

Juridical Review Of The Dissolution Of Marriage For Buddhists In Indonesia (Decision Study No. 66 / Rev.G./ 2024 / PN Mdn)

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Abstract

Marriage in Buddhism aims to create a happy family, so for that the faithful must follow the teachings of the Buddha about the practice of the right life. The formulation of the problem is how the legal arrangements relating to the dissolution of marriage due to divorce of Buddhists, how the legal consequences of the dissolution of marriage of Buddhism. The research method used is descriptive analysis that leads to normative juridical law research, namely research conducted by referring to legal norms, namely researching library materials or secondary materials. Secondary Data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. The results showed that in the case of divorce, the Buddhists follow the law of the Republic of Indonesia No. 1 of 1974 on marriage. Article 38 of Law No. 1 of 1974 states that a marriage can be dissolved by death, divorce, or by a court decision. As a result of the divorce law on the position, rights and obligations of the former husband/wife according to Article 41 letter c of Law No. 1 of 1974 is that the court may require the former husband to provide living expenses and/or determine an obligation for the former wife. Normative provisions in Article 41 letter c of Law No. 1 of 1974 are related to Article 11 of Law No. 1 of 1974 which contains normative provisions that a woman who breaks up her marriage applies a waiting period, which then this article has been spelled out in Article 39 of Government Regulation No. 9 of 1975 which contains imperative provisions that for a widow, so the waiting time for widows who are still menstruating is set 3 (three times) holy with at least 90 (ninety) days and for those who are not menstruating set 90 (ninety) days. If the marriage is broken, and the widow is pregnant, the waiting period is set until she gives birth.

Keywords: Marriage, Buddhism, Dispute Resolution

1. INTRODUCTION

Marriage according to Article 1 of Law No. 1 of 1974 on marriage, what is meant by marriage is the inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God The fundamental basis of marriage can be defined as a personal relationship between a man and a woman and a biological relationship for mating and reproduction . Mating is to preserve the breed by multiplying offspring. Etymologically, marriage is mixing, alignment, or bonding. If it is said, that something is married or mated to something else then it means that the two are related.

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There are many definitions of marriage according to the teachings of Buddhism. One of the literature that contains Buddhist teachings explains that the meaning of marriage or *vivāha* is to take the bride from her father's House. Ram Jasan describes marriage as *vi* which means to accept each other and *vah* which means to accept, which can be summed up to be to accept each other. H.H Wilson explains in his dictionary that marriage is called *vivahak*. The Pali dictionary refers to marriage as *vivaari*. From all the definitions above, it can be concluded that marriage or marriage is a relationship and inner bond between a man and a woman to love each other, love, accept each other as is and without coercion, the purpose of marriage itself is to continue or continue the generation by multiplying offspring, and solely to expect the love of God Almighty to be.

Marriage in Buddhism aims to create a happy family, so for that the faithful must follow the teachings of the Buddha about the practice of the right life. In the *Samajivi Sutta*, the Buddha has pointed out the basics of a harmonious, harmonious, harmonized and balanced marriage. That is, if the husband and wife have equality and / or harmony in *Saddha* (belief), *Sila* (morality), *Caga* (generosity), and *Panna* (wisdom) Buddhism believes that if a couple behaves well then after death they will be revived in the next life and will get happiness. However, if a married couple behaves badly, then they will be miserable in the next life. Such misbehavior not only makes spouses miserable in the hereafter but can also cause misery in this world. These bad behaviors include fighting or arguing, physical violence in the household, and if a husband does not provide for his wife's physical and mental well-being. These are the things that play a big role in causing divorce in married couples. Divorce is the breakdown of a marriage that results in the breakup of the relationship as a husband and wife.

