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A Juridical Review of the Implementation of Conservatory Seizure of Marital Property in Divorce Cases

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In marriage, rights and obligations arise between husband and wife, and between parents and children, reciprocally regulated according to the applicable laws and regulations. Not every individual can obtain what they desire, and the same applies to marriage. Many reasons and obstacles can lead to the dissolution of a marriage, with divorce being one of the ways it can end (apart from death). The procedures for filing a divorce are regulated in Law No. 50 of 2009 concerning Religious Courts. The consequences of divorce can cause issues for the husband or wife, including iddah maintenance, the payment of past due maintenance, the division of jointly acquired property, and the custody of children who have not reached the age of discernment (Article 105 of the Compilation of Islamic Law). Parties in a divorce can apply for a sequestration guarantee as stipulated in Article 24 paragraph (2) of Government Regulation No. 9 of 1975 in conjunction with Article 78 Sub C of Law No. 50 of 2009. The purpose of the sequestration guarantee is to ensure the rights or delivery of items specified in the verdict, regardless of their existence. Therefore, to ensure the execution, plaintiffs typically request sequestration guarantees (conservatoir beslag) together with their lawsuit. To request a sequestration guarantee, there must be a reasonable suspicion. Based on the provisions of Article 24 paragraph (2) letter C of Government Regulation No. 9 of 1975, "during the divorce proceedings, at the request of the plaintiff or defendant, the court may determine necessary measures to ensure the preservation of items that are jointly owned by the husband and wife or items that belong to the husband or wife.

Keywords: conservatoir beslag, child custody laws, iddah maintenance, marital property division, divorce cases

INTRODUCTION

Fundamentally, no human being in this world can live in complete isolation. Humans are social creatures who naturally seek to interact, socialize, and gather with others, emphasizing their inherent desire for communal living, which often begins within the smallest unit of society: the family. The shared life bound by marriage has significant consequences within a community. Given the profound impact of marriage on society, there is a necessity for norms or regulations that govern the prerequisites, implementation, continuity, and dissolution of marriage (Soemiyati, 1982).

In marriage, rights and obligations arise reciprocally between husband and wife, as well as between parents and children, according to the applicable laws and regulations. Not every individual can attain what they desire, and the same applies to marriage. Many reasons and obstacles can lead to the dissolution of marriage, with divorce being one of the means by which a marriage can end. The consequences of divorce can cause issues for either the husband or the wife, including iddah maintenance, the payment of past due maintenance (arrears), rights to jointly acquired property, and the custody of children who have not reached the age of discernment. Both civil servants (PNS)

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and non-civil servants involved in a divorce can apply for a sequestration guarantee as stipulated in Article 24 paragraph (2) of Government Regulation No. 9 of 1975 in conjunction with Article 78 Sub c of Law No. 50 of 2009.

Since the initiation of divorce proceedings, the court, upon the petitioner's request, may:

a. Determine the maintenance obligations of the husband;

b. Establish measures necessary to ensure the care and education of the children;

c. Establish measures necessary to ensure the preservation of property that is jointly owned by the husband and wife, or property that belongs individually to the husband or the wife (Supramono, 1993).

The purpose of sequestration guarantees is to ensure the enforcement of rights or the delivery of items as stated in the court ruling, regardless of whether the items exist. Therefore, to ensure the execution of the ruling, plaintiffs customarily file for sequestration requests, typically alongside their lawsuits. A sequestration request is an effort to secure the plaintiff's or petitioner's rights in the event of a favorable verdict, enabling the enforcement of the court's decision that acknowledges their rights (Harahap, 1990). To file for a sequestration guarantee, there must be a reasonable suspicion. According to Article 24 paragraph (2) letter c of Government Regulation No. 9 of 1975, "during divorce proceedings, upon the request of the plaintiff or defendant, the court may establish measures necessary to ensure the preservation of items that are jointly owned by the husband and wife or items that belong individually to the husband or wife." The phrase "establish measures necessary to ensure the preservation of items" inherently implies actions or efforts to sequestrate marital property. Measures deemed necessary to ensure the preservation of property during divorce proceedings include sequestration guarantees (conservatoir beslag), also known as marital beslag.

