

Characteristics of Domestic Violence in the Context of Divorce Legal Formulation of the Religious Chamber in SEMA No. 3 of 2023

Moh. Wahyu Al-Waris,¹ Ali Akbar Masyayih,² Dominikus Rato³

¹²³ Fakultas Hukum, Universitas Jember, Jawa Timur, Indonesia

Email: alimasyayih82@gmail.com

Abstract

This research aims to analyze the resolution of divorce disputes in religious courts after the implementation of Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Court Chamber of the Supreme Court in 2022 as a Guide to the Implementation of Duties for the Court. The method used for this research is a normative legal research method which refers to literature and legal research, then data collection and analysis is carried out after which conclusions are drawn using deductive thinking methods. The results of the study show that, the publication of the Religious Chamber's Formulation of Circular Letter Number 3 of 2023 which regulates that to maintain a marriage and fulfill the principle of making divorce difficult, divorce cases based on continuous disputes and quarrels can be granted if it is proven that the husband/wife has continuous conflicts and quarrels. continuously, or have been separated from their residence for at least 6 (six) months, it does not just appear out of thin air but goes through a long process. The Supreme Court through the Religious Chamber Meeting Formulations in SEMA 4 of 2014 also provided several indicators indicating the condition of a broken household (broken marriage). This formulation was then refined in SEMA 3 of 2023 which provides instructions for judges to consider sufficiently and carefully when adjudicating divorce cases. The formulation of the Religious Chamber Meeting in SEMA 3 of 2023 emphasizes the provisions of Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which makes it easier for judges to explore the roots of divorce problems submitted by husbands or wives to minimize the reasons for divorce, continuous disputes and quarrels

Keywords : Domestic Violence, SEMA No. 3 of 2023, Religious Chamber Formulation.

Abstract

Penelitian ini bertujuan untuk menganalisis penyelesaian sengketa perceraian di Pengadilan Agama pasca pemberlakuan Surat Edaran Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2023 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2022 sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan. Metode yang digunakan untuk penelitian ini adalah metode penelitian hukum normatif yang mengacu kepada penelitian kepustakaan dan undang-undang kemudian dilakukan

pengumpulan dan analisa data setelah itu ditarik kesimpulan menggunakan metode pemikiran deduktif. Hasil penelitian menunjukkan bahwa, Terbitnya Rumusan Kamar Agama Surat Edaran Nomor 3 Tahun 2023 yang mengatur bahwa dalam upaya mempertahankan suatu perkawinan dan memenuhi prinsip mempersukar perceraian maka perkara perceraian dengan alasan perselisihan dan pertengkaran yang terus menerus dapat dikabulkan jika terbukti suami/istri berselisih dan bertengkar terus menerus, atau telah berpisah tempat tinggal selama minimal 6 (enam) bulan tidak semata-mata muncul begitu saja melainkan melewati proses yang panjang. Mahkamah Agung melalui Rumusan Rapat Kamar Agama dalam SEMA 4 Tahun 2014 juga memberikan sejumlah indikator sebagai petunjuk kondisi rumah tangga yang sudah pecah (*broken marriage*). Rumusan ini kemudian disempurnakan dalam SEMA 3 Tahun 2023 yang memberikan petunjuk kepada hakim untuk mempertimbangkan secara cukup dan seksama dalam mengadili perkara perceraian. Rumusan Rapat Kamar Agama Dalam SEMA 3 Tahun 2023 mempertegas ketentuan Pasal 39 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan yang mana memudahkan hakim menggali akar permasalahan perceraian yang diajukan oleh suami atau istri untuk meminimalisir alasan perceraian perselisihan dan pertengkaran terus menerus.

Kata kunci: *KDRT, SEMA No 3 Tahun 2023, Rumusan Kamar Agama.*

Istinbath : Journal of Law

Website : <http://e-journal.metrouniv.ac.id/index.php/istinbath/index>

Received: 2024-08-25 | Revised: 2024-09-15 | Accepted: 2024-11-15 | Published: 2024-11-25.



