



Juridical Review of Determination of Marriage Certificate in Divorce Applications in Decision No. 5361 Rev. G/2022/PA. Badg

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Abstract. Marriage is a great agreement between two human beings bound by a strong bond that aims to form an eternal and harmonious family. One aspect related to marriage is divorce and marriage constituencies which in this study refer to Decision No. 5361 Rev. G/2022/PA. Badg. The court's decision emphasized that there was a cumulation or combination of two lawsuits in one lawsuit, namely regarding divorce and marriage certificated application at the same time. This study aims to examine the validity of the cumulative lawsuit between divorce by the husband and marriage certificate. This research is a normative legal research with a conceptual, case, and statutory approach. The results of the study confirm that in essence a cumulative lawsuit can be carried out as an implementation of the principle of a quick and low-cost trial, provided that the cumulative lawsuit is carried out in cases that have the same relevance and does not have the potential to give rise to conflicting decisions. The accumulation of divorce by the husband and marriage certificate can be said to be inappropriate because it has the potential to give rise to conflicting decisions in merging applications for marriage certificates which do not have disputes in them and the application for divorce by the husband is characterized by disputes with the respondent, and contrary to Law No. 7 of 1989 concerning Religious Courts article 86 paragraph (1).

Keywords: Civil Lawsuit, Divorce by the husband, Marriage certificated application

1 INTRODUCTION

Article 1 of Law No. 1 of 1974 concerning Marriage states that 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 (household) based on Belief in the One Almighty God". In another sense, marriage is not only a social institution, but in it there is a horizontal relationship between the human being and God.

Marriage is a great and sacred agreement, as God likens it in the Qur'an with the word *mīṣāqan galīzan* or a very strong bond. This word is only written four times in the Qur'an, namely the agreement between Allah and the Apostles with the title Ulul Azmi; Nuh, Ibrahim' Musa, and Isa (see QS. Al-Ahzab: 7) and the *mīṣāqan galīzan* between

Allah and the Children of Israel where the Qur'an tells that in carrying out this agreement Allah raised Mount Thursina above the heads of the Israel's People QS. Al-Nisa: 154 [1]. So the level of marriage is aligned with His agreement with the ulul-azmi prophets and the Isarel's people. this is in line with the sound of Article 2 Chapter II book I Compilation of Islamic Law, marriage is a very strong contract (mūshāqan galīzan). [2]

Today the majesty of marriage is not understood comprehensively by society, given the very high divorce rate. In 2022, referring to SIPP MA-RI data, 461,134 cases of national divorce cases have been decided. Divorce cases were contested as many as 348,001 or 75%. Meanwhile, at least 113,133 divorce cases or 25% of the cases decided. From the data above, 89% of divorce cases were granted, 8% were revoked by the applicant, 1% were rejected and at least 3% were dropped or crossed out. As the figure above deserves special attention regarding the high rate of divorce in Indonesia, both in terms of prevention, legal norms and procedural procedures in the Religious Courts [3].

Decision number 5361 Pdt. G/2022/PA. Badg is a bit of a reflection of the case above. In this decision it was explained that the applicant in his letter of application dated November 11, 2022 had submitted a divorce application for talak and marriage certificates registered at the Registrar's Office of the Bandung Religious Court. The case is that the applicant had an unregistered marriage on September 30 2022 on the background that the respondent was 8 months pregnant due to an illicit relationship with the applicant. The applicant on November 11, 2022 intends to file for a divorce, bearing in mind that at the beginning of their marriage the two did not register their marriage, so in the application for the case a cumulation of marriage certificates and a divorce application for divorce were submitted.

Cumulation or *samenvoeging van vordering* is the merging of more than one lawsuit into one lawsuit or several lawsuits combined into one. Actually the accumulation of lawsuits aims to simplify the examination process at trial and avoid conflicting decisions. [4] Basically, every lawsuit that is combined is a lawsuit that stands alone.

However, what researchers concern on the cumulation in Decision number 5361 Pdt. G/2022/PA. Badg there is a merger between the marriage certificate which is in the nature of a request where in the case of the application there is no dispute in it and talak divorce which is a lawsuit in which there is a dispute in the case. Whereas cumulation is justified if there is a merger between interrelated claims as stipulated in Law No. 7 of 1989 concerning Religious Courts article 86 paragraph (1) which reads: "Lawsuits regarding child control, child maintenance, wife maintenance, and joint property of husband and wife can be filed together with a divorce lawsuit or after the divorce decision has permanent legal force. Based on the background above, the researcher will highlight the application of procedural law, with the formulation of whether the marriage certificate and divorce application for talak can be submitted in one application. [5]

2 RESEARCH METHODS

This research is a normative legal research. Legal research is a know-how activity, not just know-about, so this research aims to solve legal problems, not just what the law is and what problems we are discussing, but through identifying legal issues, legal reasoning, and analyzing legal issues, it will be found problem solving solutions [6]. In this research regarding the Juridical Review of the determination of ISBAT FOR MARRIAGE AND APPLICATION FOR DIVORCE IN DECISION NUMBER 5361 Pdt.G/2022/PA. Badg. Solving these legal problems will use legal research in a normative juridical manner because at this wrote it was carried out using the approach of national legislation and other legal doctrines. The approach to the problem in question is the statutory approach, conceptual approach, comparative approach, and Rechtsvergelijking or comparative legal study or comparative approach.