Thus, the intent contained in Article 24 paragraph (2) letter C is to: grant the husband and wife the right to apply for marital sequestration (marital beslag) of marital property during divorce proceedings, and authorize the court to approve marital sequestration (mantale beslag) to ensure the preservation and integrity of marital property throughout the divorce process (Rasyid, 1998).

To ensure that the husband fully fulfills and guarantees the rights of the widow mentioned above, the institution of sequestration guarantees in divorce cases is essential. In the Religious Courts, the existence of sequestration guarantees provides significant assistance and offers solutions when issues related to divorce arise. This can be anticipated by placing a sequestration guarantee (conservatoir beslag) on the assets of the respondent during the divorce petition or request. Filing for a sequestration guarantee on the assets of the petitioner is crucial to ensure the realization of the petitioner's rights, such as jointly owned property or child support, in cases where the former spouse fails to comply. Consequently, a sequestration guarantee automatically transforms into an execution seizure if the ex-spouse neglects their obligations. To safeguard these rights if the petition is granted or won, and to prevent the transfer of assets to others, the law provides for asset seizure (arrest, beslag). A sequestration request can be submitted before or after the case is decided (Mertokusumo, 1993). With the enactment of Law Number 7 of 1989, the Religious Court in Indonesia is equipped with bailiffs, as stipulated in Article 38, which states, "In every Religious Court, a bailiff and substitute bailiff shall be appointed." Therefore, if a divorce occurs between husband and wife, the parties can file a sequestration request for marital assets in the Religious Court to ensure the integrity of the joint property (Soebyakto, 1997).

METHOD

This research combines two types of legal studies: normative legal research (doctrinal legal research) and empirical legal research. The researcher examines the law not only within its disciplinary scope but also from a normative perspective, considering aspects such as legal principles, legal systematics, legal synchronization, legal comparison, and legal history. Additionally, the researcher addresses the reality of legal developments in society (socio-empirical legal research), providing a descriptive analysis of the implementation and operationalization of the law (Hidayati & Pasaribu, 2021).

RESULTS AND DISCUSSION

Issues with Sequestration Guarantee Requests Filed in Court Petitions

The discussion on the procedures for sequestration guarantees encompasses two aspects. The first aspect concerns the procedure for submitting a sequestration guarantee request itself. The second aspect relates to the procedure for the implementation of the sequestration guarantee by the court.

1. Filing a Request within the Main Petition

The common practice for filing a sequestration guarantee request (conservatoir beslag) is for the plaintiff to include the written request within the main petition. This form of request is submitted simultaneously with the principal lawsuit and is not separated from the main arguments of the lawsuit.

2. Filing a Separate Request from the Main Case

The second method for filing a sequestration request involves submitting a separate and independent request from the main case. In addition to the principal lawsuit, the plaintiff files the sequestration guarantee request (conservatoir beslag) in a different document. It is also possible to submit an oral request for a sequestration guarantee, although this is rare in practice. Nonetheless, the rarity of oral requests does not eliminate the plaintiff's right to submit such a request verbally.

Issues of Timing and Execution

The basis for examining the timing and the court jurisdiction for filing a sequestration guarantee request is Article 227 paragraph (1) HIR or Article 261 paragraph (1) RBG. The provisions outlined in these articles indicate that the two issues are interconnected. The determination of the timing for filing a sequestration request, as regulated in these articles, simultaneously raises issues regarding the appropriate court jurisdiction for submitting the sequestration guarantee (conservatoir beslag) request. According to the law, the sequestration guarantee request can be submitted as follows:

1. Before the Judgment is Issued or Before the Judgment Becomes Legally Binding

According to this provision, the time limit for filing a sequestration guarantee request is not strictly defined within a specific timeframe. Instead, the timing is based on the progress of the case's resolution and decision-making process. This means that as long as the case has not been decided or the judgment has not become legally binding, there is an opportunity to file a sequestration guarantee request (conservatoir beslag).

