

Ex-Officio Rights in Talak Divorce: Study on Judges' Considerations in the Compliance of Ex-Wife's Rights

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Abstract

Theoretically, judges have the ex-officio rights to protect the rights of women and children in divorce cases. This study examines the judges' considerations in applying Ex officio rights associated with the plaintiff's profession as Pegawai Negeri Sipil (PNS, Indonesian Civil Servant) and non-civil servant. This normative legal research employed a case study and conceptual approach. The data collection techniques of this study were obtained from interviews, document content, and literature review. This study highlighted several essential points. First, the judges' reasoning for applying ex-officio rights, which is referred to the Article 41 paragraph (c) of Law Number 16 of 2019 and the Decree of the Chairman of the Supreme Court Number: KMA/032/SK/IV/2006 concerning the Enforcement of Guidelines for Administration of Justice in Court. Second, the judges' decision did not contradict the Ultra Petita principle since the considerations are based on logical arguments and facts such as the husband's earning capacity, the wife's devotion, and the wife's loyalty. The legal basis of judges' decisions on divorce cases involving civil servants is similar to ordinary divorce cases. The divorce case is only distinguished by the addition of the regulations concerning civil servants in the divorce case of civil servants.

Keywords: Ex-Officio, Ex-wife Rights, Judges' Considerations, Talak, Civil Servant

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Introduction

It is in contrast to the procedural law of the court when the judges give a verdict on something not requested in the lawsuit. According to Article 50 of the Reglement of de Burgerlijke Rechtsvordering (RV), judges are prohibited from ruling on cases that are not prosecuted or granted more than requested. The judges who make a decision that was not requested or was not in the applicant's demand and verdict beyond the *posita* or *petitum* is deemed to have exceeded the power or authority permitted by law (*ultra vires*) even though this is in good faith or the public interest, the judges are deemed to have violated the *ultra petitum partium*.¹

However, based on Article 154 paragraph (1) *Herzien Inlandsch Reglement (HIR)*, a judge also has the right to decide a case beyond the standard rules as long as he can give consideration and *ijtihad* in the form of logical arguments and following the law. This right is obtained through his position as a judge. As the main organ in a court, the judge should realize the law, although the legal provisions are unclear or not claimed.² A judge is a functional academic position since the judge has certain roles, duties, responsibilities, powers, and rights. One of the rights that a judge has is the *ex officio* powers. In language terms, The *ex-officio* right is a Latin phrase that means under position.³ *Ex-officio* means because of position or taking office *ex-officio*.⁴

1 I.P.M Ranuhandoko, *Terminologi Hukum*, Sinar Grafika, Jakarta, 2006, hlm. 522.

2 Rifai , Ahmaf., *Penemuan Hukum oleh Hakim dalam Perspektif Hukum dan Progresif*, Sinar Grafika, Jakarta, 2010. hlm. 6-8.

3 Marjanne Termorshuizen, *Kamus Hukum Belanda*, Djambatan, Jakarta, 1992), p. 22 .

4 Tim Penyusun Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka, 1990.

Subekti asserts that the right of ex-officio is power due to the judge's position that is not based on a determination letter or appointment letter, nor is it from the application.⁵ The judges or *qadi* refers to wise people or people who decide cases and determine them.⁶ ex-officio rights are outlined as rights or authorities control by judges owing to their position, and one in all them is to decide or provide one thing that's not within the suit. In divorce cases, the judge will decide quite requested because of his position.⁷ In talak divorce, the wife is in a weak position so the judge can use their authority to obtain the wife's rights.

This power is entirely the authority of a judge in deciding a case. Thus, the judges should be able to protect the rights of the ex-wife due to divorce maximally. The legal basis for ex officio rights is regulated in Article 41 paragraph (c) of Law Number 16 of 2019.⁸ Referring to this article, the word "can" is interpreted as "may" in an ex officio manner, which gives power for judges to determine *mut'ah* and *'iddah*.⁹ Even though this is not included in the *petitum* in the divorce application filed by the petitioner.

The role of judges' consideration and *ijtihad* is vital in defending the rights of ex-wives and children, especially

5 Fanani, Ahmad. Judge's Ex Officio Rights: A Case Study of Divorce cases at the Sidoarjo Religious Court. No. 3513 Th. 2015, in TSAQAFAH, vol 13, no. 2, 2017, pages. 339-352.