This is an open access article distributed under the terms of the [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Introduction

The reverse burden of proof system is an interesting debate because this system is contrary to the principle of proof itself and is contrary to other principles of criminal law. In civil procedure law, the system of proof determines that anyone who accuses, claims and argues something must prove it (*he who asserts must prove*). This confirms that the party suing has the obligation to prove his claim. In the aspect of criminal law, the party who has the burden of proving the guilt of the perpetrator of the crime is the Public

Prosecutor (JPU). Andi Hamzam is of the view that this system of proof is an incarnation of the principle of presumption of *innocence*.¹

Divorce cases from year to year continue to increase by 3% per year, this is caused by various factors such as economy, violence, neglect, and many more. Based on the 2022 Supreme Court Annual Report, if combined, the number of divorce cases handled by courts in the religious courts and general courts in 2022 almost reached 500,000 or half a million.² and in 2023 there will be a decrease of 10.2%, there will be 463,654 divorce cases in Indonesia.³

The divorce rate each year is also influenced by the increasing population and the number of marriages, so this is considered normal. However, the decline that occurred in 2023 to 10.2% can also be influenced by the implementation of the Religious Chamber Legal Formulation number 1 letter b point (2) of the Supreme Court Circular Letter Number 1 of 2022, which reads "Divorce cases on the grounds of continuous disputes and quarrels can be granted if it is proven that the husband/wife has disputes and quarrels continuously or has been living apart for at least 6 (six) months."⁴

The existence of the Circular Letter has given rise to 2 different interpretations. *First*, the granting of a divorce application/suit if it is proven that there has been a dispute and quarrel for 6 (six) months or it is proven that they have been separated for 6 (six) months. Thus, even though they have only been separated for 1-2 months, as long as it is proven that there has been a dispute and quarrel for 6 (six), the divorce suit can be granted. *Second*, the granting of a divorce application/ suit divorce suit/application if it is proven that they have been separated for 6 (six) months due to disputes and quarrels. Thus, even if it is proven that there have been disputes and quarrels for more than 6 (six) months, if they have not been separated or have been separated for less than 6 (six) months, then the divorce suit cannot be granted.

in fact, in the religious court environment, more people use the first interpretation and some others use the second interpretation. this creates a lack of uniformity between

¹Mochtar, Akil, *Reversal of the Burden of Proof of Corruption Crimes*, (Jakarta: Secretariat General and Registrar's Office of the Constitutional Court, 2009), 129.

²Hermansyah, "Principles of Complicating Divorce and the Role of Information Officers in the Religious Court Environment" Buntok Religious Court Website, 2024, p. 3.

³DataIndonesia.id, Data on the Number of Divorce Cases in Indonesia until 2023, accessed on April 5, 2024 <https://dataindonesia.id/varia/detail/data-jumlah-kasus-perceraian-di-indonesia-hingga-2023>

⁴Legal Formulation of the Religious Chamber Number 1 Letter B Point (2), SEMA NO. 1 of 2022.

officers in the Religious Court environment in carrying out their duties. the officers who are most affected are Information officers at PTSP and POSBAKUM Officers, causing confusion in the community. in addition, these officers also received reprimands from judges and clerks who had different perspectives on the existence of the SEMA.

Judges who use the first interpretation consider that if an officer rejects the submission of a divorce lawsuit/application, it is considered to have exceeded the authority of the panel of judges in court. because on the principle of *ius curia novit* or *curia novit jus* , it means that the judge is considered to know all the laws so that the court may not refuse to examine and try the case. ⁵This is also emphasized in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, namely: "The court is prohibited from refusing to examine, try, and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it."⁶

judges who adhere to the second interpretation will consider the officers to be less careful in checking the requirements, because they do not take precautions for people who will file a divorce lawsuit/application less than six months apart from their homes. because later the case will be rejected by the panel of judges so that this certainly causes the Plaintiff/Applicant to suffer losses in terms of time, money and energy. With such an incident, the Supreme Court then issued a Circular at the end of 2023, namely SEMA No. 3 of 2023. especially in the Legal Formulation of the Religious Chamber Perfecting the legal formulation of the Religious Chamber number 1 letter b pain 2 in SEMA Number 1 of 2022 which reads "Divorce cases on the grounds of continuous disputes and quarrels can be granted if it is proven that the husband and wife have continuous disputes and quarrels and there is no hope of living in harmony again in the household followed by having separated for at least 6 (six) months unless it is found that the legal fact is that the Defendant/Plaintiff has committed domestic violence."⁷