2. From the Commencement of Court Proceedings Until the Judgment is Issued

The implementation of the sequestration guarantee request is contained in the phrase of Article 227 paragraph (1) HIR or Article 261 paragraph (1) RBG, which states: before the judgment is issued. Our interpretation of this phrase is that it is limited to the scope of proceedings in the District Court. This context pertains specifically to District Court proceedings and does not extend to appellate or cassation processes. Thus, during the proceedings at the District Court level, the plaintiff retains the right and authority to file a sequestration guarantee request from the commencement of proceedings until the District Court issues its judgment. This request is filed separately from the main petition.

3. Or Before the Judgment is Executed

The calculation of the second timeframe regulated in Article 227 paragraph (1) HIR or Article 261 RBG is formulated in the phrase: before the judgment can be executed. This means that as long as the judgment cannot be executed, the plaintiff has the right and opportunity to file a sequestration guarantee request (conservatoir beslag). A judgment becomes legally binding when it can no longer be appealed or brought to cassation. Conversely, a judgment is not legally binding if it is still subject to appeal or cassation.

Thus, the essence of a judgment that has not yet acquired legal force is that it is still open to appeal and cassation. The law still allows and justifies the submission of a sequestration guarantee request against a judgment with such a status.

Authorities Authorized to Order Sequestration Guarantees

Regarding the aforementioned legal issues, it is necessary to ascertain which judicial authority has the jurisdiction to accept, examine, and order a sequestration guarantee request (conservatoir beslag). Is this authority exclusively the right of the District Court (first-instance court), or can the High Court, as the appellate court, also grant and order a sequestration guarantee if the District Court has denied it?

1. The First Opinion: Absolute Authority of the District Court

According to the first opinion, the authority to grant sequestration guarantees rests solely with the District Court. Proponents of this view argue that only the District Court has the jurisdiction over sequestration guarantees, and such authority is not extended by law to the High Court as an appellate body. Accordingly, they outline the application of sequestration guarantees based on the following regulations:

a. If the District Court denies the sequestration guarantee request, the High Court does not have the authority to order the District Court to enforce the sequestration. It is important to distinguish between rejection and revocation. In the case of a rejection, the sequestration guarantee was never granted or ordered by the District Court. In the case of revocation, the District Court initially granted and ordered the sequestration guarantee but later revoked it. In such instances of revocation, the High Court has full authority to grant the sequestration by overturning the District Court's decision.

b. If the plaintiff deems sequestration necessary while the case is on appeal, the request must still be submitted to the District Court, which has the authority to approve or deny the request. Efforts should be made to ensure that the District Court rules on the sequestration guarantee request concurrently with the High Court's decision, so that the High Court can incorporate the sequestration order into its ruling. Thus, the District Court is the authorized body for executing sequestration guarantees. All sequestration requests must be submitted to the District Court, even if the case is under appeal. The High Court lacks the authority to accept or order sequestration guarantees, particularly if the District Court has already denied the request. The High Court cannot "review" or "overturn" the District Court's denial of a sequestration guarantee. Consequently, the High Court cannot order the District Court to enforce a sequestration guarantee that has been denied. Additionally, if the plaintiff did not file a sequestration request during the District Court proceedings and later wishes to do so at the appellate level, the request must still be submitted to the District Court, not the High Court. Therefore, the District Court remains the authority responsible for ordering the execution of sequestration guarantees.

