

## Provisions And Legal Consequences Of Divorce For Indonesian National Army, Civil Servants And Civil Citizens

Andrew Pradikta

Tri Margana University

andrianpradikta@gmail.com

### **Abstract**

Divorce can be done by anyone including Civil Servants whose position as civil servants who are expected to be good examples for society can also get divorced. Basically, filing for divorce case examination for civil servants, TNI members or ordinary citizens can be filed through the Religious Court if the disputing parties are Muslim. However, if the disputing parties are not Muslim, the submission can be submitted through the District Court where the respondent is domiciled.

**Keywords:** *Divorce, Legal Consequences, Civil Servants, TNI*

### **INTRODUCTION**

Article 1 of Law No. 1 of 1974 concerning marriage defines that marriage is a bond between husband and wife with the aim of forming a happy family. <sup>1</sup>Basically, everyone who gets married wants their marriage to be happy and eternal, meaning it is only done once in a lifetime. However, in reality, not a few married couples fail to implement the meaning of Article 1 of the Marriage Law. This is indicated by the increasing divorce rate from time to time. For example, quoted from the Republika.co.id website, it states that in the Bandung religious court the number of divorce cases from January to August reached 5,000 cases and is expected to increase to 7,000 cases. <sup>2</sup>Divorce can be caused by various factors, such as economic factors, quarrels that do not end in harmony, domestic violence, disharmony, no responsibility from husband or wife, and social and cultural factors also influence the emergence of divorce in society.

Divorce is not a good thing. In society, the word divorce has a negative stigma. Because by doing a divorce not only results in the severance of the relationship between husband and wife who are married but divorce can also sever the bonds of brotherhood from each party's family. Therefore, every effort must be made so that divorce does not occur. This means that divorce must be the last resort in a marriage.

Divorce can be done by anyone including Civil Servants whose position as civil servants who are expected to be good examples for society can also get divorced. Basically, the behavior, actions and obedience to laws and regulations for Civil Servants are regulated in special laws including those concerning family relationships. Therefore, in carrying out a divorce, the procedure is not as easy as for ordinary citizens because

<sup>1</sup>Jagloabang, *Law 1 of 1974 concerning Marriage*, accessed from the page <https://www.jogloabang.com/pustaka/uu-1-1974-perkawinan?amp>, on March 12, 2021, at 20:10 WIB

<sup>2</sup>Esthi Maharani, *Divorce Cases at Bandung Religious Court Reach 5 Thousand*, accessed from the page <https://www.google.com/amp/s/m.republika.co.id/amp.qg28bh335>, on March 12, 2021, at 20:18 WIB

they must go through the requirements that have been determined by the relevant law. Civil <sup>3</sup>Servants who want to get a divorce must have a written permit or a statement from their superiors. This law applies to Civil Servants as plaintiffs or applicants, while Civil Servants who are in the position of defendant or respondent only need to get a statement from an official. <sup>4</sup>The legal consequences arising from a civil servant divorce are also slightly different from the legal consequences of a divorce carried out by ordinary citizens, in addition to severing the relationship between husband and wife and the family, another legal consequence that can arise for Civil Servants who get a divorce is regarding the division of salaries. If the applicant is a husband who has the status of a civil servant, then the wife is entitled to 1/3 of her husband's salary, but if the one who sues for divorce is the wife, then she does not have the right to receive 1/3 of her husband's salary, but in the provisions of the divorce suit filed by the wife there are several exceptions regarding the division of salary. If the husband sues his wife on the grounds that the wife likes to commit adultery and has bad intentions, then the civil servant wife does not have the right to receive her husband's salary and vice versa if the wife as an ordinary citizen sues her husband who has the status of a civil servant on the grounds that her husband has bad intentions, then the civil servant wife still has the right to receive 1/3 of her husband's salary.

Other employees who have different procedures from ordinary citizens if they want to get a divorce are members of the Indonesian National Army. Based on the provisions of Article 9 paragraph (1) of the Minister of Defense Regulation No. 23 of 2008, it states that TNI employees who want to get a divorce must obtain permission from an authorized official. However, if the one who files for divorce is his wife who is not a TNI member, it can be submitted directly to the District Court or Religious Court where the applicant or defendant resides.<sup>5</sup>

Basically, the submission of divorce case examination for civil servants, TNI members or ordinary citizens can be submitted through the Religious Court if the disputing parties are Muslim. However, if the disputing parties are not Muslim, the submission can be submitted through the District Court where the respondent is domiciled.