The emergence of the Supreme Court Circular Letter Number 3 of 2023 brings a breath of fresh air so that the interpretation of SEMA No. 1 of 2022 is lost. It does not stop there, a new question arises that will be discussed in this study, namely What are the

⁵Online Law Article , Meaning of the Principle of *Ius Curia Novit*, accessed on April 16, 2024 at 09.00 <https://www.Hukumonline.com/klinik/a/ius-curia-novit-lt58dca7c78ab7d/>

⁶Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power, Article 10 paragraph (1)

⁷Legal Formulation of the Religious Chamber Number 1 Letter B Point (2), SEMA No. 3 of 2023.

Characteristics of Domestic Violence in the Context of Divorce in the Legal Formulation of the Religious Chamber of SEMA No. 3 of 2023?

Method

To answer the formulation of the problem in this study using normative or doctrinal legal research by examining primary legal sources in the form of SEMA No. 1 of 2022, SEMA No. 3 of 2023, Law Number 48 of 2009 concerning Judicial Power, and also secondary legal sources. The approach used is a statutory regulatory approach, namely an approach that is implemented based on new and/or applicable statutory regulations as related positive law and the conceptual approach is an approach that is implemented based on forms and concepts that can be obtained in the opinions of scholars or legal doctrines related to related legal issues.

Result and Discussion

Domestic Violence and Divorce

The definition of Domestic Violence (KDRT) in Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence explains that "KDRT is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household."⁸

Disclosure of domestic violence cases is difficult to uncover. The causes include: The occurrence of domestic violence is within the scope of private domestic life where outside interference (intervention) is not permitted.

The victim who is always (wife/children) is the party who is dependent on the perpetrator (husband) especially economically or in general (wife/children) is a group. Victims will choose to remain silent and cover up acts of domestic violence because it is a family disgrace.

The community still lacks knowledge and legal awareness. Related to the rights inherent in humans and so on.

⁸Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 1 paragraph (1)

Domestic violence is considered normal for society if it is done by a husband, this social stigma has mushroomed in society. so that victims are worried that they will be blamed which causes victims to be reluctant to report to law enforcement.⁹

In addition, the misunderstanding related to gender bias ¹⁰, where a woman must submit to a man, results in domestic violence. Gender bias also pressures women to be submissive and accept all forms of unfair behavior that prioritize social or other people's rights over personal rights. ¹¹Law Number 23 of 2004 concerning the Elimination of Domestic Violence provides an explanation regarding the forms of domestic violence, including:

Physical Violence is an act that results in pain, illness or serious injury. In the context of personal relationships, forms of physical violence experienced by female victims include slapping, beating, pulling hair, trampling, kicking, strangling, throwing hard objects, torture using sharp objects, such as knives, scissors, irons and burning. While in the context of social relations, physical violence against women can be in the form of confinement or rape of female servants by employers or genital mutilation carried out in the name of a particular culture or belief.

Psychological Violence is an act that causes fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering in a person. Forms of psychological violence experienced by women include insults, ongoing insults to belittle the victim's self-esteem, shouting and threats given to create fear. In general, this psychological violence occurs in the context of personal relationships.

Sexual violence is forced sexual intercourse committed against a person living in a household or forced sexual intercourse against one person in the scope of the household with another person for commercial purposes and/or certain purposes. Sexual violence includes unwanted behavior and has sexual meaning, or is often called 'sexual harassment', as well as various forms of forced sexual intercourse which are often called rape.

⁹Surianti, Domestic Violence (Analysis of Social Facts Based on Feminist Counseling on Gender Inequality), MUSAWA Journal, Vol. 10 No.1 June 2018, 5

¹⁰Gender bias is a condition that favors and disadvantages one gender, thus causing gender discrimination. Simply put, gender bias is the tendency to prefer one gender over another.

¹¹Anugriaty Indah Asmarany, Gender Bias as a Predictor of Domestic Violence, Journal of Psychology Vol 35, No 1, 5

Domestic Neglect is when a person does not fulfill his/her legal obligations towards people within the household in the form of neglecting to provide living, care or maintenance obligations to the person. Included in the category of domestic neglect is placing restrictions or prohibiting a person from working properly inside or outside the home so that the victim is under the control of the person.