6 Sudarno, Kamus Hukum, Rineka Cipta, Jakarta, 1999, p. 156. See Muhammad Salam Madkur, Peradilan dalam Islam, Bina Ilmu, Surabaya, 1993, p. 20.

7 Mukti Arto, Praktek Perkara Perdata pada Pengadilan Agama, Pustaka Pelajar, Yogyakarta, 2005, hlm. 11

8 Article 41 paragraph (c) Law Number 16 the Year 2019: "The court may require the former husband to provide cost of living and/or determine an obligation to ex-wife"

9 Ibrahim AR Nasrullah, "The Judge's Ex Officio Rights in Talaq Divorce", Jurnal Hukum Keluarga dan Hukum Islam, Volume 1 No. 2, 2017, p, 464.

talak divorce.¹⁰ Considerations or often called *consideirans* are the basis for the decision. Considerations must support every judgment.¹¹ Adequate consideration involves reasons, legal bases, and stipulated in articles concerned, as well as systematic argumentation and clear, easily understood conclusions.¹² The legal basis used by judges in deciding cases is state regulations and shariah¹³.

In case of talak divorce, the judges' consideration is important thing to protect the rights of the ex-wife after the divorce. It is justice for the ex-wife, especially in the case of a *talaq* divorce.¹⁴ Most of the case of *talaq* divorce¹⁵ aims to end the marriage or just comply with the legal validity in the form of a divorce decree¹⁶, without fulfilling the rights of the ex-wife as the consequence of the divorce. The petition requested by the husband (the petitioner) involves accepting and granting the applicant's petition and giving

10 Annas, Syaiful., Masa Pembayaran Beban Nafkah Iddah Dan Mut'ah Dalam Perkara Cerai Talak (Sebuah Implementasi Hukum Acara Di Pengadilan Agama), in *Al-Ahwal: Jurnal Hukum Keluarga Islam*, vol. 10, no. 1, 2017, hlm. 1

11 Isnantiana, Nur Iftitah, Judge's Legal Reasoning in Making Decisions in Court, in *Islamadina: Jurnal Pemikiran Islam*, vol. 18, no. 2, 2017, pages. 41-56.

12 Abd Tri Wahyudi. *Peradilan Agama di Indonesia*, Pustaka Pelajar, Yogyakarta, 2007, p. 36.

13 Harahap, Y., & Omara, A. "Compilation of Islamic Law in the Perspective of Legislative Law", *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 22(3), 2010, pages. 625-644.

14 Muhammad Aqwam Thariq, "Judge's Legal Consideration of the Imposition of Iddah and Mut'ah Livelihoods in the Case of Verstek Divorce in the Perspective of Maqashid Syariah (Case in the Religious Court of Malang Regency)," *Sakina: Journal of Family Studies* 3, no. 2 (2019): 1-12.

15 Talaq Divorce is the divorce initiated by the husband for a certain reason and the wish is declared with a certain statement before the court. Available in Abdul Ghofur Ansori, *Hukum Perkawinan Islam (Perspektif Fikih Dan Hukum Positif)* (Yogyakarta: UII Press, 2011).

16 Dea Mahartika, "Ratio Decidendi of the Panel of Judges on Judges' Ex Officio Rights in Providing Custody and Livelihood for Children in Talaq Divorce Cases," *Uniska Law Review* 1, no. 2 (2020): 40-60.

permission to the petitioner to pledge for *talaq* to the wife (the respondent). The verdict concerns giving the petitioner permission to commit the *talaq* divorce to the respondent. However, the verdict was not supported by the condemnatoir decision that is the punishment of the applicant to give *mut'ah*, *'iddah*, and child support.¹⁷

According to Alawiyah, the reason why the divorce filed by the husband is not followed by his obligations to fulfill the rights of the ex-wife after the divorce includes the ignorance of both parties regarding the post-divorce obligations and the right.¹⁸ Furthermore, Yulianti points out that the husband's disobedience to his post-divorce financial obligation is one of the reasons why the *petitium* filed by the husband is only to end the marriage without

17 HSA Alhamdani, *Risalah Nikah, Second* (Jakarta: Pustaka Amani, 2002). defining *mut'ah* and *iddah*. *Mut'ah* (منعة; with dhammah mim), also read *mit'ah* (with kasrah mim). The word *mut'ah* itself is another variation of the word *al-mata'* (المتاع), which means something that is used as an object of fun (ما يستمتع به). Definitely, the meaning of *mut'ah* is "several assets that the husband must give to his wife who has been divorced utilizing a divorce or a method that is more appropriate". The word *nafaqah* is associated with marriage which means "something that is given from his property for the benefit of his wife that causes his property to decrease". What is meant by the wife's livelihood includes the husband's obligations to his wife such as food, clothing, shelter, servants, and medicines if her husband is rich.