3 DISCUSSION

3.1 Marriage Certificate and Application for Talak Divorce in Indonesia

Marriage certificate is validation of a marriage that has been carried out according to Islamic religious law, but is not recorded by the KUA or an authorized Marriage Registrar. [7] In Law No. 1 of 1974 concerning Marriage, marriage in Indonesia is considered valid if it is carried out according to the laws of each religion and belief.

Although, a marriage that only fulfills the requirements and pillars of marriage according to religion is believed to be valid by most Indonesian Muslims. *Jumhur Ulama'* stipulates that at least a valid marriage according to religion must be fulfilled 4 pillars, as follows; 1) there are groom and bride candidates, 2) marriage guardian, 3) two witnesses, and 4) consent granted. [8] If these four elements are fulfilled then the marriage is considered valid according to Islamic law.

Law No. 1 of 1974 requires that marriages are considered valid and have legal force if they are carried out according to religious regulations and registered at the Office of Religious Affairs. As stated in the Marriage Law, article 2 paragraph 1 states "marriage is legal, if it is carried out according to the laws of each religion and belief" and paragraph 2 reads "Marriage is recorded based on applicable laws". [9] Marriage registration is regulated through Presidential Instruction No. 1 of 1991 Compilation of Islamic Law (KHI) article 6 paragraph 2 which reads "Marriage performed outside the supervision of a Marriage Registrar has no legal force". Government Regulation No. 9 of 1975 Chapter II article 2 describes the registration of marriages. [10] As meant in Law no. 32 of 1954 concerning Registration of Marriages, Divorces and Referrals".

There are two ways to apply for marriage legalization, namely by filing a marriage legalization application (Voluntair) and by filing a marriage legalization lawsuit (Kontentius). [11] The legal product of the Religious Courts regarding applications for marriage legalization is in the form of a trial determination for lawsuits for legalization of marriage in the form of decisions. The marriage certificate is also called the

Legalization of Marriage, and if the marriage certificate application is granted, then the marriage is declared valid and has legal force. to a marriage that is declared valid brings the consequences of a legal relationship between husband and wife and the children they give birth to.

Normatively, the legal basis for filing a marriage certificate is contained in the following rules:

1. Law no. 22 of 1964 concerning Registration of Marriage, Divorce and Reconciliation
2. Law no. 1 of 1974 concerning Marriage
3. Law no. 7 of 1989 concerning Duties and Authorities of the Religious Courts
4. Government Regulation no. 9 of 1975 concerning Implementation of Law Number: 1 of 1974 concerning Marriage
5. Presidential Instruction No. 1 of 1991 KHI (Compilation of Islamic Law)

KHI Article 7 Paragraphs 2 and 3 regulates in detail regarding marriage certificates, in paragraph 2 it reads "In the event that a marriage cannot be proven by a marriage certificate, the marriage certificate can be submitted to the Religious Court" and paragraph 3 states "The marriage certificate can be submitted to the Religious Court limited regarding matters relating to; (1) The existence of a marriage in the framework of divorce settlement. (2) Loss of marriage certificate. (3) There is doubt about whether or not one of the conditions of marriage is valid. (4) The existence of a marriage that occurred before the enactment of the Marriage Law No. 1 of 1974. (5) Marriages conducted by those who do not have marital obstacles according to Law Number 1 of 1974. [2]

Acceptance of marriage certificates by judges is an important matter and cannot be ignored, bearing in mind the legal implications of marriage certificates will have a positive impact on the families concerned, including becoming the KUA basis for registering their marriages, marriage certificates can be used to arrange birth certificates to fulfill children's rights to identity. The legal consequences of children being born as legitimate children, there are legal consequences of rights and obligations between family members regarding joint property, inheritance rights, gono gini if later there is a divorce, living iddah, living child.

