institution, in addition to being based on the Positive Law that applies Nationally, also has legal regulations regarding the process of Marriage/Marriage, Divorce and Reconciliation or known as the term Marriage, Divorce and Reconciliation which is regulated in the Regulation of the TNI Commander Number 50 of 2014, also regulated in the Decree of the Chief of Staff of the Army Number 496 of 2015 concerning the procedures for Marriage, Divorce and Reconciliation for Indonesian Army Soldiers, Regulation of the Chief of Staff of the Army Number 331/VI/2021 concerning Divorce Procedures for Indonesian Army Soldiers and Telegram Letter of the Chief of Staff of the Army Number 462/2022 dated March 1, 2022 concerning Officials authorized to issue Divorce Permits.

There are many problems related to Marriage and Divorce in the Indonesian Army environment, one of which is the divorce of an Indonesian Army member and his wife without a Letter of Permission from the Unit Commander. Based on the Regulation of the TNI Commander Number 50 of 2014 concerning the Procedures for Marriage and Divorce of TNI Soldiers and Reconciliation, namely "carried out according to the beliefs and religions adhered to and based on the provisions of laws and regulations." Marriage and Divorce of TNI AD Soldiers must go through several processes and require approval from the Unit Commander. In the case of Divorce, if it does not go through the Unit process or without the approval of the Unit Commander, it will have a very significant impact on the TNI AD Soldier himself, for example, without the approval of the Unit Commander for divorce, the Soldier could be subject to Military Disciplinary Law sanctions which would have an impact on hampering the Soldier's career. Then without a letter of permission from the Unit Commander, the Commander cannot know the actual state of the Soldier's Household, therefore in the early stages the Unit Commander cannot mediate at the unit level before going to Court. Because in the TNI AD Organizational Structure there is the Principle of Unity of Command and the Principle of Commanders Being Responsible for Their Subordinates (Hermawan, Respationo, Ernianti, & Fadlan, 2022).

On January 12, 2021, the Clerk of the Soreang Religious Court received a letter of application for divorce from a soldier's wife without a permit from the Commander of the Unit where the Plaintiff's husband (Defendant) served, registered with case number 363/Pdt.G/2021/PA.Sor. Then the Soreang Religious Court granted the lawsuit, imposing a divorce of one Ba'in Sughra on the Defendant against the Plaintiff. In the Indonesian Army environment, this decision is considered a problem because the Plaintiff has not completed the applicable administrative procedures in the form of a divorce permit from the Unit Commander and the Soreang Religious Court Judge still decided or granted it (Alim, Triono, & Yudhi, 2023; Zulfa, Raharjo, & Shafira, 2022).

Based on the problems above, the Author realizes that the chosen topic has been the subject of previous research written in 2020 by Captain Chk Yunianto who at the time was conducting the research as Pamasis STHM XXII with the title Juridical Analysis of the Case of a Soldier's Wife's Divorce Lawsuit Against Her Husband Without Permission from the Unit Commander. However, the author is interested in exploring and delving deeper from another perspective in the hope of providing new insights and contributions to understanding the problem. So the author is interested in raising this research through the title, **"LEGAL REVIEW OF THE SOREANG RELIGIOUS COURT DECISION ON THE DIVORCE SUIT OF AN TNI AD SOLDIER'S WIFE WITHOUT PERMISSION FROM THE UNIT COMMANDER"** (Case Study of the Soreang Religious Court Decision Number 363/Pdt.G/2021/PA.Sor).

1.1. Problem Formulation

Based on the description of the background of the problem above, the main problems of this thesis are as follows:

1. Is the acceptance of a divorce lawsuit without a Letter of Permission from the Unit Commander included in the error of legal procedures carried out by the Soreang Religious Court or the Indonesian Army Unit (Pusdikarmed Pussenarmed)?
2. What is the impact on Soldiers and Indonesian Army Units (Pusdikarmed Pussenarmed) who divorce without permission from the Unit Commander?

