Prosecution of Livelihood by Judge Against Petitioner in Verstek's Decision

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Abstract. A judge is prohibited from deciding a case with an Ultra Petitum Partium decision which in formal law means that the decision by the judge exceeds what is requested by the applicant (petitum). Constitutionally, judges are not only given the freedom to act in a non-democratic manner, but also have total immunity rights or total personal immunity rights. This study aims to examine the application of the principle of ultra petitum partium in the case of divorce divorce in the Slawi religious court and to analyze the factors that caused the applicant to object to the application of the principle of ultra petitum partium by the judge in the divorce case at the religious court of Slawi. This study uses a normative approach and qualitative data analysis. The results of this study indicate that with ex officio iddah and mut'ah expenses imposed by the judge in case Number 0651/Pdt.G/2019/PA.Slw. This case cannot be categorized as ultra petitum partium, because the use of the judge's ex officio rights in this case does not exceed the limits of the authority given to the judge to be able to make a decision that exceeds the demands and in this case the judge is in accordance with Article 149 of the Compilation of Islamic Law. The decision of the judge examining the a quo case deviated from the ultra petitum partium principle on the basis of the application of the ex officio rights of judges in the Slawi Religious Court because many judges were bound by formal and material legal aspects so that the sense of justice in the conscience of every judge was hindered by principles and reasons. ultra petitum law.

Keywords: Divorce, Ultra Petitum, Judge

1. Introduction

The prosecution of a living by a judge against the Petitioner can be carried out. This happens a lot in the Slawi Religious Court as in case Number 0651/Pdt.G/2019/Pa.Slw in the case of a divorce application for divorce, which is contrary to article 178 paragraph (3) HIR. / article 189 paragraph (3) RBg. The author found the contents of the decision that was not requested/demanded by the parties to the litigation regarding the determination of the 'Idddah and Mut'ah income which must be borne by the applicant.

Judges in making decisions on cases before them are bound by generally accepted legal principles, one of which is regarding the prohibition of deciding cases with ultra petita decisions. This provision is regulated in article 178 paragraphs (2) and (3) of the Het Herziene Indonesisch Reglement (HIR) as well as articles 189 paragraphs (2) and (3) of the RBg which prohibits a judge from deciding more than what is demanded. However, in civil cases, sometimes judges are found to give decisions that are Ultra Petita which in formal law means that the decision by the judge exceeds what is requested by the applicant (petitum).

Divorce cases filed by a husband or divorced divorce are often in this case, the rights that should be obtained by the wife (the respondent) are in a marginal position, the demands

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requested by the applicant are not mentioned regarding the applicant's obligation to give rights to the respondent after the divorce, in the form of several expenses such as : Mut'ah living, 'iddah living and Madliyah living.

Divorce in Islam is a way out of domestic turmoil caused by constant quarrels. Divorce can only be carried out because it contains elements of benefit, because every way of peace between a husband and wife who is bonded does not find a way of peace. Islamic law gives complete freedom to both parties to consider everything carefully, within responsible limits. Besides the many bad consequences of a divorce concerning the lives of both parties and children, one can also imagine how painful it is for someone whose domestic peace can no longer be maintained, so that in conditions like this divorce is a way to solve this problem.

The Religious Courts / Syar'iyah Courts as one of the implementations of judicial power have the main task of receiving, examining and adjudicating and resolving any particular case that is brought to them in order to enforce law and justice based on Pancasila for the sake of the implementation of the State of Law of the Republic of Indonesia (Law No. 3 year 2006). In accordance with the provisions of Article 178 HIR, 189 RBg, if the examination of the case is completed the panel of judges because of their position conducts deliberation to make a decision to be submitted, so that the decision handed down does not contain defects, then there are principles of the decision that must be enforced.

Marriage is a very important thing in the reality of human life. With the existence of domestic marriage, it can be enforced and fostered in accordance with religious norms and the order of community life. In a household, two people of the opposite sex (husband and wife) gather, they are related to each other in order to have offspring as the next generation. The people in the household are called "family". The family is the smallest unit of a nation, the family aspired to in a legal marriage is a prosperous and happy family that always gets the pleasure of Allah SWT.

