



SETTLEMENT OF DIVORCE FROM INTERRELIGIONS AND ITS LEGAL CONSEQUENCES ACCORDING TO NATIONAL CIVIL LAW

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Abstract

In marriage different religions the same goes for marriage normal in it contain problem social and juridical . Divorce as a incident although allowed but as a things that Allah does not like . This shows as close as possible existing marriage happen , don't let it break Because divorce. According to Article 38 of the Law Number 1 of 1974 concerning Marriage states that something marriage can separated Because death , divorce and above decision Court . Divorce is he decided something bond marriage between husband wife by the way through decision court and there is Enough reason that between husband and wife cannot life reconcile as husbands wife , who became complicated when divorce the from marriages of different religions. The problems that arise are not only about division treasure together will but also rights nurturing and nurturing child in divorce different religions.

Keywords: *Interfaith Marriage , Legal Consequences, Divorce*

1. INTRODUCTION

Marriage is bond physically and spiritually between a man with a woman as husband recognized wife legal by the community concerned and also based on on regulation existing marriage . Every humans who have adults definitely will crave carry out marriage with prescribed procedures and rules in laws and statutes. Applicability Constitution Number 1 of 1974 concerning marriage in relative terms can answer problems regarding marriage will but by no means that this law regulates all aspects related to marriage . Along development public as well as progress Nowadays , problems regarding marriage are increasingly complex , which recently we often have look in the media regarding marriage different religion. Marriage Of course there will be different religions too give rise to consequence the law is such a problem recording marriage , rights foster child , legal status child , and perhaps also about which religion it will be adopted or taught to children in family the. Divorce carried out between husband and wife who have the same religion in submission application the lawsuit to there is no court obstacles , however If divorce carried out by those who follow other religions Islam so The District Court will decide it because it is in accordance with authority absolute something court. This also applies to divorce partner of different religions in marriage held abroad. Arise the question of whether the District Court has jurisdiction in disconnect divorce where is this religion different ? is known that in Indonesia does not recognize exists marriage different religions, will but in Constitution Marriage is also not prohibited marriage different religions. Based on matter the so writer interested to discuss regarding “ Settlement Divorce Between Different Religions and Consequence The law According to National Civil Law”. Based on description background behind so writer formulate problems that will discussed in this writing is : How to solve divorce from marriage different religion, and what are the consequences law to right foster children and property together from divorce different religion ?

2. IMPLEMENTATION METHOD

Method used in This writing is an approach juridical normative namely by conducting research based on materials law / reference by the way examine ingredients laws and concepts from ingredients law those , which are related to the principles law regulation laws and regulations related to this writing /research.

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3. RESULTS AND DISCUSSION

Marriage Different religions still often occur , various method taken to get validation from the country. Couples different religions often do marriage abroad as an effort get around how difficult it is carry out marriage different religions in Indonesia. When couples have different religions marrying abroad is actually already a thing category smuggling law Where marriage the considered invalid , if matter the happens not to close possibility will arise consequence law later a day like what if happen quarrels that trigger divorce , then how to divide his assets , as well as the status of any children born from marriage the.

Completion divorce from marriage different religion

Completion process different religions in Indonesia in general the same as the divorce process in general . District Court for those who have a religion other than Islam and religious court for those who have a Muslim religion. The District Court has authority examine , adjudicate and decide case lawsuit divorce from partner husband the wife carries it out marriage according to Christian, Catholic , Hindu, Buddhist or other religions that are not according to Islam. Legal proceedings implementation Divorce in District Court is regulated in Articles 20 to Article 36 of the Regulations Government Number 9 of 1975 concerning Implementation Constitution Number 1 of 1974 concerning Marriage , namely:

1. Submission lawsuit divorce

In Article 20 of the Regulations Government Number 9 of 1975 concerning Implementation Constitution Number 1 of 1974 concerning Marriage arrange that lawsuit divorce submitted by the husband or wife or their proxies to Regional District Court the law covers place residence defendant , if place residence the defendant is unknown or does not have it The place to stay is the lawsuit divorce submitted to District Court on site residence Plaintiff . In matter Defendant residing abroad , lawsuit divorce submitted to District Court on site residence Plaintiff . The Chairman of the District Court said lawsuit the through representative local Republic of Indonesia .