The Domestic Violence Law is an identification of actors who have the potential to be involved in violence. Article 2 of the Domestic Violence Law states that the scope of the household includes (a) husband, wife, and children, (b) people who have family relationships as referred to in letter (a) due to blood relations, marriage, breastfeeding, care, and guardianship, who live in the household and or (c) people who work to help the household and live in the household so that they are considered family members. The identification of violence against domestic workers as domestic violence has invited controversy because some argue that the case should be viewed within the framework of employment relations (between workers and employers). However, the Domestic Violence Law fills the gap in legal protection because until now labor laws in Indonesia do not cover domestic workers. So victims of domestic violence are people who experience violence and or threats of violence in the household.

Divorce according to its definition has several explanations, the first in Article 38 of Law No. 1 of 1974 concerning Marriage, which contains the optional provision that: "Marriage can be terminated due to death, divorce, and by court decision".¹²In Islamic terms, divorce is called *furqah*, meaning divorce. namely the opposite of gathering Sayyid Sabiq defines talaq as an effort to release the bonds of marriage or the dissolution of the marital relationship.¹³also in the Indonesian Dictionary the word divorce is interpreted as separation or breaking up.¹⁴

Positive law regulates divorce, which is explained in Law No. 1 of 1974 concerning marriage, which understands that:

Legal action that can be taken by a husband or wife to terminate the marital relationship between them.

¹²Law No. 1 of 1974 concerning Marriage, Article 38

¹³Sayyid Sabiq, *Sunnah Jurisprudence* 8, PT Alma'rif, Bandung, 1980, 7

¹⁴Department of Education and Culture, Big Indonesian Dictionary, Balai Pustaka, Jakarta, 1998, 163.

The legal event that terminates the relationship between husband and wife, namely the death of the husband or wife concerned, which is a definite provision and directly determined by Almighty God.

A legal decision declared by a court which results in the legal termination of the marital relationship between husband and wife.

So, the term "divorce" legally means the dissolution of a marriage that results in the dissolution of the relationship as husband and wife.¹⁵ Then the meaning of divorce from the definition that has been mentioned is an event that has legal consequences, namely the dissolution of the bond of husband and wife physically and spiritually for reasons that are correct according to the law before a religious court but does not sever the relationship between the two. In the KHI and PP, the reasons that cause the dissolution of a marriage between husband and wife are explained in Article 19 PP 9 of 1975 and Article 116 of the KHI, the following is the description:¹⁶

Article 19 of PP 9 of 1975	Article 116 of the KHI
<p>One of the parties commits adultery or becomes a drunkard, addict, gambler and so on which are difficult to cure.</p> <p>One party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her ability.</p> <p>One party or partner is sentenced to 5 (five) years in prison or a heavier sentence after the marriage takes place.</p> <p>One party commits cruelty or serious abuse that endangers the other party.</p> <p>One party suffers from a physical disability or illness resulting in him/her</p>	<p>One of the parties or partners commits adultery or becomes a drunkard, addict, gambler and so on which are difficult to cure.</p> <p>One party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her ability.</p> <p>One party or partner is sentenced to 5 (five) years in prison or a heavier sentence after the marriage takes place.</p> <p>One party or partner commits cruelty or serious abuse that endangers the other party.</p>

¹⁵Muhammad Syaifuddin et al., *Divorce Law*, Sinar Grafika, Jakarta, 2013, 15.

¹⁶Article 19 of PP 9 of 1975 and Article 116 of the KHI

Article 19 of PP 9 of 1975	Article 116 of the KHI
<p>being unable to carry out his/her obligations as husband/wife.</p> <p>Between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony again in the household.</p>	<p>One party or partner suffers a serious disability or illness resulting in the person being unable to carry out their obligations as husband or wife.</p> <p>Between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household.</p> <p>Husband violates divorce agreement.</p> <p>Conversion or apostasy which causes disharmony in the household.</p>

Characteristics of Domestic Violence in the Context of Divorce Legal Formulation of the Religious Chamber SEMA No. 3 of 2023

The provisions of the Supreme Court Circular Letter Number 3 of 2023 did not suddenly emerge spontaneously, if further investigated, it will appear in several regulations that regulate before the birth of the SEMA. *First*, if we pay attention to the provisions of Article 19 of Government Regulation Number 9 of 1975, we can conclude that Indonesian marriage law provides the basis for reasons for divorce letters a to e which require one party to admit fault, while in Article 19 letter f of the Government Regulation *a quo* no longer imposes a fault as a reason for divorce, but rather a condition in the form of disputes and quarrels between husband and wife and there is no hope of living in harmony again in the household.

