

**THE EFFECTIVENESS OF LAW NUMBER 22 OF 2022 CONCERNING
THE RIGHTS OF PRISONERS IN DIVORCE LAWSUITS
IN THE LEGAL SYSTEM THEORY PERSPECTIVE
(Study In Correctional Institution Malang And
Religious Courts of Malang City)**

THESIS

BY:

AKHMAD ASRORI MAULIDANI

SIN 19210082



ISLAMIC FAMILY LAW DEPARTMENT

SYARIAH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

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Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

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(Study In Correctional Institution Malang And
Religious Courts of Malang City)**

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THE EFFECTIVENESS OF LAW NUMBER 22 OF 2022 CONCERNING

THE RIGHTS OF PRISONERS IN DIVORCE LAWSUITS

IN THE LEGAL SYSTEM THEORY PERSPECTIVE


(Study In Correctional Institution Malang And

Religious Courts of Malang City)

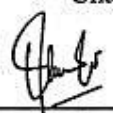
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MOTTO

*“Menuntut ilmu adalah takwa. Menyampaikan ilmu adalah ibadah.
Mengulang-ulang ilmu adalah zikir. Mencari ilmu adalah jihad”*

(ABU HAMID AL-GHAZALI)

“The law is public conscience”

(THOMAS HOBBS)

*“The wisdom of a law-maker consisteth not only in a platform of justice,
but in the application thereof; taking into consideration by what means
laws may be made certain”*

(FRANCIS BACON)

ACKNOWLEDGEMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamin, thanks be to Allah SWT, who has given his grace and help in writing a thesis entitled "The Effectiveness Of Law Number 22 Of 2022 Concerning The Rights Of Prisoners In Divorce Lawsuits In The Legal System Theory Perspective (Study In Correctional Institution Malang And Religious Courts Of Malang City)" we can finish well. Our salutations and greetings go to the Messenger of Allah Muhammad SAW, who has given us *uswatun hasanah* to live this life in a *shar'i* manner. By following him, hopefully, we will be classified as believers and get his intercession on the final day of judgment. Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility, the writer will express the gratitude which is unequalled to:

1. Prof. Dr. H. M. Zainuddin, MA. as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Dr. Sudirman, MA. as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Hj. Erik Sabti Rahmawati, MA., M.Ag. as the Head of Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
4. The Panel of Examiners, consisting of Rayno Dwi Adityo., M.H as the Chairperson of the Session, Iffaty Nasyiah., M.H as the Secretary of the

Session, and Dra Jundiani S.H., M.Hum as the Main Examiner, who have provided corrections and constructive feedback in the improvement of the writer's thesis.

5. Iffaty Nasyi'ah, M.H. as the thesis supervisor, has provided assistance, guidance, and encouragement in writing this thesis.
6. Syabbul Bachri S.HI, M.HI., as supervisor lecturer of the writer during his study at the Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
7. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
8. Staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
9. The writer's extended family, especially the writer's parents, especially the person who contributed to the writer's life, namely (Almarhumah) Mrs. Siti Anisah, S.Pd, who always gave prayers, sacrifices, and support to the writer until the end of her life.
10. The Head of the Regional Office of the Ministry of Law and Human Rights of East Java, the head of the administrative division, permitted the author to conduct research at the Malang Correctional Institution.
11. The Head of the Correctional Institution Malang, the Head of the Community Guidance Section, and the staff who assisted the author during the research

12. The Head of the Religious Court of Malang City, judges, young law clerks, and all staff and employees who assisted the author while conducting research there.
13. All of the author's teachers, especially KH Mutohharun Afif Lc, M.Hi, and (Almarhumah) HJ Muslimah as the caretaker of PP Sabilul Muttaqin Mojokerto City, and DR KH M Asrori Alfa M.A and HJ Maslachatul Ammah Sholeh M.Ag as the caretaker of PP Al-Mubtadi-ien Bahrul Ulum Tambakberas Jombang, who constantly pray for the author. Furthermore, specifically to Gus Afif Sholihudin is the author's spiritual teacher who always motivates so that the author remains enthusiastic in living life. Do not also forget that Buya Addin Kholishin S.Q, M.A, and his wife as the caretaker of the Ribatul Qur'an Wal Qira'at (PRQQ) Islamic Boarding School. In this place, the author studied Quranic knowledge and lived in Malang.
14. Finally, all those who cannot be mentioned individually in this work but have assisted in completing this work optimally. May Allah SWT reward their kindness.

With the completion of this thesis report, we hope that the knowledge we have gained during our studies can provide the benefits of living in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for forgiveness, criticism, and suggestions from all parties for future improvement efforts.

Malang 11 June, 2023

Writer,

Akhmad Asrori Maulidani

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TRANSLITERATION GUIDENCE

A. General

Transliteration is the transfer of Arabic script into Indonesian (*Latin*) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from nations other than Arabic are written as the spelling of the national language, or as written in the reference book. Writing the title of the book in the footnotes and bibliography, still use the provisions of this transliteration.

B. Consonant

Arab	Latin	Arab	Latin
ا	Not symbolized	ط	T{
ب	B	ظ	Z{
ت	T	ع	‘
ث	S	غ	G
ج	J	ف	F
ح	H{	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Z	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	أ/ء	_____’
ص	S{	ى	Y
ض	D{		

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above (‘), turning around with a comma (‘) to substitute for the “ع” symbol.

C. Vocal, long pronounce, and diphthong

Vocal <i>fathah</i>	= a				
Vocal <i>Kasrah</i>	= i				
Vocal <i>Dlumah</i>	= u				
Long vocal (a)	= Â	e.g.	قال	become	Qâla
Long vocal (i)	= Î	e.g.	قيل	become	Qîla
Long vocal (u)	= Û	e.g.	دون	become	Dûna

Especially for reading you Nisbet, it cannot be replaced with “î”, but is still written with “iy” to describe ya' Nisbat in the end. Likewise, for the sound of diphthongs, wawu and ya 'after fathah wrote with "aw" and "ay", as in the example below”

Diphthong (aw)	= و	e.g.	قول	become	Qawlun
Diphthong (ay)	= ي	e.g.	خير	become	Khayrun

D. Ta' marbuthah (ة)

Ta' marbûthah translited as “t” in the middle of word, but if Ta' marbûthah in the end of word, it translited as “h” e.g. الرسالة المدرسة become *alrisalat li al-mudarrisah*, or in the standing among two word that in the form of mudhaf and mudlaf ilaih, it transliterated as t and connected to the next word, e.g. في امان الله become *fi amanillâh*.

E. Auxiliary Verb and Lafadh al-Jalâlah

Auxiliary verb “al” (ال) written with lowercase form, expect if it located it the position and “al” in lafadh al-Jalâlah which located in the middle of two or being or become idhafah, it remove frome writing.

1. Al-Imâm al-Bukhâriy said.

2. Al-Bukhâriy in muqaddimah of his book said.

3. *Masyâ Allah kâna wa mâ lam yasya ' lam yakun.*

F. Indonesian Arabic Names and Words

In principle, every word that comes from Arabic must be written using the transliteration system. When the name is the Arabic name of an Indonesian or an Arabic Indonesian, no need to write using the system transliteration.

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ABSTRAK

Akhmad Asrori Maulidani, 19210198, Efektivitas Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan Terhadap Hak Narapidana Dalam Gugatan Perceraian Perspektif Teori Sistem Hukum: Studi di Lembaga Pemasyarakatan Malang dan Pengadilan Agama Kota Malang, Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing: Iffaty Nasyi'ah, M.H.

Kata Kunci: Hak Narapidana, Gugatan Perceraian, Teori Sistem Hukum

Keterlibatan narapidana selaku tergugat dalam kasus gugatan perceraian termasuk polemik esensial. Hal itu lantaran banyak narapidana yang tidak menghadiri sidang gugatan perceraian di Pengadilan Agama, padahal pemanggilan narapidana sebagai tergugat telah diupayakan melalui pengiriman relaas, sehingga persoalan itu menjadi budaya sosial yang turut serta mengintervensi bekerjanya suatu sistem hukum. Arah kajian ini di fokuskan atas isyarat instrumen hukum yang bisa dijadikan acuan narapidana untuk hadir dalam proses gugatan perceraian di Pengadilan Agama. Penelitian ini bermaksud untuk mengetahui pemenuhan hak yang dilakukan oleh Lembaga Pemasyarakatan Malang dan meneropong mekanisme penanganan perkara gugatan perceraian oleh Pengadilan Agama kota Malang terhadap tergugat yang menjadi narapidana perspektif teori sistem hukum.

Jenis Penelitian ini merupakan penelitian yuridis empiris dengan menggunakan pendekatan yuridis sosiologis. Lokasi penelitian berada di Lapas Malang dan Pengadilan Agama Kota Malang. Data primer yang diperoleh dalam berasal dari hasil wawancara terhadap para narasumber dan responden yang telah ditentukan dengan menggunakan metode *purposive sampling*. Sedangkan data sekunder diperoleh melalui literatur-literatur yang berkaitan dengan penelitian ini.

Hasil Penelitian ini mengungkap *pertama*, bahwa pemenuhan hak narapidana terhadap gugatan perceraian belum terpenuhi. Hal itu disebabkan adanya tindakan khusus yang didasarkan atas asesmen kognitif dan evaluatif petugas lapas untuk mengatasi persoalan tersebut sehingga menimbulkan sikap ekspresif terhadap narapidana. *Kedua*, instrumen hukum sebagaimana diatur dalam Pasal 10 Ayat 1 Huruf g UU Pemasyarakatan yang diinterpretasikan sebagai solusi atas persoalan tersebut belum bekerja dengan efektif karena terjadinya kultur hukum di Lembaga pemasyarakatan Malang. Hal itu turut serta mempengaruhi sistem hukum di Pengadilan Agama kota Malang untuk menangani penerapan hak narapidana sebagai tergugat dengan adil dalam proses persidangan. Sebagaimana hal tersebut, menimbulkan ketidakpastian hukum terhadap persoalan yang dihadapi oleh narapidana.

ABSTRACT

Akhmad Asrori Maulidani, 19210198, The Effectiveness Of Law Number 22 Of 2022 Concerning The Rights Of Prisoners In Divorce Lawsuits In The Legal System Theory Perspective: Studies In Malang Correctional Institutions And Malang City Religious Courts, Thesis, Islamic Family Law Study Program, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang, Supervisor Iffaty Nasyi'ah., M.H

Keyword: The Rights of Prisoners, Divorce Lawsuits, Legal System Theory

The involvement of prisoners as defendants in divorce lawsuits cases is an essential polemic. This is because many prisoners do not attend divorce litigation hearings in the Religious Court, even though the summons of prisoners as defendants have been attempted through the delivery of relaas, so that the problem becomes a social culture that also intervenes in the functioning of a legal system. The direction of this study is focused on the signal of legal instruments that can be used as a reference for prisoners to attend the process of divorce litigation in the Religious Court. This study intends to find out the fulfillment of rights carried out by Malang Penitentiary and to observe the mechanism of handling divorce litigation cases by Malang City Religious Court against defendants who become prisoners perspective of legal system theory.

This type of research is an empirical juridical research using a sociological juridical approach. The location of the research is in Malang Prison and Malang City Religious Court. Primary data obtained in derived from interviews with sources and respondents who have been determined using purposive sampling method. While secondary data is obtained through literatures related to this research.

This research reveals first, that the fulfillment of prisoners' rights to divorce lawsuits has not been met. This is due to the existence of special actions based on cognitive and evaluative assessments of prison officers to overcome these problems, resulting in expressive attitudes towards prisoners. Second, the legal instrument as stipulated in Article 10 Verse 1 Letter g of the Penitentiary Law which is interpreted as a solution to these problems has not worked effectively due to the occurrence of legal culture in Malang Penitentiary Institution. This also affects the legal system in the Malang City Religious Court to handle the application of prisoners' rights as defendants fairly in the trial process. As such, it creates legal uncertainty for the problems faced by prisoners

ملخص البحث

مولدان، أحمد أسراري. ١٩٨٠، ١٩٢١، فاعلية القنون رقم ٢٢ سنة ٢٠٢٢ عن اصلاحية على السجين في دعوى الطلاق بمنظرية نظام الحكم: دراسة في مؤسسة الاصلاحية مالانج ومحكمة الدنية مالانج، البحث قسم الأحوال الشخصية كلية الشريعة جامعة مولانا مالك إبراهيم مالانج.

المشريف: عفة نشيئة، الماجستير

الكلمة الرئيسية: حق السجين، دعوى الطلاق، نظرية نظام الحكم

إن تورط السجين كمدعى في دعوى الطلاق هو مسألة النوعية. وذلك لأن العديد من السجين لم يحضروا محاكمة الطلاق في المحاكم الدينية، على الرغم من محاولة استدعاء السجين كمتهمين من خلال إرسال النداء. بحيث تصبح المشكلة ثقافة اجتماعية تشارك في التدخل في عمل نظام قانوني. يركز اتجاه هذه الدراسة على إشارات الأدوات القانونية التي يمكن استخدامها كمرجع سجين لحضور إجراءات الطلاق في المحاكم الدينية. تهدف هذه الدراسة إلى تحديد وفاء الحقوق التي تنفذها مؤسسة مالانج الإصلاحية ومراقبة آلية التعامل مع دعوى الطلاق من قبل محكمة الدنية مدينة مالانج على المدعى عليهم السجين من منظور نظري للنظام القانوني.

نوعية من هذا البحث هو بحث قانوني تجريبي باستخدام منهج قانوني اجتماعي. موقع البحث في سجن مالانج والمحكمة الدينية في مدينة مالانج. تحصل البيانات الأولية في هذه الدراسة من نتائج المقابلات مع المخبرين والمستجيبين المختارين باستخدام طريقة أخذ العينات الهادف *purposive sampling* وأما البيانات الثانوية من خلال الكتب المتعلقة بهذا البحث.

نتائج هذه الدراسة تبين أولاً، أن وفاء المحكوم عليهم بحقوقهم في دوى الطلاق لم يتحقق. ذلك يسبب على الإجراءات الخاصة القائمة على التقييمات المعرفية والتقييمية لموظفي السجن للتغلب على هذه المشاكل بحيث تخلق موقفا تعبيريا تجاه السجناء. ثانياً، لم تعمل آلة الحكم كما هو منصوص عليه في المادة ١٠ اية ١ الحرف ز من قانون الإصلاح والتي يتم تفسيرها على أنها حل للمشكلة بشكل فعال بسبب وجود ثقافة قانونية في سجن مالانج. يؤثر هذا على النظام القانوني في المحاكم الدينية لمدينة مالانج للتعامل بإنصاف مع تطبيق حقوق المدانين كمدعى عليهم في عملية المحاكمة. وكذلك، فإنه يخلق حالة من عموض القانوني فيما يتعلق بالمشاكل التي يواجهها المحكوم عليهم.

CHAPTER I

INTRODUCTION

A. Background

The idealism of a married couple in establishing a new relationship has excellent hope in carrying out marriage. It aligns with the value of *mitsaqan ghalizhan* contained in Islamic teachings to bind marriage with a solid and sacred bond so that it is not easy to divorce. Unfortunately, such lofty ideals cannot be achieved by mere words. Abdul Ghofur Anshori said that in every journey of a person's household life, misunderstandings are often caused by the failure to fulfill the rights and obligations of one party, husband or wife.¹

Interpersonal conflict in married couples who seem somewhat complicated to maintain their marital relationship often tend to choose to end their marriage either legally recognized by the state or illegally (*according to fiqh*). Thus, divorce becomes the last alternative offer at the end of the journey of family life that can be done after the peace effort (*islah*) between the two parties has vanished.² Moreover, the state accommodates the legality for anyone who wants to file a divorce lawsuit to the nearest court.

The provisions regarding the substance of divorce law are written in Article 38 of Law Number 1 of 1974 concerning Marriage, which

¹ Abdul Ghofur Anshori, *Hukum Perkawinan Islam (Perpektif Fikih Dan Hukum Positif)*. (Yogyakarta: UII Press, 2011).

² Ahmad Rofiq, *Hukum Islam Di Indonesia*, 1 (Jakarta: Raja Grafindo Persada, 2000), 269.

speaks about “Marriage can be terminated due to death, divorce, and court decisions.”³ Then in article 39 of Law No. 1 of 1974 concerning Marriage, Wahyu, and Putu Samawati stated that the article has imperative provisions that emphasize that divorce can only be done in front of a court hearing.⁴ Thus, the provisions of divorce law apply to all Indonesian people without exception, even though they are included in the category of civil cases (relations between people and people).

Every legal event in the context of breaking up a marriage or divorce experienced by everyone does not look at social stratification. Husbands or wives who become prisoners in Correctional Institutions also have the potential to become defendants in divorce cases when one party files a divorce lawsuit in court. The legal event is in line with the provisions in Islamic Law Compilation Chapter XVI Article 116 letter c, which states that a divorce lawsuit can be accepted if one party gets a prison sentence of 5 (five) years or a heavier sentence after the marriage occurs.⁵

Per the regulations enacted, prisoners are convicts who receive criminal imprisonment for a certain period, life imprisonment, and undergo coaching at prison or death row inmates awaiting execution of decisions.⁶ Like humans, prisoners or inmates should still have inherent natural rights

³ Lembaran Negara Republik Indonesia Nomor 3019

⁴ Lembaran Negara Republik Indonesia Nomor 3019

⁵ Lembaran Lepas Sekretariat Negara Tahun 1919

⁶ Lembaran Negara Republik Indonesia Nomor 6811

that cannot be intervened by any interests even though prisoners have lost their freedom.⁷

This natural right originates from the idea of Human Rights,⁸ which fundamentally prioritizes respect for human dignity and legal personality. As owners of natural rights, humans have the legal capacity to use and enjoy their fundamental rights and fulfill their obligations.⁹ As a policyholder, the state must respect, protect, and fulfill human rights, including prisoners' rights. One way to carry out this obligation is to formulate legal arrangements that accommodate prisoners' rights.

The regulation about the provisions of rights intended for prisoners or inmates can be found in articles 9 to 10 of Law Number 22 of 2022 concerning the Penitentiary.¹⁰ The provisions regarding the rights written in this legal arrangement are helpful as elements of protection, interests, and wills¹¹ for prisoners in their capacity as inmates during the coaching period in prison.

The fulfillment of rights for prisoners as defendants in divorce cases experienced based on regulations that have been legalized can be found in article 10 verse (1) letter g of Law No. 22 of 2022 concerning

⁷ Lembaran Negara Republik Indonesia Nomor 6811

⁸ Rhona K.M. Smith and Dkk, *Hukum Hak Asasi Manusia*, Pertama (Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII), 2008), 12, [https://jdih.situbondokab.go.id/barang/buku/13.%20Hukum%20Hak%20Asasi%20Manusia%20by%20Rhona%20K.M.%20Smith,%20dkk.%20\(z-lib.org\).pdf](https://jdih.situbondokab.go.id/barang/buku/13.%20Hukum%20Hak%20Asasi%20Manusia%20by%20Rhona%20K.M.%20Smith,%20dkk.%20(z-lib.org).pdf), diakses pada 13 Juni 2023 pukul 17:15 wib.

⁹ Abdurrahman Kasdi, "Maqashid Syari'ah Dan Hak Asasi Manusia (Implementasi Ham Dalam Pemikiran Islam)," *Jurnal Penelitian* 8, no. 2 (2014): 247.

¹⁰ Lembaran Negara Republik Indonesia Nomor 6811

¹¹ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000), 54.

Penitentiary. The provision of this article talks about the right of prisoners to get “other rights under the provisions of the legislation”.¹² The other rights referred to in this article are civil rights for prisoners in the form of permission to leave prison in extraordinary¹³ cases, as explained in Article 52 Verse 1 letter b of Government Regulation No. 32 of 1999 concerning Terms and Procedures for Implementing the Rights of Inmates.

At this level, prisoners who experience divorce lawsuits have expectations to defend their rights or interests as defendants. Unfortunately, the material contained in the legal arrangement is only limited to normative appeals and does not run efficiently and effectively in practice. It gives rise to new legal events for the penitentiary community, such as the rampant absence of prisoners as defendants to defend their rights in the series of divorce lawsuit hearings in court.¹⁴

This phenomenon of divorce lawsuits was also experienced by prisoners still serving criminal sentences or coaching periods at Malang Prison. In the past year, as many as 176 prisoners or inmates have been sued for divorce by their legal wives in the Religious Court of Malang City jurisdiction.¹⁵ Meanwhile, the number of prisoners' wives who filed for divorce at the Malang City Class IA Religious Court is unknown.

¹² Lembaran Negara Republik Indonesia Nomor 6811

¹³ Lembaran Negara Republik Indonesia Nomor 3846

¹⁴ Darsono, “Perlindungan Hukum Bagi Hak-Hak Narapidana Dalam Kasus Perceraian Di Pengadilan Agama,” *Pengadilan Agama Selat Panjang*, 2022, <https://www.pa-selatpanjang.go.id/id/artikel-pa-slp/1653-darsono.html>, di akses pada 8 Oktober 2022 pukul 15:00 wib .

¹⁵ Uzman, Wawancara, (Malang, 13 April 2023)

However, based on the testimony of judges and junior law clerks related to this phenomenon, it is inevitable that there is every year.¹⁶

The Religious Court of Malang City attempted to summon the defendant, who became a prisoner, by sending a relaas by the bailiff to the address of the Prison of Malang. The relaas were received by the officer¹⁷ but not delivered directly to the prisoner or defendant, but given to the prison officer who had complete authority over the prisoner, namely the Head of Community Guidance Section of the Prison of Malang.¹⁸ As such, there is a discrepancy between the religious court's mechanism of summoning the defendant and giving relaas to the prisoner.