Based on the high phenomenon of divorce that occurs in the territory of Indonesia which is not only carried out by ordinary citizens, but also Civil Servants and members of the Indonesian National Army, the author took the initiative to write a scientific paper on the differences in the resolution of divorce disputes for Civil Servants, TNI members and ordinary citizens and their legal consequences with the hope that after this paper can increase the knowledge of readers regarding the differences in the process of resolving divorce disputes and the legal consequences that arise as well as the protection of the rights of wives and children as a result of the divorce.

## METHOD

As a scientific paper, the writing of this paper cannot be separated from the research method. The research method is a procedure, steps or procedures carried out with the aim of obtaining data, where the data obtained will be used to conduct research with certain goals and functions. According to Sugiyono, the research method is a

<sup>3</sup>Yogyakarta Special Region Civil Service Agency, *What If a Civil Servant is Going to Get a Divorce?*, accessed from the page <https://bkd.jogjaprov.go.id/informasi-publik/artikel/bagaimana-jika-pns-akan-melakukan-perceraian> , on April 10, 2021

<sup>4</sup>Official Website of the Regional Civil Service Agency of South Sumatra Province

<sup>5</sup>Diana Kusumasari, *What is the Divorce Procedure if the Husband is a Military Member?*, accessed from the page <https://m.hukumonline.com/klinik/detail/ulasan/lt4e6f2640f215f/bagaimana-prosedur-cerai-jika-suami-anggota-militer-/> , on April 10, 2021

scientific way to obtain data for certain purposes and uses. Both of these definitions emphasize the word scientific, scientific means that the activities carried out are based on scientific characteristics, namely rational, empirical and systematic.<sup>6</sup> The research method used by the author is a qualitative descriptive research method. Descriptive research is used with the aim of presenting a picture of a phenomenon or social reality by describing a number of variables related to the problem being studied. While qualitative research is a descriptive research method that tends to use analysis.<sup>7</sup> In addition, in making this scientific paper, the author also uses normative and empirical legal methods. In the normative legal research method, it is carried out that in writing this scientific paper the author uses laws and regulations as its legal norms. In addition, empirical legal research is used because this research uses the object of study regarding the behavior of society in its environment.<sup>8</sup>

## **RESULTS AND DISCUSSION**

### **Scope of Authority of Religious Courts**

Religious Courts are state courts that exercise state power in the judicial field, with the main function being to uphold law and justice based on Pancasila. Religious courts have the authority to resolve a number of civil cases between people who are Muslims in various fields that have been determined by law. The duties and authorities of religious courts are regulated in Article 25 paragraph (1) and (3) of Law No. 48 of 2009 concerning Judicial Power. More detailed provisions regarding the authority of Religious Courts are regulated in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 50 of 2009 based on Article 49 of the law stating that Religious Courts have the duty and authority to examine, decide, and resolve cases at the first level between people who are Muslims in the fields of: Marriage, Inheritance, Wills, Grants, Waqf, Zakat, Infaq, Alms, and Sharia Economics. The provisions on the authority and scope of the Religious Court in the field of Divorce are stated in the explanation of Article 9 letter (a) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts as amended in Law Number 50 of 2009. From the explanation of this article, it can be understood that the scope of the field of marriage that is included in the authority of the religious court includes all matters regulated in Law Number 1 of 1974 concerning marriage.