The problems that will be discussed in this research are: how is the application of the principle of ultra petitum partium in divorce cases in the Slawi Religious Court? What Factors Caused the Petitioners to Object to the Application of the Ultra Petitum Partium Principle by the Judge in the Divorce Case at the Slawi Religious Court?

2. Method

This type of research is library research. Library research is a research activity carried out by collecting data from various literatures from libraries. This research is a type of library research because the data or materials needed in completing this research come from the library in the form of books, encyclopedias, dictionaries, journals, documents, magazines and so on.

3. Result & Discussion

3.1. Application of the Ultra Petitum Partium Principle in the Divorce Case at the Slawi Religious Court

The civil procedural law system contained in the HIR/RBg is to leave it to the judge to have a role to lead the trial starting from the beginning of the litigation process until the end of the case process. The procedural law system that assigns the leadership of the process to the judge is in accordance with the traditional Indonesian thought which prioritizes the interests of the community who require that a case be submitted to a judge, the state is obliged to settle the case so that the case can end in absolute terms.

The problem is whether the role given to the judge to lead the case process is so broad, so that the judge by using the et aequo et bono principle is no longer bound to the form and content of the petitum or even the judge can decide beyond the petitum proposed by the parties or in other words the Ultra Principle Petition Partium[1,2]. The principle of Ultra Petitum Partium in Civil Procedure Law is divided into two, namely considerations about legal issues or legal events and considerations about the law. Therefore, the researcher will first describe chronologically about the case starting from the reconciliation effort, the arguments for the lawsuit, the evidence and witnesses as well as the conclusions and describe how the judge evaluates the arguments for the application or events submitted by the parties in a divorce case. divorce no. 0651/Pdt.G/2019/PA.Slw.

Regarding case No. 0651/Pdt.G/2019/PA.Slw. is a divorce case filed by the husband (the Petitioner) whose petitum (contents of the claim) requests to drop the applicant's divorce with his application letter dated February 20, 2019, submits his application to the Slawi Religious Court which examines, hears civil cases at the first level to grant the request. (Petitioner) Yana Arifin bin Nuridin, 27 years old, to give one divorce to the Petitioner's wife, Rezania Tanzil bint Miftahudin, 27 years old, hereinafter referred to as (Respondent). In the posita or sitting case submitted by the applicant with his application letter dated February 20, 2019 which has been registered at the Registrar's Office of the Slawi Religious Court No. 0651/Pdt.G/2019/PA.Slw. have submitted the following:

1) Whereas the Petitioner and the Respondent entered into a marriage (marriage contract) on August 4, 2014, as quoted from the Marriage Certificate Number: 0573/069/VIII/2014 dated August 4, 2014 which was issued by the Marriage Registrar of the Office of Religious Affairs (KUA) Dukuhturi District, Regency Tegal;
2) That after the marriage took place (marriage contract) the Petitioner and the Respondent resided at the home of the Respondent's parents for 4 (four) years and 3 (three) months;
3) Whereas during the marriage the Petitioner and the Respondent have not been blessed with children;
4) Whereas initially the household life of the Petitioner and the Respondent was happy and harmonious. However, in January 2018 the household began to quarrel and quarrel, which made it impossible to live in harmony again. This is due to family economic matters, in which the Respondent does not properly accept the support from the Petitioner, besides that the Respondent always demands more beyond the ability of the Petitioner. This situation continued until the peak occurred in November 2018 The Petitioner, who could not stand the conditions of his household, finally returned to his own parents' house at Rukun Tetangga 04 Rukun Warga 04, Jl. Sumbodro Gg. 5 Slerok Village, East Tegal District, Tegal City;

Due to the marriage of the Petitioner and the Respondent, there were disputes and quarrels, which made it impossible to live in harmony again[3–5]. This is due to family economic matters, in which the Respondent does not properly accept the support from the Petitioner, besides that the Respondent always demands more beyond the ability of the Petitioner. The Petitioner feels miserable and unable to continue his household with the Respondent. For this reason, in the petition (contents of the claim), the applicant submits that the panel of judges is pleased to give a decision to grant the applicant's divorce application and to stipulate or give permission to the applicant (Yana Arifin Bin Nuridin) to impose divorce against (Rezania Tanzil Binti Miftahudin).