18 *Nafkah* is a loan word from Arabic which means the same as cost. If the word referred to the word *الزوجة*, can be interpreted as the allowance given by the husband to the wife. In term, referring to *Surah al-Baqarah* (2); 23314 and the hadith of the Prophet, narrated by Imam Tirmizi, living can be interpreted as a gift given by the husband as an obligation to his wife, be it in the form of food, clothing, or a place to live. Meanwhile, according to article 80 of the *Compilation of Islamic Law*, a living can be interpreted as something that is given by a husband as an obligation after being his wife and not in a *nusyuz* state, concerning all the necessities of household life according to his abilities. See *At-Tirmidhi, Sunan At-Tirmidhi, Juz III* (ttp.; tnp., t.t.), p. 466. in *al-Maktabah asy-Syamilah, Version 2.11*.

providing support for his ex-wife and children.¹⁹ Thus, the consideration of judges with all their powers to protect the rights of wives after divorce is salient.

The court decision Number 004x/Pdt.G/2017/PA.Plk and 25x/Pdt.G/2014/PA.Plk. Plk were court decisions in which the Judge decide a case that exceeds the contents of the claim. A judge applied their ex-officio rights to fullfill the ex wives rights namely *mut'ah* and *iddah*. However, this study seeks to examine judges' considerations in to decide a verdict on something that not claimed and why the amount of iddah allowance set by the panel of judges for the wives in the two decisions is different, initiated by the husband whose occupation as private security and civil servant, specifically Indonesian National Police (POLRI).

In both cases, the judges use the ex officio power in their decision. This study deals with problem statements as follows. First, what are the judge's considerations in applying the ex officio right to *talaq* divorce cases at the Palangka Raya Religious Court Class I B? Second, how is the comparison of the Decision Number 004x/Pdt.G/2017/PA.Plk and the Decision Number 25x/Pdt.G/2014/PA.Plk. related to the amount of iddah allowance between civil servants (POLRI) and non-civil servants? This normative legal research employed a case approach. Data collection techniques of this study documented content, interviews, and literature review.

Judges Consideration in Applying Ex Officio Rights in Talaq Divorce Case

19 Yulianti, D., Abikusna, R. A., & Shodikin, A. (2020). Mut'ah and Nafkah 'Iddah in Talaq Divorce with the Verstek Decision. *Mahkamah: Jurnal Kajian Hukum Islam*, 5(2), 286-297.

Legal consideration base of the panel of judges in applying *ex officio* rights in *talaq* divorce cases at the Palangka Raya Religious Court Class I B is Article 41 paragraph (c) of Law Number 16 Year 2019 that reads: “The court may require the former husband to provide cost of living and/or determine an obligation to ex-wife”. According to Hamid in the interview, the Panel of Judges can decide more than what is asked due to their position to give the ex-wife the rights to make a verdict is fair to both parties.²⁰

Another consideration refers to the legal process for *talaq* divorce at the Religious Courts that is described in the Decree of the Chairman of the Supreme Court Number: KMA/032/SK/IV/2006 concerning the Enforcement of Guidelines for Administration of Justice in Court²¹:

- 1) *Talaq* divorce filed by the husband whose *petitum* asks to be allowed to pledge the *talaq* to his wife.
- 2) A husband who is *riddah* (leaving Islam) who filed for divorce must take the form of a lawsuit. The verdict was not to permit the husband to pledge *talaq*, but the divorce imposed by the Religious Court in the form of a verdict.
- 3) The procedures for filing for divorce application and the process of examining *talaq* divorce shall be guided by Article 66 to Article 72 of Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 in conjunction

20 Interview with Abdul Hamid as Religious Court Judge. The Reasoning for Consideration of the Use of Ex Officio Rights at the Palangka Raya Religious Court Class IB. At Palangka Raya Religious Court, on January 9, 2021.