Based on the dynamics of the existing condition, it is not surprising that many prisoners do not know that they have been sued for divorce by their wives and have been legally summoned to follow the course of the trial process at the Religious Court of Malang City. As a result, the judges who handled the case decided with a default judgment, that is, without the defendant's presence.¹⁹

The absence of the defendant as a prisoner in the Prison of Malang to defend his rights in the divorce lawsuit process at the Religious Court of Malang City becomes a particular problem related to fulfilling prisoners' rights. In general, fulfilling prisoners' rights in prison life so far has not

¹⁶ Masykur Rosih, Wawancara, (Malang, 28 September 2022)

¹⁷ Dwi, Wawancara, (Malang, 11 April 2023)

¹⁸ Muhammad Faishol Nur, Wawancara, (Malang, 13 April 2023)

¹⁹ Jefri Sulthonudin, Yustafad, and Abdul Halim Musthofa, "Cerai Gugat Istri Akibat Suami Dipidana Penjara Menurut Perspektif Hukum Islam Dan Hukum Positif (Analisis Putusan Nomor. 609/Pdt.G/2018.PA.Kdr)," *Legitima : Jurnal Hukum Keluarga Islam* 2, no. 1 (December 31, 2019): 1–16, <https://doi.org/10.33367/legitima.v2i1.1072>.

been effective and often injures prisoners who will use their rights. As in the research conducted by Jinani Firdausiah, the fulfillment of prisoners' rights based on articles 9 and 10 of Law Number 22 of 2022 concerning the Penitentiary in Class IIB Probolinggo Prison has not been implemented well due to several factors behind it.²⁰

Then, the fulfillment of family visit leave rights for prisoners whom Ovilia Yana Pradipta and Mitro Subroto have studied revealed that fulfilling these rights seemed complicated because of the convoluted administrative procedures.²¹ Furthermore, the researcher himself is about the fulfillment of spiritual sustenance rights for prisoners who are married. The results of this study explain that based on legal regulations that have been enacted, the fulfillment of rights to spiritual sustenance for married prisoners has not been accommodated well, resulting in sexual deviation phenomena that occur in prison.²²

Based on the research results stated above, there is an urgency for legal institutions and law enforcement officials concerned to improve the mechanism for fulfilling prisoners' rights, primarily related to prisoners' rights, to attend ongoing divorce lawsuit hearings.

²⁰ Jinani Firdausiah, "Implementasi Pemenuhan Hak Narapidana Selama Dalam Lembaga Pemasyarakatan Perspektif Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan (Studi di Lembaga Pemasyarakatan Kelas IIB Probolinggo)" (undergraduate, UIN Kiai Haji Achmad Siddiq Jember, 2022), <http://digilib.uinkhas.ac.id/13660/>.

²¹ Ovilia Yana Pradipta and Mitro Subroto, "Penerapan Pelaksanaan Cuti Mengunjungi Keluarga Sebagai Hak Narapidana Di Lembaga Pemasyarakatan," *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 1 (February 1, 2022): 406–14, <https://doi.org/10.23887/jpku.v10i1.45096>.

²² Akhmad Asrori Maulidani, "Urgensi Pemenuhan Hak Atas Nafkah Batin Narapidana Dalam Perspektif Fikih Islam" 11, no. 2 (2022).

In response to this legal event, a profound reflection on the relevant penitentiary law regulations is needed related to the context of civil law cases (divorce lawsuits) that ensnare prisoners. Although the legal regulation regarding penitentiaries has undergone some improvement in the last few months based on the paradigm shift of penitentiaries, it is essential to review whether the normative values contained in the legal regulation have been implemented well per the needs of the penitentiary community, or whether they are only used as a formality that is exploited as legal politics by policymakers.

In the context of fulfilling prisoners' rights in divorce lawsuits, there needs to be an indicator used to assess the legal regulation related to this matter. This assessment can be based on Lawrence M. Friedman's legal system theory. This theory offers a concept that can guide the state in determining how the law should operate in a country and identifying which aspects are problematic and require immediate improvement. Lawrence M. Friedman's book on legal system theory mentions that law can be effective if there is a proper balance between three essential components: Legal Structure, Legal Substance, and Legal Culture.²³

First, the Legal Structure component involves the legal framework built to regulate prisoners' rights in divorce lawsuits. In this case, the legal regulation must stipulate prisoners' rights to attend hearings, give statements, and express opinions. A clear and firm legal structure will

²³ Achmad Ali, *Keterpurukan Hukum Di Indonesia* (Jakarta: Ghalia Indonesia, 2022), 9.

provide a robust legal foundation to ensure the fulfillment of these prisoners' rights.

Second, the Legal Substance component relates to the content of the legal regulation related to fulfilling prisoners' rights in divorce lawsuits. Includes rules that guarantee prisoners' access to the legal process fairly and equally, including mechanisms that enable their presence in hearings, scheduling arrangements that consider physical limitations of prisoners in custody, and providing opportunities to express their opinions and defenses fully.

Third, the Legal Culture component refers to the norms and values that underlie legal decision-making. An inclusive and fair legal culture regarding prisoners' rights in divorce lawsuits is essential. The court must be open and free from stigmatization or discrimination against prisoners. Support for rehabilitation and understanding prisoners' backgrounds must also be part of the existing legal culture.

By paying attention to these three components, namely Legal Structure, Legal Substance, and Legal Culture, the legal system can provide protection and fair access for prisoners in the context of divorce lawsuits. Of course, it will ensure prisoners have a fair chance to defend their rights and participate effectively in the ongoing legal process.

Departing from the legal event at the Correctional Institution of Malang and the Religious Court of Malang City, where the fulfillment of prisoners' rights as defendants was not appropriately met, it became an

interesting subject to be studied more deeply through the perspective of Lawrence M. Friedman's legal system theory. It aims to evaluate the feasibility of regulations that have been legalized. Although this legal event is classified in civil aspects, the principle of equality before the law indicates that prisoners also have the right to protect their rights or interests in divorce lawsuit hearings at the Religious Court of Malang City.

Thus, this issue becomes an urgent and fundamental legal issue that requires further research in the form of a thesis with the title "The Effectiveness Of Law Number 22 Of 2022 Concerning The Rights Of Prisoners In Divorce Lawsuits In The Of Legal System Theory Perspective: Study In Correctional Institution Malang And Religious Court of Malang City".

B. Research of Limitations

In this study, the researcher limited it to applying other rights granted to convicts, which are regulated in Article 10 Verse (1) Letter (g) of Law No. 22 of 2022 concerning Corrections. The other rights referred to are the civil rights of convicts who are the defendants in the divorce lawsuits they are experiencing.

C. Statement of Problem

From the background that has been presented, the authors formulate several problem formulations, namely:

1. How is the implementation of Law Number 22 of 2022 concerning Corrections on the Rights of Prisoners in divorce lawsuits at Class 1 Prison in Malang?
2. How is the mechanism of applying prisoners' rights in divorce lawsuit hearings at the Religious Court of Malang City from the legal system theory perspective?

D. Objective of Research

Based on the formulation of the problem that has been stated, there are several objectives to be achieved by the author, namely:

1. To find out the implementation of Article 10 verse (1) letter g of Law Number 22 of 2022 concerning Penitentiary regarding divorce lawsuits at the Correctional Institution of Malang
2. To find out the mechanism of applying prisoners' rights in divorce lawsuit hearings at the Religious Court of Malang City from the perspective of legal system theory

E. Benefits of research

1. Theoretical Benefits

Hopefully, this research can provide a scientific contribution that can be used as material for further research studies in developing logical, systematic, and rational thinking concepts. Then, theoretically, this research contributes to developing a particular legal system theory in implementing Article 10, verse (1), Letter G of Law Number 22 of 2022 Concerning Corrections. Furthermore, this research is expected to be

material for study for students of Islamic family law to find out the problems of inconsistencies in legal arrangements regarding the rights of convicts as defendants who often do not attend divorce lawsuits through the perspective of legal system theory.

2. Practical Benefits

a) For Writers

Especially for writers, this research is expected to be a reference in knowing the feasibility of regulations related to convicts' rights as defendants through the perspective of Lawrence M. Friedman's legal system theory. Then it can add insight into the knowledge and develop the knowledge obtained to be practiced in people's lives. In addition, this research was also written to fulfill the final assignment of an undergraduate study (S1) at the Sharia Faculty of UIN Maulana Malik Ibrahim Malang.

b) For Society

In general, this research can contribute to the community to increase an understanding of literacy regarding the rights of convicts as defendants in divorce lawsuits and how Article 10 verse (1) letter g uu no 22 of 2022 concerning correctional facilities can protect the rights of these convicts. In addition, this research is expected to be a foundation for legal academics, legal practitioners, and legal observers to find solutions to the problems raised by the author, especially for legal practitioners in the Correctional Institution of Malang and the

Religious Court of Malang City. Finally, this research will provide information for the two related institutions to establish cooperation.

- c) For the Academic Community of UIN Maulana Malik Ibrahim Malang
- This research can be a reference for students and lecturers in conducting legal research. Then, this research is expected to be able to make a scientific contribution in several legal and scientific clusters, firstly in the criminal law science family, such as in the field of the correctional system and convicts' rights. Second, in the family of Islamic family law, such as in the field of divorce law and the field of religious court procedural law. And third, in the legal science family, such as Lawrance M. Friedman's legal system theory.

F. Operational definition

To avoid bias in understanding this study, the researcher tries to provide an understanding of each variable per word in the title of this study, as will be stated below:

1. Law Number 22 of 2022 Concerning Corrections

The article in Law Number 2 of 2022 on Corrections used in this study refers to Article 10 Verse (1) Letter g, which contains the provision that "prisoners are entitled to other rights under the provisions of other laws and regulations".²⁴ Thus, the correlation of this article with the author's research implicitly implies that even if a person holds convict status and is serving a sentence or coaching in prison and participates as a

²⁴ Lembaran Negara Republik Indonesia Nomor 3846

defendant in the divorce lawsuit that is being experienced, the convict still has civil rights like the defendant. Others are allowed to attend the divorce suit filed by his wife in court.

2. Convict

Convicts normatively contained in Law Number 22 of 2022 Concerning Corrections are currently undergoing training in correctional institutions.²⁵ Meanwhile, in another sense, convicts serve prison sentences for a certain period, for life or death row convicts awaiting execution of a decision.²⁶ Furthermore, according to Wilson, convicts are problematic human beings who have been separated from society to learn to socialize well.

Thus, from the several definitions that have been described, it can be understood that a convict is someone who has been found guilty of a crime committed in the community and has been sentenced by a panel of judges based on the judicial process that has been conducted.

G. Discussion Systematics

The thesis research to be studied by researchers includes empirical research or field research. The systematic discussion in empirical research is classified into five parts or chapters that are correlated with each other so that the research flow in this study can be well systematized and has the essence of eligibility for readers, including namely:

²⁵ Lembaran Negara Republik Indonesia Nomor 6811

²⁶ Anonim, *PARALEGAL.ID (Portal Hukum Dan Peraturan Indonesia)*, "Narapidana," 2022, <https://paralegal.id/pengertian/narapidana/> diakses pada 22 April 2023 pukul 14:00 wib.

1. Chapter I Introduction)

In this chapter, the author will describe several sub-chapters which become the basis for the reader to understand the theme that is carried out in this study. The sub-chapters in this chapter consist of (1) The background, which becomes the author's basis for studying the legal issues raised in this study, (2) The limitations of the problem as a limiting problem that the author carries so that the focus of the research is not biased, (3) Formulation of the problem which became the principle of the author before starting this research, (4) The purpose of the research is to explain why the authors formulated the problems raised in this study, (5) The benefits of research discuss the benefits of what is in this research both theoretically and practically,

2. Chapter II (Literature review)

In this chapter, the author will describe the review literature or previous research that has been studied by previous researchers and includes the most crucial things in each study so that every writer who wants to do research can find a novelty in the research to be designed, besides Therefore, the novelty can complete the required scope of research. Not to forget, the author will also explain the literature review or theoretical framework related to the thesis research theme carried by the author as a guide for the author in analyzing problems, of course.

3. Chapter III (Research Method)

The research method is a guide or procedure needed in every research and has a vital essence for everyone who wants to do research. In this chapter, the author will describe the methods used by the author in analyzing the issues raised in this study, which include the type of research used, the approach used, the type and source of data chosen, the location of the research, the method of determining research subjects, finally, namely method of collecting and processing research data.

4. Chapter IV (Research and Discussion)

This chapter will discuss the author's research data while conducting research in the field, which consists of several components, such as conducting interviews with several sources, making observations or observations, and documentation. All data obtained will then be processed again by the author by analyzing the chosen method. In each data analysis process, the authors also use theories related to research themes that can help writers so that this research can solve the problems raised by the authors in this thesis.

5. Chapter V (Concluding)

This last chapter describes the results of research done by the author briefly, concisely, and clearly as a form of an answer to the problem formulation raised by the author in this research. In addition, this chapter will also present suggestions or suggestions for academics, legal practitioners, and anyone who wishes to conduct research related to the research theme so that the research to be carried out is of better quality.

CHAPTER II

LITERATURE REVIEW

A. PREVIOUS RESEARCH

1. Research on the thesis written by Umm Mutoharoh from the Faculty of Sharia and Law, Sunan Kalijaga State Islamic University Yogyakarta in 2020 entitled "Divorce of Prisoners in Class IIA Wirogunan Prison and Class IIB Women Prison Yogyakarta." The type of research in this thesis is field research. The approach used is a legal sociology approach because the writer examines laws and regulations related to the author's research theme and analyzes the habits of prisoners when detained and how they impact the bonds and behavior of individual prisoners. The data collection method in this thesis is by going directly to the field (interview). The results of this study reveal that when a divorce is experienced by convicts languishing in correctional institutions.²⁷
2. Research on the thesis written by Desmaetha from the Faculty of Law, Riau State Islamic University Pekanbaru in 2021 entitled "Analysis of Decisions Regarding Divorce Cases in the Case of Defendants Convicted of 5 Years and 4 Months in Prison (Case Study of Decision Number 0441/PDT.G/2018/PA. TBK). This thesis's research type combines normative and empirical (sociological) legal research that uses documented data and facts in the field. The nature of this research is descriptive. The

²⁷ Ummu Mutoharoh, "Perceraian Narapidana di Lapas Kelas IIA Wirogunan dan Lapas Perempuan Kelas IIB Yogyakarta," 2020.

method of collecting data in this thesis is by going directly to the field (interviews) and studying documentation.²⁸

3. A research journal written by Fitra Mulyawan from Indonesia's Ekasakti University in 2019 was published in the Journal of Multidisciplinary Research and Development entitled "Implementation of Settlement of Divorce Cases with Husband Reasons in Prison." This research is qualitative research with descriptive qualitative type. The data used in this study are primary data obtained through direct interviews with informants and secondary data obtained through documentation studies through selected literature. The results of this study reveal that the settlement of contested divorce cases because the husband is in prison, is not much different from other contested divorce cases.²⁹
4. A research journal written by Shenti Agustini from the Faculty of Law, Batam International University, Indonesia, in 2022, which was published in the SASI journal, Faculty of Law, University of Pattimura Ambon, entitled "Fulfillment of The Civil Rights of Prisoners Concerning Legal Cases Relating To Divorce." The type of research used in this journal is normative juridical research. The data used are secondary, namely data obtained indirectly from sources or objects of research in the form of primary, secondary, and tertiary legal materials. Data is collected to solve

²⁸ Desmaetha, "Analisis Putusan Tentang Perkara Cerai Gugat Dalam Hal Tergugat Terpidana 5 Tahun 4 Bulan Penjara (Studi Kasus Putusan Nomor 0441/PDT.G/2018/PA.TBK)" (other, Universitas Islam Riau, 2022), <https://repository.uir.ac.id/15340/>.

²⁹ Fitra Mulyawan, "PELAKSANAAN PENYELESAIAN PERKARA CERAI GUGAT DENGAN ALASAN SUAMI DI PENJARA," *Ranah Research : Journal of Multidisciplinary Research and Development* 1, no. 4 (August 2, 2019): 850–59, <https://jurnal.ranahresearch.com/index.php/R2J/article/view/139>.

this problem using a documentation or literature study, which is then analyzed qualitatively. The research results in this journal reveal that Correctional law has not reached its legal objectives due to correctional institutions' weak structure, substance, and culture. So that in this case, the rights of convicts are not fulfilled in the divorce lawsuit process they are experiencing. Therefore, it is necessary to revise the penitentiary law by paying attention to civil rights in handling divorce cases.³⁰

5. Journal written by Jefri Sulthonudin et al. in 2019, which was published in the journal *Legitima (Islamic Family Law)* entitled "Divorce Sues Wife Due to Husband Sentenced to Prison According to the Perspective of Islamic Law and Positive Law (Decision Analysis No. 609/Pdt.G/2018. PA. Kdr). The type of research used in this research is qualitative research. The results of this study reveal that in deciding *verstek* lawsuits in divorce lawsuits involving convicts, judges try to be objective and careful. This attitude of the judge was due to other factors besides the husband being imprisoned, namely the physical violence perpetrated by the husband/convict against the wife as the plaintiff in such a context.³¹

³⁰ Shenti Agustini, "Fulfillment of The Civil Rights of Prisoners Concerning Legal Cases Relating To Divorce," *SASI* 28, no. 4 (December 30, 2022): 697–706, <https://doi.org/10.47268/sasi.v28i4.1182>.

³¹ Sulthonudin, Yustafad, and Musthofa, "Cerai Gugat Istri Akibat Suami Dipidana Penjara Menurut Perspektif Hukum Islam Dan Hukum Positif."

Table 1.1
Literatur Riview

No	Researcher Name, Title, & Year of Research	Equality	Difference
1.	Ummu Mutoharoh Student of State Islamic University Sunan Kalijaga Yogyakarta “Divorce of Prisoners in Class IIA Wirogunan Prison and Class IIB Women’s Prison Yogyakarta” Thesis Year 2020	The theme carried out in this study is the same as the author's research, namely, discussing prisoner divorce. The next similarity lies in the approach used, namely the same use of the legal sociology approach.	The difference lies in the location used. The research object chosen by the author in this study uses two different law enforcement agencies, while the previous authors used the same two law enforcement agencies.
2.	Desmaetha Student of State Islamic University Riau Pekanbaru “Analysis of Decisions Regarding Divorce Lawsuits in the Case of Defendants Sentenced to 5 Years 4 Months in Prison (Case Study of Decision Number 0441/PDT.G/2018/PA.TBK)” Thesis Year 2021	The concept of divorce carried out in this study is the same as the author's research, namely regarding contested divorce.	The fundamental difference with the author's research lies in the research object, where the writer chose to go straight into the field. In contrast, the previous writer used the research object of decision analysis.
3.	Fitra Mulyawan Student of Ekasakti University Indonesia “Implementation of Divorce Lawsuit Settlement with Reason Husband in Prison”	The similarity of this research with the author's	The difference between this research and the author's research lies in the focus to be studied. The focus studied by

	Journal Year 2019	research lies in the concept of divorce carried out by researchers, namely the contested divorce because the husband is in prison.	previous researchers emphasized aspects of resolving divorce cases because husbands are imprisoned in the Religious Courts. In contrast, this research focuses on the legal phenomenon of convicts who do not attend divorce lawsuit trials.
4.	Shenti Agustini Student of International University Batam <i>"Fulfillment of The Civil Rights of Prisoners Concerning Legal Cases Relating To Divorce,"</i> Journal Year 2022	In this journal, the location of similarities is confirmed in the legal issues raised regarding legal issues in divorce cases experienced by convicts.	In this study, the authors focus on fulfilling the civil rights of convicts in divorce cases by referring to the old regulations, namely: Law No. 12 of 1995 Concerning Corrections While the authors in this study will focus on the effectiveness of Article 10 Paragraph 1 Letter G of Law Number 22 of 2022 concerning Corrections
5.	Jefri et al. Students of IAI Tribakti Lirboyo Kediri "Divorce Lawsuit by Wife Due to Husband Sentenced to Prison According to Islamic Law and Positive Law Perspective (Analysis of Decision Number. 609/Pdt.G/2018.PA.Kdr)" Journal Year 2019	This research examines the concept of divorce against convicts	The difference lies in this research There are aspects of the object of research where the previous authors only focused more on the judge's opinion related to the decision number. 609/Pdt.G/2018.PA.Kdr) Meanwhile, researchers are more concerned with fulfilling the right of convicts to attend

			divorce proceedings at a religious court.
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B. Theoretical Framework

1. Right

By nature, humans have rights and obligations over something in living a social life. The emergence of rights and obligations in humans is caused by events that occur when interacting. Talking about rights needs to be based on theories that explain the existence of rights, just as John Locke argued that before there was government, humans had inherent rights from birth. These rights were known as natural rights.³² These are natural rights because human nature is the same among humans, and as long as humans live, these rights are owned and necessary for humans to continue to survive. Human natural rights are also called fundamental rights, which include the right to life, freedom, and private property.

Furthermore, because The concept of rights in this study refers to the rights granted by legal regulations, it is necessary to talk right regarding the theory of rights at the legal level. Normatively, the theory of rights in the law is divided into two types: Belangen Theory (interest theory) and Wilsmacht Theorie (will theory).³³

First interest theory, or belangen theory, this theory states that rights are protected interests. This theory focuses on the benefits that will

³² Carolus Boromeus Kusmaryanto, "Hak Asasi Manusia atau Hak Manusiawi?," *Jurnal HAM* 12, no. 3 (December 31, 2021): 527, <https://doi.org/10.30641/ham.2021.12.521-532>.

³³ Editorial, "Hak Dan Kewajiban Dalam Hukum," *Cekhukum.Com*, n.d., <https://cekhukum.com/hak-dan-kewajiban-dalam-hukum/> diakses pada 15 April 2023 pukul 15:00 wib.

be obtained for humans. At first, this theory was found in Bentham's work which Rudolf von Ihering later adopted. Apart from Ihering, several adherents of this theory included Lyons, MacCormick, Raz, and Campbell. According to Ihering, the purpose of the law is not to protect individual will but to protect particular interests.³⁴ Thus, he argues that the right is an interest protected by law. The state does not create interests that already exist, but these interests already exist in social life, and the state, as the highest peak of power in people's lives, must choose which interests to protect.

Second, the theory of will, or Willsmacht theory, this theory states that the right is a will that is equipped with power. Adherents of today's theory of will, namely HLA Hart. Most adherents of this theory believe that the law's purpose is to provide as much freedom as desired for each individual.³⁵ Then, given this theory, it also emphasizes that the holder of the rights can do anything with the rights they have. As he can use the rights he has or not use the rights he has, individual discretion is a characteristic that tends to stand out from the concept of rights.

Meanwhile, experts in proposing rights in legal science also have different views, such as LJ Van Apeldoorn saying that rights are laws related to a human being or certain legal subjects that can be transformed into a power possessed by someone when the legal subject moves to do

³⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Revisi, 9 (Jakarta: Prenadamedia Group, 2008), 151.