2. Literature Review

2.1. Theoretical Framework

2.1.1. Theory of Justice

Ibrahim (2013) said that there are theories of justice that are often disputed, namely procedural justice and substantive justice. Procedural justice is justice that is based on the idea or notion of justice in the processes of dispute resolution and resource allocation, one aspect of which is related to the discussion of providing justice in the legal process, while substantive justice is justice that is given in accordance with substantive legal rules, without looking at procedural errors that do not affect the substantive rights of the Plaintiff/Applicant. That what is formally procedurally correct can be wrong in material and substance violates justice, and vice versa, what is formally wrong can be justified (Istahar, Aulia, Dermawan, & Akim, 2023; Sukirno, Respationo, Erniyanti, & Fadlan, 2022).

2.1.2. Theory of Legal Discovery

According to Jazim Hamidi and J.A. Poninter, the Theory of Legal Discovery translated by B. Arief Sidharta, quoted in the book Normative and Empirical Legal Research Methods, Ibrahim (2013) explain that legal discovery usually refers to the process of forming laws by judges or other legal officials who are tasked with applying general legal regulations to specific legal cases. Pontier defines legal discovery as "a reaction to problematic situations that people describe in legal terms". It concerns legal questions, legal conflicts or legal disputes. Legal discovery is directed at providing answers to questions about the law and the search for solutions to concrete disputes. Related to it, among others, are questions about the explanation (interpretation) and application of legal rules and questions about the meaning of the facts to which the law must be applied (Ibid p. 105).

2.2. Definition of Marriage

According to Thalib (1986), as quoted by Mohd. Idris Ramulyo in his book discussing Law Number 1 of 1974 from the perspective of Islamic Marriage Law, explains that the word "marriage" or "marriage" literally means sexual intercourse. However, in the context of majazi (metaphorical) or law, the term refers to "aqad" (agreement) that permits sexual intercourse between a man and a woman as husband and wife (Ramulyo, 1990 p.1). Marriage according to Law Number 1 of 1974 concerning Marriage as stated in Article 1 Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Almighty God.

Before the existence of the Law on Marriage, the basis for the application of Islamic Law regarding Marriage was regulated in S.1937 No. 638, jo. S.1937 No. 610 and No. 116 in conjunction with Government Regulation No. 45 of 1957, in conjunction with Law No. 22 of 1946 in conjunction with Law No. 32 of 1974.

2.3. Divorce Overview

2.3.1. Definition of Divorce

Divorce is one of the causes of marital dissolution which comes from the word cerrai. In the Big Indonesian Dictionary, the term "cerrai" has several meanings, namely: first, separation; divorce, divorce between husband and wife; and third, divorce. Meanwhile, "divorce" refers to a situation where someone experiences a separation process or divorce as a couple with a wife.: v 1 not mixing (having sex, being together, etc.) anymore, 2 ceasing to be married to a wife. While the word "divorce" has the following meanings: n 1 separation; separation; 2 the matter of divorce (between husband and wife). In

Islam, the term divorce is called in Arabic, namely 'thalaq' which means to let go or leave. Based on Article 38 of Law Number 1 of 1974 concerning Marriage, a marriage can be terminated for three reasons, namely death, divorce by court decision.

2.3.2. *Legal Basis for Divorce*

a. *Civil Code (Burgelijk Wetboek)*

According to the Civil Code, a dissolution of marriage; 1. Due to death; 2. Due to the absence of the husband or wife for more than one year, followed by a new marriage of his/her wife in accordance with the provisions in the fifth chapter of the eighth chapter; 3. Due to the Judge's decision and the separation of the table and bed and the dissolution of the statement of the dissolution of marriage in the decision in the civil registry, in accordance with the provisions in the fourth chapter of this chapter; 4.