21 Drafting Team, Guidelines for the Enforcement of Guidelines for Administration of Justice in the Religious Courts, Revision Edition 2010, The Supreme Court of the Republic of Indonesia, Jakarta, 2010, p. 152

with Law Number 50 of 2009 in conjunction with Articles 14 to 36 PP Number 9 of 1975.

- 4) During the examination before the trial, the wife can submit a reconvention regarding child support, *nafkah madhiyah*, *'iddah*, and *mu'tah*. Whereas joint property and *hadlanah* are to be filed in a separate case.
- 5) During the examination, the husband in his application can apply for a provision, likewise, the wife can submit reconvention regarding the matters regulated in Article 24 of Government Regulation Number 9 of 1975.
- 6) The request for provision as referred to in number 5 includes the request for the wife as a victim of domestic violence to be accompanied (Article 41 of Law Number 23 of 2004).
- 7) The Religious Court may use the *ex officio* power to determine the *'iddah* as long as the wife is not proven to have committed *nusyuz*, and to oblige *mut'ah* (Article 41 paragraph (c) of Law Number 1 of 1974 in conjunction with the Article 149 paragraph (a) and (b) of the Compilation of Islamic Law).
- 8) In the examination, the Religious Courts try to find out the husband's occupation to estimate the average monthly income to be used as a basis for determining child support, *mulah*, *madhiyah*, and *'iddah*.
- 9) In order to fulfill the benefit principle in making the decisions, the *mut'ah* should be in the form of non-money objects, such as houses, land, or other things, to ease the execution. *The ex-husband must give mut'ah* on the condition that a dowry has not been established for the *ba'da dukhul* and divorce is based on the husband's will. The amount of *mut'ah* is adjusted to earning ability of the husband (Articles 158 and 160 of the Compilation of Islamic Law).

- 10) If the defendant is not present at the hearing, the case will be decided on *verstek* decision, the Religious Court will continue to conduct a hearing to prove the truth of the petitioner's argument.
- 11) For uniformity, the *amar* for *talaq* divorce which reads:
:
"Give permission to the petitioner (name... bin...) to impose one *talaq raj'i* against the respondent (name... bint ...) at the Religious Court ...
- 12) To avoid the *Bid'i* divorce, the Religious Court should postpone the trial if the wife is on her period unless the wife is willing to be divorced
- 13) For uniformity, the *amar* for *talaq* divorce filed by the husband who is *riddah* (leaving Islam) as mentioned in point 2, that reads: "Pledging *talaq ba'in shughra* of the petitioner (name ... bin ...) against the respondent (name ... bint ...).

Referring to point 7, that the Religious Courts can determine the *'iddah* and *mut'ah* with their *ex officio* power. The basis for recognizing *ex officio* rights is based on Article 41 paragraph (c) of Law Number 16 Year 2019 that reads: "The court may require the former husband to provide cost of living and/or determine an obligation to ex-wife". According to the Judge of the Palangka Raya Religious Court Class I B in the interview, because of these *Ex officio* rights, the panel of Judges could decide more than what was asked to give the ex-wife's rights. Thus, the verdict can resolve the case and is fair to both parties.²²

Hamid further explained the application of *Ex officio* rights to *'iddah* and *mut'ah* in *talaq* divorce cases pays attention to the wife's devotion, the loyalty of the wife, and the earning ability of the husband. The ability of the

22 Op.Cit, Abdul Hamid.

husband who can impose the burden of *'iddah* and *mut'ah* and the divorced wife is not proven to have committed *nusyuz* to enable the judges to give punishment to the husband (even though the wife does not demand *'iddah* and *mut'ah*).²³ This is based on the principle of justice as stipulated in Article 41 paragraph (c) of Law Number 16 of 2019 on Marriage.