2. Determination court on action while to protect right husband , wife , and children during ongoing lawsuit divorce

During ongoing lawsuit divorce on application Plaintiff or Defendant or based on consideration the danger that may be caused , the District Court based article 24 paragraph (1) PP Number 9 of 1975, can allow husband and wife such as not to stay in one house. According to explanation the thing is , permission District Court to allow husband and wife do not remain silent together in one house is only given based on consideration for the good husband and wife together his children. Determination District Court regarding action temporarily as collateral right husband wife , and children during ongoing lawsuit divorce as arranged in Article 24 paragraph (1) PP Number 9 of 1975 mentioned above , is based on ratio law that If a husband or wife submit lawsuit divorce in District Court , then during The examination by the Panel of Judges took place in the atmosphere inner (heart and feelings) and mind husband and wife of course it becomes tense , uncomfortable , even stressed . What else if The Panel of Judges at the District Court requires a long time to get it drop something decision , so it's worrying that while waiting for the decision The Panel of Judges at the District Court will happen unwanted things in life together from husband and wife , that is in the end will result loss for one of them two party or even second split party . Therefore , Article 24 PP Number 9 of 1975 provides right to husband or wife to request determination court on action while to protect rights or interests of husband or wife during the legal process divorce takes place in the District Court .

3. Abortion by Lawsuit Law Divorce

Lawsuit divorce disqualified by law If husband or wife die before exists decision District Court regarding lawsuit The divorce is as determined in article 26 PP Number 9 of 1975. By death husband or wife , then Article 38 of Law Number 1 of 1974 also applies load provision that marriage separated Because death One between two party . It means that effort law husband or wife to decide marriage in a way submit lawsuit divorce in



District Court no longer needs to be continued, because their marriage has been decided directly by Almighty God. Neither Law Number 1 of 1974 nor PP Number 9 of 1975 regulates further consequence law he decided marriage Because death husband or wife the.

4. Summoning Hearing Lawsuit Divorce

According to Article 26 PP Number 9 of 1975, every time it is held hearing The District Court examined it lawsuit divorce, both Plaintiffs nor The defendant or their attorney will called to attend hearing the. For the District Court, summons carried out by the bailiff. The summons was delivered to the individual concerned. If the person concerned cannot found it, then calling be delivered through village head or something equivalent. The summons was carried out and delivered properly and was accepted by the Plaintiff nor The defendant or their attorney at the latest three day before the trial opened. Summoning to Defendant attached with a copy letter lawsuit. If deep matter place residence The defendant is unclear or unknown or does not have one place permanent residence, according to Article 27 PP Number 9 of 1975 summons done by paste claim on the notice board in the District Court and announce it through one or several newspapers or other mass media determined by the District Court. Announcement via newspapers or mass media are carried out as much twice with grace time one month of the first and second announcements. Grace time between last call with the trial set at least three months. In things have been done summons and the Defendant or his attorney remains absent, lawsuit accepted without presence. Furthermore according to explanation Article 27 PP Number 9 of 1975, though The defendant or his attorney was not present, but this was not the case alone is reasons for granting it lawsuit divorce if lawsuit it is not based on reasons as intended Article 19 PP Number 9 of 1975. In matter Defendant located residence abroad, then calling according to Article 28 PP Number 9 of 1975 is conveyed through representative Republic of Indonesia.

5. Inspection and Conciliation Lawsuit Divorce

According to Article 29 PP Number 9 of 1975, examination lawsuit divorce carried out by the Panel of Judges no later than 30 days after receipt of files/ letters lawsuit divorce. In set time stage hearing inspection lawsuit divorce, you need to pay attention grace time call and receive calling by the plaintiff nor the defendant or his attorney. If deep matter defendant located residence abroad, trial inspection lawsuit divorce set at least 6 months calculated since included lawsuit Divorce at Kapaniteran District Court. Then, Explanation Article 29 PP Number 9 of 1975 explains that determination short time to hold hearing inspection lawsuit divorce is as a business speed up the settlement process case divorce, because increasingly fast it can resolved by the District Court is better, not only for the two husband and wife, but also for the family, and if they have one children, especially their children. Should period time between delivery summons and trial arranged for both parties nor witnesses have enough time to hold it preparation To use face hearing the. Especially to defendant must given enough time to make it possible study the content well lawsuit.

