

IMPLEMENTATION OF DEFAULT JUDGMENT IN ARTICLE 19 LETTER C OF GOVERNMENT REGULATION NUMBER 9 OF 1975 AT THE RELIGIOUS COURT OF LUBUK PAKAM

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Abstract. Each husband and wife has the right to file for divorce in the Religious Court in accordance with Government Regulation Number 9 Article 19 Letter C of 1975 and Compilation of Islamic Law Number 1 Article 116 of 1991 concerning the grounds for divorce. This is stated in the judgment of the Religious Court of Lubuk Pakam Number 2612/Pdt.G/2019/PA-Lpk. The plaintiff is NL residing in Deli Serdang Regency, and the defendant is MSHN residing in Class II B Lubuk Pakam Penitentiary. It is explained in the case summary that the plaintiff and the defendant entered into marriage on February 12, 2017, and were blessed with 2 (two) children. Initially, the plaintiff's and defendant's household was harmonious and peaceful, but on April 27, 2018, the defendant was detained by the police and sentenced to 9 (nine) years in prison for the crime of "Unauthorized mediation of the sale and purchase of Class I Narcotics in non-plant form" based on the verdict of the Lubuk Pakam District Court Number 1809/Pid.Sus/2018/PN-Lbp dated October 1, 2018, and is currently incarcerated in the Class II B Lubuk Pakam Penitentiary. In the Religious Court of Lubuk Pakam, the process of implementing the default judgment was carried out in a single session during the first hearing scheduled by the Religious Court. This one-session implementation of the default judgment was only known to the Religious Court and some of the lawyers, as the community and students considered the court process to involve at least two hearings. Therefore, this research has three main issues. The results of the research and analysis of judgment Number 2612/Pdt.G/2019/PA-Lpk, and direct interviews conducted with the activist judges at the Religious Court of Lubuk Pakam, lead the author to conclude that the process of implementing the default judgment in judgment Number 2612/Pdt.G/2019/PA-Lpk at the Religious Court of Lubuk Pakam

Keywords: implementation; default judgment; government regulation; religious court of Lubuk Pakam

I. INTRODUCTION

Marriage is "an agreement between a man and a woman to become husband and wife officially." Under the Marriage Law No. 1 of 1974, it is explained that marriage is: "A spiritual and physical bond between a man and a woman as husband and wife with the aim of establishing a happy and eternal family (household) based on the One Almighty God" [1]. In the Compilation of Islamic Law (KHI), the definition of marriage is described as "A strong covenant to obey the commandments of Allah SWT, and its execution is an act of worship." From the various definitions above, it can be understood that marriage is a contractual bond formed through the marriage contract (ijab qabul) between a man and a woman to build a harmonious and loving family as an act of obedience to Allah, which is considered an act of worship. Allah states in the Quran [2]. However, marriage does not always bring harmony, tranquility, and comfort. In a household, disputes and other issues may sometimes arise, leading to divorce in religious courts. To initiate divorce proceedings in the Religious Court, one of the spouses must have valid reasons when filing a divorce lawsuit or petition in the Religious Court [3].

According to Indonesian regulations, a valid divorce can only be carried out in front of the Religious Court in

accordance with Article 39 of Law No. 1 of 1974 concerning Marriage, which states:

1. Divorce can only be conducted in front of a court session after the relevant court has attempted and failed to reconcile both parties.
2. To initiate a divorce, there must be valid reasons indicating that the husband and wife cannot live together harmoniously as spouses.
3. The divorce procedure conducted in front of a court session is regulated by separate legislation [4].

The issue at hand is that the author has found a case where it appears that in the Lubuk Pakam Religious Court, there was a verdict that did not follow the proper court proceedings. The author has come across the judgment of the Lubuk Pakam Religious Court with Case Number 2612/Pdt.G/2019/PA-Lpk, which pertains to a divorce where the husband was sentenced to imprisonment for 5 years or more. The chronology of this case seems to be in question.

II. RESEARCH METHODS

This type of research is a combined study, consisting of a literature review (library research) and a case study approach [5]. The literature review (library research) is intended to analyze the Judgment of the Religious Court of

Lubuk Pakam Number 2612/Pdt.G/2019/PA-Lpk, which is jurisprudence and can be considered a legal source for judges and other legal practitioners who have cases or similar issues to what has been decided by the Religious Court previously. Furthermore, the case study approach involves studying the practice of implementing default judgment in Judgment Number 2612/Pdt.G/2019/PA-Lpk at the Religious Court of Lubuk Pakam. The case study is conducted through interviews [6].