³⁵ Peter Mahmud Marzuki, 150.

something that matters.³⁶ Furthermore, Satjipto Rahardjo also argues that rights are powers that are given by law to someone to protect someone's interests.³⁷ Then according to Ahmad Ali, rights are a relationship between people regulated by law and on behalf of the right holder, by law, given certain powers over the object of rights.³⁸

Thus the definition of rights at the legal level is concluded into three types, namely:³⁹

- 1) Rights are a power an ability that can modify circumstances (a state of affairs)
- 2) Rights are guarantees given by law whose existence is recognized when the rights are used and based on law.
- 3) The use of rights produces a state of affairs directly related to the interests of the rights owner.

The substance of rights in this study relates to the rights acquired and owned by convicts while serving their sentences and undergoing coaching in prison. The rights reserved for convicts can be found in Indonesian legal regulations, specifically in Law Number 22 of 2022 concerning correctional facilities. The material substance regarding the

³⁶ Kansil, C. S. T, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*, 7 (Jakarta: Balai Pustaka, 1886).

³⁷ Abdul Aziz Hakim, *Negara Hukum Dan Demokrasi Di Indonesia*, 1 (Yogyakarta: Pustaka Pelajar, 2011).

³⁸ Achmad Ali, *Menguak Tabir Hukum*, 2 (Bogor: Ghalia Indonesia, 2008).

³⁹ Ridho Afriandedy, "Penghormatan Terhadap Hak-Hak Individu Oleh Pemerintah," *PA Cilegon*, 2022, <https://www.pa-cilegon.go.id/artikel/254-penghormatan-terhadap-hak-hak-individu-oleh-pemerintah-09-08>, diakses pada 10 April 2023 pukul 00:23 WIB.

rights of convicts, in general, is contained in articles 9-10 of Law No. 22 of 2022 concerning Corrections.

Article 9 of Law No. 22 of 2022 concerning Correctional Convicts states that convicts have the right:⁴⁰

- a) Carry out worship according to their religion or belief
- b) Get treatment, both physical and spiritual
- c) Get an education, teaching, recreational activities, and opportunities to develop potential.
- d) Get proper health services and food following nutritional needs
- e) Get information services
- f) Get legal counseling and legal assistance
- g) Submit complaints and complaints
- h) Obtaining reading material and following broadcasts of mass media that are not prohibited.
- i) Receive humane treatment and be protected from torture, exploitation, neglect, violence, and all actions that endanger the physical and mental.
- j) Get work safety guarantees, wages, or work premiums
- k) Get social services, and
- l) Accept or refuse visits from family, advocates, assistants, and the community.

As the rights reserved for convicts or assisted citizens described above, in Article 10 of Law No. 22 of 2022 Concerning Corrections, it is stated that convicts who have met specific requirements without exception are also entitled to:⁴¹

- a) Remission
- b) Assimilation
- c) Leave to visit or be visited by family
- d) Conditional leave
- e) Free time off
- f) Parole, and
- g) Other rights following the provisions of the legislation

2. Human Rights (HAM)

⁴⁰ Lembaran Negara Republik Indonesia Nomor 3846

⁴¹ Lembaran Negara Republik Indonesia Nomor 3846

Human rights (HAM) are a set of rights inherent in the essence and existence of human beings as creatures of God Almighty. These rights are a gift from Him that must be respected, upheld, and protected by the state, law, government, and every individual. It is intended to respect and protect the natural rights of human beings from God. In addition, it aims to respect and protect the dignity and dignity of human beings as God's creation.⁴²

In line with this, one of the figures who view human rights as natural rights is John Locke. According to him, human rights are rights that God directly bestows that no power in this world can match.⁴³ Human rights are fundamental for life and human life and are natural rights that are inseparable from and in human life.

In the context of prisoners who are defendants in divorce lawsuits, they still have human rights that cannot be violated or ignored by anyone, even though they experience limitations in prison conditions. These rights include the right to obtain legal protection and legal certainty, including the right to attend trials, obtain fair and non-discriminatory decisions, and file legal remedies.

Thus, prisoners have human rights that must be respected and protected by the state and society. Prisoners' human rights must not be sacrificed or compromised because of their status as correctional

⁴² Tim ICCE UIN Jakarta, *Demokrasi, Hak Asasi Manusia Dan Masyarakat Madani* (Jakarta: Prenada Media, 2003), 199.

⁴³ Masyhur Effendi, *Dimensi Dan Dinamika Hak Asasi Manusia Dalam Hukum Nasional Dan Internasional* (Jakarta: Ghalia Indonesia, 1994), 3.

residents. Prisoners still have the right to manage and resolve divorce cases in religious courts as part of their right to obtain legal protection and legal certainty.

3. Divorce Concept and Reasons for Divorce

Talking about the meaning of a divorce lawsuit, in the literature concerning related legal arrangements, two points of view explain the definition of a divorce lawsuit. Law No. 1 of 1974 Concerning Marriage explains that a contested divorce is a request filed by one or both parties who wish to end a marriage that has been made.⁴⁴ Meanwhile, in the Compilation of Islamic Law (KHI) contained in Article 132, verse 1, the definition of divorce is a lawsuit for divorce filed by the wife or her attorney at a religious court whose legal area covers the plaintiff's residence unless the wife leaves the husband's residence without permission.⁴⁵ Furthermore, the procedure for the divorce itself is regulated in articles 20 - 36 of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage.⁴⁶

Divorce can be submitted and accepted by the court if the reasons put forward to follow the material's content in the existing legal arrangements as contained in Article 39 verse (2) of Law No. 1 of 1974, which states that in order to carry out a divorce, there must be sufficient

⁴⁴ Lembaran Negara Republik Indonesia Nomor 3019

⁴⁵ Lembaran Lepas Sekretariat Negara Tahun 1991

⁴⁶ Lembaran Negara Republik Indonesia Nomor 3050

reasons that the husband and wife, it will not be able to live in harmony as husband and wife.⁴⁷ Then, the reasons for divorce are also clarified in Article 116 KHI, which states that divorce can occur for justifiable reasons, including first, one of the parties commits adultery or becomes a drunkard, packer, gambler, and so on, which are difficult to cure.⁴⁸

Second, one party leaves the other party for 2 (two) consecutive years without the other party's permission and a valid reason or because of other things beyond his ability. Thirdly, one of the parties gets a disability or illness, so he cannot carry out his obligations as a wife or husband. Fourthly, one of the parties commits cruelty or severe abuse that harms the other party. Fifthly, between husband and wife, there are constant disputes and fights, and there is no hope of living in harmony in the household again. Sixthly, one of the parties gets a prison sentence of five years or a more severe penalty after the Marriage takes place, and seventh, the husband violates the *talak* and apostates, which causes disharmony in the household.⁴⁹

Thus a divorce or a divorce lawsuit can occur if it fulfills the indicators described in the existing legal arrangements. If the above indicators or reasons are unmet, a divorce or divorce suit cannot be accepted and implemented.

4. Lawrence M. Friedman's Theory of Legal Systems

⁴⁷ Lembaran Negara Republik Indonesia Nomor 3019

⁴⁸ Lembaran Lepas Sekretariat Negara Tahun 1991

⁴⁹ Lembaran Lepas Sekretariat Negara Tahun 1991

Lawrence M. Friedman argued that three elements or components in the legal system could influence law enforcement, usually referred to as the Three Elements of the Legal System.

The three legal systems include legal structure, legal substance, and legal culture or culture. Such components form a unified whole and are interconnected with one another. The three components form a solid unit and are interconnected with one another,⁵⁰ known as the legal system.

According to Ahmad Ali, the correlation of the three components is briefly described by explaining these components in the legal system:⁵¹

- a. The structure is analogous to a machine or a tool
- b. The substance is the combination of what the machine does and produces
- c. Legal culture or culture is likened to anyone who wishes to turn on or turn off the machine and how the machine is used.

Then, Friedman, in his work entitled *The Legal System A Social Science Perspective* outlines these components as follows:

1) Structural Components

(“The structure of a system body of the system, the tough, rigid bones that keep the process flowing within bounds. We describe the structure of the judicial system when we talk about the number of judges, the jurisdiction of courts, how higher courts are stacked on top of lower

⁵⁰ CSA Teddy Lesmana, “Pokok-Pokok Pikiran Lawrence Meir Friedman; Sistem Hukum Dalam Perspektif Ilmu Sosial,” *Nusa Putera University*, 2021, <https://nusaputra.ac.id/article/pokok-pokok-pikiran-lawrence-meir-friedman-sistem-hukum-dalam-perspektif-ilmu-sosial/>, diakses pada 12 Maret 2023 Pukul 21:00 wib.

⁵¹ Achmad Ali, *Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)* (Jakarta: Kencana, 2009).

courts, what persons are attached to various courts, and what their roles consist of”)⁵²

The structure is part of the legal system that operates in a mechanism related to the legislative, judicial, executive, and various kinds of bodies that have the authority to make, implement and enforce the law, which also provides limitations on a legal product.⁵³

In this case, Lawrence provides a structural example found in the United States Supreme Court with nine justices enforcing legal products.

2) Substance components

*(“The substance comprises substantive rules and rules about how institutions should behave. Structure and substance are real components of a legal system, but they are at best a blueprint or design, not a working machine”)*⁵⁴

The substance is the rules, norms, and actual behavior patterns of the people who are in the system. It can also be said to be a tangible result, a product produced and published by the legal system.

The elements that include such substances include the actual rules, norms, and patterns of behavior contained in the system. Concrete evidence of such a substance can take the form of individual legal norms that develop in society (*in concrete*), then living law in society (living

⁵² Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), 16.

⁵³ Bernard L Tanya, *Teori Hukum (Strategi Tertib Manusia Lintas Ruang Dan Generasi)* (Yogyakarta: Genta Publishing, 2013).

⁵⁴ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, 15.

law/in *Astrabc to*), and general legal norms contained in laws (law in books).⁵⁵

3) Components of legal culture

*("It is the element of social attitude and value. The phrase "social forces" is itself an abstraction; in any event, it has needs and makes demands; this is sometimes done and sometimes does not invoke a legal process, depending on the culture.")*⁵⁶

Legal culture is a human attitude toward the existing legal system through beliefs, values, thoughts, and expectations. Examples of legal culture relate to human actions against the law itself, such as the feeling of shame and guilt when breaking the law, and so on.⁵⁷

Further, legal culture is an essential aspect of the legal system, which requires that law is not only seen as an absolute formulation of regulations on paper but understood as an interpretation that occurs at the level of social reality in society. Thus, the dynamics of law are greatly influenced by non-legal factors such as values, attitudes, and public views on the applicable legal regulations.

⁵⁵ Zulfa 'Azzah Fadhlika, "Mewujudkan Hukum Yang Ideal Melalui Teori Lawrence M. Friedman," *Heylaw.Edu*, 2022, <https://heylawedu.id/blog/mewujudkan-hukum-yang-ideal-melalui-teori-lawrence-m-friedman>, diakses pada 15 April 2023 pukul 21:00 wib.

⁵⁶ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, 16.

⁵⁷ Muhammad Reza, "Sistem Hukum," 2017, <https://www.metrokaltara.com/8788-2/>, diakses pada 6 April 2023 Pukul 14:00 wib.

CHAPTER III

RESEARCH METHODS

A. Types of research

This research is a type of empirical juridical research. This research examines the normative legal provisions that apply to any particular legal event that arises in the middle of society.⁵⁸ Salim HS and Erlies Septiana Nurbaini stated that this legal research examines and analyzes how the legal behavior of individuals or communities related to law and the sources of data used come from primary data.⁵⁹

This research is intended to find out the truth of correspondence, namely by reviewing legal regulations regarding the rights of convicts as defendants in the provisions of the Correctional Law and its implementing regulations by adjusting to legal norms based on three fundamental aspects of Lawrence M Friedman's legal system theory.

B. Research Approach

The sociological juridical approach is the approach used in this research. This approach studies law with an interdisciplinary approach, namely by combining sciences correlated with one another, namely legal science and social science, in a single approach. The sociological juridical

⁵⁸ Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek* (Jakarta: Rineka Cipta, 2012), 126.

⁵⁹ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: Raja Grafindo Persada, 2013), 21.

approach is intended to understand the law as a result of thinking between text and context.⁶⁰

The legal understanding of the text in this study is closely related to legal events regarding the effectiveness of the legal and regulatory provisions regarding the rights of convicts in the Prison of Malang in Article 10 Verse 1 letter g of the Correctional Law, which can obtain permission to leave prison in extraordinary cases. Then, in the legal context of attending a divorce lawsuit trial at the Religious Court of Malang City. So that at this level, the law is a concept of reality that, when applicable, can influence or be influenced by other factors.

C. Research Location

The research location is the place used to obtain data from informants. The research location chosen by the researcher, two locations within the jurisdiction area in Malang City, are used as research objects. First place in the Correctional Institution of Malang at Jl. Asahan, Bunulrejo, Blimbing District, Malang City, East Java Province. Then secondly, at the Religious Court of Malang City, located at Jl. Raden Panji Suroso No. 1, Polowijen, Blimbing District, Malang City, East Java Province.

D. Subject Determination Method

The subject determination method used in this study is a purposive sampling technique. Purposive sampling is a sampling technique selected

⁶⁰ Muhammad Chairul Huda, *METODE PENELITIAN HUKUM (Pendekatan Yuridis Sosiologis)* (IAIN SALATIGA, 2022), 20, <http://e-repository.perpus.iainsalatiga.ac.id/14262/>.

based on subjective considerations or research from the study.⁶¹ Dana P. Turner suggests that this sampling technique is used when the researcher already has individual targets with specific characteristics according to the topic raised.⁶² Thus, researchers can determine whether their respondents and informants represent the population.

The determination of subjects in this study was determined by direct researchers who were closely related to the issues raised, where the subjects of this study had the best position in providing access to broad information to researchers so that the data used was comprehensive. Of course, in this case, it involves several parties, such as prisoners and officers in the Correctional Institution of Malang and the Religious Courts Malang City officers.

Table 1.2
(Informant List)

No	Informant Name	Agency Origin	Position	Status
1.	M Faishol Nur	Malang Prison	Head of Community Guidance	Prison officer
2.	Uzman	Malang Prison	Community Guidance staff	Prison officer
3.	Ali bin Husain Abdullah	Malang Prison	-	Convict
4.	Nahrul Hayat	Malang Prison	-	Convict
5.	Drs H Masykur Rosih	Religious Court of Malang city	Judge	Religious court officials
6	Muhmmad Dedy	Religious	Junior	Religious

⁶¹ Burhan Ashshofa, *Metode Penelitian Hukum*, 3rd ed., 3 (Jakarta: Rineka Cipta, 2001), 91.

⁶² Sampoerna University, "Teknik Purposive Sampling: Definisi, Tujuan, Dan Syarat," *Sampoerna University*, n.d., <https://www.sampoernauniversity.ac.id/id/purposive-sampling-adalah/> diakses pada 17 April 2023 pukul 20:00 wib.

	Kurniawan SH, MH	Court of Malang city	Registrar of Law	court officials
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E. Data Type

Primary and secondary data are the data types used in empirical juridical research:

1. Primary data

The primary data used in this study is data obtained directly from the first source relating to legal events regarding the rise of inmates who were not present at the divorce trial by conducting direct interviews with the parties, both structured and unstructured, from the Correctional Institution of Malang and Religious Court of Malang City.

The Correctional Institution of Malang was represented by the Head of the Community Guidance section and his staff, who had the authority to guide prisoners. Meanwhile, from the Religious Court of Malang City, a judge's job represented was to decide on divorce cases involving convicts as defendants and young legal clerks. Whose duty is to assist the deputy clerk in carrying out the administration of the magistrate clerkship.

2. Secondary Data

Secondary data is obtained by conducting library research on the research materials used, which include primary legal materials, legal materials, and secondary and tertiary legal materials, namely:

a) Primary legal material

The primary legal materials in this study are legal materials related to the topic of the issues raised, which include laws and regulations that follow the issues discussed, which include:

1. Law Number 12 of 1995 concerning Penitentiary
2. Law Number 22 of 2022 concerning Penitentiary
3. Government Regulation Number 32 of 1999 concerning Procedures and Conditions for Granting Prisoners' Rights
4. Law Number 39 of 1999 concerning Human Rights
5. Universal Declaration of Human Rights (UDHR)
6. International Covenant on Civil and Political Rights (ICJR)
7. Law Number 7 of 1989 concerning Religious Court's jo. Law Number 3 of 2006 jo. Law Number 50 of 2009 concerning Religious Courts
8. Compilation of Islamic Law (KHI)
9. *Burgerlijk Wetboek* (Civil Code)
10. Law Number 1 of 1974 concerning Marriage (Law No. 1 of 1974)
11. Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974
12. *Het Herziene Inlandsch Regelement* (HIR)
13. *Rechtreglement voor de Buitengewesten* (Rbg)
14. *Reglement op de Bugarlijk Rechtsvording* (Rv)

b) Secondary Legal Materials

Secondary legal materials in this study are intended to provide further explanation regarding primary legal materials and materials that can support the structure of this research obtained from library sources. The literature sources referred to include research results, the works of legal thinkers, articles, online media, various papers, journals, newspapers, documents, and various literature related to legal issues raised by the author. One of the secondary legal materials used by the author is the Law System Theory of Social Science Perspective Lawrance M. Friedman.

c) Tertiary Legal Materials

Tertiary legal materials in this study are intended to complement and provide guidance and explanation of the primary and secondary legal materials used. These materials include the Big Indonesian Dictionary (KBBI), legal dictionaries, encyclopedias, etc.

F. Method of collecting data

The data collection method used in this study is as follows:

1) Interview

Interviews are an essential part of empirical legal research used to obtain information or sources of information orally to achieve specific goals.⁶³ The interview technique used in this study used mixed interviews, namely structured and unstructured interviews with related parties. The informants interviewed by the author included the Head of the Community Guidance Section and his staff, The Correctional Institution of Malang, and then judges and young clerks of law for the Religious Court of Malang City.

2) Documentation

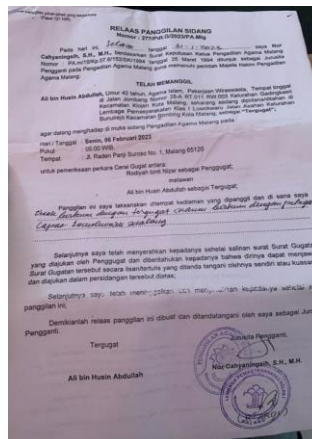
Documentation is a technique used to collect data from documents or library materials and records.⁶⁴ When the researcher has entered this stage, the researcher will record the results of the recordings obtained from the informants when conducting research in the Correctional Institution of Malang and the Religious Court of Malang City. Apart from that, the researcher will also record and photograph library

⁶³ Burhan Ashshofa, *Metode Penelitian Hukum*, 95.

⁶⁴ Hardani and Dkk, *Metode Penelitian Kualitatif & Kuantitatif* (Yogyakarta: Pustaka Ilmu, 2020).

materials that are essential according to the author and are closely related to the legal issues raised by the author regarding the effectiveness of Article 10 Verse 1 Letter g of Law Number 22 of 2022 concerning correctional regarding the rights of convicts in lawsuit for divorce from the perspective of legal system theory whose application was carried out in Correctional Institution of Malang and the Religious Court of Malang City.

Figure 1.1
(Relas received by the prison)



(Accessed from Malang Prison officials)

G. Technique of Data Sources Collection

As data and legal materials have been collected, then the validity of the data is well selected. The next stage is to carry out data processing, intending to manage the data that has been collected in such a way as to make it easier for researchers to carry out an analysis of the data and legal materials as a whole. Orderly and systematic. The data processing method used in this study went through several stages, namely:

1. Editing

The initial stage in the data processing process is the editing stage. At this stage, the author will examine the data by checking, checking, or correcting the data sources resulting from interviews that have been conducted or those sourced from the literature. The data in this study resulted from interviews with several informants involved, such as the Community Guidance Section and its staff, The Correctional Institution of Malang, and prisoners. Then, forms the Religious Court of Malang City, such as the judges and young legal clerks, were proportionally adjusted to the issues raised.

2. Classification

After the editing stage is complete, the next stage is classification. At this stage, the process of data reduction and grouping of the data that has been obtained is carried out. After the process ends, the data that has been collected is then selected according to the substance of the same legal event. The data selected in this study is limited to data that correlates with legal issues raised regarding the right of prison at Correctional Institution of Malang inmates to attend divorce proceedings in the Religious Court of Malang City.

3. Verification

At this stage, the researcher will determine several steps of activity to review the information obtained from the field so that the data is guaranteed valid and acknowledged for its truth and clarity. The verification used by the author is by meeting and providing the results of

interviews with informants in the Correctional Institution of Malang and the Religious Court. of Malang City.

4. Analysis

The next stage is data analysis. At this stage, the researcher will conduct a study or examine the results of data processing assisted by the theories used in the form of sentences that have been arranged properly and correctly so that they are easy to read and interpret. The data analysis used in this study is descriptive to provide an overview of the subjects and research objects in the issues raised as the research results have been obtained.⁶⁵ In this study, the author will analyze the effectiveness of legal arrangements in Article 10 Verse 1 letter g of Law Number 22 of 2022 concerning correctional regarding the signal of fulfilling the rights of convicts as defendants in a divorce suit through Lawrance M. Friedman's legal system theory.

5. Conclusion

It is at this last stage that all the data that the author has analyzed based on Lawrance M Friedman's legal system theory will reveal the conclusions of the results of research on legal issues raised by the author regarding the rise of inmates in Correctional Institutions of Malang who were not present at the divorce trial at the Religious Court of Malang City.

⁶⁵ Muhamin, *Metode Penelitian Hukum*, 1 (Mataram-NTB: Mataram University Press, 2020), 105.

CHAPTER IV

DISCUSSION OF RESEARCH FINDINGS

A. Implementation of Law Number 22 of 2022 Concerning Corrections Against Prisoners' Rights in Divorce Lawsuits in Malang Correctional Institution

1. Overview of the Correctional Institution Malang

a) Profile of Correctional Institution Malang

The Correctional Institution of Malang is located at Jalan Asahan Number 7 Malang, approximately 2 Km from the City Center, in the middle of a residential area. The Correctional Institution of Malang is one of the Dutch heritage buildings built in 1918; until now, it has never experienced a change in function. During this period, under the passage of time, the Correctional Institution of Malang has undergone repairs and additions to office buildings, residential blocks, workspaces for prisoners, employee housing, and other development facilities.