In Islam, scholars have different opinions regarding the amount of living given to the ex-wife. According to Imam Malik and Abu Hanifah, it is according to the needs of the wife. This is based on Surah al-Baqarah verse 223 and the hadith of the Prophet which instructs Hindun to take her husband's assets for her needs and her children properly.²⁴ Whereas according to Imam al-Shafi'i it is according to the husband's earning ability, which is based on surah at-Talaq verse 7.²⁵ According to Imam Hambal, as quoted by Ibn Qudamah, it is according to the wife's needs that are adjusted to the husband's ability as the middle of the two arguments to practice both and for caution.²⁶

The Ex officio rights of judges are used at the Religious Courts when the respondent has finished submitting her answer, either at the first answer stage or the same stage. The judge then asked whether the defendant knew that she had rights that had to be fulfilled

23 Ibid.

24 According to Abu Hanifah and Malik, the word *ma'ruf* is interpreted as a wife's need, it does not mean a choice for the husband between money and clothing, which is according to the husband's ability. Likewise the meaning of *ma'ruf* in the hadith and clothes, which is the choice according to the ability of the husband. Referring to, *خذي ما يكفيك وولدك بالمعروف* both rely on the wife not based on the needs of the husband, See Ibn Qudamah, *asy Syarh al-Kabir*, Juz IX, p. 230, Compare with Al-Sarakhsi, *Al-Mabsut*, Juz VI, pages. 492-493

25 Ibid

26 Ibid, *Jus IX*, p. 230

by the husband when he was about to be divorced. If the respondent had no idea about it, the judge had to be active in explaining the rights possessed by the respondent. The judge solely carried this out to protect the rights of the respondent who did not have insight into the law of procedure in court and did not know her rights as a divorced wife. This is also a realization of the simple, fast, and low-cost justice principle.²⁷

In applying the Ex officio Rights, the responses of both parties may vary. The wife must be delighted while the husband might be objected and then filed an appeal and even cassation. However, some accepted. According to the Panel of Judges of the Palangka Raya Religious Court, Ex officio right has been frequently implemented as long as it is fair to both parties. If the petitioner does not carry out the decision that obliges him to pay a certain amount of *'iddah* and *mut'ah* to the respondent, the respondent may submit a petition submitted to the Chief of the Religious Court who decides the case.²⁸

The Ex officio rights use considers that wives do not demand *'iddah* and *mut'ah* due to their ignorance. This Ex officio right aims to protect the wife's rights and ensure the welfare of the ex-wife and to console her. Every court decision must be based on considerations. Likewise, in deciding a divorce case, especially *talaq* divorce cases in the Palangka Raya Religious Court Class I B, the Judges have concerns in using their ex officio rights such as ²⁹

- 1) Give a lesson to the husband not to divorce his wife as he wish and to think twice about divorcing;

27 Utami, Ulfiana Linda. The Implementation of Supreme Court Regulation (PERMA) No.3 of 2017 on women's rights and children's rights as a result of divorce at the Semarang Religious Court. Diss. UIN Walisongo, 2019, p. 11.

28 Op.Cit, Abdul Hamid

29 Ibid.

- 2) Respecting the woman's dignity by providing guarantees to a wife to receive her rights after a divorce;
- 3) A judge considers a husband to have the earning ability to pay the *'iddah* and *mut'ah*; there is a legal obligation for the ex-husband related to the rights of the ex-wife if the wife is not proven to be *nusyuz*.

However, the Ex officio rights cannot be used to protect the rights of the ex-wife if there are 1) statement from the respondent who does not want to be granted *mut'ah* and *'iddah*; 2) the wife is *qabla ad-dukhul*; 3) the wife is declared as *nusyuz* by the judge; 4) husbands do not have the earning ability to burden the rights of children and their ex-wives.

The judge use the ex officio rights when the respondent did not file a claim for reconvention in the trial regarding her rights after divorce. However, if the respondent used the lawyer or filed a reconvention, the judges do not use their ex officio right. The characteristics of a judge's decision in a *talaq* divorce case using ex officio rights are: 1) granting the petitioner's petition; 2) Permitting to the petitioner to impose one divorce on the respondent before the Religious Court hearing ... ; 3) sentencing the petitioner to pay *mulah* and *'iddah* in the amount of ... ; 4) sentencing the petitioner to pay child support in the amount of ... every month until adulthood; 5) sentencing the petitioner to pay a court fee of ...

The preceding description indicates that the Ex officio Right is very useful in solving *talaq* divorce cases to protect the wife's right and child support after divorce. Thus, the Religious Courts should know the husband's occupation and average monthly income to determine the *'iddah*, *mut'ah*, and child support. Especially if the husband has a non-permanent job, the judges should have

careful consideration in determining the amount of income that the husband bears.