2. The Second Opinion: The High Court has the Authority to Order Sequestration Guarantees

The second opinion holds that the High Court, as the appellate authority, has the power to "order" sequestration guarantees. For example, Subekti (1989) asserts that a request for a conservatoir beslag can be submitted to the High Court as long as the main case has not yet been decided at the appellate level. His reasoning is based on Article 227 paragraph (2) HIR, which contains the phrase "before the judgment becomes legally binding." He concludes that this phrase "indicates that a request for a conservatoir beslag can also be submitted to the High Court as long as the main case has not been decided on appeal."

> *Regarding the Execution of Sequestration Guarantees, First, the issues concerning the procedure for executing sequestration guarantees (conservatoir beslag) are outlined. The execution procedure for sequestration guarantees is essentially identical to that for execution seizures (executorial beslag). Therefore, the regulations governing the execution of sequestration guarantees and execution seizures are found in the same provisions. These regulations are established in Article 197 paragraphs (2) to (6) HIR or Article 209 RBG.*

The primary purpose of sequestration guarantees (conservatoir beslag) and/or matrimonial seizures in the Religious Court during divorce proceedings is to provide legal recourse for the petitioner/respondent. This allows them to request the court or judge to place a hold on joint property to prevent it from falling into third-party hands while the divorce dispute is being examined. This measure ensures that the petitioner's claims are not rendered illusory or empty. Once the court's decision has obtained legal force, the judgment must be executed.

Because the lawsuit is initially accompanied by measures to effectively guarantee the rights

and interests of the parties involved, it is necessary to place a sequestration guarantee/matrimonial seizure on the joint property in dispute during divorce cases in the Religious Court. This means that the sequestration guarantee (conservatoir beslag) does not aim to perpetuate the seizure or ownership but to ensure that the lawsuit filed by the parties holds value. The value may include the confirmation of ownership of the seized property and the assurance that the property remains available when the judgment, which has obtained legal force, is executed.

Matrimonial seizures are crucial for the Religious Court, as most cases involve disputes between husbands and wives, as indicated by Article 24 paragraph (2) of Government Regulation No. 9 of 1975 in conjunction with Article 78 Sub C of Law No. 50 of 2009. Although matrimonial seizures pertain only to jointly owned property, which will later be divided between the husband and wife, it is necessary to declare such seizures valid and valuable in the dictum/verdict. This ensures protection against third-party interference.

To implement a sequestration guarantee (conservatoir beslag) and/or matrimonial seizure, it must be based on the plaintiff's request. This request is typically included in the petition, particularly in the petitum section, with specified reasons. A sequestration guarantee request for joint property can be filed together with the divorce petition or separately after the divorce decree has obtained legal force (Article 86 paragraph (1) of Law No. 50 of 2009). The sequestration guarantee covers the entirety of the joint property.

To prove the existence of joint property, documentary evidence such as receipts or certificates obtained during the marriage can be submitted. In addition to documentary evidence, witnesses who observed the acquisition of joint property may also be presented. The principle in Civil Procedure Law is stated in Article 163 HIR, which reads: "Whoever claims a right, or to refute another person's right or to point to an event, is obligated to prove the existence of that right or event."

Among the disputed joint property, there may be immovable assets such as a piece of land. If a dispute arises between the plaintiff and the defendant regarding the boundaries and size of the land, the Religious Court judge may conduct an on-site inspection of the disputed property. The purpose of this inspection is to provide the judge with an accurate understanding of the matter.

A clear understanding of the land is crucial for the judge to execute a fair division of the property between the parties. This ensures that the implementation of the judge's decision proceeds smoothly, thereby avoiding the wrongful execution of another person's land.

Items Prohibited from Seizure

The preceding discussion focused on the limitations of seizure in relation to the nature of the lawsuit, specifically addressing items that judges are permitted to seize. However, in different cases, other items might be seizable according to the lawsuit. This differs from items prohibited from seizure, which are absolutely and permanently forbidden. In any case, items that are prohibited by law from being seized cannot be used as collateral or subjected to execution seizure. This prohibition is stipulated in Article 197 paragraph (8) of the HIR or Article 211 of the RBG. According to these articles, there are two types of items that are prohibited by law from being seized: animals and tools.