Divorce is the culmination of a bad marriage settlement, and occurs when the husband and wife are no longer able to find a way to solve the problem that can satisfy both parties. The term "divorce" is contained in Article 38 of Law No. 1 of 1974 on marriage, which contains facultative provisions that "marriage can be dissolved by death, divorce, and by court decision". In today's society, both ordinary people and public figures think that divorce is a common thing to do. One of the many causes of a divorce is violence committed by a husband or wife against their partner, economic problems and also problems of intimacy from a married couple. The economic situation becomes one of the biggest reasons for a divorce because there are not enough things in life that must be fulfilled daily. As stated by Agoes, that: "many couples from underprivileged families often divorce occurs because the husband is less successful in meeting the material needs and other needs of the family". However, a low economy is not the only reason for a divorce, a high economy can also be a reason for a divorce. The advanced economy of a family can lead to greed in property ownership,

as well as the desire to try love other than the wife or husband just because they have a lot of property. This is the beginning of the dispute and will lead to divorce.

Understanding of good and True Religion is very necessary in building a family between spouses. Because the belief and knowledge of the teachings of religion that is good and true is able to prevent a married couple from divorce because the teachings of any religion does not justify a divorce. Daradjat states that " " usually people who understand and diligently implement the teachings of religion in their lives, their morals can be accounted for, on the contrary, people whose morals deteriorate, usually their belief in religion is less or none at all.

In Hinduism, divorce is not specifically regulated in Buddhism. Divorce is not forbidden but it is also not recommended. In Vinaya Pitaka Volume I Vinitavatthu section there is a story "when a woman quarreled with her husband and returned to her mother's House. A monk who often visits his family seeks to reconcile (them) back. Regret appeared on him . Bhikkhu, is she divorced?"Not yet divorced, Bhagavan."Bhikkhu, it is not an offense to be divorced." The monk's efforts above teach that divorce should be avoided and that quarrels or fights between spouses can be resolved amicably. Like every other religion, Buddhism strictly forbids divorce.

The case that the author researched started from the plaintiff (husband) with a lawsuit letter dated Medan, January 19, 2024 which was received and registered at the Medan District Court Registry on January 22, 2024 In Register Number 66/Pdt.G./ 2024 / PN Mdn

2. RESEARCH METHOD

The type of research chosen is normative legal research that is research establish the law as a system of norms. The system of norms in question is about the principles, norms, rules and regulations. Peter Mahmud Marzuki that: 'normative legal research is a process of finding a rule of law, principles of law, as well as legal doctrines to answer legal problems faced. Normative legal research conducted to produce argumentation, theory or a new concept as a prescription in solving the problem at hand. research normative law is also called doctrinal legal research, namely research aimed at to provide a detailed systematic explanation of the rule of law governing the field of specific legal rules, analyze the relationship between the rules of law one denhan the other, explaining the elusive parts of a rule of law and it also includes predictions of the future development of a particular rule of law. Doctrinal legal research is library-based research whose focus is analysis of primary legal materials. This type of research is based on the thought that this study to analyze a system of norms or rules.

3. RESULT AND ANALYSIS

A. Legal arrangements relating to dissolution of marriage due to Buddhist divorce

Decree of the Supreme Court dated January 1977 article I said “Marriage is an inner bond between a man as a husband and a woman as a wife based on Love (Metta), affection (karana) and a sense of responsibility (Mudita) with the aim of forming a family (friendly ladder) happy blessed by Sanghyang Adi Buddha/God Almighty, the Buddhas and the Bodhisatvamahasatwa”. Marriage is valid if it is performed according to the Indonesian Buddhist Marriage Law (Article 2 HPAB). According to the teachings of Indonesian Buddhism explains that as Buddhists should not hurt others, then in principle the law of marriage according to Indonesian Buddhism is based on monogamy and does not recognize divorce. But because the nature of the human body is more prominent, the great tolerance of Indonesian Buddhism is the holding of divorce institutions.

Legally to do a divorce there must be sufficient reason, that between husband and wife will not be able to get along as husband and wife (article 39 paragraph 2), which further explained that that can be used as a reason for divorce by a court decision that has binding legal force if :

- a) One of the parties commits adultery or becomes a drunkard, a stuffing, a gambler etc. which is difficult to cure.
- b) One party leaves the other for 2 consecutive years without the other party's permission and without valid reason or because of other things beyond his will
- c) One of the parties gets a prison sentence for 5 years, or a more severe sentence after the marriage takes place.
- d) One party commits cruelty or serious harm to the other party.
- e) One of the parties gets a physical disability or illness that results in not being able to carry out his duties or obligations as a husband and wife. f. Between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony in the household.