Comparison on the Religious Court Judges' Decision

1. Palangka Raya Religious Court Decision Number 25x /Pdt. G/2014/FA. Plk (non-civil servant case)

The applicant and the defendant were married on October 11, 2012, at the Religious Affairs Office of Jekan Raya District. The applicant is a security in a hotel and the defendant is a housewife. During the marriage, they resided in Cilik Riwut Km. 9 for one year, and then moved to Jl. RTA Milono Km. 9. During the marriage, their relationship was fine. However, since October 2012, there were never-ending disputes and arguments. Since March 2014, the applicant left the joint residence due to the frequent conflicts that were difficult to reconcile. From the marriage, they have not been blessed with any child.

In the Judge's Decision Number 25x/Pdt.G/2014/PA.Plk, the judges use their *ex officio* power to charge the petitioner for *'iddah* and *mut'ah* since the defendant was not proven to be *nusyuz*. The judge considered that the wife who was going to be divorced had the right to get *'iddah* and *mut'ah* even though she did not ask for it. In this case, the panel of judges sentences the petitioner to pay *mut'ah* for 400,000rupiahs (four hundred thousand rupiahs) and *'iddah* for three (3) months of 600,000 rupiahs (six hundred thousand rupiahs). In this decision, the judge did not overly burden the petitioner concerning to *'iddah* and *mut'ah* because according to the judge's consideration, this was what the husband could afford as observed from the husband's earning capacity. The petitioner agreed to the sentence imposed on him.

The Judge's Decision Number reflects the Islamic Law which referring to Article 149 paragraph (a) and (b) Number 1 of 1991 concerning the Compilation of Islamic Law that reads: "Article 149 paragraph (a) and (b) Number 1 of 1991 concerning the Compilation of Islamic Law that reads: "When a marriage breaks up due to *talaq* divorce, the ex-husband is obliged to (a) provide a proper *mut'ah* either in the form of money or in objects, unless the ex-wife has been subjected to *gobla al dukhul*; (b) support *maskan* and *kiswah* to the ex-wife during "*iddah*, unless the ex-wife has been subjected to *talak ba'in* or *nusyuz* and is applicable id the ex-wife is not pregnant.

In Islam, Qur'an al Thalaq verse 1 explain the rules regarding livelihood after divorce: "O Prophet, if you divorce your wives then you should divorce them when they can (face) their *iddah* (the natural) and count the *iddah* time and fear Allah your Lord, do not remove them and do not let them (allowed) out unless they are doing a heinous act of light." The verse shows the very substantive existence of *'iddah*. its existence cannot be denied even though its implementation has various models used in judicial practices.³⁰ Although some people consider that the *'iddah* livelihood law does not yet reflect the protection of women.³¹

Before making the decision, the panel of judges considered many things, and thereby the petitioner did not feel disadvantaged. The board of judges decides within the husband's earning capacity. The

30 Rohman, Adi Nur, and Hesti Widyaningrum. Instrumentation Of Ex-Officio Rights Of Religious Courts Judge Related To Fulfilling Children And Wife's Rights Due To Divorce. *Jurnal Hukum & Pembangunan*, vol. 50, no. 2, (2020): 361-378.

31 Muhammad Fauzan, Maqasid Nafkah Iddah Dan Perlindungan Perempuan, *Hukum Islam XVI*, no. 1 (2016): 71-82.

ex-husband worked as security who earned a mediocre income every month. The wife was not proven to be *nusyuz*, then she had her rights after divorce. In this case, the Petitioner has no objection to the verdict of the panel of judges

2. Palangka Raya Religious Court Decision Number 004x/Pdt.G/2017/PA.Plk (Civil Servant Case)

The applicant and the defendant had married on March 10, 1991, at the Religious Affairs Office, Pematang District, Pematang Regency. The petitioner's occupation was Indonesian National Police (POLRI) in the city of Palangka Raya and the respondent was a housewife. During the marriage, both the petitioner and the respondent resided in the house of the respondent's parents for six years, and then the applicant and the respondent moved to Kapuas for seven years and then lived on Jalan Tangkalasa IX as the last joint residence. However, in 2011-2013, the petitioner and the defendant had live separately. The petitioner lived in Sukamara, while the respondent remained in Palangka Raya for work. Once a week, the petitioner visited her wife in Palangka Raya.

