



Study on the Granting of Marriage License to Civil Servants

Sri Hariati^{1*}, Haeratun²

Mataram University

Corresponding Author: Sri Hariati srihukum80@gmail.com

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ABSTRACT

Marriage is a very important institution in society. The existence of the institution is to legalize the legal relationship between a man and a woman. Marriage, according to Law Number 1 of 1974 Concerning Marriage and Islamic Law, not only seen from a purely formal aspect, but also from a religious and social aspect. In the religious aspect to determine the validity of marriage, while the formal aspect is related to administrative aspects, namely registration at the Office of Religious Affairs and civil registration. In the conception of Western civil law, marriage is seen in civil relations only. It means that the law does not interfere in ceremonies held by the church. The law only concerns "civil marriages", namely marriages that take place in the presence of a civil registry employee

INTRODUCTION

Law No. 1 of 1974 concerning Marriage, states that "Marriage is legal, if it is carried out according to each religion". With the issuance of this Marriage Law, in Indonesia there has been a unification of governing laws regarding marriage, namely the enactment of one law for all Indonesian citizens in the event that they enter into a marriage. This intention can be seen in the preamble to the Marriage Law, which among other things reads "That in accordance with the philosophy of Pancasila and the ideals of fostering national law, it is necessary to have a law on marriage that applies to every citizen", so that juridically there is no law anymore. marriages other than those stated in Law Number 1 of 1974.

In It is stated in paragraph (1) of Chapter 2 of Law No. 1 of 1974 regarding Marriage that "Marriage is legal, if it is carried out in accordance with the laws of each religion and belief," and it is further stated in paragraph 2 that "every marriage must be registered in accordance with the provisions of the applicable law."

If you examine the phenomenon of civil servants (PNS), who are incidentally members of the state machinery and public officials, performing marriages nowadays, it is hoped that they can be a good example for the community in behaving and obeying the applicable laws and regulations. If a civil servant wishes to be married, has more than one wife, or intends to file for divorce, they must abide by the duties outlined in the laws and regulations.

Civil Servants perform their responsibilities in order to avoid being distracted by the issues of their home or family as components of the governmental apparatus, servants of the state, and servants of the public.

LITERATURE REVIEW

In relation to the foregoing, Government Regulation No. 10 of 1983, which deals with civil marriage and divorce licenses officials, is believed to need a number of amendments. Civil Servants, these changes have been amended through Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants as regulated in:

Chapter 3

Paragraph (1) Civil Servants who are going to carry out a divorce must first obtain permission or a statement from the competent authority,
paragraph (2) For Civil Servants who are domiciled as plaintiffs or for Civil Servants who are domiciled as plaintiffs to obtain a permit or certificate as referred to in paragraph (1) must submit a request in writing, and
paragraph (3) in a letter requesting permission or notification of a lawsuit for divorce to obtain a statement must include the complete reasons underlying it.

Meanwhile inside:

Chapter 4

Paragraph (1) A male Civil Servant who intends to have more than one wife must first obtain permission from an authorized official,
paragraph (2) Female civil servants are not permitted to become second/third/fourth wives,
paragraph (3) the request for a permit as referred to in paragraph (1) shall be submitted in writing and, paragraph (4) in the letter of request for permission as

referred to in paragraph (3) must state the reasons underlying the request for permission to have more than one wife.

If you pay attention to some of the formulations of regulations that apply to Civil Servants,

If one pays attention to the thoughts and wishes of the people regarding good governance and employee discipline which have been regulated by Government Regulation Number 30 of 1980, there are still many violations committed by Civil Servants which will become obstacles in achieving national development goals and creating a clean government. Authoritative, professional, accountable so that it will reduce public trust in the government In carrying out their daily duties as government officials and public servants there are still many Civil Servants who have not carried out their official duties as well as possible, especially in providing excellent service to the community, have not carried out all government regulations, for example: morning assembly, evening call, skipping work, arriving late and others. In addition, there are still high irregularities in implementing and enforcing state discipline, coupled with high rates of second and third marriages, as well as government servant divorces, might cause delays in the delivery of services to the community.