The reason for divorce as intended above where one party commits adultery or becomes a drunkard, a gambler who is difficult to cure as one of the reasons, among others, is not in accordance with the legal feelings of our society, thereby disturbing peace and security. Things where already include compactors, gamblers and other bad habits that give rise to diseases of society. Divorce can occur because one of the parties successively leaves the other without a valid reason or because another thing is to protect the abandoned party. On the other hand, it can be interpreted successively that leaving the other party means not living under the same roof during his marriage, as befits a husbandwife. Furthermore, it is expressly referred to by The Marriage Law regarding the minimum limit for one person to leave the

other party (two consecutive years) or more, meeting the demand for legal certainty.

The reason one party gets a prison sentence of 5 years or more after the marriage takes place is to protect the party who is not punished not to suffer his life because he was abandoned by a husband or wife. One party commits cruelty or severe abuse that is harmful to the other party, is a reason for divorce is intended to protect the soul and the perfection of the body.

In the case of divorce, Buddhists follow the law of the Republic of Indonesia Number 1 of 1974 on marriage. Article 38 of Law No. 1 of 1974 states that a marriage can be dissolved by death, divorce, or by a court decision.

B. Legal Consequences Of The Dissolution Of A Buddhist Marriage and Case Analysis Medan District Court Decision No. 66 / Pdt.G/2024 / PN.Mdn

Since marriage is secular, Buddhism has no restrictions on divorce . His Excellency K. Sri Dhammananda said, " If a husband and wife really cannot live together, instead of living a miserable life and harboring more jealousy, anger, and hatred, they should have the freedom to separate and live in peace." Divorce is not specifically regulated in Buddhism like other religions, divorce is not prohibited but also not recommended in Buddhism. So Buddhists follow the Law No. 1 of 1974 on marriage, due to the divorce law on the position, rights and obligations of the former husband/wife according to Article 41 letter c of the Law No. 1 of 1974 is that the court can require the former husband to provide living expenses and/or determine an obligation for the former wife. Normative provisions in Article 41 letter c of Law No. 1 of 1974 are related to Article 11 of Law No. 1 of 1974 which contains normative provisions that a woman who breaks up her marriage applies a waiting period, which then this article has been spelled out in Article 39 of Government Regulation No. 9 of 1975 which contains imperative provisions that for a widow, then the waiting time for widows who are still menstruating is set 3 (three times) holy with at least 90 (ninety) days and for those who are not menstruating is set 90 (ninety) days. If the marriage breaks up, and the widow is pregnant, the waiting time is set until she gives birth. According to Article 39 of Government Regulation No. 9 of 1975, there is no waiting time for widows who break up their marriage due to divorce, while between the widow and her ex-husband there has not been a sexual relationship. For marriages that break up due to divorce, the waiting time is calculated after the fall of a court decision that has permanent legal force.

Plaintiff, male, Buddhism, birth of H.Perak, dated 19-05-1981, architect's work, located in Medan, in this case gives power to Junaidi S.H.,

and comrades, the advocates at The Advocate'S office BIMA, S.H & REKAN, Medan address against Defendant, female, Medan birth 10-07-1986, housewife's work is located in Medan. Considering, that the plaintiff with a lawsuit dated January 19, 2024 received and registered at the Medan District Court Registry on January 22, 2024 In Register Number 66/Pdt.G / 2024 / PN Mdn, has filed the following lawsuit:

- a) That the plaintiff and Defendant are lawful spouses who have entered into marriage in the presence of Buddhist leaders in Medan, and have been registered at the Office of Population and civil registration of Medan City in accordance with
- b) That during the marriage the plaintiff and defendant have lived in peace and have got along as a husband and wife and have been blessed with a daughter who was later named the plaintiff and defendant's child who is currently 5 years old;\
- c) That at first the plaintiff's and defendant's households were in a state of peaceful harmony, but over time the peace of the household began to falter due to miscommunication, disputes, differences in principles and differences of opinion regarding running the household, without the need to be mentioned in detail, according to a mutual agreement between the plaintiff and defendant not to disclose
- d) That the existence of disputes and differences (miscommunication, disputes, differences in principles and differences of opinion regarding running a household) has caused continuous quarrels and the result of continuous quarrels has resulted in the plaintiff's and defendant's households there is no inner and outer happiness and there is no hope of being able to re-establish a household
- e) That the family and friends have tried to reconcile the plaintiff and defendant but the effort has not yielded results, due to differences of opinion and miscommunication
- f) That as a result of continuous quarrels, the plaintiff and defendant have been living apart (separate beds) for almost 11 (eleven) months, and due to the rift in the household the parties may not be able to be reunited again and just want to separate peacefully and amicably;
- g) That the plaintiff and Defendant have agreed and agreed that the issue of child custody arrangements and alimony costs will be made separately by the parties and will be set forth in the letter of agreement to be legalized by a notary