To classify animals and tools as items prohibited from seizure, specific qualities in terms of their nature and function must be met:

1. **Nature**: Genuine
2. **Function**: Used as tools for earning a livelihood

Therefore, not all animals and tools are exempt from seizure. Only those that genuinely function as tools used by the defendant for their daily livelihood are prohibited. The quality of these characteristics is not part-time but genuinely and seriously used by the defendant as tools for daily subsistence. For instance, animals that are traded or produce commercial commodities such as milk do not qualify as genuinely used tools for daily subsistence. Examples include animals raised for trade or dairy cows; these do not fall under the category of animals prohibited from seizure (conservatory seizure). Such animals are considered production assets for profit, not tools genuinely used for earning a daily livelihood.

Similarly, the interpretation of tools should not be too narrow and must consider their function as tools for daily livelihood. For example, a store cabinet cannot be classified as an item

prohibited from seizure. A passenger car also cannot be classified as an item prohibited from seizure. Whether a passenger car or a goods transport vehicle, they are not considered tools for daily livelihood but are classified as service assets for profit.

The general interpretation given by law to tools in Article 197 paragraph (8) of the HIR or Article 211 of the RBG refers to tools whose nature and form are directly used by an individual:

1. With physical strength to earn a daily living (e.g., hoe, machete).
2. Or tools directly used by a skilled worker or artist (e.g., saw for a carpenter, chisel for a sculptor).

The purpose of prohibiting the seizure of certain items, as outlined in the relevant articles, is clearly to protect a defendant from total destitution. This prohibition aims to ensure that a defendant's ability to meet daily livelihood needs is not completely hindered. It does not extend to business activities aimed at profit-making. Therefore, animals or tools that serve as production or service assets are not included in the category of items prohibited from seizure.

In relation to the issue of items prohibited from seizure, it is worthwhile to consider the perspective of Subekti, who advocates for expanding the prohibition beyond just animals and livelihood tools. He suggests including beds used by spouses and their children, as well as scientific books, up to a certain limit. This expansion is very humane and should be considered during the execution of auctions. Such an approach ensures that seizure or auction does not excessively strip and impoverish the defendant, causing profound distress. By expanding these protections, the law effectively draws a line, considering individuals as having no substantial property if their possessions are limited to beds, kitchen tools, and scientific books.

CONCLUSION AND SUGGESTION

Conclusion

After examining the issues faced in the implementation of Conservatory Seizure of Marital Property in Divorce Cases, several conclusions can be drawn:

1. The implementation procedures of the Conservatory Seizure Institution in divorce cases in the Religious Courts have not been optimally executed. This is due to a general lack of public awareness about the institution, leading to various obstacles in its implementation.
2. The role of the Conservatory Seizure Institution in divorce cases in the Religious Courts is crucial for protecting the interests of the parties involved. The plaintiff, who requests the Conservatory Seizure of joint property held by the defendant, can have their rights protected as the property cannot be transferred. However, several challenges arise in implementing conservatory seizure in divorce cases in the Religious Courts. These include instances where some joint property has been sold by the defendant without the plaintiff's knowledge or the property in question belongs to a third party. Additionally, the property may have originally belonged to the defendant and not constitute joint property. Another significant obstacle is that the Religious Courts are not authorized to resolve civil disputes that arise in divorce cases, as stipulated in Article 50 of Law Number 50 of 2009.

Suggestion

1. There is a need for legal education and awareness programs about the existence and benefits of the Conservatory Seizure Institution in the Religious Courts so that the public is well-informed.
2. It is recommended that both the petitioner and the respondent, especially in cases involving significant joint property, promptly apply for conservatory seizure to prevent the property from being transferred to third parties and to ensure a fair distribution of joint property.

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