As a result, in order to obtain findings that describe the significant impact of implementing Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants as described above, it is necessary to study and study through scientific research regarding the application of the regulation. provisions in the regulation. .

Based on the description put forward several problems can be formulated to be studied, namely 1). What is the legal basis granting permission for marriage and divorce? 2) What are the mechanisms, procedures and handling of issuing Are civil officials permitted to marry and divorce?

Research of this kind is normative-empirical in nature., namely where this research examines the applicable laws and regulations and examines the literature relating to the subject matter raised and to obtain logical answers, an empirical approach is taken by means of interviews. In connection with the type of research being carried out is normative-empirical legal The Statute Approach, Conceptual Approach, and Sociological Approach are the methodologies employed in study.. obtained in accordance with the data collection techniques above, the data collected is then processed and analyzed qualitatively, namely data analysis and legal interpretation which is carried out by understanding and compiling data that has been collected systematically so that an overview of the problem or situation being studied is obtained by using flowchart. deductive, in this case the mindset underlying general matters is then concluded to specific matters by using laws and regulations and then main conclusions are drawn regarding the issues studied.

METHODOLOGY

The legal theory that will be used in discussing and studying the problems in this study are:

Definition of Marriage

A. Definition of Marriage According to Law no. 1 of 1974

What is meant by marriage is "a physical and spiritual bond between a man and a woman as husband and wife with the aim of to form a happy and eternal family (household) based on Belief in the One and Only God" (Article 1 of Law Number 1 of 1974). According to Idris Ramulyo, the consideration is "Marriage has a close association with religion/spirituality in a nation built on Pancasila, where the first precept is Belief in the One and Only God, hence marriage not only includes a physical/physical part but also an inner/spiritual element. play a significant influence." Meanwhile, according to Hazairin stated, "the essence of marriage is sexual relations. According to Hazairin, there is no marriage (marriage) if there is no sexual relationship between husband and wife, so there is no need for a waiting period (iddah) for the ex-wife to remarry to another man.

In order to form a happy family, close relations with offspring, which is also the goal of marriage, maintenance and education are the rights and obligations of parents according to Article 1 and the elucidation of Law No. 1 of 1974 concerning marriage which is the basis of the National Marriage Law.

B. Definition of Marriage According to Customary Law

The definition of marriage according to customary law does not merely mean a bond between a man and a woman as husband and wife to get offspring and build and foster family and household life, but also means a legal relationship involving members of the relatives of the wife and husband.

As for the opinion of A Ridwan Halim, "traditional marriage is an event or certain legal events which are generally in the form of human actions, which can be used as a benchmark, or a reinforcing guide, that a marriage between two certain people has indeed taken place, so that juridically it will has valid value.

Even though every marriage is considered legal according to religion and public beliefs, it is still required to fulfill the requirements for "marriage registration" according to state law (Law No. 1 of 1974). From this provision it has been shown that the Republic of Indonesia is still inclined to the position of customary law over other non-state law laws (religious law, customary law and other customary laws).

C. Definition of Marriage According to Western Law

According to Vollmar in the book Salim HS. In the concept of Western Civil law, marriage is seen in civil relations only. The point is that in this case the law does not participate in the ceremonies held by the church. The law only recognizes "civil marriages", namely marriages that take place in the presence of a civil registry employee.

D. Marriage Purpose

The purpose of marriage is according to Allah SWT's order, to obtain legitimate offspring in society, by establishing a peaceful and orderly household.