Based on these provisions, the authority of the Religious Court in deciding divorce disputes, both divorce by talak and divorce by lawsuit, is contained in letters (h) and (i) of the explanation of Article 9 letter (a) of Law Number 50 of 2009. Divorce is a legal consequence caused by the existence of talak, khuluk, syiqaq, fasakh, ila', zihar, li'an in marriage. Divorce as one of the causes of the end of a marriage, linguistically comes from the Arabic verb, طلق which is based on the phrase المرأة which means to divorce. In terms of terminology, talak according to al-Jurjawi as quoted by Tihami and Sohari Sahrani, is to eliminate the bonds of marriage or reduce the release of its bonds

<sup>6</sup> Gamal Thabroni, 2021, *Research Methods: Definitions and Types According to Experts*, Accessed from the page <https://serupa.id/metode-penelitian/> , on April 28, 2021

<sup>7</sup> Anugerah Ayu Sendari, 2019, *Getting to Know the Types of Qualitative Descriptive Research in a Scientific Writing*, Accessed from the page <https://m.liputan6.com/hot/read/4032771/mengenal-jenis-penelitian-deskriptif-kualitatif-pada-sebuah-tulisan-ilmiah> , on April 28, 2021

<sup>8</sup> Accessed from the page <http://repository.umy.ac.id/bitstream/handle/123456789/10710/BAB%20III.pdf?sequence=7&isAllowed=y#:~:text=Normative%20juridical%20research%20is%20research,as%20a%20building%20system%20of%20norms.&text=While%20empirical%20juridical%20research%20is,object%20of%20study%20regarding%20social%20behavior> ., on April 28, 2021

by using certain words that are usually said by the husband.<sup>9</sup> In addition to talak from the husband, divorce also occurs due to a divorce lawsuit from the wife. According to the provisions of Article 40 of the Marriage Law in conjunction with Article 20 paragraph (1) of PP No. 9 of 1975, a divorce suit is a lawsuit filed by a husband or wife or their attorney to the court whose jurisdiction covers the defendant's place of residence.<sup>10</sup>

With the issuance of PERMA No. 1 of 2016 concerning mediation procedures in court, it provides legal implications that every case that will be resolved through litigation must first be tried through a mediation process. In mediation, a mediator only has a role in assisting the disputing parties in identifying problems, developing options, and providing alternative suggestions for dispute resolution for both parties. In carrying out this task, a mediator only has the authority to provide alternative suggestions for problem resolution, meaning that he does not have the authority to determine the contents of the agreement for both parties.<sup>11</sup> If the disputing parties do not take the mediation process, then the case cannot be submitted to the Court. In the implementation of mediation, the disputing parties are given the authority to determine the mediator they want, but if the parties do not reach an agreement regarding a mediator, the relevant court judge can appoint a mediator to facilitate peace for both parties concerned. Mediation is expected to be one of the alternative dispute resolutions that can provide justice for both parties because this non-litigation dispute resolution process is a *win-win solution*, meaning that no party wins or loses because the decision taken is based on an agreement resulting from deliberations that have been carried out by both parties.<sup>12</sup> However, if mediation does not reach an agreement, the case will continue to be examined in court based on a report from a mediator that the mediation process did not reach an agreement.

### **Provisions for the Implementation of Divorce and its Legal Consequences for Civil Servants and Ordinary Citizens**

Civil Servants who are going to divorce must not only comply with the laws and regulations on marriage, but also comply with the special regulations contained in PP No. 45 of 1990 concerning amendments to PP No. 10 of 1983. According to Article 3 of PP No. 45 of 1990, Civil Servants who are going to divorce must first obtain permission from the authorized official. To obtain this permission, Civil Servants who are in the position of plaintiff or defendant must make a written permission that must include the most complete reasons underlying the divorce. Before issuing a permit regarding divorce, the authorized official must first try to reconcile the two parties, if reconciliation is not successful and the marriage can no longer be saved and with convincing reasons, the authorized official has the right to issue a divorce permit for the Civil Servant concerned.<sup>13</sup> The granting of a divorce permit must be based on strong reasons. The

<sup>9</sup>Muchammad Hammad, *Women's Rights After Divorce: Iddah Talak Maintenance in Indonesian, Malaysian and Jordanian Muslim Family Law*, Journal of Islamic Family Law, Vol. 7, No. 1, 2014, Page 18

<sup>10</sup>Tri Jata Ayu Pramesti, *Divorce Due to Lawsuit and Divorce Due to Divorce*, accessed from the page <https://m.hukumonline.com/klinik/detail/ulasan/lt51b4244f94344/cerai-karena-gugatan-dan-cerai-karena-talak/>, on April 13, 2021

<sup>11</sup>Rika Lestari, *Comparison of Divorce Dispute Settlement Through Mediation in Court and Outside Court in Kampar Regency*, Ius Quia Iustum Law Journal, Vol. 2, No. 2, 2014, Page 315

<sup>12</sup>Bani Syarif Maulana, (2018), *The Process of Resolving Marital Conflicts in Religious Courts: A Comparative Study of Family Law in Indonesia and Islamic Law*, Yogyakarta: Lontar Mediatama, pp. 53-54.