Legal considerations given to the plaintiff and defendant in case number 66/Pdt.G/2024 / PN.Mdn is Considering that the purpose and purpose of the plaintiff's lawsuit is basically to declare the marriage between the plaintiff and the defendant to be broken due to divorce by reason of disputes and differences (e.g. communication, disputes, differences in principles and differences of opinion regarding running a household) that

cause continuous quarrels as stipulated in Article 19 letter f of the Government of the Republic of Indonesia Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning marriage. Considering that due to the time period and formality of the summons according to the law has been duly heeded, the defendant who has been duly summoned but has not come to appear at the hearing and has not sent someone else to appear as his representative, must be declared absent. Considering that because the defendant has been declared absent, the examination of this case is carried out without the presence of the defendant (verstek). Considering, that in accordance Article 149 R.Bg., a lawsuit in the absence of the defendant (Verstek) is admissible unless the lawsuit is against the right or unreasonable, so the panel of judges will examine whether the plaintiff's lawsuit is not against the law and reasonable.

Considering, that to prove the arguments of the lawsuit the plaintiff filed a letter of evidence in the form of

- a) Copy of Marriage Certificate Number: -- issued by Medan Civil Registration Officer dated September 29, 2015.
- b) Copy of Family Card Number: -- issued by the Department of Population and civil registration of Medan dated July 4, 2018.

That the proof of the letters P-1 and P-2 cannot be shown in the original by the plaintiff Considering, that because the lawsuit does not meet the formal requirements of filing a lawsuit to the Medan District Court in accordance with Article 149 R.Bg., a lawsuit in the absence of such a defendant (Verstek) is declared inadmissible. Considering, that because the plaintiff's lawsuit was declared unacceptable with verstek, the plaintiff was sentenced to pay for this case.

In the decision of Judge No. 66 / Rev.G/2024 / PN. Mdn judge ruled that :

- a) The defendant has been duly summoned not to appear
- b) Declaring the plaintiff's lawsuit inadmissible with verstek
- c) Punish the plaintiff to pay a case fee of Rp.231.000, 00 (Two hundred thirty one thousand rupiah).

The analysis of the case above can be drawn that the claim of the plaintiff cannot be granted because the plaintiff cannot provide evidence in the trial where the original evidence. The judge ruled that the divorce was invalid.

4. CONCLUSION

In the case of divorce, Buddhists follow the law of the Republic of Indonesia Number 1 of 1974 on marriage. Article 38 of Law No. 1 of 1974 states that a marriage can be dissolved by death, divorce, or by a court decision. Divorce is not specifically regulated in Buddhism like other religions, divorce is not prohibited but also not recommended in Buddhism. So the Buddhists follow the Law No. 1 of 1974 on marriage, due to the

divorce law on the position, rights and obligations of the former husband/wife according to Article 41 letter c of Law No. 1 of 1974 is that the court may require the former husband to provide living expenses and/or determine an obligation for the former wife. Normative provisions in Article 41 letter c of Law No. 1 of 1974 are related to Article 11 of Law No. 1 of 1974 which contains normative provisions that a woman who breaks up her marriage applies a waiting period, which then this article has been spelled out in Article 39 of Government Regulation No. 9 of 1975 which contains imperative provisions that for a widow, then the waiting time for widows who are still menstruating is set 3 (three times) holy with at least 90 (ninety) days and for those who are not menstruating is set 90 (ninety) days. If the marriage is broken, and the widow is pregnant, then the waiting time is set until she gives birth.

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