3. **Research methodology**

3.1. *Legal materials*

This research uses Secondary Legal Data in terms of its binding, so Secondary Legal Data is divided into 3 (three) legal materials, namely:

3.1.1. *Primary Legal Materials*

Namely legal material that has authority or is binding. The primary legal material in this thesis is:

- 1) The 1945 Constitution of the Republic of Indonesia, first-fourth amendments (1999-2002);
- 2) Law Number 1 of 1974 concerning Marriage;
- 3) Law Number 7 of 1989 concerning Religious Courts;
- 4) Law Number 31 of 1997 concerning Military Courts.
- 5) Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army;
- 6) Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts;
- 7) Law of the Republic of Indonesia Number 50 of 2009 concerning Second Amendment to Law Number 7 of 1989 concerning Religious Courts;
- 8) Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power;
- 9) Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage;
- 10) Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage;
- 11) Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants;
- 12) Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants;
- 13) Regulation of the TNI Commander Number 50 of 2014 concerning Procedures for Marriage, Divorce and Reconciliation for Soldiers;
- 14) Decree of the Chief of Army Staff Kep/496/VII/2015 dated July 27, 2015 concerning Technical Instructions on Procedures for Marriage, Divorce and Reconciliation for Indonesian Army Soldiers;
- 15) Regulation of the Chief of Army Staff Number 331/VI/2021 concerning Divorce Procedures for Indonesian Army Soldiers;
- 16) Telegram Letter of the Chief of Army Staff Number 462/2022 dated March 1, 2022 concerning Officials authorized to issue Divorce Permits;
- 17) Circular Letter of the Supreme Court of the Republic of Indonesia Number 5 of 1984 concerning Guidelines for the implementation of Government Regulation Number 10 of 1983;
- 18) Circular Letter of the Supreme Court Number 3 of 2018 dated November 18, 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for the Courts; and
- 19) Circular of the Supreme Court of the Republic of Indonesia Number 10 of 2020 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2020 as a Guideline for the Implementation of Duties for the Courts.

3.2. Collection of Legal Materials

The collection of legal materials is carried out through document research or library materials and supporting data in the form of limited interviews. For secondary legal materials in legal research, it can be limited to the use of document research or library materials. This literature study is carried out by visiting various libraries, such as the libraries of the Military Law College, Ditkumad and National to research and study literature and other sources related to the problems discussed in the thesis with the aim of obtaining theoretical materials that are directly or indirectly related to the formulation of the problem that will be used as a theoretical basis. The collection of legal materials through interviews was carried out at the Soreang Religious Court and the Indonesian Army Unit (Pusdikarmed Pussenarmed).

3.3. Legal Material Analysis

The author analyzes the research data that has been collected using qualitative methods. as primary material and secondary data to be processed to be concluded in order to obtain information and answers to research problems, namely by analyzing the decision. Then a conclusion is drawn to formulate the results of this study.

3.4. Drawing Conclusions

Deductive Logic is used for drawing conclusions, namely by drawing specific conclusions from general questions. This method is carried out by analyzing the Decision of the Soreang Religious Court, Bandung Regency Number 363/Pdt.G/2021/PA.Sor. The study of the general theory will be analyzed specifically from the aspect of the TNI Commander Regulation Number 50 of 2014 concerning Procedures for Marriage, Divorce and Reconciliation for Soldiers, Regulation of the Chief of Army Staff Number Kep/496/VII/2015 dated July 27, 2015 concerning Technical Instructions on Procedures for Marriage, Divorce and Reconciliation for TNI AD Soldiers, Regulation of the Chief of Army Staff Number 331/VI/2021 concerning Divorce Procedures for TNI AD Soldiers, Telegram Letter of the Chief of Army Staff Number 462/2022 dated March 1, 2022 concerning Officials Authorized to Issue Divorce Permits and Circular Letter of the Supreme Court Number 10 of 2020 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2020 as a Guideline for the Implementation of Duties for the Courts.