<sup>13</sup>Tri Wahyuni Herawati, Yunanto, Herni Widanarti, *Protection of Rights to Salary Distribution Due to Divorce Carried Out by Civil Servants*, Diponegoro Law Journal, Vol. 6, No. 2, 2017, Page 3

reasons for divorce can be found in Article 116 of Presidential Instruction No. 1 of 1991.<sup>14</sup>

Divorce is a legal act that will have legal consequences for the husband and wife who do it. The legal consequences of divorce can basically be found in article 41 of Law No. 1 of 1974.<sup>15</sup>

One of the consequences of divorce as regulated in Article 41 of Law No. 1 of 1974 is that if the court has issued a final decision *against* the husband and wife concerned, then according to Islamic law, one of the legal consequences is that the ex-husband has an obligation to provide *mut'ah* in the form of money or goods and provide maintenance to finance the life of the ex-wife and her children during the iddah period, as well as to pay off all obligations that have not been fulfilled while he was the husband of his ex-wife, including paying off the dowry.<sup>16</sup>

The compilation of Islamic law is an elaboration of the provisions of Law No. 1 of 1974 concerning marriage, in the provisions of article 149 it is explained that if a marriage ends due to divorce, the husband is obliged to fulfill the needs of his ex-wife and children. First, provide a decent *mut'ah* to his ex-wife, either in the form of money or goods, unless the ex-wife is qobla al dukhul. Second, provide maintenance, maskan and kiswah to the ex-wife during the iddah, unless the ex-wife has been given a ba'in or nusyur divorce and is not pregnant. Third, pay off the dowry that is still owed in full, and half if qobla al dukhul. And finally, provide *hadhanan* costs for children who have not reached the age of 21 years.<sup>17</sup>

However, especially for PNS members, there are additional legal consequences when they divorce. This is regulated in PP No. 10 of 1983 regarding Marriage and Divorce Permits for Civil Servants. Article 8 paragraph (1) PP No. 10 of 1983 states " *If a divorce occurs at the will of a male Civil Servant then he is obliged to hand over part of his salary for the livelihood of his ex-wife and children.* " The obligation to give salary to the ex-wife of a Civil Servant occurs when the divorce is at the man's will. Meanwhile, if the wife sues for divorce, then she is not entitled to share the salary from her husband. As stated in article 8 paragraph (5) PP No. 10 of 1983 which reads " *If the divorce occurs at the will of the wife, then she is not entitled to a share of the income from her ex-husband* ". Further in article 8 paragraph (2) PP No. 10 of 1983 states " *The distribution of salary as referred to in paragraph (1) is one third for the male Civil Servant concerned, one third for his ex-wife and one third for his child or children* ". So when a civil servant divorce happens, the husband only gets one-third of his salary. However, the ex-wife's right to her ex-husband's salary expires when the ex-wife in question remarries. This is regulated in Article 8 paragraph (7) PP No. 10 of 1983 which states " *If the ex-wife of the civil servant in question remarries, then her right to a portion of the salary from her ex-husband becomes null and void from the time she remarries.* " <sup>18</sup>The provision of salary distribution for ex-wives is absolute because it is regulated based on the law. It is hoped that the husband can think more maturely about the provisions of this law so that it is not

<sup>14</sup>Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law

<sup>15</sup>Law no. 1 of 1974 concerning Marriage

<sup>16</sup>Maya Yulita, *Ombudsman Supervision of Maladministration of Fulfillment of Wife and Child Support after Divorce for Civil Servants*, Soumatara Law Review, Vol. 3, No. 2, 2020, Page 219.