III. RESULTS AND DISCUSSION

Regarding the Trial Process of Default Judgment for Case Number 2612/Pdt.G/2019/PA-Lpk, it can be observed that the trial process here appears to be shorter than what is typically known. This is clearly stated in the judgment for Case Number 2612/Pdt.G/2019/PA-Lpk, which explains that the panel of judges conducted only one hearing due to certain considerations that needed to be taken into account during the trial, leading to the decision to issue a Default Judgment in a single session. If we were to examine the trial process, which should ideally involve stages to be followed by the panel of judges, the first-level trial process in the religious court is formulated as follows: Mediation, Response, Reply, Rejoinder, Evidence Presentation, Conclusion, Judgment [7]. If we look at the stages of the trial process mentioned above, the panel of judges often skips several stages such as skipping the Mediation process, the Defendant's Response, the Reply, and the Rejoinder. Regarding the Trial Process of Default Judgment in a single session at the Religious Court of Lubuk Pakam, the author has indeed interviewed the judges at the Religious Court of Lubuk Pakam, and the formulated stages of the Default Judgment Trial in a single session are as follows: Presenting the Plaintiff's Case, Presentation of Evidence, Conclusion, Judgment [8].

In every decision issued by the Religious Court, there are always legal arguments, reasons, legal foundations, and legal considerations made by the judges. To answer what considerations the Panel of Judges at the Religious Court of Lubuk Pakam had for Judgment Number 2612/Pdt.G/2019/PA-Lpk, the author conducted personal interviews with the judges at the Religious Court of Lubuk Pakam. The results of personal interviews with the judges revealed that the legal considerations or legal grounds for the Default Judgment in a single session for Case Number 2612/Pdt.G/2019/PA-Lpk were based on Article 149 of the Rechtsreglement voor de Buitengewesten (RBg) or Article 125 of the Herziene Inlandsch Reglement (HIR), which state: "If, on the appointed day, the defendant does not appear and does not send someone to appear on their behalf, despite having been summoned by the bailiff, the lawsuit is accepted with a judgment in absentia (default judgment), unless the court finds that the lawsuit is unfounded or contrary to rights." From Article 149 RBg or Article 125 HIR, it is clear that the Defendant did not appear and did not appoint legal representation on the scheduled hearing day as set by the Religious Court. Not only does Article 149 RBg or Article

125 HIR apply, but the court has also sent official summonses (Relaas) to both parties, the Plaintiff, and the Defendant, in a valid and reasonable manner. Valid means that the summonses (Relaas) were conducted by the official Bailiff or Deputy Bailiff appointed by the Religious Court in accordance with Article 228 and 390 HIR, and reasonable means that the summonses (Relaas) were delivered 3 (three) days before the trial and acknowledged by the parties summoned, as well as the Plaintiff and the Defendant. Furthermore, the reason the Panel of Judges conducted a single-session trial for case Number 2612/Pdt.G/2019/PA-Lpk is because, during the trial, the judges considered the concept of Maslahat (public interest). We can see this in the principles of Islamic jurisprudence (fiqh). Every Religious Court throughout Indonesia will adhere to the procedural process of litigation in accordance with the Herziene Inlandsch Reglement (HIR), Rechtsreglement voor de Buitengewesten (RBg), Laws (Undang-Undang), Government Regulations (Peraturan Pemerintah), Supreme Court Regulations (Peraturan Mahkamah Agung), Circular Letters from the Supreme Court (Surat Edaran Mahkamah Agung), jurisprudence, and regulations related to the civil litigation process in Religious Courts, especially in the case of the Religious Court of Lubuk Pakam [9]. This time, the author will examine and review the aspects of Civil Procedure Law concerning Judgment Number 2612/Pdt.G/2019/PA-Lpk regarding the Application of Default Judgment in Article 19 Letter C of Government Regulation Number 9 of 1975 Regarding Divorce Reasons Concerning a Single Session Trial in the Religious Court of Lubuk Pakam. To do so, we need to consider, firstly, the legal procedural aspects of the concept of the default judgment trial for Case Number 2612/Pdt.G/2019/PA-Lpk. Secondly, we need to review the legal procedural aspects of the legal considerations made in the Religious Court of Lubuk Pakam regarding the Application of Default Judgment in Article 19 Letter C of Government Regulation Number 9 of 1975 Regarding Divorce Reasons Concerning a Single Session Trial.

A review of Civil Procedure Law regarding the concept of the default judgment trial for Case Number 2612/Pdt.G/2019/PA-Lpk. To review it from a civil procedure law perspective, we should examine the stages of the first-level trial process in the Religious Court as they should be, as formulated below: Mediation in accordance with PERMA (Supreme Court Regulation) Number 1 of 2008. Defendant's Response in accordance with Article 121 paragraph (2) of HIR (Herziene Inlandsch Reglement) or Article 145 of RBg (Rechtsreglement voor de Buitengewesten). Plaintiff's Reply based on the principle of "Audi alteram partem. Defendant's Rejoinder in accordance with the RV (Reglement of de Rechtsvordering). Presentation of Evidence as stipulated in Article 163 of HIR or Article 283 of RBg. Conclusion. Judgment in accordance with Article 50 of Law No. 48 of 2009 concerning Judicial Authority [10]. When the panel of judges has determined that the case will be handled as a default judgment case, whether it involves only one summons, two summonses, or three summonses, the legal basis for the default judgment is in accordance with Article 125 of HIR

(Herzein Inlandsch Reglement) or Article 149 of RBg (Rechtreglement voor de Buitengewesten). The trial process stages are also shortened compared to the civil procedure law trial process [11].