4. Results and discussions

4.1. Legal materials

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13. Regulation of the TNI Commander Number 50 of 2014 concerning Procedures for Marriage, Divorce and Reconciliation for Soldiers;
14. Decree of the Chief of Army Staff Kep/496/VII/2015 dated July 27, 2015 concerning Technical Instructions on Procedures for Marriage, Divorce and Reconciliation for Indonesian Army Soldiers;
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5. Conclusions

5.1. Conclusion

Based on the discussion in the previous chapter and the research results obtained by the author, the following conclusions can be drawn, among others:

1. Analysis of the acceptance of the divorce suit without a Letter of Permission from the Unit Commander is included in the legal procedural errors carried out by the Soreang Religious Court or the Indonesian Army Unit (Pusdikarmed Pussenarmed)

Based on the analysis that has been carried out, it can be concluded that the divorce process in the Indonesian Army environment must follow strict legal regulations, both those regulated in the general and full-time regulations of the Indonesian Army. The divorce process for Indonesian Army soldiers is not only based on Law Number 1 of 1974 concerning Marriage and Indonesian Civil Government Regulation Number 9 of 1975, but also on internal regulations such as TNI Commander Regulation Number 50 of 2014, Army Chief of Staff Regulation Number Kerp/496/VII/2015, Army Chief of Staff Regulation Number 331/VI/2021, and Army Chief of Staff Letter of Divorce Number 462/2022.

This regulation requires soldiers or wives of soldiers who wish to file for divorce to obtain a Divorce Permit Letter from the Unit Commander. Without this permit letter, the divorce petition is subject to the applicable administrative requirements. In the case handled by the Sorerang Religious Court with Number 363/Pdt.G/2021/PA.Sor, it is seen that the petition for divorce by a soldier's wife without a Divorce Permit Letter from the Unit Commander is an act that is not in accordance with the applicable regulations. Although the petition was accepted and processed by the Sorerang Religious Court, this caused legal problems because it did not comply with the internal procedures of the Indonesian Army which had been clearly regulated.

Divorce process that does not follow these rules can cause various negative impacts for soldiers and TNI AD units. Internally, this can disrupt discipline and order in military units, because rules that are not obeyed can become bad habits for other members. In addition, the absence of control from superiors directly through the Divorce Permit Letter can result in the soldier concerned being unprepared mentally or physically to face the divorce process, which in the future can affect the various duties of a TNI soldier.

The divorce process of an Indonesian Army soldier must comply with the rules of the law stipulated by various laws and regulations. One of the important requirements is a Divorce Permit Letter from the Unit Commander, which must be attached before the divorce lawsuit can be processed. In this case, the Sorerang Religious Court accepted a divorce lawsuit from the wife of an Indonesian Army soldier without the said permit letter. This action is contrary to the applicable procedure, indicating a violation of the established rules.

The Court's Obligation to Examine and Try Divorce Cases in Accordance with Law Number 48 of 2009 concerning Judicial Disability in Article 10 paragraph (1) emphasizes that the court may not refuse to examine, try, and try the proposed case documents on the grounds that the documents are absent or unclear. Based on this principle, the Sorerang Religious Court cannot reject a divorce lawsuit simply because there is no permit from the Commander of the Unit. However, the court must still comply with the existing guidelines to ensure that the disposition process is carried out according to procedure.

The Supreme Court Decree (SErMA) Number 5 of 1984 and SErMA Number 10 of 2020 provide clear guidelines regarding the handling of divorce lawsuits involving Indonesian Army soldiers. These guidelines recommend that the courts provide up to 6 (six) months for the party filing the lawsuit to complete the required administrative requirements, including a letter of permission from the Commander of the Unit. However, the Sorerang Religious Court ruled that this case only had a time limit of 6 (six) months, which indicates that the courts do not provide a time limit for Indonesian Army soldiers who are sued to comply with the administrative requirements. This action can be considered as a violation of procedure because it ignores the rules stated in the SErma.

Analyzing the ruling of the Sorerang Religious Court, it is important to consider the theories of procedural and substantive justice. Procedural justice emphasizes the importance of fair and appropriate procedures according to the rules, while substantive justice focuses on a fair outcome for the parties involved. In this context, even though a divorce permit letter is not attached, the court must consider the substantive reasons behind the divorce lawsuit, such as domestic violence or infidelity. If the reasons

are valid, the decision taken can be considered substantive fair even though there are deficiencies in the administrative procedure.