<sup>17</sup>Hariyanti Novita, *Women's Rights After Divorce Analysis of Judges' Considerations in the Decision of the Padangsidempuan Religious Court*, South Tangerang: Young Progressive Muslim, pp. 41-42

<sup>18</sup>Adi Condro Bawono, *Legal Consequences If a Civil Servant Divorces His Wife*, accessed from the page <https://m.hukumonline.com/klinik/detail/ulasan/lt4f4418745b912/akibta-hukum-jika-pns-menceraikan-istrinya/>, on April 14, 2021

arbitrary in declaring divorce and divorce. In addition, it is expected to provide protection of rights to his ex-wife.

If the husband refuses to implement the provisions of this salary distribution, he will be subject to disciplinary sanctions as stipulated in Circular Letter No. 48/SE/1990 in Chapter VIII concerning sanctions stipulated in number 3 which reads " *Civil Servants, except for monthly employees in addition to retirement, are subject to one of the severe disciplinary sanctions based on PP No. 30 of 1980, if they refuse to implement salary distribution and/or refuse to sign their salary list as a result of divorce* ". Disciplinary sanctions are imposed on a Civil Servant for violating the Civil Servant Disciplinary Regulations. PP No. 30 of 1980 as amended by PP No. 53 of 2010 concerning Civil Servant Discipline. The sanctions that can be imposed consist of:

- a. Demotion to one lower rank for 3 (three) years;
- b. Transfer in the context of demotion to a lower level position;
- c. Release from office;
- d. Honorable dismissal not at one's own request as a Civil Servant, and;
- e. Dishonorable dismissal as a Civil Servant.

However, the imposition of the witness was not immediately given. The first step taken was to summon and reprimand verbally. If the Civil Servant still does not want to carry out his obligations, the provisions of sanctions in PP No. 53 of 2010 can be imposed gradually.<sup>19</sup>

After a judge's decision is binding, the implementation of the distribution of one-third of the husband's salary for his ex-wife and child must be carried out with the role of the local government or an authorized institution to implement the salary of the husband who has the status of a Civil Servant for his ex-wife. Fulfillment of the rights of the ex-wife is carried out by the assistance of the head of the agency and the relevant authorized salary treasurer. If the fulfillment of the rights for the ex- wife of a civil servant is not carried out properly or in other words there is maladministration, it will cause losses for the ex-wife and child. The government institution authorized to carry out supervision if there is maladministration in the implementation of public services is the Ombudsman. The Ombudsman has the authority to supervise reports of maladministration. In accordance with the provisions of Article 35 of Law no. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, the Ombudsman has the authority to supervise the implementation of public services carried out by the central and regional governments. In its implementation, the Ombudsman has the authority to accept or reject reports submitted to it. If the report is accepted, the Ombudsman will follow up and provide conclusions and opinions regarding the matters submitted by the reporter. In addition, the Ombudsman also has an obligation to protect the public who are harmed by maladministration.<sup>20</sup>

As previously stated, when a Civil Servant wants to divorce, he/she must obtain permission from his/her superior. The judge cannot grant permission for divorce if the Civil Servant concerned has not obtained permission because this is contrary to the law governing marriage and divorce for Civil Servants. However, in practice, it was found that a Civil Servant divorced without permission from his/her superior, such as in the decision of case Number: 5194/Pdt.G/2009/PA.Bwi, the court granted the Civil Servant member's divorce application without permission from his/her superior. The judge's decision to grant the divorce application refers to the provisions of Article 70 paragraph (1) of Law No. 7 of 1989 concerning Religious Courts which states "After the Court concludes that both parties can no longer be reconciled and there are sufficient grounds

<sup>19</sup>Cit., p. 6

<sup>20</sup>Maya Yulita, Op.Cit, pp. 215-218.

for divorce, the Court determines that the application is granted".<sup>21</sup> Basically, the judge can grant a divorce application for a Civil Servant that is not accompanied by a letter of permission by first emphasizing to the parties regarding the consequences of disciplinary sanctions that he/she can receive from his/her superior. This provision is a real manifestation of Das Sein and Das Solen which is always found in society, that existing regulations may not be in accordance with the conditions in society.