E. Divorce

Even though basically the purpose of carrying out a marriage is to last forever, there are sometimes certain reasons that result in a marriage not being able to continue, so it must be terminated in the middle of the road or forced to break up by itself, or in other words, a divorce between the husband and the wife. According to experts in Fiqh, divorce is referred to as "furqah" or "divorce". Opening the bond cancels the agreement, which is what the term "divorce" means. While "Furqah" denotes divorce, the reverse of gathering, and signifies divorced. Fiqh experts then combine these two terms to denote divorce between husband and wife.. The word divorce in the term figih has two meanings, namely the general meaning and the special meaning. Divorce according to the general meaning is all kinds of divorces either imposed by the husband, determined by the judge, or divorces that fall by itself or divorce due to the death of one of the husbands or wives. Divorce in its special meaning is divorce imposed by the husband. Because one form of divorce between husband and wife is caused by divorce, henceforth the term talak here is intended as talak in a special sense.

The marriage law does not stipulate in detail the methods of divorce as stipulated in Islamic law, but only mentions in general regarding the dissolution of marital relations within 3 (three) groups, as stated in Law No. 1 of 1974's Article 38 namely:

1. by death,
2. divorce and
3. court decision.

Whereas in the Civil Code, the breakup or dissolution of a marriage is divided into 4 (four) types, namely:

1. Death of one of the parties;
2. 10 years of the wife's absence, followed by a new marriage;
3. There is a judge's decision; And Divorce.

Government Employees

Civil Servant resources are very important assets for the implementation of governance Both at the national and regional levels are necessary in order to provide public services. The increase in Civil Servant resources must continue to be carried out by means of regular guidance, training and education so that they can produce productive, innovative, creative and professional Civil Servants and no less important is the discipline of the Civil Servants.

According to Soegeng Prijodarminto stated that,

"Civil Servants are individuals who are appointed by an authorized authority and given responsibilities in a State after meeting the requirements outlined in the relevant laws and regulations. position, determined based on a statutory regulation and are paid according to the applicable laws and regulations" . Civil Servants are elements of the state apparatus, servants of the State and servants of the public who with full loyalty and obedience to Pancasila, the 1945 Constitution to carry out development and government tasks.

Whereas Employees according to Musanep are people who do work by getting compensation in the form of salaries and benefits from the Government or Private Business Entities where the person works.

According to Djoko Prakoso Civil Servants are, "those who meet the specified conditions, are appointed, paid according to applicable government regulations and are employed in a state position by state officials or authorized state agencies".

Furthermore, it was also explained that Civil Servants are those who work for the Ministry, Secretariat of state institutions, vertical agencies in the Province, Regency/City, court partnerships, Indonesian National Armed Forces agencies and the police work for the provincial/regional regional government, assisted in the autonomous region. The implementation of other state tasks such as law and salaries is borne by the State Revenue and Expenditure Budget or the Regional Revenue and Expenditure Budget.

Every Republic of Indonesian citizen is subject to the provisions of Law No. 43 of 1999 concerning Amendments to Law No. 8 of 1974 Concerning Personnel Principles. who meets the required criteria, is appointed by a designated official, given responsibilities in a state post or given other state obligations, and compensated in accordance with the relevant laws and regulations is referred to as a civil servant.

Then in Article 2 it is determined that Civil Servants consist of Civil Servants, and members of the Armed Forces of the Republic of Indonesia. And civil servants are divided into:

- a. Central Civil Service
- b. Regional Civil Servants
- c. Other Civil Servants stipulated by Government Regulation.

Meanwhile, Specifically, it is mentioned in the explanation of Article 2 that Central Civil Servants are Civil Servants whose salaries are charged to the State Cash Flow and Expenditure Budget and activities of departments, non-departmental government agencies, the highest/highest state institutions' secretariat, and vertical agencies Province/Regency/City Areas, Court Clerk's Office or are employed to carry out tasks other countries.

Regional Civil Servant is a Provincial/District/City Regional Civil Servant whose salary is charged to the Regional Revenue and Expenditure Budget and works for the Regional Government, or is employed outside the main agency.