Basically, the breakup of a marriage caused by divorce can occur because of a landslide divorce through a divorce application and a contested divorce through filing a divorce lawsuit. In Law No. 1 of 1974 concerning Marriage that divorce can only be carried out before a court hearing after the court has failed to reconcile the two parties. In a contested divorce, the divorce is considered to have occurred since the fall of the decision of the Religious Court which has permanent legal force. The divorce process will end with the decision of the divorce case by the judge in an open trial. This is different from talak divorce. In a talak divorce, after the judge has rendered a decision that has permanent legal force, the husband will declare his divorce in front of a religious court session attended by the wife or her attorney. If the husband does not pronounce the divorce vow within six months after the court's decision is rendered, then the husband's right to declare divorce is null and void. Divorce is considered null and void and the marriage bond remains intact. [12]

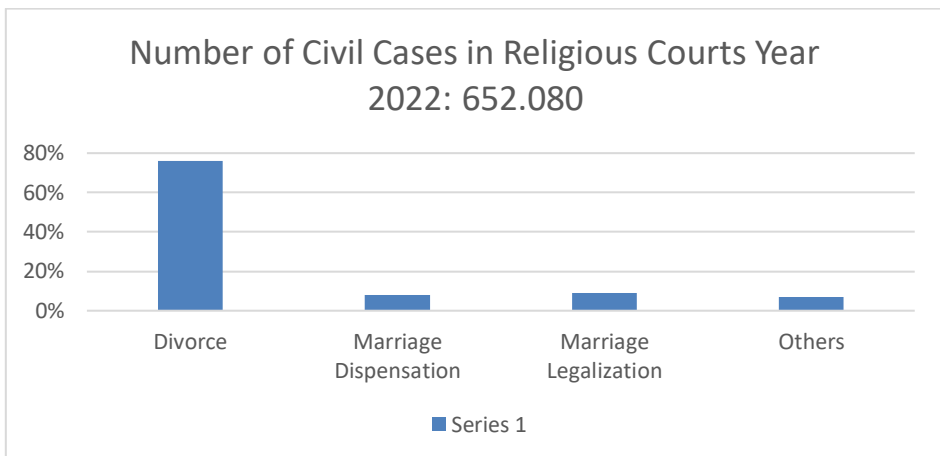
As explained above, a divorce application for divorce is a request filed by a husband to divorce his wife, talak is a husband's pledge before a religious court session which is one of the reasons for breaking up a marriage. This is regulated in detail in Presidential Instruction No. 1 of 1991 KHI Article 129 KHI, a husband who wants to divorce his wife must submit an application to the Religious Court which includes the wife's residence. This application must be accompanied by reasons and request that a hearing be held for this purpose. [2] As for Article 118 HIR 142 Rbg jo article 66 of Law No. 7 of 1989 which has been amended by Law No. 3 of 2006, which states that a husband or his attorney can apply for divorce in writing or verbally to the Religious Court/Sharia Court. [13]

From the series of rules above, it can be concluded that the husband or his attorney can apply for divorce in writing or verbally to the Religious Court/Sharia Court based on Article 118 HIR 142 Rbg in conjunction with article 66 of Law No. 7 of 1989 which has been amended by Law No. 3 2006. In addition, divorce can only be done before a court hearing after the court has failed to reconcile the two parties based on Law No. 1 of 1974 concerning Marriage. For Muslim couples, the divorce process also refers to special provisions in the Compilation of Islamic Law, where talak is the husband's pledge before the Religious Court hearing which is one of the reasons for breaking up a marriage.

3.2 Juridical Review Determination of Marriage Certificate and Talak Divorce Application in Decision No. 5361 Rev. G/2022/PA. Badg

The Religious Courts noted that the number of civil cases filed in 2022 was at least 652,080 cases with a completion rate of 93%. Of the above, 76% of divorce cases, 8% of marriage dispensation, 9% of marriage legalization and 7% of other cases. [3]

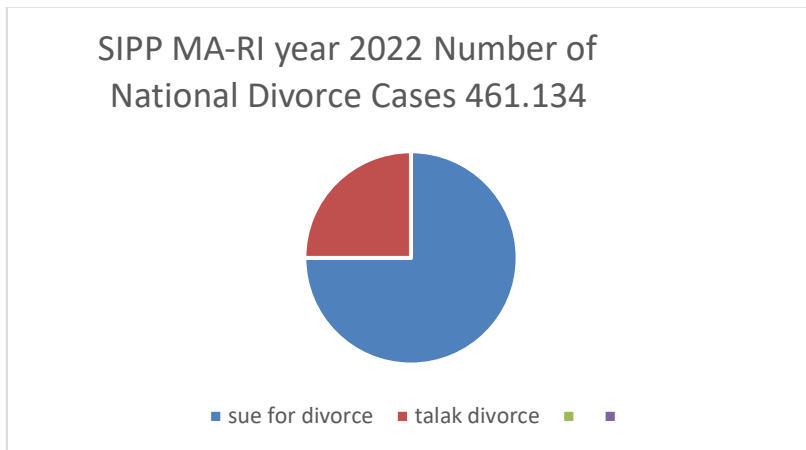
Fig. 1.