Based on historical records, the Correctional Institution of Malang was established in 1918 at the same time as the prison because it was a legacy of the Dutch colonial government. Establishing the Penitentiary was to imprison violators of dutch colonial regulations. Correctional Institution of Malang was originally a prison whose function was to rehabilitate convicts who violated it. In its development, the prison facility turned into a place to detain freedom fighters who demanded the independence of the Indonesian nation. The name Lowokwaru Prison

remained in effect until 1964, and after that, it changed to Penitentiary. The changes after the congress in Bandung resulted in the instruction from the Head of the Directorate of Corrections Number JH G 8/506 dated June 17, 1964. After the independence of the Indonesian nation in 1945, there was a transfer of power from the Dutch government to the government of the Republic of Indonesia, which included in the Institution the transfer of assets of the Dutch colonial government. Corrections, still called prisons, became one of the assets transferred to the Indonesian government. Until now, Correctional Institutions still function as a place to educate convicts who violate the law.

Currently, the Correctional Institution of Malang functions as a Correctional Technical Implementation Unit directly responsible to the Regional Office of the Ministry of Law and Human Rights in East Java. Correctional Institution of Malang is located at Jalan Asahan no. 7 with a land area of 57,710 m² a building area of 14,678 m² and an official residence covering an area of 7,600 m² with land certificate number: 1614/1985 dated 17 July 1985 as usufructuary rights. Correctional Institution of Malang consists of 22 blocks and 211 rooms with a capacity Of 1282 people, and currently, on April 27, 2023, it is inhabited by 3,005 Correctional Assisted Residents.⁶⁶

⁶⁶ Roni, wawancara, (Malang, 27 April 2023)

b) Job and function

1) Main tasks

Correctional Institutions or Correctional Institutions have the task of carrying out correctional convicts or students.⁶⁷

2) Function

- a) Conducting guidance for prisoners or students
- b) Providing guidance, preparing facilities or facilities, and managing work results
- c) Conducting social or spiritual guidance for prisoners/students
- d) Maintaining security and order in the Penitentiary Institutions, and
- e) Carrying out administrative and household affairs⁶⁸

c) Vision and mission

By the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 33 of 2020 concerning the Strategic Plan of the Ministry of Law and Human Rights for 2020 - 2024 and the Strategic Plan of the Directorate General of Corrections for 2020 - 2024, it is stipulated that the vision, mission, and objectives of the Directorate General of Corrections are the vision, mission, and objectives that must be guided by the Technical Implementation Unit of Corrections as follows Charts 1.1:⁶⁹

⁶⁷ Roni, Wawancara, (Malang, 27 April 2023)

⁶⁸ Roni, Wawancara, (Malang, 27 April 2023)

⁶⁹ Roni, Interview, (Malang, 27 April 2023)

**Charts 1.1
(Vision and Mission of Prison)**



(Accessed from Malang Prison officials)

d) Organizational Structure of Correctional Institution Malang

**Charts 1.2
(Organizational Structure of Correctional Institution Malang)**



(Accessed from Malang Prison officials)⁷⁰

⁷⁰ Roni, Wawancara, (Malang, 27 April 2023)

2. Exposure and data analysis:

Implementation of Fulfillment of Prisoners' Rights to Divorce Petitions Based on Law No. 22 of 2022 concerning Penitentiary in Malang Correctional Institution

The issue involving prisoners as defendants in divorce cases in religious courts is highly complex and critical. It is because, as individuals serving criminal sentences, they should receive moral support from their wives as the closest person; instead of getting that, they are trapped in domestic conflicts that end up in legal processes that affect their lives in prison. According to Maslow, the need for belongingness is one of the basic psychological needs for humans.⁷¹ Prisoners, like humans in general, also desire emotional bonds and strong relationships, including marital ones. However, when prisoners are sued for divorce by their wives, this need for belongingness becomes disrupted.

Regardless of their status as prisoners and their limitations to access the outside world, they still have rights that must be recognized and respected under the universal principles of human rights and have been guaranteed by the constitution of the Basic Law (UUD) of the Republic of Indonesia 1945 Article 28G verse (1) which states:⁷² “Everyone has the right to protection of personal self, family, honor, dignity, and property under his control, and has the right to security and

⁷¹ Maslow, A. H., *A Theory of Human Motivation. Psychological Review*, (4), 1943, 50, <https://doi.org/10.1037/h0054346>.

⁷² Lembaran Negara Republik Indonesia No 75, 1959

protection from threats of fear to do or not do something that is a human right.”

Genealogically, the Universal Declaration of Human Rights (UDHR) was approved and announced by the UN General Assembly on December 10, 1948, through resolution 217 A (III).⁷³ The primary basis for the declaration was the rights granted directly by God, also called natural rights, inherent in humans and considered suitable for all nations; therefore, human rights are universal. The main point of the declaration contains principles that apply to all individuals without distinction, including Prisoners.

Some of the UDHR principles related to Prisoners are contained in several articles, namely in Article 5 UDHR, which explains that “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”⁷⁴ Then article 7 emphasizes that “All are equal before the law and are entitled to equal protection of the law without any discrimination; all are entitled to equal protection against any discrimination that violates this declaration.”⁷⁵

Then, in Article 10 verse (1) of the International Covenant on Civil and Political Rights (ICCPR), it is also affirmed that: “All persons deprived of their liberty shall be treated with humanity and with respect

⁷³ Rhona K.M. Smith and Dkk, *Hukum Hak Asasi Manusia*, 15.

⁷⁴ Pasal 5 Deklarasi Hak Asasi Manusia (DUHAM), [https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--\\$R48R63.pdf](https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--$R48R63.pdf), diakses pada 15 Juni 2023 pukul 02:45 wib

⁷⁵ Pasal 7 Deklarasi Hak Asasi Manusia (DUHAM), [https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--\\$R48R63.pdf](https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--$R48R63.pdf), diakses pada 15 Juni 2023 pukul 02:45 wib

for the inherent dignity of the human person.”⁷⁶ This provision indicates that the loss of freedom is the only suffering imposed on Prisoners. As such, prisoners must still be treated humanely and respected for their dignity as human beings. In addition, Article 26 of ICCPR affirms that: “All persons are equal before the law and are entitled to equal protection of the law without any discrimination.”⁷⁷ This provision indicates that discriminatory treatment is not allowed in the context of fulfilling the rights of Prisoners as a result of law enforcement.

According to Article 3 of Law Number 12 of 1995 (Law No. 12 of 1995) on Correctional Institutions, “The correctional system functions to prepare Correctional Institution Residents to integrate healthily with society so that they can play a role again as free and responsible members of society.”⁷⁸ Correctional institutions are part of the criminal justice system that functions to achieve the goal of resocialization.

Resocialization is a process of coaching prisoners carried out gradually according to time and results achieved.⁷⁹ This process consists of three stages, namely the initial stage, the advanced stage, and the final stage. Resocialization aims to change prisoners' behavior to become good

⁷⁶ Pasal 10 Ayat 1 International Covenant on Civil and Political Rights (ICCPR), <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> diakses pada 15 Juni 2023 pukul 02:45 wib

⁷⁷ Pasal 10 Ayat 1 International Covenant on Civil and Political Rights (ICCPR), <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> diakses pada 15 Juni 2023 pukul 02:45 wib

⁷⁸ Lembaran Negara Republik Indonesia No 3614

⁷⁹ Petrus Irwan Panjaitan, Radisman Saragih, And Inri Januar, “Persepsi Anggota Masyarakat Mengenai Resosialisasi Dan Rehabilitasi Mencegah Bekas Narapidana Menjadi Residivist,” *To-Ra* 5, no. 3 (2019): 4098, <https://doi.org/10.33541/JtVol5Iss2pp102>.

and responsible citizens when they return to society. It is aligned with Peter Hoefnagels' opinion that criminalization is a conflict resolution.⁸⁰

Resocialization is also related to the central concept of social reintegration, the spirit of the Correctional Institution that considers that crime results from conflict between prisoners and society. Therefore, criminalization not only intends to sanction prisoners but also to restore their relationship with society. It requires a correctional system that can prepare prisoners to integrate healthily with society.

According to Romli Atmasasmita, an interaction process between prisoners, correctional officers, and society is needed, which is oriented to involve changing the value system of prisoners so that they can adapt better and more effectively to the norms and values that apply in society.⁸¹ To realize this, the rule of law is needed to become a facilitator to achieve lofty ideals. This context aligns with the utilization/utilitarian theory that ensures unlimited human happiness.⁸² As an adherent of this theory, Jeremy Bentham argues that, in essence, the purpose of the law is the existence of benefits that produce pleasure for most people, including prisoners.⁸³

⁸⁰ Teguh Prayadi, "Proses Pembinaan Narapidana Dalam Fungsi Lembaga Pemasyarakatan," *Jurnal Pendidikan dan Konseling* 4, no. 3 (2022): 665.

⁸¹ Melania Altri Afrodita, Nilda Elfemi, and Yuhelna Yuhelna, "Proses Resosialisasi Mantan Narapidana Di Tengah Lingkungan Masyarakat Pasar Siulak Gedang Kecamatan Siulak Kabupaten Kerinci Provinsi Jambi," *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 4 (August 17, 2022): 4099, <https://doi.org/10.31004/jpdk.v4i4.6126>.

⁸² Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, 5th ed. (Yogyakarta: Liberty, n.d.), 80.

⁸³ Ibid

The legal arrangement formulated in the context of imprisonment was initially regulated in Law No. 12 of 1995 on Imprisonment.⁸⁴ Based on the shift in the paradigm of imprisonment and as an effort to perfect the arrangement that was felt not to accommodate the emergence of this harmonization problem between norms, which affected the guarantee of legal certainty for all parties,⁸⁵ especially in the life of the prison community, the policy makers conducted a scientific justification of the legal rule, resulting in Law No. 22 of 2022 on new Imprisonment.⁸⁶

The rights of prisoners guaranteed in the legal arrangement that was just legalized are contained in Articles 9 to 10 of Law No. 22 of 2022 on Imprisonment.⁸⁷ The rights in these articles explain the rights obtained by prisoners while serving sentences/guidance in prisons. Although the policymakers have redesigned the legal arrangement comprehensively, unfortunately, when there is a problem of prisoners who are sued for divorce by their wives in the Religious Court, it seems that certain rights to respond to this problem have not been integrated well, course, this is a red note that must be immediately resolved by the policymakers so as not to cause a commotion for the prison community, especially for prisoners who are defendants.

⁸⁴ Lembaran Negara Republik Indonesia Nomor 3614

⁸⁵ Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, "NASKAH AKADEMIK RANCANGAN UNDANG-UNDANG TENTANG PEMASYARAKATAN" (Bphn.go.id, 2017), 2, https://bphn.go.id/data/documents/na_ruu_pemasyarakatan.pdf.

⁸⁶ Lembaran Negara Republik Indonesia Nomor 6811

⁸⁷ Lembaran Negara Republik Indonesia Nomor 6811

This problem's orientation relates to prisoners' right to attend divorce lawsuit hearings in the Religious Court. To respond to this right, if the legal regulation is studied more deeply according to the researcher's opinion, implicitly, it can refer to Article 10, Verse 1 letter g of Law No. 22 of 2022 on Imprisonment.⁸⁸ The provision stated in this article states that prisoners have the right to obtain other rights under the provisions of laws and regulations.

As there is a new law in the legal culture of Indonesia, there is usually a government regulation that is used as the right hand in implementing this law. Therefore there has been no government regulation regarding this matter until now. Then the researcher refers to Government Regulation No. 32 of 1999 concerning Terms and Procedures for Implementing Prisoners' Rights. Based on Article 52 Verse 1 of this government regulation, other rights referred to are civil rights in the form of permission to leave prison in extraordinary situations,⁸⁹ including attending divorce lawsuit hearings in religious courts. Seeing this implicit recommendation, prison officials should be able to fulfill the rights of prisoners who are defendants to attend divorce lawsuit hearings in the Religious Court so that justice and equality before the law between both parties involved can be appropriately fulfilled.

A renowned constitutional law scholar in England, A.V.Dicey once touched on the meaning of “equality before the law,” which was used as a

⁸⁸ Lembaran Negara Republik Indonesia Nomor 6811

⁸⁹ Lembaran Negara Republik Indonesia Nomor 3846

form of interruption to the life of the administrative court. Something is fascinating about Dicey's doctrine, regardless of the view abandoned in England, but the meaning of the doctrine remains important for legal thinkers. Dicey's rationalization means that doctrine is that "everyone is subject to the law (both substantive and procedural), and any dispute that arises must be resolved in the same forum."⁹⁰ Therefore, based on this view, it is appropriate that the involvement of prisoners in divorce lawsuits be resolved in the same forum.

The expected ideal condition contradicts the existing conditions in the Prison of Malang. It was expressed based on the results of an interview with Mr. Uzman, a prison officer who was in charge of providing community guidance to prisoners; out of 3016 total prisoners who were incarcerated in prison, as many as 176 prisoners had been sued for divorce by their legal wives at Class IA Malang Religious Court did not meet the summons to attend his divorce trial.⁹¹ Seeing the case, it is clear that the principle of equality before the law for prisoners is just empty talk and not accommodated well by prison officers.

The background of prisoners not fulfilling the summons that the Religious Court of Malang city has delivered through a letter of *relaas* needs to be explored more deeply. The legal regulations have guaranteed the defendant's rights as stipulated in Article 121 Verse 2 *Het Herziene*

⁹⁰ Hasbi Hasan, *Kompetensi Peradilan Agama* (Jakarta: Gramata, 2010), x.

⁹¹ Uzman, *Wawancara*, (Malang, 19 April 2023)

Inlandsch Regelement (HIR).⁹² Regardless of the status of the defendant who became a prisoner in the case of a divorce lawsuit, he should still be given the right to submit a written answer.⁹³ Concerning prisoners who do not fulfill their rights to attend court, then a temporary suspicion appears that there is a pattern applied by prison officers who have absolute authority over prisoners to overcome this problem.

The step above the pattern applied by the prison officers includes the relative rights (*nisbi*), a power/authority given by law to the legal subject to perform a public legal action.⁹⁴ The legal action included the fundamental question regarding the non-attendance of prisoners in divorce litigation hearings. The issue's primary focus is based on the interview results with Mr. Uzman as staff of Community Guidance, namely related to the mechanism of notification *relaas/calls*⁹⁵ to prisoners whom the Religious Court of Malang City has sent.

The mechanism is based on the welfare and psychological balance of prisoners and includes three others:⁹⁶

a. Evaluation of the situation and condition of prisoners

In this initial step, prison officers realize that it is essential to understand the situation and condition of prisoners who will be sued for divorce before delivering a *relaas* letter. This process aims to understand

⁹² Pasal 121 Ayat 1 *Het Herziene Inlandsch Regelement (HIR)*

⁹³ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2016), 462–63.

⁹⁴ R. Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2018), 289.

⁹⁵ Uzman, Wawancara (Malang 13 April 2023)

⁹⁶ Muhammad Faishol, Wawancara (Malang, 13 April 2023)

the character and mentality of the prisoner. When a is relaas addressed to prisoners, they will assess based on the activities of prisoners who will be sued for divorce daily. The policy is done because prison officers admit that, most likely, when the prisoner already knows that he will be sued for divorce, he will experience extreme mental conditions that interfere with the coaching process being undertaken. In addition, at one time, a dynamic occurred in the life of the community imprisonment; a prisoner almost committed suicide because he knew he would be sued for divorce by his wife. Therefore, prison officers in this stage are cautious in assessing the character of prisoners before taking the next step.

b. Consideration of the mentality of prisoners

After prison officers have successfully identified the previous step, the next step applied before telling about divorce litigation is categorizing the prisoner's mentality. This process aims to see how far mental resilience and emotional strength are possessed by prisoners when facing information about divorce litigation. Prison officers make two Categories against prisoners, namely having a solid or weak mentality. This policy is based on anticipating negative impacts that prison officers do not expect, and this information becomes the most important basis for determining the next step, namely delivering relaas.

c. Delivery of relaas to prisoners

After the previous step was successfully classified by prison officers based on two categorizations of his mentality, prison officers will

deliver *relaas* to prisoners involved in divorce litigation. The *relaas* were delivered to prisoners with solid mental characters, assuming they could deal with these problems well. However, for prisoners with weak mental conditions, prison officers will not tell about divorce litigation against him consideration to avoid the negative impacts that prisoners will face excessively. The notification is fully submitted to the family so they can notify divorce litigation slowly; of course, in this case, *relaas* is held by prison officers.

The actions described above indicate that the mechanism applied by prison officers to deliver *relaas* letters to defendants who become prisoners is done with stages that require them to be careful in dealing with this problem. Therefore they are in charge of the division of community guidance tasked to coach prisoners then the steps are taken based on the psychological conditions of prisoners. It aims to prevent the occurrence of problems that affect the mental health condition of prisoners as a result of notification of divorce litigation filed by his legal wife. In addition, the main point of this step is not to disturb the focus of coaching being undertaken by prisoners.⁹⁷

Although at first the attitude of officers in taking policy seemed firm to handle legal cases of prisoners involved in divorce litigation, then as a proof stage needs to be confirmed to the concerned (prisoners/defendants). The effort is made to peer how effective prison

⁹⁷ Muhammad Faishol, Wawancara, (13 April 2023)

officers do policy intervention, whether it has been fair or even caused other problems for prisoners. Responding to this, here researchers will describe interview results with ABH and NH as prisoners who have been sued for divorce by their legal wives.

It turns out that the mechanism applied by prison officers causes psychological problems for prisoners who are sued for divorce. The problem was solved based on interview results with ABH as a prisoner categorized as having a solid mental character. ABH stated that he experienced culture shock over the legal events he experienced when prison officers gave him *relaas*.⁹⁸ The primary cause of ABH experiencing this condition is *relaas* given by prison officers done suddenly when researchers wanted to do interviews.

Unlike ABH, based on interview results with NH as a prisoner who has also been sued for divorce by his wife about six months ago, he did not experience conditions like those faced by ABH. NH's intuitive awareness worked when he was caught in a criminal case and tried to accept it if it happened.⁹⁹

Based on the statements that have been expressed by ABH and NH, interpreting that intervention of prison officers to overcome the problem of involvement of prisoners in divorce litigation cases has not been so effective even though rationalization of prison officers is based on the

⁹⁸ ABH, Wawancara, (Malang, 9 Mei 2023)

⁹⁹ NH, Wawancara, (Malang, 9 Mei 2023)

context of the coaching process, still causing other problems in psychological aspects faced by prisoners.

In addition to the factor of the mechanism of release that is not well delivered to the defendant as a prisoner, there are internal factors that come from prisoners as researchers' findings that include two things:

1) **Weak understanding of legal arrangements**

Weak legal knowledge of prisoners regarding the arrangement of rights to attend divorce litigation can be a significant obstacle. The limitation of the legal knowledge of prisoners about their rights in the context of divorce litigation can result in a misunderstanding of involvement in the ongoing legal process. It is based on interview results with ABH and NH related to the researcher's hypothesis; both respondents expressed that they do not understand that they are entitled to certain rights.

Their intuitive awareness only focuses on remission rights, assimilation, and other rights that can reduce their sentence. This condition may be caused by various factors, such as limited access to legal information, lack of legal education, or lack of opportunity to obtain adequate legal knowledge during detention. Therefore, when they are involved in other legal issues (civil), they experience inner turmoil,¹⁰⁰ so they cannot defend their rights/interests in the divorce litigation hearing process in the Religious Court.

¹⁰⁰ ABH dan NH, Wawancara, (Malang, 9 Mei 2023)

2) **The condition is in prison**

The condition of prisoners in prison is one of the causes they can not attend divorce litigation hearings in the Religious Court. This condition is based on interview results with ABH and NH, who stated they could not leave prison without official permission.¹⁰¹ Even if they are allowed, it is no secret that licensing will be challenging to obtain.

As described, interpreting becomes an obstacle for prisoners to attend court and provide defense or pro-actively undergo the legal process. Of course, this has an impact that will harm the defendant's rights as a prisoner based on verstek decisions that indeed become the decision of judges who handle divorce litigation cases when the defendant does not fulfill relaas calls that have been sent again to the defendant's address as regulated in Article 126 HIR¹⁰² Jo. Article 158 Rbg.¹⁰³

When researchers asked about policies implemented in addition to notification of relaas to prisoners, based on interview results with Mr. Muhammad Faishol as a prison officer, actually for prisoners who want to apply for permission to leave prison, especially in the focus of this study, namely attending divorce lawsuit hearings in religious courts, specific policies with certain conditions must be met by prisoners, including:¹⁰⁴

a) **Prisoner Supervision Team Meeting**

¹⁰¹ ABH dan NH, Wawancara, (Malang, 9 Mei 2023)

¹⁰² Pasal 126 Herziene Indonesich Reglement (HIR)

¹⁰³ Pasal 158 Reglement voor de Buitengewesten (Rbg)

¹⁰⁴ Muhammad Faishol, Wawancara, (Malang, 13 April 2023)

The meeting conducted by the observation supervision team by prison officers is one part that aims to evaluate the stage of guidance to prisoners both at the initial and advanced stages.¹⁰⁵ The purpose of this meeting is to absorb the aspirations of all members so that the implementation of guidance for prisoners runs optimally. The primary orientation in the Prisoner Supervision Team Meeting is the determination of proposals for the integration rights of correctional residents/prisoners and whether they are eligible to receive them. These rights include joint leave rights; family visit leave rights, assimilation, and conditional release based on fulfilling specific requirements, both administration and substance, including the right of prisoners to leave prison.¹⁰⁶

The Prisoner Supervision Team Meeting is an essential factor that prisoners must pass and affects their access to religious court hearings in the context of divorce lawsuits. Mr. Muhamad Faishol revealed this context as a prison officer; if prisoners want to apply for permission to leave, they must follow the approval process in the prisoner supervision team meeting.

This meeting is a mechanism that regulates the permissions and attendance of prisoners in legal hearings, especially in non-criminal cases.

However, so far, no prisoners have applied for permission to leave prison

¹⁰⁵ Anonim, "Kenapa Narapidana Harus Di Sidang TPP ? Apa Itu Sidang TPP ?," *BIGNEWS.ID*, 2022, <https://bignews.id/kenapa-narapidana-harus-di-sidang-tpp-apa-itu-sidang-tpp/>, diakses pada Jumat 16 Juni 2023 pukul 22:30 wib.