In the case of talak divorce related to the petition for divorce filed by the Petitioner and the Respondent, on the day of the trial that has been determined the Petitioner and his proxies have come before the court, while the Respondent did not come before the court and did not ask

another person to appear as his representative/proxy. The law is that even though he has been officially and appropriately summoned, his summons has been read out in court, while it is not evident that his absence was due to a legal prohibition.

The panel of judges has advised the Petitioner to think about not divorcing the Respondent but the Petitioner remains on the arguments his application for divorce from the Respondent. This divorce divorce case could not be mediated because the Respondent never came before the court even though it had been officially and properly summoned, then the examination began by reading the Petitioner's application letter in a closed session to the public in question and the contents were retained by the Petitioner[6–8].

To find out the truth of the Petitioner's statement, the chairman of the trial invited the Petitioner's witness to give a statement to strengthen the Petitioner's argument. Based on the testimony of the witnesses from the Petitioner, the Panel of Judges has been able to find legal facts in the trial, which principally are as follows:

1) Whereas the Petitioner and the Respondent are legally married couples.
2) That after marriage, the Petitioner and the Respondent lived together for the last time at the home of the Respondent's parents but have not been blessed with children.
3) Whereas initially the household of the Petitioner and the Respondent was in a state of harmony, but since January 2018 the Petitioner and the Respondent have often quarreled due to economic factors, where the Respondent did not receive it well from the Petitioner.
4) Whereas since November 2018 the Petitioner has left the house where they live together.
5) Whereas the Petitioner and the Respondent have been separated for approximately 3 months and during the separation the Petitioner and the Respondent have never had a relationship like husband and wife.
6) Whereas the family of the Petitioner has tried to reconcile the Petitioner and the Respondent but to no avail.
7) Whereas the applicant is determined to divorce the Respondent, and no longer wants to listen to the advice and/or advice of the family and the Panel of Judges.
8) Furthermore, the legal facts are considered which in essence are as follows:
9) Between the Petitioner and the Respondent there were continuous disputes and quarrels which were difficult to reconcile.
10) The Petitioner and the Respondent have been living apart for approximately 3 months.
11) Between the Petitioner and the Respondent there is no hope of living in harmony again.

Considering whereas based on the above facts, the Panel of Judges is of the opinion that the household of the Petitioner and the Respondent has been broken because the bond between the Petitioner and the Respondent has lost, even though it has been difficult to reconcile despite the efforts of the family and the Panel of Judges during the trial process, thus maintaining The Petitioner and the Respondent remain in the marriage bond, it will have an adverse impact on both parties or one of the parties in between. Therefore, divorcing the Petitioner and the Respondent is better and more beneficial[9–11].

Considering whereas based on the things that have been considered as mentioned above, the Panel of Judges is of the opinion that the reasons for the divorce submitted by the Petitioners have been proven to be in accordance with Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage jo. Article 19 letter (f) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage is in line with article 116 letter (f) of the Compilation of Islamic Law by taking into account Article 125 paragraph (1) of the HIR, the Petitioner's application can be granted verstek by granting

permission to the Petitioner to impose a divorce of one raj'i against the Respondent before the Slawi Religious Courts Sidnag.

Considering that the trial proved that the Petitioner had a fixed income so that he was deemed to have the ability to carry out his obligations as a result of the divorce, therefore the Panel of Judges considered the ability of the Petitioner and based on the length of the marriage since August 4, 2014, it was determined that the most appropriate Mut'ah to be paid by the Petitioner to the Respondent is Rp. 1.000.000,- (one million rupiah).

Considering that at trial the Respondent was not proven to have acted nujuz, therefore the Respondent is entitled to a living during the iddah period (for 90 days), while the amount of income that must be paid by the Petitioner to the Respondent must be considered in accordance with daily needs and must also be considered with the ability of the Petitioner In the trial, it was proven that the Petitioner had a fixed income so that he was deemed to have the ability to carry out his obligations as a result of the divorce, therefore the Panel of Judges considered the ability of the Petitioner and in accordance with the current necessities of life. of Rp. 1,500,000, - (one million five hundred thousand rupiah).