During the marriage, their relationship was fine. However, since June 2011, there had been disputes and arguments between husband and wife. From February 2015 to 2017 (two years), the petitioner left the joint residence due to frequent conflicts and debates. They never met each other in two years and there was no good communication. The members of the Indonesian National Police who wish to file for divorce must first obtain written permission from the authorized official (their superiors). This refers to Article 18 of the Indonesian National

Police Chief Regulation number 9 of 2010 concerning Procedures for Submitting Marriage, Divorce, and Referral for Civil Servants to the Indonesian National Police (PERKAPOLRI Number 9 of 2010) which reads: “Every divorce must be implemented following the provisions of the laws and regulation and religious norms adhered to by civil servants at the POLRI and must obtain written permission from the authorized official.”

In Article 19 PERKAPOLRI Number 9 year 2010, it is stated that every civil servant at the POLRI who will carry out a divorce is required to submit letter permission to the KASATKER (Head of the Work Unit). Violation of PERKAPOLRI Number 9 of 2010, including divorce without permission, will be subject to sanctions following the provisions of laws and regulations. According to Article 15 in conjunction with Article 13 paragraph (1) Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Permits.

The regulation for Marriage and Divorce for Civil Servants states that if a Civil Servant (PNS) does not obtain permission from the official, he will be subject to one of the severe disciplinary penalties regulated in Government Regulation Number 30 of 1980 on Discipline of Civil Servants. The severe disciplinary punishments stipulated in Government Regulation Number 30 of 1980 are 1) demotion at a lower level for a maximum of 1 (one) year; 2) exemption from office; 3) dismissal with respect not at his request as a civil servant; and 4) dishonorable discharge as a Civil Servant.

Thus, according to the law, members of the Indonesian National Police who wish to file a divorce

must first seek permission from their superiors. If the divorce is carried out without permission, the person concerned will be subject to sanctions. In case Number 0049/Pdt.G/2017/PA.Plk, the Petitioner had received a permission letter from his superior Number SIC/25/MI/2016 dated December 30, 2016, issued by the Central Kalimantan Police. From the marriage, they have been blessed with three children (ages 24, 20, and 15 years).

In the Judge's decision Number 004x/Pdt.G/2017/PA.Plk, the judges used their *ex officio* power. The panel of judges obliged the petitioner to provide *'iddah* and *mut'ah* since the petitioner had pledged *talaq* to the respondent and the respondent was not proven as *nusyuz*. The judges considered that the wife who was going to be divorced had the right to get *'iddah* and *mut'ah* even though the wife did not ask for it. In this case, the panel of judges sentenced the petitioner to pay *mut'ah* of 7,500,000 rupiahs and *'iddah* of 4,500,000 rupiahs. Before making the decision, the panel of Judges used many considerations not to disadvantage the petitioner. The decision was made within the earning capacity of the husband a member of the Indonesian National Police who can provide such *'iddah* and *mut'ah* support. The petitioner complied with the order of the panel of judges on the sentence imposed.

The marriage was blessed with three children. The first and the second children are adults and independent. The third child was still 15 years old and was not independent. There is an agreement between ex-husband and ex-wife whereby the petitioner pays child support of 500,000 rupiahs every month until the child is an adult or able to be independent. However,

the cost of child support was not stated in this decision. It is assumed to be the cause of a father's irresponsibility. The judge should have included the burden of child support in the decision. Hence, the father would continuously support the child. In this case, the judge did not decide whether the child's *hadhanah* is with the care of the father or mother. In fact, this is important to guarantee the cost of caring for the child.