¹⁰⁶ Anonim, "Apasih Sidang TPP ?," *Satuan Kerja Pemasarakatan Kantor Wilayah Kemenkumham Jawa TImur*, 2020, <https://jatim.kemenkumham.go.id/berita-upt/13908-apasih-sidang-tpp/>, diakses pada Jumat 16 Juni 2023 pukul 22:30 wib.

to attend hearings in the Religious Court. Even though some prisoners want to leave for trial in civil cases and have followed all procedures in the meeting, prison officers do not immediately give permission indiscriminately unless related to criminal law hearings in the District Court.

b) Temporary release report letter

A temporary release report letter is essential to releasing prisoners for those with temporary interests, including prisoners involved in divorce lawsuit cases, as revealed by Mr. Muhammad Faishol. He added that the prison could issue the letter with the condition that the religious court must send a letter of request to the Prison to present the defendant (prisoner) in a special hearing besides the *relaas* that have been sent.¹⁰⁷

The letter of request is proof that the court recognizes the right of prisoners to attend hearings and requests permission from the Prison to carry it out. Prison officers cannot issue a prisoner release report letter without this letter because there is no legal basis or adequate reason.

As described above, it is clear that there is a pattern of social dynamics in the practice of community life in prison. Naturally, these dynamics affect the aspect of law enforcement against prisoners as defendants to defend their rights in the trial process that takes place in divorce lawsuits in the Religious Court. The performance of the legal regulations that are signals to accommodate these rights based on article 10

¹⁰⁷ Muhammad Faishol, Wawancara, (Malang 13 April 2023)

verse 1 letter g of the prison law¹⁰⁸ does not work effectively with rationalizing sociological conditions in prison, so the rights of prisoners are not well fulfilled, as stated by Mr. Muhammad Faishol.¹⁰⁹

Reflecting on the occurrence of legal events that cause prisoners' rights as defendants not to be appropriately accommodated, it is not in line with the leading spirit that lives in the theory of protection. This spirit is attached to the aspect of the purpose of the law, where the law is designed to protect humans both actively and passively.¹¹⁰ In addition to not being in line with the substance of the theory of protection, this event also seems to violate the essence of human rights (fundamental), mainly at the level of civil rights of prisoners guaranteed by legal rules.

As such, the state is the central entity fully responsible for accommodating human rights, as affirmed in the 1945 Constitution Jo. Law No. 39 Concerning Human Rights,¹¹¹ the state has three obligations to respect, protect, and fulfill its citizens' rights, including prisoners' rights.¹¹² Therefore, correctional institutions, as the right hand of the state, should at least be able to implement the state's obligation by paying attention to what has been affirmed in legal arrangements, including respect, protection, and fulfillment.

¹⁰⁸ Lembaran Negara Republik Indonesia Nomor 6811

¹⁰⁹ Muhammad Faishol, Wawancara, (Malang, 13 April 2023)

¹¹⁰ Hasyim, *Peradilan Agama & Perbankan Syariah Perspektif Sistem Ketatanegaraan* (Surabaya: Airlangga University Press, 2020), 40.

¹¹¹ Lembaran Negara Republik Indonesia Nomor 3886

¹¹² Mukhammad Nur Hadi, *Pernikahan dan Disabilitas (Nalar Penghulu di Kota Malang, Pertama* (Jakarta: Publica Institute, 2020), 167.

On the aspect of “*respect*” for prisoners’ rights in the context of divorce lawsuit issues, prisons, as the right hand of the state, should not marginalize actions taken by prison officers to overcome these problems even though they are based on maintaining a balance in the process of guiding prisoners. Furthermore, “*protection*,” not discriminating, means protecting prisoners involved in divorce lawsuit processes from protecting their legal rights as legal subjects. Then, on the aspect of “*fulfillment*,” there is a state in determining legislative, judicial, and administrative steps as a form of review of legal rules that have not accommodated fulfilling prisoners’ rights in civil law processes.

By paying attention to these three fundamental aspects, the law applied in community life in prison will be more responsive because it becomes a facilitator to respond to social needs and aspirations,¹¹³ including legal events. As such, fulfilling prisoners’ rights will be well fulfilled so that they are recognized and respected in legal processes for resolving divorce lawsuits involving prisoners. However, it will be different if these three things are not considered; the law that occurs will be repressive, which tends not to pay attention to prisoners’ rights/interests.

¹¹³ Mukhtie Fadjar, *Teori-Teori Hukum Kontemporer*, Revisi (Malang: Setara Press, 2013), 50.

B. The Mechanism Of Applying The Rights Of Prisoners In The Process Of Divorce Litigation In Religious Court of Malang City Perspective Of Legal System Theory

1. Overview of the Religious Court Malang City

a) History of PA Malang Class IA

Historically, the establishment of Class IA Malang City PA can be classified into several phases that are related to one another. The first phase was during the pre-colonial period, in this phase before Hindu religious civilization was brought to Indonesia, the court that was in effect in the community environment was customary justice conducted by an assembly of hamlet and village customary elders. After the arrival of Hindu civilization to Indonesia, customary courts turned into Hindu courts.

At the same time, a civil trial was initiated by the ruling empire at that time. After the Islamic civilization was brought to Indonesia, civil courts changed again to gloomy courts as evidenced by historical traces in the Mataram kingdom during the time of Sultan Agung. The historical traces of the court proceedings in the Malang region at its time were located in the Great Mosque or Jami' Mosque which is located west of the Malang city square.

The second phase was during the Dutch colonial period to the Japanese occupation. In this phase, the religious courts during the Dutch East Indies era were called Priesterraad or Padri Courts, or Penghulu

Courts. Regulations regarding Padri Courts were only enacted in 1982 as evidenced by the Stbl. No. 152/1882) which determines that every ladraad (District Court) in the Java-Madura region also holds a Priestraad.

At that time, the religious court was only an assembly consisting of a chairman and several members so decisions made by the religious court were joint decisions. The area of the Religious Courts in this phase has two places, namely the Religious Court in Pakel (Sumber Pucung) and the State Religious Court of East Java (NDT). Furthermore, during the Japanese occupation, the Religious Court was called Sooyo Hooin. The legal arrangements that apply are the same as those that occurred when the Dutch came to power.

Then, in the independence phase. based on PP No. 5 / SD dated March 25, 1946, the structure of the Religious court which was under the Ministry of Justice initially changed to become under the Ministry of Religion after completing the Independence of the Republic of Indonesia with Emergency Law No. 1/1951. In Malang itself, after the recognition of sovereignty granted by the Dutch Government as a result of the Bode Tofel Conferentie (Round Table Conference), the Religious Courts were returned to Malang, with offices at Jalan Merdeka Barat no. 3 Malang together with DAD.

In further developments the Malang Religious Court moved to the house of the head of the court, namely KH A Ridwan, located in Klojen Ledok Malang, then over time it had its own office on Jalan Bantaran

Gang District no. 10 and the leadership of the Malang Religious Court chaired by KH A Ridwan was replaced by KH Ahmad Muhammad, KH. Moh. Zaini, KH Moh. Anwar (KH. Masjkur's younger brother, former Minister of Religion of the Republic of Indonesia), and KH. Bustanul Arifin (formerly in Gadung Malang).

Then in the phase of the enactment of law number 1 of 1974 concerning Marriage, in this phase, the position of the religious court is getting stronger and bigger and growing relatively quickly so that this institution has the authority to hear no less than 16 (sixteen) types of cases in the field of marriage. At that time, the Malang religious court accepted a consensus on the Development List (DIP) twice to build an office building.

Construction of the first building located on Jalan Candi Kidal No. 1 Malang, was inaugurated directly by the Head of the Regional Office of the East Java Ministry of Religion (Kakanwil Ministry of Religion of East Java), namely H. Soehadji, SH. Then, the office previously used in the Bantaran area was converted into the chairman's official residence. The second development was carried out on Jalan R. Panji Suroso No. 1 Malang, while the previous office building was also converted into the chairman's official residence which is located at Jalan Candi Kidal No. 1 Poor.

Furthermore, this last phase is closely related to the enactment of Law Number 7 of 1989 contained in the State Institution Number 49 of 1989.

These legal provisions create comprehensive statutory regulations on religious courts contained in the system and procedures of national law based on the mandate of the 1945 constitution and Pancasila. Based on these legal arrangements, the religious court has the authority to try certain cases¹¹⁴, and about certain groups of people¹¹⁵ who are Muslim, in such cases, the religious court has also been aligned with other courts.

The leadership of the Malang religious court at this time was chaired by Drs. H. Muhadjir, SH., and Drs. Abu Amar, S.H. Then, the Malang religious court underwent a separate expansion into 2 (two), namely the Malang Regency Religious Court which is located in Kepanjen District, Malang Regency which is chaired by Drs. Abu Amar, SH. and the Malang Municipal Religious Court which is located at Jalan R. Panji Suruso No. 1 Malang, chaired by Drs. Moh. Zabidi, SH.¹¹⁶

b) Vision and Mission of PA Malang Class IA

The Malang Religious Court has a vision, namely "The Realization of the Great Malang Religious Court". This vision is following the vision of the highest judicial institution, namely the Supreme Court.

Then, to support this vision so that it can be implemented properly the Malang Religious Court has several missions including the following:

1. Maintaining the independence of the Malang Religious Court
2. Providing equitable legal services to justice seekers.

¹¹⁴ Lembaran Negara Republik Indonesia Nomor 3400

¹¹⁵ Lembaran Negara Republik Indonesia Nomor 3400

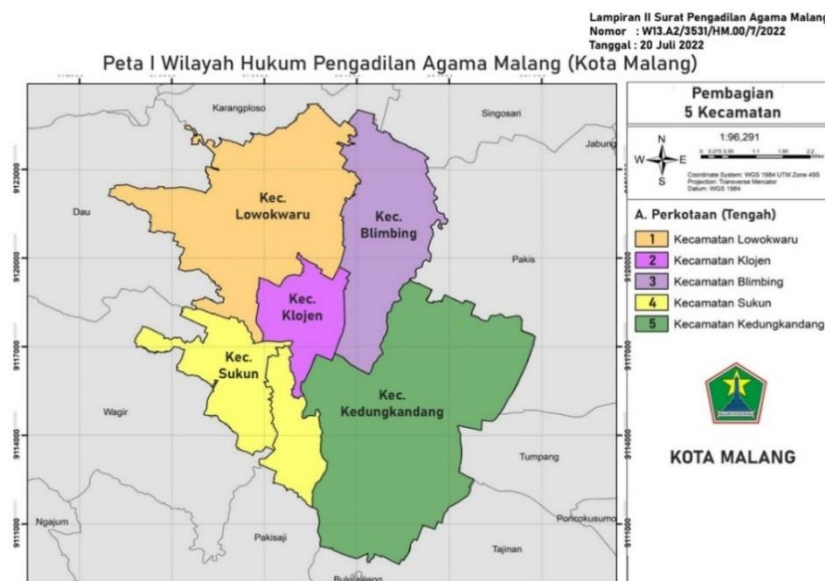
¹¹⁶ Tim Sejarah PA Malang, "Sejarah PA Kota Malang," *Pengadilan Agama Malang*, 2020, <https://pa-malangkota.go.id/sejarah>, diakses pada 21 April 2023 pukul 20:00 wib /.

3. Improving the leadership quality of the Religious Courts.
4. Increase the credibility and transparency of the Malang Religious Court.¹¹⁷

c) **Jurisdiction Region of PA Malang Class IA**

The area of jurisdiction is included in the relative competence of the religious courts to adjudicate a case under its jurisdiction. The jurisdictional area of the Malang Religious Court itself can be seen based on Figure 1.2 and Figure 1.3 on the map below.¹¹⁸

Figure 1.2
(Map of the Jurisdictional Area of Malang City)

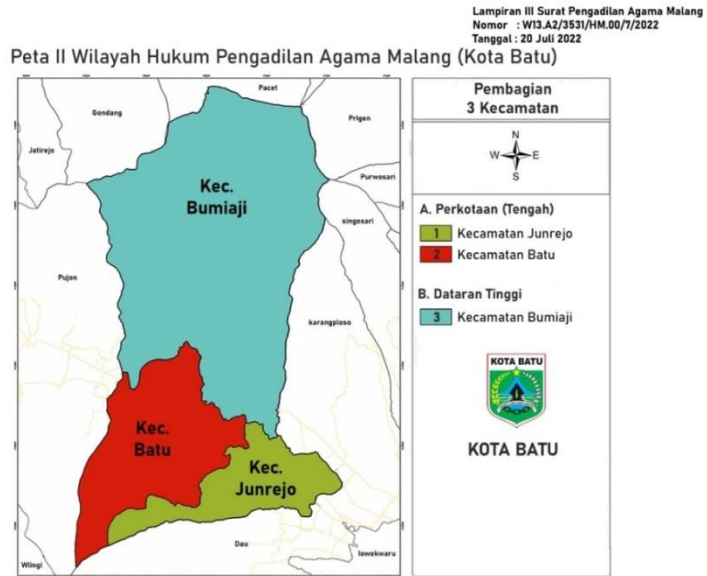


(Accessed from the website pa-malangkota.go.id)

¹¹⁷ Pengadilan Agama Malang, "Visi Dan Misi PA Kota Malang Kelas IA," *Pengadilan Agama Malang*, 2020, <https://pa-malangkota.go.id/visi-dan-misi/>, diakses pada 21 April 2023 pukul 20:00 wib.

¹¹⁸ Pengadilan Agama Malang, "Wilayah Yurisdiksi PA Kota Malang Kelas IA," n.d., <https://pa-malangkota.go.id/wilayah-yurisdiksi/>, diakses pada 21 April 2023 pukul 20:00 wib.

Figure 1.2
(Map of the Jurisdictional Area of Malang City)



(Accessed from the website pa-malangkota.go.id)

The map that has been presented can be described in Table 1.3 below:

Table 1.3
(Description of the Religious Court Jurisdiction Area of Malang City)

No	Subdistrict	Ward
1.	Breadfruit	Breadfruit, Cipto Mulyo, Pisangcandi, Tanjungrejo, Gading, Kebonsari, Bandungrejosari, Bakalan Krajan, Mulyorejo, Bandulan, Karangbesuki.
2.	Clojen	Kiduldalem, Sukoharjo, Klojen, Kasin, Kauman, Oro-oro Dowo, Samaan, Rampil Celaket, Gadingkasri, Together, Underwriting.
3.	Blimbing	Purwantoro, Bunulrejo, Polowijen, Arjosari, Purwodadi, Blimbing, Pandanwangi, Kesatrian, Jodipan, Polehan, Balarjosari.
4.	Lowokwaru	Sumbersari, Ketawanggede, Dinoyo, Lowokwaru, Jatimulyo, Tulusrejo, Mojolangu, Tunjungsekar, Merjosari, Telogomas, Tunggulwulung, Tasikmadu.
5.	Kedungkandang	Kotalama, Mergosono, Sawojajar, Madyopuro, Lesanpuro, Kedungkandang, Buring, Bumiayu, Cemorokandang, Telogowaru, Arjowilangun.

2. Exposure And Data Analysis:

Application of Prisoners' Rights in the Process of Divorce Cases at the Malang City Religious Court Perspective of Legal System Theory

Statistical data on the high number of divorce cases that occur in Indonesia geographically can be viewed through 3 aspects. First on a national scale, there are confirmed cases of divorce, around 400,000 thousand cases in 2022.¹²⁰ Second, regionally in the province of East Java in the same year, there were also 95,917 divorce cases detected.¹²¹ Third, in the domestic urban area that occurred in Malang City itself, in the last three years it has become one of the cities that have contributed to the high number of divorce cases, which the author will present in Table 1.4 below:¹²²

Table 1.4

(Number of Divorce Cases in Malang City in 2020-2022)

¹²⁰ Rina, "Capai Angka 400 Ribu, Dirjen Bimas Islam Minta Kemenag Berkontribusi Cegah Perceraian," *Portal Kementerian Agama Sumatera Barat*, 2022, <https://sumbar.kemenag.go.id/v2/post/65895/capai-angka-400-ribu-dirjen-bimas-islam-minta-kemenag-berkontribusi-cegah-perceraian>, diakses pada 22 Oktober 2022 Pukul 21:00 wib.

¹²¹ Syafik, "Mengejutkan Di Jawa Timur 72 Persen Istri Yang Gugat Cerai Suami Kenapa Istri Lebih Berani," *PA Bojonegoro*, 2023, <https://www.pa-bojonegoro.go.id/Mengejutkan-di-Jawa-Timur-72-persen-Istri-yang-Gugat-Cerai-Suami-Kenapa-Istri-Lebih-Berani>, diakses pada 22 Oktober 2022 Pukul 21:00 wib.

¹²² Tubagus Achmad, "Selama Dua Tahun, Angka Perceraian Di Malang Mencapai 4.592 Perkara," *Malang Times.Com*, 2022, <https://www.malangtimes.com/baca/75759/20220111/182700/selama-dua-tahun-angka-perceraian-di-malang-mencapai-4592-perkara>, diakses pada 22 Oktober 2022 pukul 21:00 wib.

Year	Entry Case	Category	Disconnected Case	Category
2020	2,450 cases	704 divorce divorce	2,235 cases	635 divorce divorce
		1,764 filed for divorce		1,600 contested divorce
2021	2,674 cases	700 divorce divorce	2,357 cases	621 divorce divorce
		1974 divorce sued		1,736 contested divorce
2022	1,444 cases on month January- August	dominated sue for divorce	-	-

Based on these data, it is known that divorce cases that occur in the Malang city area are very high and become a separate problem, of course, which must be resolved by an institution that represents full authority in handling these cases.

The conception of divorce when referring to existing legal arrangements are classified into 2 categories, namely Talak Divorce (CT) and Divorce Lawsuit (CG)¹²³. The fundamental difference between the two concepts of divorce lies in the legal subject who files a lawsuit in court. Explicitly a talak divorce is filed at the husband's initiative and takes effect after the divorce pledge is read out before the panel of judges, while a divorce that is filed at the wife's initiative is called a contested divorce, this

¹²³ Muhammad Syaifuddin, Sri Turatmiyah, and Annalisa Yahanan, *Hukum perceraian*, 1st ed. (Jakarta Timur: Sinar Grafika, 2013), 7.

decision takes effect after obtaining permanent legal force (*Inkracht van gewijsde*).¹²⁴

Divorce is also experienced by convicts, this is justified in Article 116 letter c which states that a divorce claim can be accepted if one of the parties gets a prison sentence of 5 (five) years or a more severe sentence after the marriage takes place. Based on these regulations, the potential for filing a divorce suit against convicts has a great opportunity. Even though the provisions in that article allow for suing convicts as stated in article 121 verse 2 *Het Herziene Inlandsch Regelement* (HIR), convicts who become defendants in divorce cases are given the right to submit a written answer.¹²⁵ The grant of this right was given to the defendant through a relass letter (subject to summons) addressed to the defendant under article 1 of the *Regulation op de Rechtsvordering* (Rv).

The summons of both parties to a lawsuit in court is an attempt to uphold the principle of *audi er alteram partem* (giving the defendant equal rights to defend his interests) and the principle of equality before the law.¹²⁶ These two principles fundamentally have a vital role to recognize

¹²⁴ Asmu'i, "PERCERAIAN: Antara Asa Dan Realita," *Direktorat Jenderal Badan Peradilan Agama*, 2022, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/perceraian-antara-asa-dan-realita-oleh-drs-h-asmu-i-m-h-26-8>, diakses pada 07 April 2023 pukul 16:00 wib.

¹²⁵ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, 462–63.

¹²⁶ Asep Nursobah, "PROSEDUR PENYAMPAIAN SURAT ROGATORI DAN SURAT BANTUAN PENYAMPAIAN DOKUMEN PENGADILAN DALAM MASALAH PERDATA BAGI PIHAK YANG BERADA DI LUAR NEGERI," *Kepaniteraan Mahkamah Agung*, 2021, <https://kepaniteraan.mahkamahagung.go.id/surat-rogatori/1755-prosedur-penyampaian-surat-rogatori-dan-panggilan-pihak-di-luar-negeri>, diakses pada 06 April 2023 pukul 11:00 wib.

the defendant's right to defend himself¹²⁷ and maintaining equality (*musawah*) for the parties to the dispute. Thus, the position of convicts as defendants in divorce law cases has the opportunity to defend their rights or interests in the case.

In fact, prisoners who are involved in the polemic of divorce lawsuits filed by their legal wives do not attend divorce lawsuit hearings to defend their rights/interests, they even only find out a few months after the divorce lawsuit hearing has been decided and has legal force. This was revealed based on an interview with ABH as the defendant who became a prisoner. ABH explained that the summons that was sent by the court clerk in February 2023 was just given to him when the researcher wanted to meet.¹²⁸ Therefore, it is not surprising that many prisoners who become defendants do not attend divorce lawsuit hearings that take place in the Religious Court of Malang City.

Responding to this, of course, the function of law that is interpreted as engineering to support society towards a better direction, it seems that in this problem it will not be achieved. However, concrete evidence is needed for the application of legal regulation itself. As well as the embodiment of legal norms into better legal practices, including proportional law enforcement. As this is based on the aspect of legal performance that is

¹²⁷ Faiz Amrizal Satria Dharma, "PENERAPAN ASAS AUDI ET ALTERAM PARTEM DALAM PROSES MEDIASI DI PENGADILAN AGAMA," *Direktorat Jenderal Badan Peradilan Agama*, 2019, 3–4, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/paper-penerapan-asas-audi-et-alteram-partem-dalam-proses-mediiasi-di-pengadilan-agama-oleh-faiz-amrizal-satria-dharma-12-12>, diakses pada 07 April 2023 pukul 12:00 wib.

¹²⁸ ABH, Wawancara, (Malang, 9 Mei 2023)

oriented toward law enforcement officials in enforcing legal regulations, and not merely a matter of legislative functions.

Concerning this, of course, it is questioned how the mechanism that is applied by law enforcers to overcome this problem. However, it should be said that enforcing the law proportionally must be aligned with the values that live and are upheld by society. These values in the context of Indonesian society that is pluralistic include values of divinity, justice, togetherness, peace, order, modernity, deliberation, protection of human rights, and course the manifestation of these noble values into practice, should also influence the concept and model of law enforcement.