The provisions of letter f are reminiscent of the concept of *marital breakdown*, *irreconcilable differences* or *irretrievably broken* which are used in a number of divorce laws in the United States and Australia. The same situation is also experienced by the Indonesian justice system, the meaning of the dispute depends on the subjective understanding of the judge as the case assessor and the judge does not need to study more deeply about the cause of the dispute or disagreement. In facing this problem, the

Supreme Court issued guidelines in Sema 3 of 1981 which emphasized that if a dispute occurs, the cause of the dispute must be investigated.

This SEMA emerged based on observations at the Supreme Court which examined divorce cases (Article 20 of Government Regulation Number 9 of 1975) and divorce petitions from husbands to their wives (Article 14 of Government Regulation Number 9 of 1975), Religious Courts reaped conflicts and quarrels that continued to occur and there was no longer any hope for living in harmony in the family (Article 19 f of Government Regulation Number 9 of the Government of 1975). Therefore, SEMA Number 3 of 1981 reminded judges who decide divorce cases to pay attention to the matters regulated in the regulations below, in particular:

The examination carried out before the trial seemed cliché, there did not appear to be any serious effort to get a glimpse of the motives and truth behind the case;

It was not investigated who the cause of the dispute was, whereas this was a determining factor for the Judge in making his decision, considering that the cause of the dispute could not possibly request a divorce based on Article 19 f PP Number 9 of 1975;

Not heard by the family and people close to the husband and wife as required by Article 22 (2) of PP Number 9 of 1975;

The provisions in points 1, 2, and 31 indicate that these deficiencies are rarely corrected by the High Court of the High Islamic Court/Provincial Sharia Court by conducting additional examinations;

Due to the above deficiencies, the Supreme Court was forced to send back the case files to be completed based on the above matters, which will clearly require a long time before the cases mentioned above, which will clearly require a long time before the cases can be decided at the cassation level, so that it will slow down the resolution of divorce cases, even though these cases should be given priority in their resolution.¹⁷

Based on the SEMA, it is necessary to find out who is at fault for causing quarrels and disputes between husband and wife. The guilty party is not allowed to file for divorce. This instruction is clearly built on the principle of divorce based on fault. The application of the instructions in the SEMA *a quo* seems to be the right and fair thing to do. However, in a number of cases this causes more serious damage to the social values of society and to individuals in the household . Children will continue to be in a household where their

¹⁷ Supreme Court Circular Letter Number 3 of 1981 Concerning Divorce

parents continue to quarrel and their father continues to have relationships with women who are not his wife. In fact, families that are not functioning well, which are filled with continuous quarrels and disputes often have a negative impact on children's development.

Based on the SEMA, it is necessary to find the mastermind of the conflict that caused the case between husband and wife, because as has been regulated, the party that caused the case is not allowed to file a case with the court. This guideline is clearly built on the principle of divorce due to fault, the application of the principles in the SEMA *a quo* seems to be the right and fair thing to do. However, in some cases it causes more serious damage to the social values of society and family members. Children will continue to live in a house where their parents continue to fight and their father continues to have a relationship with a woman who is not his wife. In fact, dysfunctional families and frequent quarrels and conflicts often have a negative impact on children's development.

Second, the implementation of Western civil procedural law *mutatis mutandis* in religious courts based on Article 54 of Law Number 7 of 1989, has led to the settlement of divorce cases entering the realm of Western civil procedural law. The orientation and principles of Western civil procedural law are mechanistic, when used as procedural law for religious courts, especially divorce cases, it turns out to give rise to various problems. Filing for divorce cases is conditioned through two ways, namely a divorce petition and a divorce lawsuit. These two methods turn out to cause problems in practice, because divorce cases are often combined with cases of managing children and property from marriage.