### **Provisions and Legal Consequences of Divorce for Members of the Indonesian National Army**

The role and main task of the TNI is basically to carry out national defense by making every effort to uphold the sovereignty of the state, maintain the integrity of the territory of the Republic of Indonesia and the safety of the entire nation from military threats and armed threats to the integrity of the nation and state. The role of the TNI is very heavy, so to support it in carrying out its duties optimally, the TNI must be supported by a happy family situation, namely a harmonious husband and wife life. To realize this intention, the TNI commander as the highest leader issued TNI Commander Regulation No. 11 of 2007 concerning procedures for marriage, divorce and reconciliation for soldiers. Then the KASAD as the highest leader of the TNI AD issued KASAD Decree No. SKEP/491/XII/2006 concerning Marriage, Divorce, and Reconciliation for the TNI AD. According to article 2 paragraph (1) of Law No. 43 of 1999 concerning amendments to Law No. 8 of 1974 concerning the Principles of Civil Service, the TNI AD is a civil servant. So the provisions of the Divorce regulations for TNI members are generally explained in Article 10, Article 11, Article 12 and Article 13 of the TNI Commander Regulation Number Perpang 11/VII/2007. If there is a violation of the provisions of marriage and divorce for TNI members, disciplinary regulations will be imposed in accordance with Law No. 26 of 1997 concerning the Disciplinary Law of Soldiers of the Armed Forces of the Republic of Indonesia.<sup>22</sup> Disciplinary punishment in this provision can be found in Article 8 which states the types of disciplinary punishment for soldiers.<sup>23</sup>

The Indonesian National Army (TNI) and Civil Servants (PNS) are civil servants who are positioned in the Indonesian government. As civil servants, both institutions have additional special regulations regarding divorce and marriage procedures, in addition to Law No. 1 of 1974 concerning Marriage and PP No. 9 of 1975 concerning the implementation of Law No. 1 of 1974.<sup>24</sup> For TNI members who will divorce must obtain permission from the authorized official. Divorce permission can be granted if the marriage that is carried out does not result in physical and spiritual well-being and happiness as stated in the marriage law. However, the provisions for granting permission

<sup>21</sup>Desniar Yusmawati, Divorce of a Civil Servant Without a Divorce Permit from Her Superior, Accessed from the page [http://repository.unej.ac.id/bitstream/handle/123456789/3933/Desniar%20Yusmawati\\_1.pdf?sequence=1&isAllowed=y](http://repository.unej.ac.id/bitstream/handle/123456789/3933/Desniar%20Yusmawati_1.pdf?sequence=1&isAllowed=y) on April 28, 2021

<sup>22</sup>Nindya Wulandari, Surini Ahlan Sjarief, and Farida Prihartini, from the page <http://lib.ui.ac.id/naskahringkas/2015-09/S53283-nindya%20wulandari> , Accessed on April 26, 2021

<sup>23</sup>Nindya Wulandari, Surini Ahlan Sjarief, and Farida Prihartini, The Marriage and Divorce Process of Indonesian Army Members Reviewed from Islamic Law, the Marriage Law and the Indonesian Army Divorce and Marriage Regulations. Legal Analysis of Decision Number 1684/PDT.G/2011/PA.CBN and Number 153/PDT.G/2012/PA.SRG from the page <http://lib.ui.ac.id/naskahringkas/2015-09/S53283-nindya%20wulandari>

<sup>24</sup>WM Novenanty, *Analysis of Divorce Procedures and Legal Consequences for Members of the Indonesian National Armed Forces (TNI) compared to Civil Servants*, Accessed from the page <http://repository.unpar.ac.id/handle/123456789/4486?show=full> , on April 25, 2021

from the authorized institution only apply to active TNI members who are positioned as plaintiffs or applicants. If the divorce is filed by the spouse of a TNI member whose status is not active TNI, the divorce application or lawsuit can be submitted directly to the local court. The authorized institution can issue a permit, but must first try to reconcile the two parties. However, the divorce permit application can be rejected if:

- a) Divorce that is carried out contrary to the religious law of the husband and wife;
- b) The reasons put forward do not have the power to carry out a divorce.