Lawrance M.Friedman, argues that the functioning of a legal system in a country cannot be separated from three aspects, namely the component of legal structure, the component of legal substance, and the component of legal culture. These three elements of the functioning of law have an interaction that cannot be separated, each element depends on and affects the other element. The idealism of forming legal substance is influenced by the functioning of the legal structure and the pattern of legal culture in applying the norm of legal substance that is certain, fair, and beneficial.¹²⁹

The interaction between structure and substance of law can create an ideal legal culture in society, on the other hand, the central role of legal

¹²⁹ Izzy Al Kautsar and Danang Wahyu Muhammad, "Sistem Hukum Modern Lawrance M. Friedman: Budaya Hukum Dan Perubahan Sosial Masyarakat Dari Industrial Ke Digital," *SAPIENTIA ET VIRTUS* 7, no. 2 (October 4, 2022): 91, <https://doi.org/10.37477/sev.v7i2.358>.

culture can create a legal structure related to the formation and enforcement of legal substance. So these three elements are like a circle line that never ends and is continuously connected. If an unhealthy legal structure is formed, it will create an ideal legal substance, on the other hand, good legal substance will not be enforced in its realization if the legal structure is bad. The implication is that the legal culture that is realized will follow the pattern of the two other components when working in the legal system.¹³⁰

As such, related to the problem of prisoners who have been sued for divorce, it needs to be based on Lawrence M. Friedman's theory of legal system. This is because it is an effort to assess whether the existing legal system in this problem is feasible or still needs to be improved to answer this polemic besides it is also intended to find out how the mechanism of law enforcement against the application of prisoners' rights as defendants in the process of divorce litigation in Malang Religious Court which can be stated as follows:¹³¹

First, the component of legal structure. Lawrence argues that structure is a part of the legal system that moves in a mechanism that relates to legislative, judicial, executive, and various kinds of bodies that have the authority to make, apply and enforce the law that also provides limitations on a legal product. The researcher's findings related to this problem can be analyzed through the legal structure of the institution that

¹³⁰ Kautsar and Muhammad, "Sistem Hukum Modern Lawrence M. Friedman."

¹³¹ Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial*, 7th ed. (Nusa Media, 2015), 12.

has full authority over prisoners, namely prison officers and religious courts.

In this aspect, based on interviews with Mr. Muhammad Faishol and Uzman as prison officers,¹³² and also from the Malang City Religious Court, namely Mr. Masykur Rosih and Muhammad Dedi,¹³³ it turns out that there is no mou or cooperation agreement between related institutions in finding solutions for prisoners who are sued for divorce. Whereas, this problem is included in the fundamental category because it concerns human rights that are still possessed by prisoners.

Therefore, coordination and cooperation between prisons and religious courts are needed to ensure fair treatment of prisoners involved in divorce lawsuits. The process of sending summons letters and handling trials must accommodate the special situation of prisoners who are in a prison so that their rights are still fulfilled and they can defend their rights in court.

Second, the component of substance includes the elements of substance contained in the legal regulations related to the rights of prisoners to attend divorce lawsuit hearings. The provisions related to this have not been regulated firmly in the prison law, but the signal to overcome this problem can be found in Article 10 Verse 1 letter g of Law No. 22 of 2022 concerning imprisonment. The provision of this article

¹³² Muhammad Faishol dan Uzman, Wawancara, (Malang 13 April 2023)

¹³³ Masykur Rosih dan Muhammad Dedi, Wawancara, (Malang 22 Oktober 2022 dan 13 April 2023)

states that prisoners have the right to obtain other rights under the legislation that then.¹³⁴ Other rights referred to by this article are civil rights in the form of permission to leave prison¹³⁵ which is clarified in Article 52 Verse 1 of Government Regulation No. 32 of 1999 concerning Procedures for Implementing the Rights of Inmates. Therefore, in the aspect of fulfilling the rights of prisoners who are sued for divorce by their wives, law enforcers can fulfill these rights.

Mr. Muhammad Faishol and Uzman as prison officers, they are quite difficult to apply this article. This is because they are anticipating something that harms the Correctional Institution such as the risk of prisoners escaping.¹³⁶ Therefore, concrete evidence of the application of the substance of this article in its implementation has not been effective because it is hampered by the existing conditions that occur in prisons

However, different from the substance of legal regulation that requires defendants to still attend divorce lawsuit hearings. This was revealed based on the testimony of Mr. Masykur Rosih and Muhammad Dedi that to handle cases involving prisoners as defendants adjusted to the procedural law that applies in religious courts as stipulated in Law No. 7 of 1989 concerning Religious Courts¹³⁷ which speaks about civil procedural

¹³⁴ Lembaran Negara Republik Indonesia Nomor 6811

¹³⁵ Lembaran Negara Republik Indonesia Nomor 3846

¹³⁶ Muhammad Faishol dan Uzman, Wawancara, (Malang 13 April 2023)

¹³⁷ Lembaran Negara Republik Indonesia Nomor 3400

law that applies to courts within the general judicial environment, except those that have been specifically regulated.¹³⁸

Seeing two different interpretations put forward by the Malang Correctional Institution and Malang City Religious Court, it is clear that there is a contradiction between the substance of legal instruments used by both related institutions. Therefore, policymakers should formulate special legal regulations aimed at overcoming problems faced by prisoners, of course in the context of fulfilling divorce lawsuit rights.

Third, the component of legal culture refers to the values that underlie decision-making in the legal process. Regarding the rights of prisoners in divorce lawsuits, the orientation of legal culture that exists in correctional institutions is identical to the steps taken by prison officers for prisoners who are sued for divorce by their wives.

Based on interviews with Mr. Muhammad Faishol and Uzman, to handle problems involving prisoners in divorce lawsuits, they were forced to take their policies due to the dynamics that occurred in prisons. The policy intervention that was carried out was based on the cognitive experience of prison officers against prisoners who almost committed suicide because he found out that he had been sued for divorce by his legal wife.¹³⁹ The intervention is in the form of a strict mechanism for giving summons to prisoners that is done gradually.

¹³⁸ Masykur Rosih dan Muhammad Dedi, Wawancara, (Malang 22 Oktober 2022 dan 13 April 2023)

¹³⁹ Muhammad Faishol dan Uzman, Wawancara, (Malang 13 April 2023)

In addition, prisoners who have been sued for divorce also have a sense of shame when the problem spreads to the public (fellow prisoners/inmates) based on interviews with ABH and NH as prisoners who are sued for divorce by their wives. They both expressed that they were embarrassed when others found out that they had been sued for divorce by their wives.¹⁴⁰

Furthermore, the legal culture in religious courts. This, of course, relates to the case handling mechanism for the divorce lawsuit hearing that took place. Based on the results of an interview with Mr. Masykur Rosih the judge who had handled the case, he explained that to handle this case, of course, based on the mechanism of procedural law applicable in religious courts.¹⁴¹ Concerning the panel of judges granting or not based on the facts proven during the trial, even if the defendant is a prisoner and has limitations to attend the trial, the ongoing case will still be decided by *verstek*.¹⁴² This is because the religious court has attempted to summon the defendant through a letter sent to the prison, besides that the judge in handling civil cases is passive.

As has been explained regarding the application of prisoners' rights in the divorce lawsuit trial process according to Lawrence M. Friedman's legal system theory, it is slightly hampered because the legal system that is in the two related institutions that have full authority over prisoners as

¹⁴⁰ ABH dan NH, Wawancara, (Malang, 9 Mei 2023)

¹⁴¹ Masykur Rosih, Wawancara, (Malang, 22 Oktober 2022)

¹⁴² Muhammad Dedi, Wawancara, (Malang, 11 April 2023)

defendants experience complex problems. The problem shows a counter-intuitive reaction between the two related institutions.¹⁴³ The contradiction causes a dispute of authority¹⁴⁴ between the two parties to overcome the problems faced by prisoners.

As a result, the legal instrument that is signaled in the Penitentiary Law to accommodate the fulfillment of the rights of prisoners as defendants who in the case of divorce lawsuits do not work effectively because of the influence of legal culture that occurs in prisons, thus affecting the fulfillment of rights for prisoners who want to attend divorce litigation hearings in the Malang Religious Court.

Sometimes, a component of structure and substance is very good or can be said to be modern, in reality it does not always produce an ideal output of law enforcement, because the culture of society does not support the formal procedures that have been established.¹⁴⁵ On the matter of law enforcement will always interact and interrelate with its social environment. The implementation of law enforcement will be able to achieve the objectives as determined through the function of the workings of processes and forces in society, namely social, political, economic, and cultural forces.

¹⁴³ Mukhtie Fadjar, *Teori-Teori Hukum Kontemporer*, 115.

¹⁴⁴ Hasbi Hasan, *Kompetensi Peradilan Agama*, x.

¹⁴⁵ Kseniya E. Kovalenko, Nataliya E. Kovalenko, and Anna V. Gubareva, "The Impact Of Information Technology On The Legal Culture," *Quid: Investigación Ciencia Y Tecnología*, no. 2 (2018): 13–16, <https://dialnet.unirioja.es/servlet/articulo?codigo=6562902>.

CHAPTER V

CONCLUSION

A. Conclusion

The fulfillment of prisoners' rights in the issue of divorce lawsuits in correctional institutions has not been accommodated properly. This is based on the existence of a separate policy mechanism carried out by prison officials to deal with the problems experienced by prisoners. Even though, the hint of article 10 paragraph 1 letter g of Law No. 22 of 2022 concerning Corrections requires a reference that can be used by prisoners involved in divorce lawsuits to leave the prison temporarily in order to attend a divorce lawsuit hearing, in fact the implementation of the article also remains unattainable, so that the rights of prisoners in this matter are violated.

Based on the legal culture that occurs in correctional institutions, the effectiveness of the application of the rights of prisoners as defendants in the trial that took place at the Religious Court of Malang city did not work optimally. This is because the inmates who are sued for divorce are not present to fulfill the relaas that have been sent to the address of the Malang Correctional Institution, so that the application of the principle of equality before the law to prisoners tends to be unbalanced. Based on the procedural law applicable in the Religious Courts, the matter will still be carried out and decided according to the facts presented. The absence of an MOU between the two institutions is one of the keys to the problem not

being resolved between the two institutions, causing a dispute of authority between the two institutions.

B. Suggestion

Related institutions (Malang Correctional Institution and Religious Court of Malang City) should establish cooperation between institutions specifically to overcome the crucial problems faced by prisoners in divorce lawsuits. The implications of the MoU or cooperation can minimize the high number of divorces that occur in religious courts, including prisoners who are sued for divorce. In addition, the fulfillment of the rights of both parties will be balanced and not favoritism.

Furthermore, policy makers also at least formulate strict rules for prisoners involved in civil matters, especially in the aspect of divorce lawsuits, this is because prisoners are still entitled to defend their rights / interests and actively participate in the ongoing divorce lawsuit trial because they still have civil rights that cannot be intervened by other parties even though legal arrangements provide restrictions and they have temporarily lost their independence rights.

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APPENDIXES

First Appendixes

LETTERS

1. Research Permit Letter from the Regional Office of the Ministry of Law and Human Rights of East Java



**KEMENTERIAN HUKUM DAN HAK
ASASI MANUSIA
REPUBLIK
INDONESIA
KANTOR WILAYAH JAWA TIMUR**

Jalan Kayon
Nomor 50-52 Surabaya
Telepon : 031-5340707
Faksimili : 031-5345496

Laman: <http://jatim.kemenkumham.go.id>
surel: tukkanwiljatim@gmail.com

Nomor : W.15-UM.01.01-
Lampiran 1777
Hal : -
: Izin Penelitian

10 April 2023

Yth. Wakil Dekan Bidang Akademik
Fakultas Syariah Universitas Islam
Negeri Maulana Malik Ibrahim Malang
di tempat

Sehubungan dengan surat Wakil Dekan Bidang Akademik Fakultas Syariah Nomor B- 5628 /F.Sy.1/TL.01/03/2023 tanggal 06 April 2023, bersama ini disampaikan bahwa pada prinsipnya kami berkenan untuk menerima mahasiswa atas nama :

Nama : Akhmad Asrori Maulidani
NIM : 19210198
Program Studi : Hukum Keluarga Islam

untuk melaksanakan kegiatan penelitian dengan topik “*Efektivitas Pasal 10 Ayat 1 Huruf G Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasarakatan Mengenai Hak Narapidana Dalam Gugatan Perceraian Perspektif Teori Sistem Hukum*” pada Lembaga Pemasarakatan Kelas I

Malang, dengan catatan yang bersangkutan menaati peraturan dan ketentuan yang berlaku.

Atas perhatiannya, diucapkan terima kasih.



a.n. Kepala
Kantor Wilayah,
Kepala Divisi
Administrasi,

Tembusan :

1. Kepala Kantor Wilayah Kemenkumham Jawa Timur (sebagai laporan);
2. Kepala Divisi Pemasyarakatan;
3. Kepala Lembaga Pemasyarakatan Kelas I Malang;
4. Yang Bersangkutan.



Ditandatangani secara elektronik oleh :
Saefur Rochim
NIP 19750402199803100

Dokumen ini telah ditandatangani secara elektronik menggunakan sertifikat elektronik yang diterbitkan oleh Balai Sertifikasi Elektronik (BSrE), Badan Siber dan Sandi Negara. Keaslian dokumen dapat dicek melalui tautan <https://bsre.bssn.go.id/verifikasi>

2. Permit from the Malang City Religious Court



PENGADILAN AGAMA MALANG

Jl. R. Panji Suroso No. 1 Malang Telp. (0341) 491812 Fax. (0341) 473563
<http://www.pa-malangkota.go.id>, email: pamalangkota@gmail.com
 M A L A N G 65126

Nomor : W13-A2/4908/PB.01/10/2022
 Lamp. : -
 Perihal : Izin Pra Penelitian

Yth. Wakil Dekan Bidang Akademik
 Fakultas Syariah
 Universitas Islam Negeri Maulana Malik Ibrahim Malang
 di Tempat

Assalamu 'alaikum wr. wb.

Sehubungan dengan surat Saudara Nomor : B-4620/F.Sy.1/TL.01/09/2022 tertanggal 28 September 2022, perihal Izin Pra Penelitian berjudul **Hak Narapidana Dalam Beracara Pada perkara Perceraian**, disampaikan bahwa:

Nama : Akhmad Asrori Maulidani
 NIM : 19210198
 Judul Pra Penelitian : Hak Narapidana Dalam Beracara Pada perkara Perceraian

diberikan izin melakukan **Pra Penelitian** dengan ketentuan sebagai berikut :

1. Tidak mengganggu jalannya persidangan;
2. Tidak dibenarkan memeriksa/meneliti berkas-berkas perkara dan atau putusan Pengadilan Agama yang belum berkekuatan hukum tetap;
3. Tidak dibenarkan mencoret/menambah dan atau memberi tanda-tanda lain pada berkas, membawa berkas ke luar ruangan yang telah disediakan atau mengambil sendiri berkas-berkas arsip di tempat arsip;
4. Tidak dibenarkan menyalahgunakan kesempatan ini untuk tujuan lain atau tujuan tertentu yang dapat mendiskreditkan wibawa Badan Peradilan;
5. Berkaitan dengan adanya Pandemi Covid 19 dimohon untuk menerapkan **Social Distancing** dan protokol kesehatan di Pengadilan Agama Malang.

Demikian, atas perhatiannya diucapkan terima kasih.

Wassalamu 'alaikum wr. wb.

Malang, 04 Oktober 2022
Ketua,

Drs. H. MISBAH, M.H.I.
 NIP. 19651203 199003 1 001

PENDAMPING MAHASISWA PRA PENELITIAN DI PENGADILAN AGAMA MALANG TAHUN 2022

NO	NAMA	UNIVERSITAS	PENDAMPING	KETERANGAN
1.	Akhmad Asrori Maulidani	Universitas Islam Negeri Maulana Malik Ibrahim Malang	Drs. H. Masykur Rosih	B-4620/F.Sy.1/TL.01/09/2022, tertanggal 28 September 2022.

Malang, 04 Oktober 2022
Ketua,

Drs. H. MISBAH, M.H.I.
 NIP. 19651203 199003 1 001

3. Research Permission Letter from the Malang City Religious Court



PENGADILAN AGAMA MALANG

Jl. R. Panji Suroso No. 1 Malang Telp. (0341) 491812 Fax. (0341) 473563
<http://www.pa-malangkota.go.id>, email: pamalangkota@gmail.com
M A L A N G 65126

Nomor : W13-A2/2250/PB.01/3/2023
Lamp. : 1 (satu) lembar
Perihal : Permohonan Izin Penelitian

Yth. Wakil Dekan Bidang Akademik
Fakultas Syariah
Universitas Islam Negeri Maulana Malik Ibrahim Malang

Assalamu'alaikum wr. wb.

Sehubungan dengan surat Saudara Nomor : B-5588/F.Sy.1/TL.01/03/2023 tertanggal 27 Maret 2023, perihal Permohonan Izin Penelitian berjudul **Efektifitas Pasal 10 Ayat 1 Huruf G Undang-Undang Nomor 22 Tahun 2022 Tentang Permasalahan Mengenai Hak Narapidana Dalam Gugatan Perceraian (Studi Kasus di PA Kota Malang Kelas 1 A dan Lapas Kelas I Malang)** di Pengadilan Agama Malang, disampaikan bahwa:

Nama : Akhmad Asrori Maulidani
NIM : 19210198
Judul Penelitian : Efektifitas Pasal 10 Ayat 1 Huruf G Undang-Undang Nomor 22 Tahun 2022 Tentang Permasalahan Mengenai Hak Narapidana Dalam Gugatan Perceraian (Studi Kasus di PA Kota Malang Kelas 1 A dan Lapas Kelas I Malang)

diberikan izin melakukan **Izin Penelitian** dengan ketentuan sebagai berikut :

1. Tidak mengganggu jalannya persidangan;
2. Tidak dibenarkan memeriksa/meneliti berkas-berkas perkara dan atau putusan Pengadilan Agama yang belum berkekuatan hukum tetap;
3. Tidak dibenarkan mencoret/menambah dan atau memberi tanda-tanda lain pada berkas, membawa berkas ke luar ruangan yang telah disediakan atau mengambil sendiri berkas-berkas arsip di tempat arsip;
4. Tidak dibenarkan menyalahgunakan kesempatan ini untuk tujuan lain atau tujuan tertentu yang dapat mendiskreditkan wibawa Badan Peradilan;
5. Berkaitan dengan adanya Pandemi Covid 19 dimohon untuk menerapkan **Social Distancing** dan protokol kesehatan di Pengadilan Agama Malang.

Demikian, atas perhatiannya diucapkan terima kasih.

Wassalamu'alaikum wr. wb.

Malang, 03 April 2023
Wakil Ketua,

Muslich, S.Ag., M.H.
NIP. 19710331.199803.1.003

No	Nama	Universitas	Pendamping	Keterangan
1	Akhmad Maulidani Asrori	Universitas Islam Negeri Maulana Malik Ibrahim Malang	Mochamad Dedy Kurniawan, S.H., M.H.	B-5588/F.Sy.1/TL.01/03/2023 Tertanggal 27 Maret 2023

Malang, 03 April 2023
Wakil Ketua,

Muslich, S.Ag., M.H.
NIP. 19710331.199803.1.003

Second Appendixes

INTERVIEW GUIDELINES

1. Malang Correctional Institution Class I

PEDOMAN WAWANCARA

“EFEKTIVITAS PASAL 10 AYAT 1 HURUF G UNDANG-UNDANG NOMOR 22 TAHUN 2022 TENTANG PEMASYARAKATAN MENGENAI HAK NARAPIDANA DALAM GUGATAN PERCERAIAN PERSPEKTIF TEORI SISTEM HUKUM”

(Studi di Lapas Kota Malang Kelas I dan PA Kota Malang Kelas I)

Oleh : Akhmad Asrori Maulidani

A. Identitas Responden (Petugas Lapas Kota Malang)

- 1) Nama lengkap : Muhammad Faishol Nur
- 2) Jenis kelamin : Laki-Laki (L)
- 3) Umur : 30 Tahun
- 4) Pendidikan terakhir : S-1
- 5) Jabatan saat ini di lapas Kota Malang: Kasie Bimkemas Lapas Malang
- 6) Lama bekerja di lapas Kota Malang : 2 Tahun

B. Identitas Responden (Petugas Lapas Kota Malang)

- 1) Nama lengkap : Uzman
- 2) Jenis kelamin : Laki-Laki (L)
- 3) Umur : 27 Tahun
- 4) Pendidikan terakhir : S-1
- 5) Jabatan saat ini di lapas Kota Malang: Staf Kasie Bimkemas Lapas
Malang

6) Lama bekerja di lapas Kota Malang : 6 Tahun

Daftar Pertanyaan Wawancara

(Petugas Lembaga Pemasyarakatan Kelas 1 Malang)

- 1) Apakah ada warga binaan atau narapidana di lapas kota Malang yang mengalami gugatan perceraian di PA Kota Malang selama 2 tahun terakhir?
- 2) Apabila ada, bagaimana pihak lapas untuk mengakomodir hak keperdataan tersebut kepada narapidana yang menjadi tergugat?
- 3) Apa saja kendala atau hambatan yang dialami petugas lapas dalam memenuhi hak tersebut?
- 4) Apakah surat relaas yang dikirimkan oleh pihak PA selalu sampai kepada lapas atau narapidana?
- 5) Apabila surat relass tersebut sampai kepada narapidana, apakah narapidana tersebut berkenan untuk menghadiri gugatan perceraianya? Atau narapidana tersebut tidak menghiraukan panggilan gugatan perceraian yang dialami?
- 6) Apakah Anda pernah menangani kasus narapidana yang mengajukan prosedur perizinan dalam rangka menghadiri gugatan perceraian yang dialami?
- 7) Apabila ada narapidana yang berkeinginan untuk hadir dalam gugatan perceraianya, prosedur administratif apa saja yang harus dilakukan oleh narapidana?