The increasing number of divorce cases due to disputes between wives cannot be separated from the perspective of the application of western civil procedural law, because what is prioritized by each party to divorce is more attention to the formality aspect which has nothing to do with religious norms. In fact, in Muslim divorce law, there are several factors that must be used as the basis for divorce and require different procedures in considering the case, the spiritual aspect based on religious beliefs in the implementation and development of marital relations has begun to shift to the mechanical aspect based on Western civil procedural law applied in general courts.

Legal issues in the divorce process in religious courts, which are resolved through divorce petitions and disputed divorce cases *mutatis mutandis* and in accordance with national law, clearly experience obstacles and changes (*stuck & disturbance*) in their

implementation. The cause is the procedure for filing a divorce case, both from the husband, which is called a divorce oath petition, or because of a divorce dispute carried out by the wife, the more important reason for divorce lies in the personal desires of the couple, often not based on a matter of principle.

The process of litigation in the Religious Court is procedural in nature which is mechanical, starting from the submission or trial, answer, response, copy, proof, conclusion, legal efforts, legality and implementation of the decision are further emphasized by litigation in the Religious Court showing Western civil procedural law, the spiritual aspect is the main guideline in resolving divorce cases in religious courts which are faced with a very formal and mechanical legal dilemma. Therefore, every divorce case brought to the religious court, both divorce petitions and divorce lawsuits, can be ascertained to end in divorce, changes in the cultural orientation of society that views divorce as merely a legal procedure and has no sanctity based on religious beliefs, clearly occurs and will continue to occur without any efforts to change the procedural law applicable to religion, the Court relies on Article 54 of Law Number 7 of 1989 concerning Religious Courts.

Based on this, the Supreme Court Justices and the Substitute Clerks of the Religious Court Chamber held a plenary chamber meeting which was stated in the Legal Formulation of the Results of the Religious Court Chamber Meeting of the Supreme Court of the Republic of Indonesia on 19-20 December 2013 at the Supreme Court Education and Training Center of the Republic of Indonesia, which resulted in an agreement, one of which regulates the provisions for divorce. The initial problem in this SEMA discussed the issue of husband and wife who have been living apart for 3 (three) months, can it be used as a reason for divorce, or is it only based on the fact that the household has broken up (*broken marriage*) even though the separation has only been 1 (one) month? facing this problem, it was agreed that a divorce suit can be granted if the facts show that the household has broken up (*broken marriage*) with indicators including:

There have been peace efforts but they have not been successful.

There is no longer good communication between husband and wife.

One party or each party abandons their obligations as husband and wife.

There has been a separation of beds/shared residence.

Other things found in the trial (such as the existence of WIL, PIL, domestic violence, gambling and others)¹⁸

Referring to the expression of the meeting of the religious chamber's meeting formula at SEMA 4 in 2014, the presence of another ideal partner (third person) can be considered a sign of a broken marriage . A plaintiff who can prove that he/she has another ideal life partner will be considered proven to have broken up the marriage, so that most likely the divorce petition will be approved by the court, often the defendant/respondent is unable to refute the arguments of the lawsuit because they also know about the relationship and remain silent because they are still trying to win back the other party. Even though the plaintiff/plaintiff is the guilty party for betraying the defendant/defendant, the plaintiff/plaintiff still has the right to file for divorce and actually has the opportunity to achieve what he/she wants: divorce from the defendant/plaintiff. Respondent - whether the defendant/respondent is willing to divorce or not.

Third, the Formulation of the Religious Courts Chamber of SEMA Number 1 of 2022 which states that " In an effort to maintain a marriage and fulfill the principle of making divorce difficult, then: 1) divorce cases on the grounds that the husband / wife does not fulfill the obligation of physical and / or spiritual support, can only be granted if it is proven that the husband / wife has not fulfilled his / her obligations after a minimum of 12 (twelve) months; or 2) divorce cases on the grounds of continuous disputes and quarrels can be granted if it is proven that the husband / wife has been in dispute and quarreling continuously or has been living apart for at least 6 (six) months. "Furthermore, in SEMA No. 3 of 2023, the formulation of the Chamber of Religious Affairs problem is refined, number 1 letter B point 2, namely "Divorce cases on the grounds of continuous disputes and quarrels can be granted if it is proven that the husband and wife have been in dispute and quarreling continuously and there is no hope of living in harmony again in the household followed by having been living apart for at least 6 (six) months unless it is found that the legal fact is that the Defendant / Plaintiff has committed domestic violence."