Considering whereas pursuant to the provisions of Article 149 letters (a) and (b) the Compilation of Islamic Law, the Petitioner is obliged to pay mut'ah and maintenance during the iddah period to the Respondent. After examining the reconciliation effort, the arguments of the lawsuit, the evidence and listening to the witnesses and the conclusions of the Petitioner, and has put forward several considerations in Decision No. 0651/Pdt.G/2019/PA.Slw. the Panel of Judges may judge :

1) To declare that the Respondent who has been officially summoned and deserves to appear before the trial does not present.
2) Granting the Petitioner's Verstek Application.
3) Granted permission to the Petitioner (Yana Arifin Bin Nuridin) to impose one raj'i divorce against the Respondent (Rezania Tanzil Binti Miftahudin) before the trial of the Slawi Religious Court.
4) Punish the applicant to pay to the Respondentn:

a. Mut'ah in the form of money in the amount of Rp. 1.000.000,- (One Million Rupiah)
b. Iddah income in the amount of Rp. 1.500.000,- (One Million Five Hundred Thousand Rupiah)

5) Punish the Petitioner to pay directly and in cash for the decision number 4 (four) at the time the divorce pledge is executed.
6) Charges the Petitioner to pay the court fees in the amount of Rp. 271.000,- (two hundred and seventy one thousand rupiah)

After observing and reviewing the trial process which started from the sitting of silversmiths, peace efforts, the arguments for the Petitioners' petition, evidence, witnesses and the judge's considerations Number: 0651/Pdt.G/2019/PA.Slw. The study found issues that needed to be clarified, especially in the application of the ultra petitum partium principle, starting from the addition of the demands, the basis of judges' considerations shifting from the provisions stipulated in the Compilation of Islamic Law and the inappropriate use of ex officio rights of judges which resulted in the use of rights. ex officio judges are far from the corridor that is still justified by regulations that bind judges in terms of the use of ex officio rights of judges.

Especially regarding divorce cases, in this case, divorce cases are the provisions of lex specialis derogate legi generali. Meanwhile, what is meant by lex specialis derogate legi generali is the interpretation of the law which states that the law that is specific to the lex specialis

overrides the general law of the lex generalis. This means that even if judges in civil procedural law are bound by the ultra petitum principle in terms of deciding or granting outside demands, judges can still exercise their ex officio rights, especially in divorce cases, because there are special provisions that regulate the consequences of divorce such as rights and obligations. obligations of husband and wife after divorce. This is in accordance with Article 149 of the Compilation of Islamic Law, when a marriage breaks up due to divorce, then the ex-husband is obliged to:

a. Give a proper mut'ah to his ex-wife, either in the form of money or goods, unless the wife is qobla al dukhul.
b. Giving a living, food and kiswah to the ex-wife during the iddah, unless the ex-wife has been given talak ba'in or nusyuz and is not pregnant.
c. Pay off the dowry that is still owed in full and half if qobla al dukhul.
d. Provide hadanah fees for their children who have not reached the age of 21 (twenty one) years.

Furthermore, Article 24 paragraph (2) letters a, b, and c of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage affirms that: "during the duration of the divorce suit, at the request of the Plaintiff or Defendant, Petitioner or Respondent, the court may :

a. Determine the maintenance that must be borne by the husband.
b. Determine what is necessary to ensure the care and education of children.
c. Determine the things that are necessary to ensure the maintenance of the goods that are the husband's rights or the things that are the wife's rights.

Based on the article previously mentioned, this is where the judge makes legal discoveries (rechsvinding) by using auxiliary science in the form of the legal discovery method, namely interpretation. can be applied to a particular event. Thus the ex officio imposition of iddah and mut'ah living by the judge in case Number 0651/Pdt.G/2019/PA.Slw. This case cannot be categorized as ultra petitum partium, because the use of the judge's ex officio rights in this case does not exceed the limits of the authority given to the judge to be able to make a decision that exceeds the demands and in this case the judge is in accordance with Article 149 of the Compilation of Islamic Law.