- 8) Apakah dari pihak lapas memberikan izin kepada narapidana yang menjadi tergugat untuk membela hak-haknya atau menghadiri gugatan perceraian dan apa dasar hukum yang dipakai dalam memberikan izin kepada narapidana tersebut?
- 9) Apabila lapas memberikan izin kepada narapidana untuk menghadiri gugatan perceraian, prosedur apa saja yang dilakukan untuk mengawal narapidana tersebut untuk hadir kepada PA?
- 10) Apa saja kendala yang sering dihadapi dalam menangani prosedur yang diajukan oleh narapidana untuk keperluan perizinan menghadiri gugatan perceraian narapidana di PA Kota Malang?
- 11) Bagaimana pihak Lapas dalam menyikapi narapidana yang tidak berkeinginan untuk membela hak-haknya? Apakah dilakukan sebuah pembinaan terhadap psikologis napi tersebut?
- 12) Apakah ada wacana untuk mengadakan MOU/Perjanjian dengan pihak PA kelas 1a Kota Malang untuk menemukan solusi atas maraknya gugatan perceraian yang ditujukan kepada narapidana?
- 13) Langkah apa saja yang telah dilakukan oleh pihak Lapas dalam menerapkan pasal 10 Ayat 1 Huruf G UU No 22 Tentang Pemasyarakatan kepada narapidana yang menjadi tergugat di PA Kota Malang?
- 14) Apakah penerapan dari pasal 10 Ayat 1 Huruf G UU No 22 Tentang Pemasyarakatan juga diterapkan untuk mengakomodir hak narapidana sebagai tergugat dalam gugatan perceraian yang dialami?

- 15) Apa dasar hukum yang dipakai untuk menerapkan pasal 10 Ayat 1 Huruf G UU No 22 Tentang Pemasyarakatan, mengingat Peraturan Pelaksana dari undang-undang tersebut masih belum dilegalkan?
- 16) Menurut Anda, apakah Pasal 10 Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan mengenai isyarat pemenuhan Hak Narapidana sebagai tergugat dalam Gugatan Perceraian sudah efektif dalam menjamin hak narapidana di lapas?

PEDOMAN WAWANCARA DAN OBSERVASI

**EFEKTIVITAS PASAL 10 AYAT 1 HURUF G UNDANG-UNDANG
NOMOR 22 TAHUN 2022 TENTANG PEMASYARAKATAN MENGENAI
HAK NARAPIDANA DALAM GUGATAN PERCERAIAN**

PERSPEKTIF TEORI SISTEM HUKUM

(Studi di Lapas Kota Malang Kelas I dan PA Kota Malang Kelas I)

Oleh : Akhmad Asrori Maulidani

A. Identitas Responden (Narapidana Lapas Kota Malang)

1. Nama lengkap : ABH
2. Jenis kelamin : Laki-Laki (L)
3. Umur : 37 Tahun
4. Pekerjaan : Wiraswasta
5. Unsur kejahatan/Tindak Pidana : Narkoba dan KDRT
6. Lama masa hukuman yang dijalani: 1 Tahun 6 Bulan

B. Identitas Responden (Narapidana Lapas Kota Malang)

1. Nama lengkap : NH
2. Jenis kelamin : Laki-Laki (L)
3. Umur : 29 Tahun
4. Pekerjaan : Wiraswasta
5. Unsur kejahatan/Tindak Pidana : Narkoba
6. Lama masa hukuman yang dijalani: 6 Tahun 6 Bulan

Daftar Pertanyaan Wawancara

(Narapidana Lembaga Pemasyarakatan Kelas 1 Malang)

- 1) Apakah anda pernah mejadi tergugat dalam perkara gugatan perceraian di PA Kota Malang?
- 2) Apa alasan istri anda mengajukan gugatan perceraian tersebut kepada anda di PA Kota Malang?
- 3) Apakah surat relass yang dikirimkan oleh pihak PA Malang ke Lapas kota Malang anda menerima?
- 4) Bagaimana sikap anda dalam menyikapi pemberitahuan yang terdapat dalam surat relass tersebut mengenai gugatan perceraian yang diajukan oleh istri anda di PA kota Malang?
- 5) Apakah andaizinkan oleh lapas untuk menghadiri proses persidangan tersebut dan Bagaimana prosedur administrasi yang diterapkan oleh lapas ketika anda ingin menghadiri gugatan perceraian di PA Kota Malang?
- 6) Apakah andaizinkan oleh lapas bagaimana proses pengawalan yang diberikan lapas kepada anda untuk menghadiri proses persidangan di PA Kota Malang?
- 7) Berapa kali anda menjalani proses sidang gugatan perceraian di PA Kota Malang?
- 8) Bagaimana sikap anda dalam menyikapi putusan pengadilan yang telah berkekuatan tetap selama anda mengikuti proses peradilan?

- 9) Selama anda mengikuti jalannya proses persidangan, bagaimana sikap lapas kota Malang dalam mengakomodir pemenuhan hak anda sebagai tergugat dalam perkara gugatan perceraian yang anda alami?
- 10) Apakah anda mengetahui dasar hukum mengenai hak-hak yang diberikan oleh Lapas selama menjalani masa pembinaan di lapas kota Malang?
- 11) Apabila anda mengetahui hak-hak tersebut, hak apa saja yang pernah anda rasakan selama menjadi warga binaan di lapas kota Malang?
- 12) Apakah Anda merasa hak-hak Anda dalam gugatan perceraian dijamin sesuai dengan Pasal 10 Huruf G Ayat 1 Undang-Undang Nomor 22 Tahun 2022 tentang Pemasysarakatan mengenai Hak Narapidana Dalam Gugatan Perceraian?
- 13) Menurut Anda, apakah Pasal 10 Undang-Undang Nomor 22 Tahun 2022 tentang Pemasysarakatan mengenai Hak Narapidana Dalam Gugatan Perceraian sudah efektif dalam menjamin hak narapidana di lapas?
- 14) Apabila anda tidak menghadiri proses persidangan di PA kota Malang, mengapa anda tidak membela hak/kepentingan anda dalam sidang gugatan perceraian di lapas?
- 15) Bagaimana sikap anda dalam menerima salinan putusan verstek yang dikirimkan kepada anda?
- 16) Langkah apa yang anda lakukan atas putusan verstek tersebut

2. Religious Court of Malang City

PEDOMAN WAWANCARA DAN OBSERVASI

**“EFEKTIVITAS PASAL 10 AYAT 1 HURUF G UNDANG-UNDANG
NOMOR 22 TAHUN 2022 TENTANG PEMASYARAKATAN MENGENAI
HAK NARAPIDANA DALAM GUGATAN PERCERAIAN PERSPEKTIF
TEORI SISTEM HUKUM”**

(Studi di Lapas Kota Malang Kelas I dan PA Kota Malang Kelas I)

Oleh : Akhmad Asrori Maulidani

A. Identitas Responden (PA Kota Malang):

1. Nama lengkap : Drs. H Masykur Rosij
2. Jenis kelamin : Laki-Laki (L)
3. Umur : 63 Tahun
4. Pendidikan terakhir : S-1 Hukum Syariah IAIN SBY
5. Lama bekerja di PA Kota Malang : 3 Tahun 7 Bulan
6. Jabatan saat ini : Hakim

B. Identitas Responden (PA Kota Malang):

1. Nama lengkap : **Moch Dedy Kurniawan, S.H.,
M.H**
2. Jenis kelamin : Laki-Laki (L)
3. Umur : 40 Tahun
4. Pendidikan terakhir : S-2 Magister Ilmu Hukum Univ
Bhayangkara SBY
5. Lama bekerja di PA Kota Malang: 1 Tahun 10 bulan
6. Jabatan saat ini : Panitera Muda Hukum

Daftar Pertanyaan Wawancara

(Pengadilan Agama Kota Malang)

- 1) Apakah ada perkara cerai gugat yang tergugatnya adalah narapidana dan didaftarkan di wilayah yurisdiksi PA kota Malang?
- 2) Apabila ada gugatan yang didaftarkan, apa saja alasan yang dinyatakan oleh pihak tergugat untuk melakukan gugatan kepada suaminya yang status sosialnya menjadi narapidana?
- 3) Bagaimana pihak PA kota Malang Kelas 1a untuk mengakomodir Hak Narapidana sebagai tergugat dalam dalam perkara gugatan perceraian yang dialami?
- 4) Apakah pengadilan telah memberikan perlindungan yang memadai bagi hak narapidana dalam konteks gugatan perceraian?
- 5) Apakah pengadilan memberikan informasi yang memadai terkait dengan hak narapidana dalam konteks gugatan perceraian?
- 6) Bagaimana dasar hukum yang dipakai bagi tergugat yang menjadi narapidana untuk menghadiri sidang perkara perceraian?
- 7) Bagaimana prosedur dalam menangani kasus gugatan perceraian yang melibatkan narapidana di PA Kota Malang Kelas 1a?
- 8) Apakah ada perbedaan perlakuan dalam menangani kasus gugatan perceraian antara narapidana dengan masyarakat umum?
- 9) Apa saja kendala yang sering dihadapi dalam menangani kasus gugatan perceraian yang melibatkan narapidana dan bagaimana cara mengatasinya?

- 10) Bagaimana cara yang dilakukan oleh pihak PA Kota Malang Kelas 1a untuk memastikan bahwa hak-hak narapidana dalam kasus gugatan perceraian terpenuhi?
- 11) Apakah pengiriman dari surat relaas/panggilan kepada pihak tergugat (narapidana) sudah diantarkan ke subjek (narapidana/alamat lapas) atau hanya ke alamat identitas tergugat asli?
- 12) Bagaimana jika surat relass itu tidak sampai pada pihak terkait dalam hal ini narapidana?
- 13) Apabila tergugat tidak datang untuk menghadiri gugatannya karena tidak mendapatkan izin dari lapas, apa langkah yang dilakukan oleh majelis hakim mengenai hal itu?
- 14) Apakah narapidana yang tidak mendapatkan izin untuk menghadiri persidangan dapat diputus dengan putusan verstek oleh majelis hakim?
- 15) Apakah Tergugat yang status sosialnya menjadi Narapidana/Tahanan Hak-Hak dijamin oleh Hukum Acara Peradilan Agama? Apakah ada MOU/Perjanjian kerjasama yang dilakukan oleh Pihak PA Kota Malang dan Lapas Kota Malang kelas I untuk mengakomodir Hak-Hak Narapidana yang berhubungan dengan Hukum Perdata (Perkara Perceraian)?

Thrid Appendixes

RESEARCH RESULTS

A. Pemenuhan Hak Narapidana Dalam Gugatan Perceraian di Lapas Malang Kelas I

Pada bagian ini akan dipaparkan data hasil wawancara terhadap responden yang berkaitan langsung dengan peristiwa hukum gugatan perceraian yang melibatkan narapidana di Lapas Malang kelas I. Data yang telah didapat akan diuraikan dengan bentuk kutipan langsung sebagai pijakan awal peneliti untuk menganalisis pada sub-bab berikutnya. Berdasarkan keragaman data di bawah ini, peneliti menemukan hipotesis penelitian yang mencakup perspektif, interpretasi, hingga aspek sosiologisnya.

1. Pemenuhan Hak Narapidana Dalam Gugatan Perceraian Oleh Petugas Lapas Malang Kelas I

Data di bagian ini hanya memaparkan jawaban para responden atas pertanyaan peneliti tentang pemenuhan hak terhadap narapidana yang terlibat dalam gugatan perceraian di Lapas Malang kelas I. Pada konteks ini, responden peneliti berasal dari petugas lapas Malang kelas I dibawah naungan divisi bimbingan kemasyarakatan yang memiliki kewenangan penuh terhadap narapidana. Ketika peneliti mewawancarai langsung terhadap informan peneliti menemukan jawaban yang relatif sama dalam unsur esensi.

Topik pertanyaan yang diajukan oleh peneliti terkait dengan isyarat pemenuhan hak narapidana dalam gugatan perceraian berdasarkan pasal 10 Ayat 1 Huruf G UU No 22 Tahun 2022 Tentang Pemasyarakatan di wilayah yurisdiksi Lapas Malang kelas I. Hasil yang hendak didapatkan dari pertanyaan ini adalah bentuk interpretasi mereka dalam menangani kasus gugatan perceraian yang melibatkan narapidana berdasarkan pengaturan hukum yang mengisyaratkan narapidana untuk bisa hadir dalam gugatan perceraian yang sedang berlangsung.

Terhadap pertanyaan tersebut, MF menuturkan bahwa :

“[Untuk narapidana disini yang digugat cerai] ada mas. Kalau banyaknya itu ga terlalu mas, paling cuma berapa persen dalam kurun waktu satu tahun kebelakang, yang jelas terkait hal itu dipastikan ada [Kasus gugatan perceraian narapidana d Lapas Malang kelas I]. Kemudian, mengenai kasus hukum yang menjerat narapidana yang digugat cerai bermacam-macam dan tidak terorientasi dalam satu kasus hukum saja”

Sementara itu, faktor-faktor yang menyebabkan hal demikian, ia menambahkan:

“Kemungkinan besar istri narapidana yang melakukan hal tersebut [gugat cerai suami] diintervensi oleh kehidupan luar sehingga menjadi kekhawatiran tersendiri ketika suaminya berada di Lapas, utamanya dalam konteks tercukupinya kebutuhan ekonomi dan kebutuhan biologis istri narapidana”

Selanjutnya, rekapan arsip data narapidana yang digugat cerai, UZ menuturkan:

“Untuk lebih jelasnya minta ke pengadilan agama mas [Arsip data tentang narapidana yang digugat cerai] kalau saya kan hanya menerima suratnya [surat relaas yang dikirimkan pihak pengadilan agama].[surat relas yang diterima petugas lapas] iya mas pasti diberikan ke narapidana.

Masih dalam konteks surat relaas yang diberikan terhadap narapidana, MF kembali menuturkan:

“Nah, ada mas yang langsung kami berikan [surat relaas terhadap narapidana] tapi kita harus baca situasi dulu mas. Karena pikiran orang kita tidak mengerti apabila dia dikasih tahu [tentang kasus gugatan perceraian yang dialami], dan belum tentu dia menerima, kita harus berhati-hati dan harus mengetahui si narapidana ini karakternya seperti apa. Kalau dia tahan banting dan kuat ya kita kasih tahu [tentang kasus gugatan perceraian yang dialami] dengan cara kita pancing-pancing terlebih dahulu lah istilahnya. Akan tetapi kalau sekiranya dia lemah terpaksa kita tidak kasih tahu, daripada nanti ketika dia dikasih tau [tentang kasus gugatan perceraian yang dialami] akhirnya didalam lebih stress lagi malah jadi masalah, biarkan keluarganya yang ngasih tau sendiri [tentang kasus gugatan perceraian yang dialami]”

MF bertutur lagi dalam konteks mengkritisi surat relaas yang dikirimkan juru sita pengadilan agama, ia berkata:

“Nah ini beberapa kali permasalahan kemarin yang jadi mines [surat relaas yang dikirimkan pengadilan agama]. Karena seharusnya dia [juru sita pengadilan] yang harus memberikan informasi tersebut [gugatan perceraian] kepada narapidana atau tergugat, karena hak dan kewajiban mereka [juru sita pengadilan agama] untuk menyampaikan hal itu [penyampaian surat relaas terhadap narapidana/tergugat]. Akan tetapi, kondisi yang terjadi disini, mereka [juru sita pengadilan agama] hanya sekedar menyampaikan surat relaas kepada petugas Lapas dan enggan bertemu dengan narapidana. Setelah saya baca [data penerimaan surat relaas] “tidak bertemu dengan tergugat, namun hanya bertemu dengan petugas lapas”. Nah kalau gini jangan sampai cuma menang sendiri lah istilahnya seakan-akan kita yang salah [lapas Malang kelas I] dikira kita tidak memfasilitasi dia [juru sita] untuk bertemu dengan yang didalam [narapidana menjadi tergugat]. Padahal jika diminta untuk menjadi fasilitator atas pertemuan kedua belah pihak, kami akan selalu siap sedia”

Bagi narapidana yang ingin izin untuk menghadiri serta mempertahankan haknya dalam sidang gugatan perceraian di PA kota Malang, MF & UZ menuturkan bahwa:

“Narapidana tidak bisa datang kelokasi [pengadilan agama] karena narapidana yang berada didalam [lapas]. Karena mau datang atau tidak ketika sidang berlangsung tetap saja diketok [putusan verstek]. Itupun selama saya disini tidak dikirimkan hasil akhirnya [salinan atas pemberitahuan putusan verstek terhadap narapidana yang menjadi tergugat]. Kalaupun ada narapidana yang diizinkan atau tidaknya mas [untuk hadir dalam gugatan perceraian] harus ada kesepakatan, dikami ada yang namanya sidang TPP, kita tidak bisa langsung memberikan kecuali sidang hukum pidana yang berlangsung di Pengadilan Negeri (PN). Kalau di pengadilan agama belum pernah [narapidana yang melakukan perizinan untuk hadir sidang gugatan perceraian].

Melihat adanya prosedur administratif yang rumit dan harus dilalui oleh narapidana untuk hadir sidang gugatan perceraian di pengadilan agama, maka dalam hal demikian UZ kembali menuturkan dalam konteks kebijakan atas pengeluaran narapidana:

“Kalau izin keluar ke pengadilan agama [hadir dalam sidang gugatan perceraian] sebenarnya kita bisa mengeluarkan surat berita acara pengeluaran namun tidak sembarangan. Mereka [pengadilan agama] harus bersurat [surat permohonan untuk menghadirkan tergugat] terlebih dahulu kepada kami, kalau mereka tidak mengirimkan surat tersebut, kita tidak bisa mengeluarkan [surat berita acara pengeluaran narapidana] karena tidak ada dasar, dan sejauh ini surat yang kami terima hanya surat relaas narapidana”

Berkaca atas dinamika yang terjadi didalam lapas, maka kiranya perlu disandarkan dengan pengaturan hukum yang mengisyaratkan terpenuhinya hak narapidana atas gugatan perceraian yang dialami dengan merujuk pada pasal pasal 10 ayat 1 huruf g UU No 22 Tentang pemyarakatan. Ketentuan hukum tersebut berbicara bahwa narapidana berhak mendapatkan hak-hak lain sesuai dengan ketentuan peraturan-perundang-undangan. Berkenaan dengan muatan materi tersebut, MF berkata:

“Kalau terkait pemenuhan hak-hak lain sesuai dengan ketentuan peraturan perundang-undangan [hak narapidana hadir dalam sidang gugatan perceraian] ya seperti itu kondisinya [kondisi eksisting yang terjadi di lapas]. Mungkin akan berpengaruh ke pemenuhan haknya [hak narapidana dalam gugatan perceraian]. Namun, hak lain seperti hak memperoleh integrasi tidak berpengaruh sama sekali”

Sebagaimana yang telah diutarakan oleh MF, setidaknya untuk mengatasi permasalahan hukum yang melibatkan dua lembaga penegak hukum perlu diketahui terlebih dahulu apakah Lapas Malang kelas I pernah melakukan MOU (kerjasama) dengan pihak PA Kota Malang kelas IA, UZ menuturkan:

“Untuk MOU antara lembaga kami dengan pihak pengadilan agama sejauh ini masih belum terjalin. Fakta yang terjadi saat ini hanya terbatas penyampaian administrasi yang melibatkan narapidana di Lapas Malang kelas I dalam proses gugatan perceraian[surat relaas yang dikirimkan pihak pengadilan agama], selain itu tidak ada.”

Berdasarkan apa yang telah dikemukakan, gugatan perceraian terhadap narapidana juga terjadi di wilayah yurisdiksi Lapas Malang kelas I. Keberadaan akan hal demikian tetap diakui oleh petugas Lapas sebagai suatu fenomena yang pasti terjadi dalam kehidupan masyarakat pemasyarakatan. Faktor-faktor klasikal seperti kebutuhan ekonomi dan kebutuhan biologis istri narapidana menjadi faktor utama yang mempengaruhi keputusan istri untuk mengajukan gugatan cerai terhadap suaminya yang menjadi narapidana.

Dalam menghadapi situasi ini, penting bagi lembaga Lapas untuk mempertimbangkan dan memfasilitasi kebutuhan keluarga narapidana yang berada di dalam penjara. Tindakan yang dilakukan oleh petugas

Lapas dalam menyampaikan surat relaas kepada narapidana juga menggambarkan pendekatan yang hati-hati dan memperhatikan aspek psikologis narapidana. Hal ini dilakukan untuk menghindari dampak yang lebih serius terhadap kesehatan mental narapidana akibat pemberitahuan tentang gugatan perceraian yang mereka hadapi.

Dalam konteks ini, perlu adanya koordinasi dan kerjasama antara Lapas dan pengadilan agama untuk memastikan perlakuan yang adil terhadap narapidana yang terlibat dalam gugatan perceraian. Proses pengiriman surat relaas dan penanganan persidangan harus mengakomodasi situasi khusus narapidana yang berada di lapas, sehingga hak-hak mereka tetap terpenuhi dan mereka dapat mempertahankan hak-haknya dalam persidangan.

Selain itu, diperlukan upaya untuk meningkatkan pemahaman dan kesadaran narapidana mengenai proses hukum yang melibatkan mereka, termasuk hak mereka untuk hadir dalam persidangan. Komunikasi yang efektif antara petugas Lapas dan narapidana serta penyediaan informasi yang tepat dan akurat dapat membantu narapidana dalam memahami dan mengambil langkah yang tepat dalam menghadapi gugatan perceraian yang dialaminya.

2. Perspektif Narapidana Atas Pemenuhan Hak Dalam Gugatan Perceraian

Setelah mengetahui hasil wawancara atas proses pemenuhan hak terhadap narapidana yang dilakukan oleh petugas lapas, maka pada bagian

ini peneliti akan memaparkan jawaban dari para responden yang berkenaan dengan pertanyaan peneliti tentang perspektif narapidana atas pemenuhan haknya dalam gugatan perceraian. Pada konteks ini, responden peneliti berasal dari narapidana yang terlibat dalam gugatan perceraian berjumlah 2 (dua) orang di lapas Malang kelas I. Ketika peneliti mewawancarai langsung terhadap informan peneliti menemukan jawaban yang relatif berbeda dalam unsur esensi.

Topik pertanyaan yang diajukan oleh peneliti terkait dengan dinamika narapidana dalam gugatan perceraian beserta pengetahuan mereka atas hak dalam gugatan perceraian berdasarkan pasal 10 ayat 1 huruf g uu no 22 tahun 2022 tentang pemasyarakatan. Hasil yang hendak didapatkan dari pertanyaan ini adalah bentuk interpretasi mereka terhadap gugatan perceraian yang dialami, beserta terpenuhinya hak untuk bisa hadir dalam sidang gugatan perceraian yang berlangsung.