At the trial inspection lawsuit divorce, husband and wife come in person or by proxy to his power based on Article 30 PP Number 9 of 1975. Then according to explanation the article, in face case divorce, the parties to the dispute, namely husband and wife, yes attend trial or accompanied by a proxy or the same very deliver to his power by bringing marriage/ reconciliation certificate, deed marriage, and letters other information required. Next, the Panel of Judges will examine it lawsuit divorce, according to Article 31 PP Number 9 of 1975, trying reconcile second party. During case Not yet decided, effort reconcile can done on each hearing inspection. According to explanation the article is an attempt to reconcile middle-aged husband and wife in inspection case lawsuit to hold Divorce is not limited to the first trial as is usually in case civil, but rather on every moment throughout that matter yet decided by the Panel of Judges.

In reconcile second split party District Court can request help to parents or other bodies deemed necessary. Provision imperative in Article 31 PP Number 9 of 1975 which requires The panel of judges reconciled husband and wife before and during case lawsuit

**SETTLEMENT OF DIVORCE FROM INTERRELIGIONS AND ITS LEGAL CONSEQUENCES
ACCORDING TO NATIONAL CIVIL LAW**

Ayu Herlin Norma Yunita

Their divorce hasn't happened yet decided by the Panel of Judges concerned, is very appropriate and important, because There is possibility the divorce didn't happen, aside of course in civil procedural law business reconciliation by the District Court between the parties involved in the case is also regulated and constitutes important thing. If achieved peace, according to Article 32 PP Number 9 of 1975, cannot submitted lawsuit new divorce based on existing reasons before peace and have known to the plaintiff at the time achieved peace. On the other hand , if you ca n't achieved peace , then according to Article 33 PP Number 9 of 1975 inspection lawsuit divorce done in hearing closed. Next, explanation Article 33 PP Number 9 of 1975 explains that If The District Court has trying to achieve peace, will but it doesn't work , then lawsuit divorce checked in hearing closed. Inspection in hearing This closed policy also applies to examiners .

6. Decision Court on Claims Divorce

In Art 18 PP Number 9 In 1975, the divorce occurred calculated at the time the divorce was declared in front of the court The next District Court , decision about lawsuit divorce be spoken in hearing open to the public based on Article 34 paragraph (1) PP Number 9 of 1975. According to explanation by K. Wantjik Saleh, a an absentee verdict may be handed down , however absence the defendant or his attorney cannot is something reason granted lawsuit divorce if lawsuit This is not based on the reasons given determined. Furthermore, K. Wantjik Saleh explained that : In matter lawsuit based divorce reason that between husband and wife Keep going continuously happen quarrels and disputes and nothing hope again will life get along well in the household , reasons disputes and quarrels must be considered by the court whether it is truly influential and principled in wholeness life husband wife , that's why it needs to be heard information party family as well as people close to the husband wife the . To drop decision in lawsuit based divorce Because reason Because husband wife get punishment five years' imprisonment or a more severe sentence , then Plaintiff must deliver copy decision The court decides the matter accompanied by statement stating that the decision has been made have strength fixed law.

According to Article 34 paragraph (2) PP Number 9 of 1975, a divorce considered happen along with all consequence the law counted since moment registration on the Registry Office registration list by Employees Registrar , except those who are Muslim are counted since fall decision Religious Courts that have have strength permanent law . So there is difference between people who are Muslim and people who are not Muslim, especially couples of different religions about the moment or momentum of a the divorce was considered happen along with all consequence the law. For people who are Muslim, a moment or momentum the divorce was considered happen along with all consequence the law counted since decision Religious Courts that have have strength the law remains, while for religious people other than Islam or couples of different religions, the moment or momentum of a the divorce was considered happen along with all consequence the law counted since moment registration on the Registrar's Office registration list by Employees Note-taker .

**Legal Consequences Against Right Caring for Children and Shared Property from Divorce
Between Different Religions
To Right Foster Children**

Something marriage said legitimate based on provisions Article 2 of the Law Declaring marriage that marriage is legitimate if carried out according to the laws of each religion and belief . According to regulation provision about it's legal something specified marriage in Constitution Marriage that , the problem will be arise If carry out marriage different religions between other :

1. Problem about validity marriage
2. Problem about recording marriage
3. Problem regarding the child's status
4. Problem about If marriage the done abroad



So in Indonesia basically there are no special regulations about marriage different religions. Relating to rights parenting children in divorce will arise problem if both parents of children of different religions dispute over who has the right care for and protect the interests of children . In decide power foster child in case divorce rule the law used is :

Article 49 of the Law Number 1 of 1974 concerning marriage :

- (1) One or both parents can have their powers removed to a or more children for a certain time on request of other parents, family child in a straight line up and brother birth that has adults or officials authorized by decision court in matter :
 - a. He was very neglectful his obligations towards his child.
 - b. He behave bad very.
- (2) Even though parents are deprived of their power , they are still obliged to provide costs maintenance child the.