Central Civil Servants and Regional Civil Servants who are assisted outside the parent agency, their salaries are borne by the agency that receives the assistance. Civil Servants both at the center and Regional Civil Servants have rights and obligations as Civil Servants, namely getting a salary, obtaining coaching, and training and are entitled to legal protection and are obliged to comply with the discipline determined in accordance with the Civil Service Law and Regulation No. 30 of the Government of 1980 Concerning Civil Servant Discipline.

RESULTS AND DISCUSSION

Legal Basis for Granting Marriage and Divorce Permits

It is not easy to define what is meant by permission, according to Sjachran Basah. The opinion expressed by Sjachran seems to be the same as that prevailing in the Netherlands, as stated by van der Pot, 'Het is uiterst moeilijk voor begrip vergunning een definitie te vinden,' (it is very difficult to define a definition to express the meaning of that permit). This is because there is no disagreement between experts, each of them sees from a different perspective the object he defines.

Difficult to give a definition does not mean there is no definition, even find a number of various definitions. Before presenting several definitions of permits from experts, first put forward several other terms which are more or less parallel to permits, namely dispensation, concession, and license. Dispensation is a decision by the state administration that exonerates an act from the regulatory authority which rejects the act.

WF Prins said that dispensation is a government action that causes laws or regulations to become invalid for a special time (*relaxatio legis*). According to Ateng Afrudin, dispensation aims to break through obstacles that are normally not permitted, so dispensation means setting aside restrictions in special cases (*relaxatie legis*). A license is a permit that gives the right to run a company. License is used to express a permit that allows someone to or certain actions that are legally generally prohibited. N. M Spelt and J.B.J.M ten Berge share the broad and narrow definition of permission, namely as follows.

Permits are one of the most widely used instruments in administrative law. The government uses permits as a juridical means to control the behavior of citizens. Permission is an agreement from the authorities based on laws or government regulations to under certain circumstances deviate from the provisions of statutory prohibitions.

Permits (in the narrow sense) are bindings to a permit regulation generally based on the desire of legislators to achieve a certain order or to prevent bad conditions. Its aim is to regulate actions which the legislator does not entirely consider reprehensible, but which he wishes to be able to exercise moderate control.

The main thing in permits (in the narrow sense) is that an action is prohibited, unless it is permitted with the aim that in the provisions pertaining to permits certain limits can be accurately given for each case. So the problem is not only to give permission in very special circumstances, but so that the permitted actions are carried out in a certain way (listed in the provisions)

When compared at a glance, the understanding of permits and concessions is no different. Each one contains an allowance for someone to perform a particular action or job. In everyday terms, the two terms are used interchangeably, as M.M. van Praag, *determen vergunning en concessie beide gebezigd voor een en dezelede juridieke figuur, de houder der vergunning wordt concessionaris genoemd* (the meanings of permits and concessions are both used for the same legal form, permit holders are also called concessionaries). According to E. Utrecht, the difference between a permit and a concession is a

relative difference. In essence, there is no juridical difference between permits and concessions. For example, a permit to obtain coal according to a simple plan and will be held at one's own expense cannot be called a concession.

However, the permit granted according to the Indonesian mining law to obtain coal is a concession, because the permit concerns a large project and this large work will bring benefits to the public. so the concession is also a permit, but a permit regarding matters that are important to the public. Although these permits and concessions are considered the same, with relative differences, there are differences in legal character. A permit is a one-sided legal action carried out by the government, while a concession is a two-sided legal action, namely an agreement entered into between the giver and the one who is given the concession or the recipient of the concession.

In the case of a permit, it is impossible to make an agreement, because it is impossible to hold an agreement of will. In the case of concessions, an agreement is usually made, namely an agreement that has its own nature and which is not governed by all the provisions of the Civil Code regarding contract law. According to M.M. van Praag, permission is a unilateral legal action (*eenzijdige handeling een overheidshandeling*), while a concession is a combination of the actions of two parties that have a contractual nature with a permit, which is under legal discussion. We call the agreement. When the government carries out legal actions relating to permits and concessions, the government presents itself in two functions, namely as a general legal entity when making concessions, and as a government organ when issuing permits.