In 2022, referring to SIPP MA-RI data, 461,134 cases of national

divorce cases have been decided. Divorce cases were contested as many as 348,001 or 75%. Meanwhile, at least 113,133 divorce cases or 25% of the cases decided. From the above data, 89% of divorce cases were granted, 8% were revoked by the applicant, 1% were rejected, and at least 3% were dropped or crossed out. [3] As the figure above deserves special attention regarding the high rate of divorce in Indonesia, both in terms of prevention, legal norms and procedural procedures in the Religious Courts.

Fig. 2.



Of the many cases that have been submitted to the Religious Courts in Indonesia, there is the Determination of Marriage Certificates and Applications for Divorce in Decision No. 5361 Rev. G/2022/PA. Badg. The determination of this case is a form of accumulation of cases. because there is a determination of the marriage certificate and the application for divorce in one application letter. The case is that the applicant had an unregistered marriage on September 30 2022 on the background that the respondent was 8 months pregnant due to an illicit relationship with the applicant. The applicant on November 11, 2022 intends to file for a divorce, bearing in mind that at the beginning of their marriage the two did not register their marriage, so in the application for the case a cumulation of marriage certificates and a divorce application for divorce were submitted.

Claim cumulative or *samenvoeging van vordering* is a combination of several lawsuits into one lawsuit. [14] This merger of lawsuits is regulated in Law no. 7 of 1989 concerning Religious Courts jo. Law No. 3 of 2006. [13] Basically, cumulation is justified if there is a merger between interrelated lawsuits as stipulated in Law No. 7 of 1989 concerning the Religious Courts, article 86 paragraph which reads: "Lawsuit regarding child control, child maintenance, wife maintenance, and joint property of husband and wife can be filed together with a lawsuit for divorce or after the divorce decision has permanent legal force. Meanwhile in decision No. 5361 Rev. G/2022/PA.Badg, there is a merger of applications for marriage confirmation and divorce applications where there is no dispute in them.

Marriage certificate in procedural law is a voluntary case in which the application submitted by a person or legal entity does not contain a dispute in the matter. Voluntary cases are regulated in Article 2 paragraph (1) of Law no. 14 of 1970 amended by Law no. 35 of 1999. [15] And the legal product of the voluntary's request is a court decision.

The application for divorce can be filed as a voluntary case or a contingent case, depending on the circumstances of each. If the application for divorce is filed voluntarily by the husband or wife without any dispute in it, then it can be filed as a voluntary case. However, if there is a dispute between husband and wife, then the application for divorce must be filed as a contentious matter. [15] Observing the decision No. 5361 Rev. G/2022/PA.Badg and the judge's considerations in trying the verstek case, it can be understood that the application for divorce in this decision is a contentious case and there is a dispute in it.

Based on article 86 of Law No. 7 of 1989 concerning Religious Courts, decision No. 5361 Rev. G/2022/PA.Badg has violated the procedural law of the Religious Courts. Especially in the accumulation of lawsuits it requires rigid rules and limitations including; (1) There is a strong connection or connection between one lawsuit and another lawsuit, (2) Combined lawsuits must comply with the requirements and limitations determined by the procedural law of the religious courts, (3) Merging lawsuits must not conflict with the principle of expediency. and cheap in resolving cases, (4) Merging lawsuits must not harm the rights of the parties to the dispute, (5) Merging lawsuits must pay attention to applicable legal provisions.

So in decision No. 5361 Rev. G/2022/PA.Badg It is not permissible to carry out a cumulative lawsuit between a marriage certificate application and a talak divorce application. This is because the application for approval of marriage and the application for divorce are two different cases and have no relationship between one another. The amalgamation of voluntary and contentious cases violates the provisions of the procedural law of the Religious Courts, bearing in mind that the two cases have different procedural stages. Therefore, the two applications must be filed separately and cannot be combined in one lawsuit because they are contrary to applicable legal provisions.

4 DECISION

The procedural law of the Religious Courts has an important urgency in settling civil cases in Indonesia. For the sake of guaranteeing the upholding of material civil law, maintaining order in the justice system, legal certainty and protecting individual rights. Verdict No. 5361 Rev. G/2022/PA. Badg. related to the Determination of Marriage Certificates and Divorce Applications Divorce is a form of accumulation of lawsuits that violate the procedural law of the religious courts and are contrary to Law No. 7 of 1989 concerning Religious Courts article 86 paragraph (1). The judge combined the case for a marriage certificate which was voluntarily in nature and the divorce case for divorce was contentious. While the accumulation of lawsuits is justified in the case of

merging lawsuits that are closely related to each other. Volentair and contentious cases have different procedural laws and conflict with applicable legal restrictions.

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