The trial process for default judgment in civil procedure law is as follows: 1) Reading of the plaintiff's statement, 2) Presentation of evidence, 3) Conclusion, and 4) Judgment. Indeed, the process of default judgment trial is not specifically regulated in legislation, but when a default judgment occurs, the trial process stages mentioned above are followed in the procedural law of the Religious Court, including the Religious Court of Lubuk Pakam [12]. A review of civil procedure law regarding the Legal Considerations of the Religious Court of Lubuk Pakam for Judgment Number Register 2612/Pdt.G/2019/PA-Lpk. The author reviews it from the perspective of civil procedure law concerning the default judgment for case number 2612/Pdt.G/2019/PA-Lpk. By considering Article 121-122 of HIR and 145-146 of RBg, as well as Articles 26-29 of Government Regulation No. 9 of 1975 regarding summonses (Relaas) for parties involved in a case, it can be concluded that the default judgment for case number 2612/Pdt.G/2019/PA-Lpk is not in contradiction, even if the summons (Relaas) was conducted only once. Regarding procedural law, there are customary practices that seem to function as unwritten laws. Some of these practices include summoning the parties for the first hearing. Many cases are handled with the belief that a valid and proper summons must be issued three times. Before the third summons, parties (usually the defendants) often choose not to attend the hearing, assuming that there will be a second and third summons sent to them [13].

However, a summons is considered valid when it is officially issued by the Bailiff or Deputy Bailiff appointed by the Religious Court, as stipulated in Article 228 and 390 of HIR (Herzein Inlandsch Reglement). It is also considered proper when the summons (Relaas) is delivered 3 (three) days before the trial begins and is acknowledged by the parties summoned, as well as the Plaintiff or the Defendant [14]. Looking at the default judgment as regulated in Article 125 of HIR (Herzein Inlandsch Reglement), Articles 196-197 of HIR, Articles 148-153 of RBg (Rechtreglement voor de Buitengewesten), and Articles 207-208 of RBg, Law Number 20 of 1947, and SEMA (Surat Edaran Mahkamah Agung) Number 9 of 1946, a default judgment can be issued if the following conditions are met:

1. The Defendant has been officially and properly summoned.
2. The Defendant is absent from the hearing and has not appointed a representative.
3. The absence is due to a valid reason.
4. The Defendant has not raised objections or exceptions regarding jurisdiction.
5. The Plaintiff is present at the hearing.
6. The Plaintiff requests a judgment [15].

Considering Article 125 of HIR paragraph (1) or Article 149 of RBg paragraph (1), which states, "If, in the first hearing, the Defendant is absent while the Plaintiff is present, in such a case, the judge may issue a judgment stating that the

Plaintiff's claim can be granted in default (in the absence of the Defendant)" [16].

Considering Article 19 letter (c) of Government Regulation (PP) No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 regarding marriage, which states that one party has been sentenced to imprisonment for 5 (five) years or a heavier sentence after the marriage has taken place [17]. Seeing that the evidence provided by the Plaintiff during the first hearing includes the Marriage Certificate as regulated in the Compilation of Islamic Law Article 7 paragraph (1), which states that marriage can only be proven by a Marriage Certificate. In addition to the Marriage Certificate, the Plaintiff also included a copy of the Judgment from the Lubuk Pakam District Court, which states that the Defendant was imprisoned for more than 5 years [18]. From a legal logic perspective, when the Defendant is absent from the first hearing scheduled by the Religious Court of Lubuk Pakam and it is not possible for the Defendant to appoint a representative or legal counsel, the panel of judges can immediately issue a default judgment in that hearing [19]. Considering the legal and psychological perspective of the Plaintiff, who is determined not to reconcile with the Defendant because the Defendant is not providing financial support to the Plaintiff and the Defendant's family does not care about the Plaintiff's situation, the judge sees it necessary to grant the Plaintiff's claim [20]. Based on the explanations above regarding the single-session trial in the default judgment for case number 2612/Pdt.G/2019/PA-Lpk, the judge is allowed to conduct a single-session trial in accordance with Article 19 letter (c) of PP No. 9 of 1975. This is because a single-session trial in the judgment for case number 2612/Pdt.G/2019/PA-Lpk is not in contradiction with civil procedure law.

IV. CONCLUSION

Based on the research and analysis regarding the Implementation of Default Judgment in Article 19 Letter (c) of Government Regulation Number 9 of 1975 concerning Divorce Reasons concerning a Single-Session Trial in the Religious Court of Lubuk Pakam (A Study on the Analysis of Judgment Number 2612/Pdt.G/2019/PA-Lpk), it is permissible to conduct such a judgment because it does not contradict civil procedure law.

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