3.2.Factors That Caused the Petitioners to Object to the Application of the Ultra Petitum Partium Principle by the Judge in the Divorce Case at the Slawi Religious Court

Based on the author's statement and interview with the Petitioner Yana Arifin Bin Nuridin (the Petitioner) that the factors that caused the Petitioner to object to the application of the Ultra Petitum Partium Principle by the Judge in the Divorce Divorce Case were the Iddah and Mut'ah expenses imposed by the judge based on court decision Number 0651/ Pdt.G/2019/PA.Slw caused by several factors, including:

Judges of the Islamic Religious Courts in making decisions that are not in accordance with the Civil Procedure Code, as stated in HIR Article 178 paragraph (3), that judges are prohibited from making decisions on cases that are not prosecuted and are more than demanded. In fact, in the Slawi Religious Court there is a decision that contrary to Article 178 paragraph (3) of the HIR in case Number 0651/Pdt.G/2019/PA.Slw in the case of talak divorce where the contents of the decision contain things that are not requested by the parties, namely Iddah and Mut'ah maintenance, in the words otherwise there should be a match between the contents of the petitum and the contents of the decision, but in this decision the content of the decision exceeds the

content of the petitum. The contents of the petitum of decision Number 0651/Pdt.G/2019/PA.Slw are as follows:

Primary :

1. To grant this Petitioner's application for divorce;
2. To stipulate or give permission to the Petitioner (Yana Arifin Bin Nuridin) to impose divorce on the Respondent (Rezania Tanzil Binti Miftahudin);
3. Charge this case according to law;

In this case, the petition above is a claim from the Petitioner, while the Respondent did not make a convention to ask for his rights, the Respondent was not present at the trial, and the Respondent did not object to the Petitioner's request for divorce. To find out that the content of the decision exceeds the petitum, it is as follows:

1) To declare that the Respondent who has been officially summoned and deserves to appear before the trial does not present.
2) Granting the Petitioner's Verstek Application.
3) Granted permission to the Petitioner (Yana Arifin Bin Nuridin) to impose one raj'i divorce against the Respondent (Rezania Tanzil Binti Miftahudin) before the trial of the Slawi Religious Court.
4) Punish the applicant to pay to the Respondentn:
   a) Mut'ah in the form of money in the amount of Rp. 1.000.000,- (One Million Rupiah)
   b) Iddah income in the amount of Rp. 1.500.000,- (One Million Five Hundred Thousand Rupiah)
5) Punish the Petitioner to pay directly and in cash for the decision number 4 (four) at the time the divorce pledge is executed.
6) Charges the Petitioner to pay the court fees in the amount of Rp. 271.000,- (two hundred and seventy one thousand rupiah)

By looking at the contents of the decision, it is clear that the content of the decision exceeds the contents of the petitum, or even that the contents of the decision number 4 are not stated in the Petitioner's demands and the Respondent has not made any reconciliation to ask for Iddah and Mut'ah livelihoods as stated in the decision number 4. According to the judge member of the case examiner in decision Number 0651/Pdt.G/2019/PA.Slw, that the Iddah and Mut'ah expenses, although not requested by the litigating parties before the trial, are obligatory in Fiqh (Islamic law), p. This is based on Articles 149, 158 and 160 of the Compilation of Islamic Law, Article 41 letter c of Law no. 1 of 1974 and also the Qur'an Surah Al Baqarah verse 241.

According to another Member Judge, decision Number 0651/Pdt.G/2019/PA.Slw stated that Iddah and Mut'ah income must be provided even though it is not requested, this is due to the husband divorcing his wife, but in this case Iddah and Mut'ah maintenance not requested by the Respondent, in accordance with Article 178 paragraph (3) HIR, the judge should not make a decision by charging Iddah and Mut'ah living expenses, but because the judge has ex officio rights as justice enforcers, the judge has the right to decide by charging Iddah and Mut maintenance. 'ah to the Petitioner if the wife is not Nusyuz and by looking at the husband's ability.