Legal basis or basis for Considering marriage and divorce for government employees permit

a. Legal Basis for Marriage and Divorce Permit

- Government regulations. No. 9 of 1975 concerning Implementation of Law No. 1 Year 1974 concerning marriage.
 - Government regulations. No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants
 - Government Regulation no. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants. SE Ka BAKN No. 08/SE/1983 dated April 26, 1983 concerning Guidelines for the Implementation of Marriage and Divorce Permits for Civil Servants SE Ka 48/SE/1990 dated December 22, 1990 concerning Guidelines for Implementing Marriage and Divorce Permits for Civil Servants.
- b. Provisions Civil Servants are obliged to report their marriage in writing to officials through hierarchical channels no later than 1 year after the marriage took place, accompanied by:
- A valid copy of the marriage certificate/marriage certificate.
 - Passport photo of wife/husband measuring 3 x 4 cm Female civil servants are not allowed to become second, third or fourth wives.

Violation of these provisions is subject to disciplinary punishment with dishonorable discharge as a civil servant. Civil workers who perform a divorce must first acquire consent from the designated authority.. PNS Men who will have more than one wife must first obtain permission from the competent authority.

Mechanisms, Procedures and Handling of Granting Marriage and Divorce Permits for Civil Servants

Regional The Regional Government is a legal community unit with an arrangement based on specific rights, the Region can carry out legal acts in both Public Law and Civil Law, the Region has assets, and the Region has true, unanimous, and complete autonomy; autonomy is not a gift from the government. can be prosecuted and sue before the court.

Provincial/District Regional Civil Service Agency is an organization that has human resources to carry out its duties. The role of humans in the organization as employees plays a decisive role, because the life and death of the organization depends solely on humans. To achieve the goals of an organization, one very important factor is employee performance. Employee work performance is one of them influenced by the development of employees who can provide clarity to carry out tasks in accordance with their workload and responsibilities.

The Regional Civil Service Agency is the part of the government in charge of carrying out the policies, and it is run by the Head of the BKD, who reports to and is accountable to the Regional Head via the Regional Secretary. In terms of implementing sanctions for civil servants, the Government established Government Regulation Number 30 of 1980 concerning Civil Servant Discipline regulations. In Article 1 point (a) it is determined that what is meant by Civil Servants Disciplinary Regulations are regulations governing obligations, prohibitions and sanctions if obligations are not complied with or prohibited by Civil Servants.

On the basis of these provisions, this rule is made to clearly regulate the obligations, prohibitions and sanctions imposed on Civil Servants who do not carry out their obligations and violate the prohibitions. The existence of this provision provides a clear legal basis for imposing sanctions on civil servants who violate discipline and prohibitions.

Violation of the prohibition will result in that Civil Servant will be subject to disciplinary sanctions. Likewise, negligence or intentional failure to carry out the obligations as described above also results in the imposition of sanctions on the Civil Servant concerned, regarding the level and type of Civil Servant Discipline punishment as stipulated in Chapter III Part One Article 6 of Government Regulation No. 30 of the year 1980 has determined disciplinary penalties for violations as stated in Articles 4 to 6, the formulation of which is as follows:

Article 4 Every word, writing or act of a Civil Servant that violates the rules mentioned in Article 2 and Article 3 is a disciplinary violation.

Article 5 Without prejudice to the provisions in the criminal legislation, Civil Servants who commit disciplinary violations are subject to disciplinary punishment by officials who have the authority to punish.