Fourth, the formulation of the Religious Courts Chamber SEMA No. 3 of 2018 which states that "Judges should consider sufficiently and carefully in adjudicating

¹⁸ Circular Letter of the Supreme Court Number 4 of 2014 – Legal Formulation of the Religious Court Chamber

divorce cases, because divorce will end the sacred institution of marriage, change the legal status from halal to haram, have a broad impact on the structure of society and concern the responsibility of the world and the hereafter, therefore divorce can only be granted if the marriage has broken up (*broken marriage*) with indicators that have been clearly proven." Furthermore, this provision is based on the previous SEMA, namely SEMA Number 4 of 2014 which explains that a divorce suit can be granted if the facts show that the household has broken up (*broken marriage*). This SEMA is a refinement of the term *broken marriage* by providing instructions to judges to consider sufficiently and carefully in adjudicating divorce cases. A divorce suit can only be granted if the marriage has broken up supported by indicators that have been clearly proven. This provision is an implication of the court which has often been considered almost as a mere rubber stamp because most divorce cases will end up being granted. Some divorce cases are even decided by default, meaning that the process of reconciliation and mediation in court is not followed.

If examined further, this phenomenon does not only occur in Indonesia. *Uncontested divorce* is a term known in divorce court practices in the United States where a divorce decision is issued in conditions where the parties do not dispute and dispute regarding their divorce or when the defendant does not answer the court summons and also does not file an answer to the lawsuit.¹⁹ Most divorce cases in the United States are granted in the form of *uncontested divorce* , where the examination of this case sometimes takes only about 10 to 15 minutes. So the implementation of the examination and trial of this case is often doubtful in quality.²⁰ It is strange if the court always grants a divorce suit even though it is filed by the guilty party while the innocent party still wants to fix the household. Don't let the court, which should be a medium to fix the household and uphold the principle of making divorce difficult, become an institution that seems to justify a mistake and betrayal committed by a couple in the household. A series of provisions regarding the reasons for divorce are gradually narrowed with the assumption that the more difficult it is for a divorce application to be granted, the lower the divorce rate in Indonesia.

¹⁹ Legal Information Institute, "Uncontested Divorce | Wex | US Law", visited on April 10, 2024 at 9:34 PM

²⁰ Michael J Whaling, 1972, "No Fault Concept: Is This the Final Stage in the Evolution of Divorce", *Journal on Notre Dame Law Review*, Vol. 47, no. 4, Pg. 963

The formulation of the Religious Chamber Meeting in SEMA 1 of 2022 then emphasized that divorce cases on the grounds of continuous quarrels can be granted if it is proven that the husband/wife has been in dispute and quarreling continuously or has lived apart for at least 6 (six) months. The emergence of the Supreme Court Circular was born with several considerations:

Many divorce cases are filed with the Religious Courts not with the aim of terminating the bonds of marriage but rather to intimidate the couple.

Dismissing the notion that Religious Courts are merely legal institutions for issuing divorce certificates.

Realizing the spirit of the principles of marriage law by making divorce difficult to occur. The examination at the first level was conducted too briefly, without any serious effort to obtain a picture of the truth and the motives behind it by only looking at the main reasons for the application listed by the applicant.

The provision of time limits needs to be stated in the SEMA to serve as a guideline for judges in examining cases.²¹

Conclusion

The settlement of divorce disputes after the enactment of Circular Letter Number 3 of 2023 has indeed restored the spirit of the principle of complicating divorce as stipulated in Article 39 paragraph (2) of Law Number 1 of 1974 concerning the Principles of Marriage. Regulations regarding divorce cases on the grounds of prolonged disputes and quarrels and the absence of hope for living in harmony again in the family require a deep understanding to be applied in divorce cases between the plaintiff and the defendant. After the enactment of Circular Letter Number 3 of 2023, the Law on Religious Court Procedures added official rules in the case of divorce awaiting dispute resolution only approved after it is proven that the couple has lived together for at least 6 (six) months, unless legal facts are found that the plaintiff/defendant committed domestic violence. Hopefully this instruction can also make it easier for judges to dig deeper into the root of

²¹ Amran Suadi, 2023, "Implementation of the Circular of the Supreme Court of the Republic of Indonesia concerning the Results of the Plenary Meeting of the Chamber in Decisions Submitted for Cassation and Review in the Religious Court Environment", Paper presented via zoom (online) at the Technical Guidance for Improving the Competence of Religious Court Technical Personnel, Jakarta, March 30, 2023.

the divorce problems caused by husband and wife in order to minimize the causes of divorce, lawsuits, and endless quarrels.