In response to this, the chairman of the Majlis Hakim, Drs. H. Mohamad Taufik, S.H., M.Sc. as Chairman of the Assembly in case Number 0651/Pdt.G/2019/PA.Slw explained that Religious Court judges in their proceedings in addition to using the Civil Procedure Law applicable in the General Court also used the Procedural Law which was specifically regulated within the Religious Courts, in this is law no. 7 of 1989 concerning the Religious Courts as its

formal law and the Compilation of Islamic Law as its material law. However, in the Religious Courts, procedural law is prioritized that is special (Law No. 7 of 1989 and the Compilation of Islamic Law) unless there are things that are not regulated in a special law, then a general law is used.

Based on the legislation there are other factors that cause the judge to make a decision without charge. Generally, in the process of examining divorce cases, the Respondent does not ask for his rights through a counterclaim, but after the verdict is read, the Respondent feels barren in the sense of justice of the decision, because there is no one order to punish the Petitioner to pay or surrender something which is an inherent obligation of the Petitioner against The respondent is due to the divorce.

Based on field observations and empirical analysis, this problem always arises in cases that are strongly suspected because of the public's ignorance of legal issues, especially divorce law. In dealing with cases like this, Mr. Drs. H. Mohamad Taufik, S.H., M.Sc. explained "that the Judge because of his position (ex officio) in enforcing the law and the judiciary it is possible to carry out "contra legent" actions by deviating the legal basis stipulated in article 178 paragraph (3) HIR. However, in the Religious Courts, especially the Slawi Religious Courts, the use of ex officio rights has only been carried out to determine the iddah, mut'ah, maskan and kiswah expenses in the cetai talak case.

With regard to ex officio rights, at first glance these rights appear to be against the law, but in this case the Judge is based on Article 178 paragraph (1) of the HIR which reads: "The judge because of his position in deliberation is obliged to fulfill all legal reasons, which are not stated by both parties. In accordance with the contents of the decision and the basis for legal considerations from the decision Number 0651/Pdt.G/2019/PA.Slw, the legal consequences of breaking up a marriage due to divorce include the ex-husband's obligation to provide a living, food and kiswah to his ex-wife during the iddah period, except ex-wife has been sentenced to divorce ba'in or nusyuz, pays off the dowry which is still calculated in full and half if qabla dukhul, provides hadhanah costs for his children who have not reached the age of 21 years, provides iddah support to his ex-wife, except for the wife of nusyuz.

The judge also conveyed “that to balance the sense of justice in a judicial institution, especially in the Religious Courts, according to Gustav Radbruch the law can be effective if there is legal certainty, there is a sense of justice, and there are benefits. If the judge in deciding a case has covered the three things mentioned above, then the law that has been developing in society will run effectively, fairly and straightly.

4. Conclusion

Based on the discussion above, it can be concluded that in civil procedural law there are principles which state that the judge may not make a decision or grant more than the demands made by the Plaintiff or Petitioner which is referred to as ultra petitum partium. Decisions that exceed those demanded in the petitum of the case application are considered to have exceeded the limits of their authority. However, in the practice of proceedings in the Religious Courts regarding certain cases, judges because of their ex officio position rights can decide more than what is demanded, even though this is not demanded by the parties. So the judge because of his ex officio position contra legent by making a decision even though there was no request/demand from the Respondent. Based on the results of the research on the application of the ultra petitum partium principle in the divorce divorce case Number 0651/Pdt.G/2019/PA.Slw in the Slawi Religious Court, it is still within the justified corridor of what has been outlined in the Compilation of Islamic Law (KHI) Article 149 letter (a) and (b) and Law Number 1 of 1974. The decision on the Petition case Number 0651/Pdt.G/2019/PA. The judges examining the a

quo case deviated from the ultra petitum partium principle on the basis of the application of ex officio rights of judges in the Slawi Religious Court because many judges were bound by formal and material legal aspects so that the sense of justice that exists in the conscience of every judge is hindered by the legal principles and reasons from the ultra petitum aspect, the wife's absence and the panel of judges' concerns about the husband who is unable to carry out what is charged so that the decision becomes useless.

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