The Judge's decision on new legal provisions can help address situations where existing rules are inadequate to address specific issues. The Judge can interpret the rules more flexibly or develop new rules that are consistent with relevant legal principles. In the case of a TNI AD soldier's divorce, the Judge can decide on rules that clarify the procedures and requirements that must be met, and ensure better coordination between the Religious Court and the TNI AD Institution, including the possibility of extending the time to complete the Commander's Permit letter if there is a valid reason. The acceptance of a divorce lawsuit without a written permission from the Commander of the Unit by the Sororang Religious Court indicates a violation of the law procedure.

However, the substance of the divorce lawsuit remains valid and must be considered in order to achieve substantive justice. The Sororang Religious Court and the Indonesian Army Unit need to work together to ensure that the existing procedures do not hinder the achievement of justice for all parties involved. This can be done by clarifying the applicable rules and procedures, and ensuring that all parties understand and comply with the existing regulations..

2. Legal consequences of divorce of Indonesian Army soldiers without the permission of the unit commander

a. Towards children.

1. The maintenance of a child who has reached the age of murmayyiz or has reached the age of 12 years becomes the right of the mother. After the child reaches the age of murmayyiz, the child is given the freedom to choose whether to live with the father or the mother; and
- 2) The biological father is responsible for the costs of the child's maintenance.

b. Towards the files of the husband and wife.

- 1) After the divorce, the husband and wife are no longer bound by marriage, changing their status to widow and widower; 2) The surumi file has the right to control his wife's file during the iddah period, while the wife's file must protect herself, not accept proposals, and not marry another man during the iddah period.

- 3) The surumi file is required to provide the murt'ah fee and iddah maintenance to the wife's file, as long as the wife's file is not proven to carry out nursyurz.

c. Both parties are entitled to half of the joint property, unless there is a marriage agreement that states otherwise.

d. Towards soldiers and the care of the soldier's family.

- 1) Soldiers who file a divorce petition or lawsuit without following the correct procedure are considered to have violated military discipline and may be subject to disciplinary sanctions and administrative sanctions. Divorce will result in a reduction in the soldier's salary in the form of wife's allowance and family allowance;
- 2) Former wives are no longer entitled to receive family care for soldiers, including moral guidance, family and religious guidance, and family assistance..

5.2. Suggestions

Based on the conclusions above, the author can provide the following suggestions: 1. Periodic socialization and outreach of hurkurm to soldiers and their families, regarding marriage and divorce procedures in the soldier environment must be guided by the TNI Commander Regulation Number 50 of 2014, also regulated in the Regulation of the Chief of Army Staff Number 496 of 2015 concerning the Procedures for Marriage, Divorce and Divorce for TNI AD Soldiers, Regulation of the Chief of Army Staff Number 331/VI/2021 concerning Divorce Procedures for TNI AD Soldiers and Letter of the Chief of Army Staff Number 462/2022 dated 1 March 2022 regarding the Officials who are authorized to issue Divorce Permit Letters, socialize the consequences of divorce penalties in the hope of minimizing divorce cases and socializing the procedures. penalties face divorce cases that are recommended to go directly to the Court without the permission of the Commander of the Unit. 2. The Arrangement and Synchronization of Regulations is needed between the Religious Court and the TNI,

especially the TNI AD, to ensure that divorce procedures run according to applicable regulations. For example, the revision of the TNI Commander Regulation and the Chief of Staff of the Army Staff Regulation is more in line with SERMA Number 10 of 2020, so that the time given to complete the divorce administration is clearer and more consistent. 3. Addition of Criminal Investigation Staff in Units, it is recommended that the Army Staff be added to each TNI AD unit, especially in the ranks such as the Weapons Center and the Brigade Unit, to make it easier for soldiers to get accurate and timely criminal investigation advice and opinions. This hurkurm staff can help resolve hurkurm issues and ensure that all hurkurm procedures are in accordance with applicable regulations.

Implementing a revision of the regulations in the TNI environment, especially the TNI AD, to reflect the development of hurkurm and soldier's death. These regulations must ensure that all administrative procedures can be carried out efficiently without sacrificing substantial justice for soldiers and their families.

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