Therefore, considering the importance of establishing regulations, the author emphasizes the need to reconsider the 6 (six) month separation period because it risks violating the wife's rights in the form of living together (*mahdiyah maintenance & mut'ah maintenance*), and *iddah maintenance* if the wife *is nusyuz* . Legal protection and legal certainty must also be considered in relation to child support during the 6 (six) month separation period. The formulation of the Religious Chamber must be included in the Supreme Court regulations (PERMA) so that they are generally binding, especially for the Ministry of Religion. Why? because in the current marriage certificate there is a taklik agreement which clearly states that after 3 (three) months without physical and spiritual support, the woman can file for divorce to the religious court.

References

- Online Law Article , Meaning of the Principle of *Ius Curia Novit*, accessed on April 16, 2024 at 09.00 <https://www.Hukumonline.com/klinik/a/ius-curia-novit-lt58dca7c78ab7d/>
- Asmarany, Anugriaty Indah. Gender Bias as a Predictor of Domestic Violence, Journal of Psychology Vol 35, No 1, 5
- DataIndonesia.id, Data on the Number of Divorce Cases in Indonesia until 2023, accessed on April 5, 2024 <https://dataIndonesia.id/varia/detail/data-jumlah-kasus-perceraian-di-Indonesia-hingga-2023>
- Department of Education and Culture, Big Indonesian Dictionary, Balai Pustaka, Jakarta, 1998.
- Hermansyah, “Principles of Difficulty in Divorce and the Role of Information Officers in the Religious Court Environment” Buntok Religious Court Website Url: <https://pa-buntok.go.id/>. accessed on April 17, 2024, at 07:52.
- Husaeni, Muh. Irfan. 2014. “The Petitioner Alleges Triple Divorce Outside the Court. What is the Judge's Attitude?”. Url: <https://badilag.mahkamahagung.go.id> . accessed on November 29, 2022, at 22.10
- Compilation of Islamic Law Article 19 PP 9 of 1975 and Article 116
- Legal Information Institute, “Uncontested Divorce | Wex | US Law”, visited on April 10, 2024 at 9:34 PM
- Mochtar, Akil, *Reversal of the Burden of Proof of Corruption Crimes* , (Jakarta: Secretariat General and Clerk's Office of the Constitutional Court, 2009).

Characteristics of Domestic Violence in Context

Muhammad Syaifuddin et al., *Divorce Law*, Sinar Grafika, Jakarta, 2013.

Legal Formulation of the Religious Chamber Number 1 Letter B Point (2), SEMA No. 3 of 2023
Sabiq, Sayyid. *Sunnah Fiqh 8*, PT Alma'rif, Bandung, 1980.

Amran Suadi, 2023, "Implementation of the Circular of the Supreme Court of the Republic of Indonesia concerning the Results of the Plenary Meeting of the Chamber in Decisions Submitted for Cassation and Review in the Religious Court Environment", Paper presented via zoom (online) at the Technical Guidance for Improving the Competence of Religious Court Technical Personnel, Jakarta, March 30, 2023.

Supreme Court Circular Letter Number 3 of 1981 Concerning Divorce

Circular Letter of the Supreme Court Number 4 of 2014 – Legal Formulation of the Religious Court Chamber

Surianti, Domestic Violence (Analysis of Social Facts Based on Feminist Counseling on Gender Inequality), *MUSAWA Journal*, Vol. 10 No.1 June 2018.

Law No. 1 of 1974 concerning Marriage, Article 38

Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power, Article 10 paragraph (1)

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 1 paragraph (1)

Whaling, Michael J. "No Fault Concept: Is This the Final Stage in the Evolution of Divorce", *Journal on Notre Dame Law Review*, Vol. 47, no. 4, 1972.