Article 41 letter (a) of the Law Number 1 of 1974 concerning marriage :

Consequence he decided marriage Because divorce of either mother or father obliged nurturing and educating his children . Rights children who are protected by Article 41 letter (a) of Law no. 1 of 1974 is right to get maintenance and education from both parents. Either father or mother si child obliged to care for and educate the children they get in marriage. When divorced between husband wife will there is a new status, namely widows and widowers , as well There is term ex- wife and ex husband, but This term does not apply to children and parents. There isn't any term ex- children or former parents. For that reason, when divorce occurs child status and parents will not change , namely to maintain and educate their children until the child marries or becomes independent. This right to be maintained refers more to fulfillment external needs , children entitled to receive maintenance member physical from both parents. The role of both parents in guard their children can form need clothing, food, shelter which are primary needs, up to If possible fulfillment need tertiary. Whereas right to get This education refers more to coaching psychologically and spiritually si child, fulfillment This need can also provide education or teaching knowledge knowledge contained at school level, religious education, education personality and variety other education related to coaching from mental si child. Both maintenance and education both of them must get attention seriously by both parents child , though moment decision divorced read by the judge in front of the court court drop right foster to one party. not meaningless party not provided right foster the can free free without not quite enough answer. Both remain responsible in matter maintenance and education their children.

Furthermore Sudarsono explain that :

Cost maintenance and education child is not quite enough answer from father, big nominal amount required child in matter maintenance and education determined by the judge after marriage stated separated in advance court , the size is also adjusted to capacity financial his father and many other responsibilities imposed on the father. Based on judge's opinion , this is possible diverted if the father complied judge 's view in reality it is not enough financially to meet all need si child , then court can set that mother also carries it cost the . If you obey The judge's view is that both mother and father are considered equally incapable, then court can lift a guardian. Besides the article mentioned on Still there are many more articles related to rights parenting child so deep case Laws relating to the interests of children, Judge before decide who has the right on “ power foster child ” can request opinion from si child. This is also inseparable from the judge's obligation to decide something cases as fairly as possible by exploring, following and understanding values law and sense of justice.

**SETTLEMENT OF DIVORCE FROM INTERRELIGIONS AND ITS LEGAL CONSEQUENCES
ACCORDING TO NATIONAL CIVIL LAW***Ayu Herlin Norma Yunita***To Joint Property**

Article 35 paragraph (1) Law no. 1 of 1974 concerning Marriage state that what is meant by Joint Assets is treasure objects obtained during marriage . In paragraph (2) is said that Treasure default from each husband and wife and assets objects obtained by each as a gift or inheritance , are below respective control as long as the parties do not determine other . From the regulated clause Article 35 can interpreted that since commencement rope marriage and during marriage ongoing , legally , valid mixing treasure riches husband and wife , both assets moving or not moving , both now and later There is . As for position treasure congenital which is acquisition from inheritance or gift remains under control of each party , throughout husband wife referred to does not regulate it expressly.

Clause in article 35, article 36 and article 37 of the Law Number 1 of 1974 concerning assets together and property default in practice of course burdensome for the husband or wife to enjoy right owned by on clear treasure is results his own earnings . Provision Article 35 and Article 36 of the Law Number 1 of 1974 naturally can harm rights husband or wife who has good intentions treasure together because in general in something marriage , acquired property through effort and toil it sucks husband or wife entered just so deep his marriage . Mostly , I don't know if it's because norm Eastern or not based on the nature to glorify rope marriage , they (husband wife) considers it taboo to talk about separation acquired assets on effort and toil sucks his partner . They understand If in marriage there is agreement about separation treasure so In fact, they don't trust their partner.

