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Contemporary Social and Political Affairs 2019

**“Transformation of Nation State
and Global Society
on Gender Equality and Social Inclusion”**

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**“Transformation of Nation State and Global Society on Gender Equality
and Social Inclusion”**

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STRENGTHENING OF WOMEN'S RIGHTS WITH LAW THROUGH THE NUMBER 3 YEAR 2017 REGULATION IN THE CULTURE OF AUGUST IN THE RELIGION COURT

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INTRODUCTION

The Supreme Court has issued PERMA Number 3 of 2017 concerning Guidelines for Judging Women's Cases Against the Law (hereinafter written PERMA Number 3 of 2017) as a form of protection for women from all acts of discrimination and can enrich the quantity and quality of judges related to gender equality that will assist the judicial process. The number of divorced cases carried out by the applicant's wife was 3 times that of Divorce Divorce submitted by the husband. Especially divorce cases in the Religious Courts, a wife gets the rights of a wife due to divorce, such as mut'ah and living iddah. On the other hand the decisions of the Religious Courts in the divorce case, the wife as the plaintiff did not get the iddah and mut'ah livelihood, this difference caused injustice to women who faced the law.

This article discusses: (1) How the application of law in the decisions of the Religious Court Judges in divorce cases is contested after the enactment of PERMA Number 3 of 2017; and (2) What are the obstacles to the implementation of PERMA No. 3 of 2017 in deciding divorce cases in the Religious Courts?

RESEARCH METHODE

This research is juridical-empirical research, meaning that this research rests on legal norms and systems and is supported by primary data by conducting field research combined with library research. Primary data is the result of interviews with respondents in religious courts and several related advocates. Sampling in this study using purposive sampling, so that the overall number of respondents reached 100 people.

Analysisoftheapplication of the law of PERMA Number 3 of 2017 in the Religious Court and how the judges interpreted the trial process against women who were sampled, namely Religion Court of Bogor, Depok, Cibinong, Semarang, Surabaya, and in the DKI Jakarta Region. Comparing the decisions of religious courts in divorce cases between before and after the enactment of PERMA Number 3 of 2017.

Analysisofthefactors that become obstacles in its application in terms of legal and social aspects using qualitative descriptive.

RESULT AND DISCUSSION

The number of divorce made by the applicant's wife is 3 times the divorce divorce submitted by the husband. This is shown in the following table 2:

Table 1. Recapitulation of Divorce Cases (CT / CG) in PA 2016-2018 Respondents

| No | Nama PA | Jumlah Perkara Diterima | | | Jlh Perkara Perceraian | | |
|----|--------------|-------------------------|------|-----------------|------------------------|----------------------------------|----------------------|
| | | 2016 | 2017 | 2018 (jan-sept) | 2016 | 2017 | 2018 |
| 1. | PA. Depok | 3818 | 4144 | 2102 | CT= 900 CG:2538 | CT= 957 CG:2756 | CT = 554 CG:1617 |
| 2. | PA. Cibinong | 5248 | 678 | 4189 | CT:1229 CG:3054 | CT:1209 CG:4019 | CT = 796 CG :2637 |
| 3. | PA. Bogor | 1829 | 2022 | 950 | CT= 371 CG:1261 | CT:3177 CG:1343 | CT = 200 CG = 700 |

| | | | | | | | |
|----|--------------------|------|------|------|--------------------|--------------------|----------------------|
| 4. | PA. Banjarmasin | 2260 | 2332 | 1341 | CT:3718 CG:1326 | CT: 369 CG:1275 | CT = 208 CG = 743 |
| 5. | PA. Surabaya | 7803 | 8094 | 4783 | CT:1860 CG:3761 | CT:1772 CG:3784 | CT:1092 CG:2379 |
| 6. | PA. Purbalingga | 2531 | 2846 | 2014 | CT= 522 CG:1633 | CT= 573 CG:1735 | CT = 435 CG:1443 |
| 7. | PA. Jakarta Timur | 4936 | 5267 | 4504 | CT:1369 CG:3341 | CT:1330 CG:3289 | CT:1156 CG:2882 |
| 8. | PA. Makasar | 3169 | 3024 | 2218 | CT= 603 CG:1800 | CT= 628 CG:1729 | CT= 486 CG:1306 |
| 9 | PA. Jakarta Utara | 2267 | 2255 | 2121 | CT= 580 CG:1413 | | |
| 10 | PA Jakarta Selatan | 4495 | 5056 | 3512 | CT:1057 CG:2760 | CT:1115 CG:3185 | CT: 860 CG: 2469 |
| 11 | PA Tangerang | 2619 | 2673 | 2316 | CT:669 CG:1838 | CT:715 CG:1896 | CT:543 CG:1499 |

Source: Report 2016-2017- LIPA 2018

The results of the study indicate that the decision on divorce application has a difference namely after the enactment of PERMA No. 3 of 2017 in the decision of divorce application there is an order to pay for the living of iddah, mut'ah, and madliyah before the recitation of the divorce pledge. Before the enactment of PERMA No.3 of 2017, the Petitioner (husband) can or may pronounce the tale of divorce before paying for the rights of his wife or his wife's income. The Religious Court takes a policy to protect the rights of wives so that the Petitioner pays in advance the burden that the judge decides before making a pledge. If the applicant has not been able to pay, the Panel of Judges has been given a waiver to postpone the recitation of his divorce pledge until the specified time is 6 (six) months. If it has been due for 6 (six) months the Applicant (husband) cannot pay, then the power of the decree is dropped and the trial is canceled and cannot be submitted again with the same reason. 3 of 2017 so that it is seldom that the husband must give his ex-wife's living and living after the divorce decision. The reason is that a woman who submits or divorces her husband is considered nusyuz or defied against her husband, therefore he does not get his rights such as the living and mut'ah. The cause of women who sued for divorce is because of forced reasons, including violence in the household where the wife and child are victims, the wife is left to remarry and does not receive physical and physical support, or is a lazy husband and has no job, and or other causes while on the other hand the husband does not want to divorce.

Constraints in implementing PERMA Number 3 of 2017 in divorced cases are:

1. Paradigm of Judges if the wife submits divorce to the husband is considered nusyuz or rebellion in accordance with the rules of fiqh, so that the wife does not get her rights such as the living and mut'ah. Then the entry into force of PERMA No. 3 of 2017, the Judge in deciding the divorce case can see the reasons for the wife who filed the divorce lawsuit. The wife can be considered nusyuz or not after proof. If the wife is not proven nusyuz, the wife continues to get her rights such as livelihood and mut'ah .. It is expected that a paradigm shift Judge that the wife who sues for divorce is not all considered nusyuz before there is evidence about kenusyuzannya.
2. The husband in the divorce case is not present at the hearing, so the judge has difficulty obtaining complete information.
3. The wife does not see the importance of the iddah and mut'ah livelihood, so that it is quickly decided to divorce her husband.

CONCLUSION

In the divorce case there is no difference between before the enactment of PERMA Number 3 of 2017 and before. Judges have not optimally implemented PERMA Number 3 in 2017.

There are 3 obstacles in implementing PERMA No. 3 of 2017 in the case of divorce, namely: 1) Judge's consideration if the wife submits divorce to the husband is considered nusyuz or rebellious in accordance with the rules of fiqh, without being supported by the optimization of proof that the wife is divorced. 2) The husband is not present at the hearing, so the judge has difficulty getting holistic information. 3) The wife does not dispute the iddah and mut'ah livelihood, so that it is quickly decided to divorce her husband.

It is recommended that it be explicitly regulated in PERMA Number 3 of 2017. Women's rights after divorce decisions include custody of minors, living and living.

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