After the divorce is carried out, a copy of the divorce certificate from the authorized institution, as well as a copy of the divorce permit must be submitted by the person concerned to the personnel officer of his unit in order to complete the personal and financial administration. This is necessary to complete the provision of maintenance to the divorced ex-wife/husband and/or to the children in their care and the division of assets due to the divorce.

Divorce provisions for TNI members who are Muslim:

The letter of request for divorce permission must clearly state the reasons for the divorce submitted to the official who has the authority to grant divorce permission through *hierarchical channels* after being accompanied by an opinion from the relevant religious official.

Special provisions for TNI members who will divorce are Law No. 1 of 1974/PP No. 9 of 1975, Presidential Instruction No. 1 of 1991, HIR., PP.No. 10 of 1983/PP No. 45 of 1990 and Special Provisions on Marriage and Divorce for TNI/POLRI Members. From these provisions it can be seen that: If the Applicant/Divorce Lawsuit is filed by a TNI member (active), then the administrative requirements must be accompanied by a permit to divorce from the relevant Superior/Commander, If the Applicant/Divorce Lawsuit has not been accompanied by a permit, the Panel of Judges in the trial will directly order the person concerned to obtain such permission from his/her superior/commander, the order is included in the Minutes of the Trial. If the permit letter has not been received by the person concerned, but the active TNI member still wants to continue the divorce, then the person concerned is required to make a statement accepting the risks resulting from divorce without permission, then the panel of judges must first notify/conclude the possible risks, both of which are light in nature such as: administrative sanctions such as transfer, demotion/delay in promotion, salary, etc., and/or the worst risk of dismissal.<sup>25</sup> Officials who are authorized to grant marriage, divorce and reconciliation permits for TNI members include:

- 1) Chief of Police for the rank of Pati, civil servants groups IV/d and IV/e;
- 2) Regional Police Chief for those with the rank of AKBP and civil servants of class IV/b up to inspector and civil servants of class III in his/her region;
- 3) Metro Police Chief/Chief of Police/Chief of Resort Police and Head of SPN for those with the rank of Brigadier and civil servants class II and below in their area.<sup>26</sup>

<sup>25</sup>Herman Supriyadi, 2014 *Divorce Permit for TNI/POLRI Members* , Accessed from the page <http://pa-sarolangun.go.id/index.php/107-uncategorised/362-artikel-izinperceraian> on April 25, 2021

<sup>26</sup>Supreme Court of the Republic of Indonesia Palembang High Religious Court, *Divorce Procedures for Civil Servants and Members of the National Police/TNI*, accessed from the page <https://www.pta-palembang.net/v2/index.php/layanan-hukum/hukuman-disiplin-pegawai/prosedur-pengajuan-biaya-perkara/791-prosedur-perceraian-bagi-pns-dan-anggota-polri-tni> , on April 27, 2021

## CONCLUSION AND SUGGESTIONS

### Conclusion

Divorce is one of the legal acts that can be carried out due to marriage. Marriage is regulated in Article 1 paragraph 1 of Law No. 1 of 1974 concerning Marriage. Based on the provisions stipulated in PP No. 45 of 1990 concerning amendments to PP No. 10 of 1983. According to Article 3 of PP No. 45 of 1990, Civil Servants who will divorce must obtain permission from their superiors. This provision also applies to members of the TNI who have the status of civil servants, based on the provisions contained in the TNI Commander Regulation No. 11 of 2007 concerning procedures for marriage, divorce and reconciliation for soldiers, TNI members who will divorce must obtain permission from their superiors

The legal consequences of divorce are the dissolution of the marriage between the husband and wife concerned. In addition, there are several obligations that must be carried out by the husband towards his ex-wife, including providing for his ex-wife during the iddah period. The legal consequences arising from the divorce of civil servants are the obligation for the husband who has the status of a civil servant to provide 1/3 of his salary to finance the life of his ex-wife and children. This provision can be found in Article 8 paragraph (1) of PP No. 10 of 1983.

### Suggestion

The provisions regarding the procedures for marriage, divorce and reconciliation for civil servants and members of the TNI are adequate. However, in its implementation there are still difficulties. The government is expected to provide more legal certainty so that the provisions regarding the procedures for marriage, divorce and reconciliation for civil servants and members of the Indonesian National Army can be enforced.

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