Explanation on Article 35 of the Law Number 1 of 1974 that if marriage break up , then treasure together the arranged according to Each law has its own wider coverage from sound Article 37, which limits self as follows: if marriage separated Because divorce , then treasure together arranged according to their respective laws . Split thoughts generated from contradiction between general terms and conditions typical (break Because divorce) increases Because found in Constitution Number 1 in 1974 something provision about treasure along with that, if marriage broke up not because divorce. Explanation on Article 37 of the Law Number 1 of 1974 (the current one) is shown to meaning , their respective laws , namely the answer is religious law , law customs and other laws . The consequences If marriage broke up not because divorce (not because death) , then treasure together arranged according to former religious law husband or wife , and if they do not have a religion law regarding property together so enforced law customs regarding property together , or if there is none life religious Because husband wife different level society , then matter the contrary to Article 1 of the Law Number 1 of 1974 and generally contrary to Pancasila democracy.

Furthermore , Moh . Idris Ramulyo explain that :

Theoretically Explanation on Article 37 of the Law Number 1 of 1974 brought difficulty If used husband and wife or just their Customs are different , so Interlocal Law Still have role . Be clear that conflict law interfaith in the field treasure together inside marriage is impossible happen . Which might happen is conflict Long distance , if husband's customary law wife different, for example Muslim or Christian husband . Therefore , that can be put in other laws , in Explanation on Article 37 of the Law Number 1 of 1974 is the only provision contained in entered into the agreement in Article 35 paragraph (2) of the Law Number 1 of 1974 (as long as the parties do not determine otherwise).

Sudarsono opinion that :

Article 37 of the Law Number 1 of 1974 is something contradiction in structure law National Marriage . Hence , the explanation on Chapter 35 of the Law Number 1 of 1974 is absolutely useless as it stands Article 37. Should Article 37 of the Law Number 1 of 1974 was amended becomes : "If marriage separated Because divorce , then treasure together shared two between used husband wife. Opinion Sudarsono the in line with opinion Prawirohamidjojo Soetopo, who concluded that provision Article 37 of the Law Number 1 of 1974, namely about treasure inherent legal status is clear , that is back to each. Whereas about treasure together ,



because position husband wife balanced , then nothing else object together the must shared two , half for the former wife and the other half for the ex husband

4. CONCLUSION

1. Completion divorce different religions in Indonesia settlement process his divorce the same as divorce in general . Marriage Different religions seem to be permitted in Indonesia based on Article 66 of the Law Number 1 of 1974 concerning Marriage , so there is no such thing difference regarding the divorce settlement process in general , where someone can submit application divorce or lawsuit Divorce goes to the District Court for those who have a religion other than Islam and to the religious court for those who have a Muslim religion. Then if they do marriage different religion then lawsuit divorce or petition divorced can submitted to the District Court in the area where the plaintiff lives.
2. Legal consequences for right parenting children and property together from divorce different religions are the same as the result law from divorce in general . In case Laws relating to the interests of children , Judge before decide who has the right on “ power foster child ” can request opinion from si child . Then about solution from treasure together it is resolved separately from lawsuit the divorce he filed for . Completion process treasure together Because divorce done according to the law each as intended in Article 37 of the Law Number 1 of 1974 concerning Marriage , namely religious law , law customs and other laws . The consequences If marriage broke up not because divorce (not because death), then treasure together arranged according to former religious law husband or wife , and if they do not have a religion law regarding property together so enforced law customs regarding property together.

Suggestion

Based on conclusion on so it needs to be stated a number of thing , that Constitution Number 1 of 1974 concerning marriage needs to be perfected about arrangement marriage different religion. Because Indonesia has plural society so that marriage different religions can happen Because marriage is right private someone and in article 2 of the Law Number 1 of 1974 concerning regulated marriages about it's legal something marriage is not possible used as an excuse marriage Different religions are prohibited in Indonesia Because Still give rise to multiple interpretations by several insiders understand it. Legal consequences for right parenting children and property together from divorce different religions are the same as the result law from divorce in general . In case Laws relating to the interests of children , Judge before decide who has the right on “ power foster child ” can request opinion from si child . Then about solution from treasure together it is resolved separately from lawsuit the divorce he filed for . Completion process treasure together Because divorce done according to their respective laws are as follows intended in Article 37 of the Law Number 1 of 1974 concerning Marriage , namely religious law , law customs and other laws . The consequences If marriage broke up not because divorce (not because death), then treasure together arranged according to former religious law husband or wife , and if they do not have a religion law regarding property together so enforced law customs regarding property together .

**SETTLEMENT OF DIVORCE FROM INTERRELIGIONS AND ITS LEGAL CONSEQUENCES
ACCORDING TO NATIONAL CIVIL LAW**

Ayu Herlin Norma Yunita

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