Article 6 (1) The level of disciplinary punishment consists of:

1. Light disciplinary punishment;
2. Moderate disciplinary punishment; And
3. Severe disciplinary punishment

From the type and level of disciplinary punishment as regulated in the several Articles mentioned above, it is intended that every Civil Servants can work well and with discipline, so that they can carry out government activities that have been assigned to them to run well and achieve the goals they aspire to. The application of disciplinary punishment can be carried out if the Civil Servant in question has been truly and convincingly proven to have committed a mistake and violation which is supported by evidence of committing the said violation. and/or court judges who examine and decide cases where the perpetrators are civil servants. The application of disciplinary punishment varies depending on the severity, moderation and severity of the violation committed by the civil servant concerned.

As for the procedures for this divorce suit, the provisions are regulated in the Implementation Regulations, namely Government Regulation No. 9 of 1975 in articles 20 to 36 which are basically as follows:

1. Filing a Lawsuit
2. Calling
3. Trial
4. Peace
5. Verdict

Civil Servant carrying out a divorce submits a written application for permission by stating the full reasons. What When one of the parties engages in adultery, it can be considered as a good grounds to get a divorce. as evidenced by:

- a. Court decision Letter of statement from at least 2 (two) adult witnesses who witnessed the adultery, which officials perceive to be as low as the subdistrict head of adultery is known by (husband or wife) by being caught red-handed.
- b. The party who knows immediately makes a report. One of the parties is a hard-to-cure alcoholic or gambler, as shown by: Statements from two (two) adults who witnessed the event and are aware of it, with a minimum of the Camat .
- c. A certificate from a physician or police officer stating that the patient has developed drinking, gambling, or other bad habits as a result of the examination. who is difficult to cure/repair.
- d. One party leaves the other party for 2 (two) years in a row without the other party's consent, without a good explanation, or due to circumstances beyond his control or will, as shown by a declaration letter from the village head or kelurahan that is approved by an official with the government. lowest authority - low Camat.

- e. According to a court ruling with permanent legal effect, one of the parties is sentenced to 5 (five) years in jail or a more severe punishment continually after the marriage.
- f. Visum et Repertum from a government physician demonstrates that one of the parties engaged in cruelty or significant persecution that put the other party in danger..
- g. According to a declaration letter from the village head that has been legalized by a designated official, there is no chance of living in harmony in the home because the husband and wife frequently argue and quarrel. as low as the Camat.
- h. The reason the wife Not being able to fulfill her duties as a wife due to a handicap or disease cannot be a justification for approving a divorce. If a civil servant has been granted permission to divorce, they must communicate it to the official through the herarchy route no later than one month after the divorce date., according to the example in Appendix VII of the Circular of the Head of BAKN No. 08/SE/1983 and accompanied by a valid copy of the divorce certificate / divorce certificate.

CONCLUSIONS AND RECOMMENDATIONS

Based on the description that has been done above, it can be concluded and suggested as follows:

Conclusion

- a. Legal Basis for Granting Marriage and Divorce Permits, namely:
 - 1) Government Regulations. No. 9 of 1975 concerning Implementation of Law No. 1 Year 1974 concerning marriage.
 - 2) Government Regulations. No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants
 - 3) Government Regulation No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants.
 - 4) SE Ka BAKN No. 08/SE/1983 dated 26 April 1983 concerning Instructions for the Implementation of Marriage and Divorce Permits for Civil Servants
 - 5) SE Ka 48/SE/1990 dated December 22, 1990 concerning Guidelines for the Implementation of Marriage and Divorce Permits for Civil Servants.

Mechanism, Procedure and Handling of Granting Marriage and Divorce Permits for Civil Servants, this is carried out by Regional Civil Service Agencies, both provinces and districts/cities in Indonesia, through stages including 1) Submission of Lawsuit 2) Summons, 3) Trials, 4) Peace 5. Verdict

Recomenmendations

- 1) It is expected that the employees themselves are expected to implement and understand the contents of Government Regulation No. 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants and does not prioritize the factor of personal desire to remarry so that it does not interfere with work
- 2) The leadership of the Regional Civil Service Agency provides more motivation for civil servants to prioritize performance and apply disciplinary sanctions for violators.

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