From the Judge's Decision Number 004x/Pdt.G/2017/PA.Plk, the point of view of Islamic Law refers to the Law Number 1 of 1991 concerning Compilation of Islamic Law states, Article 149 paragraph (a), (b) and (d): "When a marriage breaks up due to *talaq* divorce, the ex-husband is obliged to (a) provide a proper *mut'ah* either in the form of money or in objects, unless the ex-wife has been subjected to *gobla al dukhul*; (b) support *maskan* and *kiswah* to the ex-wife during "*iddah*, unless the ex-wife has been subjected to *talak ba'in* or *nusyuz* and is applicable if the ex-wife is not pregnant; (c) Providing *hadlanah* costs (care, and education costs) for children under the age of 21. The panel of judges used many considerations before making the decision. Thus, the Petitioner did not feel disadvantaged. The panel of judges made the decisions within the limits of the husband's earning capacity. It was also based on the ex-wife's devotion. If one of the parties has objections to the verdict, for instance, the defendant against the

decision, an appeal³², cassation³³, and review can be filed³⁴. In handling divorce cases from POLRI members, the judges must carefully consider the regulations of marriage and divorce that apply specifically to its member to ensure justice for both parties.

Judge's decisions Number
25x/Pdt.G/2014/PA.Plk and Number

32 An appeal is a process of legal action against or feeling dissatisfied with the result decided by the district court. Appeals can be requested from one or both of the parties concerned. The appeal has a grace period of 14 days from the announcement of the district court's decision. Appeals usually allow the defeated party to submit to the high court. High court decisions can be in the form of strengthening district court decisions, changing district court decisions, canceling district court decisions. This provision regulated in Article 7 paragraph (1) and (2) Law no. 20/1947 in conjunction with Article 46 of Law no. 14/1985. In practice, the legal basis is commonly used in Article 46 of Law no. 14 of 1985. Contained in Hsb, P. H. (2015). *Tinjauan Yuridis Tentang Upaya-Upaya Hukum*. *Yurisprudencia: Jurnal Hukum Ekonomi*, 1(1), 42-53.

33 Cassation means solving or canceling a court decision from the last trial level when one party feels that a judge is against the law, except for a decision in a criminal case that contains the acquittal of the defendant from all charges. Cassation is a legal process request by one or both parties concerned against a high court decision. The party concern can file an appeal if he is not satisfied with the content of the high court's decision to the Supreme Court. Just like an appeal, cassation also has a grace period of 14 days from the date the judgment is issued and submitted to the Supreme Court through the court of the first instance which decides the case. contained in Husein, H. M. (1992). *Kasasi sebagai upaya hukum*. Sinar Grafika

34 A review is not only filed because of dissatisfaction with the cassation decision, but also against a court decision that has permanent legal force. A review can itself be submitted if there are new circumstances in the middle of the trial that gives rise to strong allegations. Review if there is a judge's mistake or an error occurred. If the judicial review is justified by the Supreme Court, it can be in the form of an acquittal, an acquittal of all charges, etc. Contained in Sitorus, S. (2018). *Upaya Hukum Dalam Perkara Perdata (Verzet, Banding, Kasasi, Peninjauan Kembali dan Derden Verzet)*. *Hikmah*, 15(1), 63-71.

004x/Pdt.G/2017/PA.Plk, it can be seen that the legal basis of a divorce case involving a civil servant is the same as the non-civil servant case. The difference is only the regulations concerning Civil Servants of POLRI that applies to its members. The implication of ex officio rights by judges at the Palangka Raya Religious Court Class I B in the divorce case Number 25x/Pdt.G/2014/PA.Plk and Number 0004x/Pdt.G/2017/PA.Plk did not deviate and contradict the principle of *ultra petita* since it is based on a *petitum subsidair* which reads: *ex aequo et bono* or requests a decision based on justice and appropriateness in determining livelihoods after divorce, the judge is obliged to try all parts of the claim.

Conclusion

Comparing the Religious Court Judges' Decisions in applying the ex officio rights, some conclusions were drawn. First, the judge's consideration of applying ex officio rights in deciding the divorce case refers to Article 41 paragraph (c) of Law Number 16 of 2019 and the legal process for divorce at the Religious Court which is described in the Decree of the Chairman of the Supreme Court Number: KMA/032/SK/IV/2006 concerning the Enforcement of Guidelines for Administration of Justice in Court. Second, the judges' decision for case Number 25x/Pdt.G/2014/PA.Plk and Number 004x/Pdt.G/2017/PA.Plk does not violate or contradict the *ultra petita* principle since ex officio rights were executed with devotion of the wife and the wife's loyalty. Thus, a fair decision can be made for the disputing parties. Lastly, in deciding a divorce case involving civil servants, the legal basis is the same as determining a divorce case of non-civil servants with the involvement of regulations concerning Civil Servants

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