Responden pertama yang peneliti wawancarai berinisial ABH yang beralamat di jl Jombang Kec Klojen Kota Malang dan telah melangsungkan pernikahan selama 15 tahun lamanya. Dalam hal ini beliau terjerat dalam dua kasus pidana, pertama yakni kepemilikan ganja/narkotika dengan masa hukuman 1 tahun 6 bulan setelah adanya putusan kasasi dari Mahkamah Agung (MA). Kedua, yakni kasus Kekerasan Dalam Rumah Tangga (KDRT) yang dihukum selama 10 bulan. Total masa kurungan pidana yang harus dijalani yakni selama 2 tahun 4 bulan dan sudah berada di Lapas Malang selama 1 tahun.

Terhadap kasus gugatan perceraian yang dialami, ABH menuturkan:

“Iya mas, barusan ini tadi dikasih tahu sama petugas hari ini [Pemberitahuan tentang gugatan perceraian], padahal sebelumnya selama 1 tahun kebelakang di lapas tidak ada masalah sama sekali. Terus kemarin sempat putus hubungan [dengan istri] selama (3) tiga bulanan, ya itu mungkin dia sudah berani melakukan itu [Menggugat cerai suami]”

Selanjutnya ABH menjelaskan mengenai surat relaas yang diberikan petugas lapas:

“Baru saja diberikan oleh petugas lapas mas pada hari ini 1 jam sebelum bertemu anda [surat relaas yang diberikan petugas lapas pada 9 Mei 2023 ketika peneliti hendak mewawancarai narapidana]. Ya kaget mas, kok langsung begini [digugat cerai tanpa sepengetahuan ABH]. Tapi gpp saya akan berupaya [untuk melakukan negosiasi dengan istri] kalau bisa jangan cerai”

Kemudian, asal mula gugatan perceraian itu diajukan oleh istri, ABH menjelaskan:

“Ya, kalau pertama dari omongan-omongannya kemarin istilahnya mau cerai itu, dilihat dari omongannya itu ragu-ragu, dia juga mikir adanya anak 3. Asal mulanya mungkin setelah putus hubungan tersebut [tidak mengunjungi suami selama 3 (tiga) bulan di lapas]. Kemungkinan bermula dari adanya selisih paham lah dengan istri saya [Dalam konteks pengajuan kasasi atas kasus narkoba]. Istri saya berkata “jangan ngajuin kasasi, kamu harus menjalani hukuman apa adanya”, tapi saya tetap ngotot kasasi [kasus narkoba]. Bukan itu [faktor istri melakukan gugatan perceraian] memang sebelumnya juga terjadi KDRT yang saya lakukan itu sudah bermasalah tapi baikan lagi sampai saya masuk lapas”

ABH ketika ditanya terkait dengan sikap atas gugatan perceraian yang dilakukan oleh istrinya, menjawab:

“Kalau saya sama keluarga mau mencoba negosiasi istri dulu untuk menarik [gugatan perceraian yang telah diajukan] itupun jika bisa, dikarenakan masih tinggal dirumah saya [istri narapidana], apabila sudah cerai seharusnya dia harus keluar dan tidak tinggal disitu.

Pokoknya bagaimanapun saya usahakan untuk dipertahankan jangan bercerai dengan melihat anak-anak saya. Saya juga mengupayakan hal itu [negosiasi atas penarikan gugatan perceraian yang telah diajukan] kalau perlawanan harta gono-gini pasti ada perlawanan”

ABH menjelaskan kembali terkait konsultasi atas gugatan perceraian:

“Kalau saya, pokoknya orang-orang jangan sampai tahu [bahwa ABH telah digugat cerai oleh istri], lebih baik yang tau saya dan keluarga”

Terkait menghadiri persidangan yang berlangsung dan isyarat untuk bisa hadir ke pengadilan agama, ABH berkata:

“Tidak bisa hadir mas [Sidang di pengadilan agama] kan berada disini [lapas Malang kelas I]. Ya kalau dikasih kesempatan pasti mau [hadir dalam sidang gugatan perceraian]”

Ketidakhadiran tergugat dalam proses persidangan gugatan perceraian dapat mempengaruhi dampak yang signifikan terhadap putusan akhir yakni putusan vreset, berkenaan dengan hal demikian ABH menuturkan:

“Kalau putusan itu [putusan vreset] sama sekali tidak menerima, dan hanya itu mas amplop coklat yang dikasih tau sama petugas [yang berisi surat relaas dan lampiran surat gugatan perceraian]”

Lalu, ABH menuturkan pengetahuannya tentang pengaturan hukum yang mengisyaratkan untuk hadir dalam gugatan perceraian:

“[Terkait aturan hukum yang berbicara mengenai hak-hak narapidana] oh iya tau, kalau isyarat pasal untuk hadir dalam sidang gugatan perceraian di pengadilan agama tidak mengerti”

Berkaca atas jawaban yang telah dipaparkan oleh responden ABH, maka dapat disimpulkan bahwa ia terkejut ketika mengetahui bahwa telah digugat cerai oleh istri. Kondisi yang dialami oleh ABH disebabkan atas

surat relaas yang seharusnya diberikan, akan tetapi oleh petugas lapas tidak memberikan surat tersebut. Melihat gugatan perceraian yang diajukan oleh istri, ABH akan berupaya untuk mempertahankan hubungan pernikahannya dengan cara mencoba negosiasi istri untuk menarik gugatan perceraianya apabila belum diputus verstek dengan mempertimbangkan kondisi anak-anak yang masih bersekolah. Keterbatasan pengetahuannya tentang hak narapidana dalam persidangan gugatan perceraian juga menunjukkan perlunya peningkatan pemahaman mengenai aspek hukum yang relevan.

Berkaca atas jawaban yang telah dipaparkan oleh responden ABH, dapat disimpulkan bahwa ABH mengalami kejutan dan ketidakpercayaan saat mengetahui bahwa ia telah digugat cerai oleh istri. Kejadian ini disebabkan oleh ketidaktepatan petugas lapas dalam memberikan surat relaas yang seharusnya disampaikan kepada ABH. Ketidakhadiran surat tersebut memiliki dampak signifikan terhadap kondisi ABH, yang kemudian menemui gugatan perceraian dari pihak istri.

Dalam menghadapi gugatan perceraian yang diajukan oleh istri, ABH berupaya untuk mempertahankan hubungan pernikahannya dengan mencoba melakukan negosiasi dengan istri untuk menarik gugatan perceraianya. ABH mempertimbangkan kondisi anak-anaknya yang masih bersekolah sebagai argumen yang mungkin memengaruhi keputusan istri. Hal ini menunjukkan bahwa ABH berusaha menjaga keutuhan keluarganya dan berupaya mencari solusi yang terbaik dalam situasi ini.

Terlihat juga bahwa ABH memiliki keterbatasan pengetahuan mengenai hak-hak narapidana dalam persidangan gugatan perceraian. Hal ini menunjukkan perlunya peningkatan pemahaman ABH tentang aspek hukum yang relevan, khususnya yang terkait dengan hak dan perlindungan narapidana dalam proses hukum perceraian. Dengan pemahaman yang lebih baik, ABH dapat lebih siap menghadapi persidangan dan menjaga kepentingan dirinya sebagai narapidana.

Dalam konteks ini, diperlukan dukungan dan upaya kolaboratif antara narapidana, petugas lapas, dan mungkin juga pihak hukum atau penasihat hukum untuk memberikan pemahaman yang komprehensif mengenai proses hukum yang melibatkan narapidana. Edukasi yang tepat dan informasi yang akurat dapat membantu narapidana seperti ABH untuk mengerti hak-haknya dan mengambil tindakan yang tepat dalam menghadapi gugatan perceraian.

Responden kedua yang peneliti wawancarai berinisial NH yang beralamat di Kecamatan Gondanglegi Kabupaten Malang yang telah melangsungkan pernikahan selama 5 bulan sebelum terjerat kasus pidana. Dalam hal ini beliau terjerat dalam kasus pidana narkoba dengan masa hukuman 6 tahun 6 bulan Subsider 2 bulan dan telah menjalani masa kurungan pidana di Lapas Malang selama 2 tahun 10 bulan.

NH Ketika ditanya mengenai gugatan perceraian yang dialami menuturkan:

“Iya mas, baru saja sekitar 6 bulan yang lalu, sekitar antara bulan 10 dan 11 [beliau digugat cerai oleh istri]. Pokoknya dia pamit ke saya pada bulan 12 mau menikah lagi”.

Pemberitahuan atas surat relaas terhadap sidang gugatan perceraian, ia menuturkan:

“Kalau petugas tidak ada mas [pemberitahuan gugatan perceraian kepada narapidana oleh petugas], bahkan saya tidak menerima sama sekali [surat relaas yang diterima petugas]. Itupun [pemberitahuan atas gugatan perceraian] saya dikasih tahu sama istri saya sendiri] pada saat dia izin pamit mau menikah lagi [istrinya berkata: jangan pusing untuk cari aku lagi ya mas, fokus dengan apa yang ada disini, yang hati-hati kalau disini]”

Ia kembali mengemukakan terkait asal mula gugatan perceraian diajukan oleh istri NH:

“Mungkin pada waktu saya disini [suami sudah masuk lapas], ya bukannya berburuk sangka ya mas, dia sudah ada pandangan lain. Selain itu, sebelum-sebelumnya saya sudah terasa kenapa jarang kesini [menjenguk suami di lapas] dan jarang komunikasi. Pokoknya ketika saya sudah masuk dan dihukum ya harus legowo, sadar posisi mas, siap tidak siap harus menerima kalau itu terjadi [dicerai gugat]”

Lalu, NH menuturkan terkait sikap atas gugatan perceraian yang dialami:

“Biasa saja mas, saya sudah ikhlas [digugat cerai istri]. Karena sewaktu dulu mau masuk kemarin, pada saat di Polres saya sudah siap, kalau masih jodoh ya akan dijenguk, kalau pun tidak ya tidak masalah [mengunjungi suami yang berada di lapas]. Soalnya walaupun dia mau menikah lagi saya sudah mengikhhlaskan dan tidak memaksa untuk tetap dengan saya, barangkali dia saya paksa untuk harus sama saya, kasihan juga sama dia karena butuh nafkah juga. Selain itu, selama saya tinggal disini [menjalani hukuman di lapas] takutnya dia malu sama teman-temannya disekolahan, kemungkinan juga dia akan malu mempunyai suami yang menjadi narapidana [yang terjerat dalam kasus narkoba]. Lebih baik mencari yang lain saja masih ada orang yang baik”

NH menjelaskan kembali terkait konsultasi atas gugatan perceraian:

“Kalau itu, paling cuma teman yang bagus [baik] dan dekat dengan saya saja yang saya curhati [bahwa NH telah digugat cerai oleh istri], ya untuk mengeluarkan keresahan-keresahan [tentang gugatan perceraian yang dialami] yang ada didalam pikiran kan mas”

NH ketika ditanya terkait hadir dalam sidang gugatan perceraian di pengadilan agama, ia mengemukakan pendapat:

“Tidak hadir mas, soalnya kan posisi saya disini [berada di lapas Malang]. Kalau dikasih kesempatan ya tidak apa apa, saya mau [hadir sidang gugatan perceraian], akan tetapi saya ingin hadir dengan niat baik-baik. Apakah benar-benar mau bercerai atau bagaimana, terus maksudnya biar tidak ada masalah apa-apa, pokoknya kalau habis cerai sudah ya sudah, biar sama-sama enak [tidak ada beban antar kedua belah pihak]

Selanjutnya terkait isi putusan verstek yang dikirimkan oleh pengadilan agama ke lapas:

“Tidak ada mas, saya tidak menerima sama sekali [Salinan atas isi pemberitahuan putusan verstek terhadap proses persidangan gugatan perceraian]”

Lalu, terkait pemahaman narapidana untuk mendapatkan hak-hak lain sesuai dengan ketentuan peraturan-perundangan dalam konteks hadir untuk sidang gugatan perceraian di pengadilan agama, ia menjelaskan:

“Tidak tau mas [pengaturan hukum tentang hak narapidana dalam sidang gugatan perceraian], kalau pasal tentang hak mendapatkan remisi saya tau”

Melihat jawaban dari responden NH dalam wawancara, terdapat perbedaan mendasar dengan apa yang telah dikemukakan oleh responden

sebelumnya, yaitu ABH. Kesimpulan dari jawaban NH menunjukkan bahwa ia mengambil sikap yang netral dalam menghadapi gugatan perceraian yang diajukan oleh istri, dikarenakan ia sudah menyadari sejak awal bahwa dirinya terkena jerat hukuman pidana.

Responden NH mencerminkan sikap yang netral dan menerima situasi yang terjadi. Ia menyadari bahwa terlibat dalam kasus pidana dapat memiliki dampak yang signifikan terhadap hubungan pernikahannya. Dalam konteks ini, NH mungkin menghadapi keterbatasan dalam mengambil tindakan untuk mempertahankan hubungan pernikahannya atau untuk merespon gugatan perceraian yang diajukan oleh istri.

Pengetahuan NH yang tidak menyeluruh mengenai hak-hak narapidana dalam persidangan gugatan perceraian juga menjadi faktor yang memengaruhi ketidakhadirannya dalam sidang. Ketidakhadiran NH dalam sidang gugatan perceraian dapat disebabkan oleh kurangnya pemahaman tentang proses hukum yang melibatkan narapidana, serta hak dan kewajiban yang dimiliki dalam konteks tersebut.

Dalam konteks ini, penting untuk meningkatkan pemahaman dan akses informasi bagi narapidana seperti NH mengenai hak-hak mereka dalam proses hukum perceraian. Pendidikan hukum yang lebih komprehensif dan dukungan yang memadai dari petugas lapas dan pihak terkait dapat membantu narapidana dalam memahami situasi mereka dan mengambil tindakan yang tepat sesuai dengan kepentingan mereka

B. Efektivitas Pasal 10 Ayat 1 Huruf G UU No 22 Tahun 2022 Tentang Pemasyarakatan Mengenai Hak Narapidana Dalam Gugatan Perceraian di PA Kota Malang kelas I

Sebagaimana data yang telah diutarakan oleh petugas lapas beserta narapidana yang terlibat dalam gugatan perceraian pada sub-bab sebelumnya. Selanjutnya, pada bagian ini akan diutarakan data hasil wawancara terhadap responden yang mempunyai kewenangan mutlak dalam menangani perkara gugatan perceraian yang melibatkan narapidana sebagai tergugat di PA Kota Malang kelas IA.

Pada konteks ini, responden peneliti berasal dari hakim pengadilan agama yang pernah memutus putusan versetek terhadap narapidana yang digugat cerai oleh istrinya dan Panitera Muda Hukum (Panmud Hukum) pengadilan agama. Ketika peneliti mewawancarai langsung terhadap informan peneliti menemukan jawaban yang relatif sama dalam unsur esensi terhadap gugatan perceraian yang melibatkan narapidana.

Topik pertanyaan yang diajukan oleh peneliti terkait dengan efektivitas pengaturan hukum yang mengisyaratkan narapidana untuk menghadiri proses persidangan yang berlangsung. Hasil yang hendak didapatkan dari pertanyaan ini adalah bentuk interpretasi mereka terhadap efektivitas pengaturan hukum yang berkorelasi dengan penanganan perkara gugatan perceraian terhadap narapidana yang berada di Lapas Malang kelas I. Selain itu juga untuk memahami apakah hak-hak narapidana terjamin dalam proses perceraian di pengadilan agama.

Terkait peristiwa hukum gugatan perceraian yang melibatkan narapidana, MR berkata:

“Ada mas [istri narapidana yang gugat cerai suami]. Kalau untuk berapa perkaranya itu tidak menghitung ya [data atas perkara gugatan perceraian yang diajukan istri terhadap suami yang menjadi narapidana], akan tetapi beberapa hari kemarin pada hari itu pas saya sidang itu [sidang gugatan perceraian yang sedang berlangsung] ya ada lebih dari tiga perkara [kasus yang didaftarkan pada tahun 2022]”

Selanjutnya, faktor atau alasan gugatan perceraian diajukan oleh istri narapidana, MR kembali melanjutkan:

“Biasanya suaminya menggunakan obat terlarang [narkoba], terjerat kasus pidana lebih dari 5 tahun, ada juga yang baru masuk penjara dan yang paling penting kebutuhan ekonomi”

MD menambahkan, Standar Operasional (SOP) untuk memanggil pihak tergugat yang berada di Lapas yakni:

“Pemanggilan tergugat yang dilakukan oleh pihak kami [pengadilan agama] yakni menyampaikan atau mengirimkan surat relaas kepada para pihak yang sedang berperkara [termasuk tergugat yang menjadi narapidana dan berada di lapas]”

Berkenaan dengan surat relaas yang telah dikirimkan ke lapas, MR kembali berkata:

“Biasanya [ketika proses persidangan pertama berlangsung], kadang-kadang pihak penggugat itu [istri narapidana] tidak mengerti jika pihak tergugat [suami yang menjadi narapidana] punya masalah [terjerat kasus hukum pidana dan berada di lapas], sehingga surat relaas/panggilan yang ditujukan kepada penggugat dikirimkan ke alamat aslinya, walaupun tidak bertemu biasanya titipkan di kelurahan. [berangkat dari pengiriman surat relaas yang salah] Pada saat itu lah majelis hakim melakukan pemanggilan [terhadap tergugat yang berada di lapas] melalui Kepala Lapas (Kalapas) sesuai dengan sema hasil munas”

MD ketika ditanya terkait kehadiran narapidana dalam sidang gugatan perceraian yang sedang berlangsung, ia menjelaskan:

“Ya, memang banyak yang tidak datang [pada saat proses gugatan perceraian berlangsung], dan ketika datangpun saya yakin dia kesulitan terkait dengan izin yang ada disana [prosedur administratif yang diberlakukan oleh lapas untuk narapidana yang ingin hadir dalam persidangan gugatan perceraian di pengadilan agama]”

Berbeda dengan MD, MR menyampaikan argumentasinya dalam

konteks demikian:

“Selama ini memang narapidana yang digugat cerai kebanyakan tidak datang [ke pengadilan agama untuk hadir dalam sidang gugatan perceraian]. Sebetulnya pihak yang berperkara dia bisa minta bantuan hukum [kepada pengacara atau pihak lapas], soalnya di lapas biasanya menyediakan bantuan hukum [contohnya : pak saya minta bantuan hukum untuk perkara gugatan perceraian di pengadilan agama]. [Maka dengan demikian] Tergantung dianya saja mau atau tidak [untuk] mengajukan permohonan ke kalapasnya, biasanya melakukan pengajuan tertulis”

Dalam konteks penanganan gugatan perceraian yang melibatkan

narapiana sebagai tergugat, ia menambahkan:

“Ya, sama [dengan tergugat lain], tidak ada bedanya dalam mengakomodir hak-haknya [hak tergugat] meski ia menjadi narapidana [yang berada dilapas], tentunya juga sesuai dengan hukum acara yang berlaku di [lingkungan] pengadilan [agama]”

MR ketika ditanya mengenai gugatan perceraian yang diajukan

oleh istri dikabulkan oleh majelis hakim, berkata:

“Gugatan [perceraian yang diajukan oleh istri] dikabulkan atau tidak ya tergantung pada [tahap] pembuktian [yang diajukan] dipersidangan. Selain itu [juga dengan melihat] alasan-alasan yang diajukan istri [sesuai dengan pengaturan hukum atau tidak] kebanyakan rata-rata ya dikabulkan [gugatan perceraianya]. Meskipun pihak lawan [tergugat/narapidana] keberatan [atas putusan verstek yang telah dijatuhkan]”

MR kembali menuturkan terkait majelis hakim yang memutus

perkara gugatan perceraian dengan verstek:

“Selama panggilan sudah dinyatakan sah [dan telah] dipanggil [melalui surat relaas] 1 (satu) kali [hingga] 2 (dua) kali [selama proses persidangan berlangsung] dan sesuai dengan [ketentuan] hukum acara [peradilan agama] ya langsung diputus verstek”

Kemudian, MD berkata terkait upaya hukum atas putusan verstek:

“Kalau untuk upaya hukum ketika pihak lawan tidak datang pada proses persidangan itu [namanya] upaya hukumnya verzet. Ketika pihak lawan keberatan dengan isi putusan verstek [yang telah dikirimkan kepada] pihak lawan, [pihak lawan] pun harus datang kesini [pengadilan agama]. [selama ini tidak ada yang mengajukan putusan verset] boro-boro (jangan) ngajuin putusan verzet, untuk mengurus dirinya sendiri saja kesulitan [karena berada dilapas]”

Lebih lanjut, MR dan MD menyampaikan argumentasinya dalam konteks MOU (perjanjian kerjasama) dengan pihak Lapas Malang kelas I terkait hak narapidana dalam gugatan perceraian. MR berkata:

“Sebetulnya tanpa mou seharusnya [perkara gugatan perceraian terhadap narapidana] kan sudah jelas, [terkait mou yang sudah dijalankan oleh pihak pengadilan agama yakni mengenai] perkara dispensasi nikah dengan pihak Dinas Kesehatan (Dinkes). [Akan tetapi] kalau dengan [pihak] lapas [Malang kelas I] dengan pengadilan agama nah ini belum pernah tau selama saya disini”

Demikian, MD juga menyinggung tentang MOU:

“Kalau persoalan mengenai MOU, sebenarnya intruksi dari pimpinan disuruh untuk menjalin MOU dengan stakeholder lembaga penegak hukum [seperti pengadilan negeri, kejaksaan, lapas, kepolisian], akan tetapi kalau dengan pihak lapas Malang kelas I sejak awal saya ditugaskan disini belum ada sepertinya”

Dari pemaparan yang telah dikemukakan oleh MR dan MD, terlihat adanya fenomena yang cukup signifikan terkait jumlah gugatan perceraian yang diajukan di wilayah yurisdiksi Pengadilan Agama (PA) Kota Malang Kelas IA. Narapidana menjadi salah satu pihak yang terlibat dalam gugatan perceraian tersebut, dimana suami narapidana sering kali terjerat dalam kasus narkoba dengan hukuman pidana yang berkepanjangan di lembaga pemasyarakatan (lapas).

Alasan utama yang mendasari gugatan perceraian ini adalah penggunaan obat terlarang, yaitu narkoba, yang dilakukan oleh suami narapidana. Selain itu, terdapat juga narapidana yang baru masuk penjara

dan masalah kebutuhan ekonomi yang menjadi faktor pendorong dalam mengajukan gugatan perceraian.

Dalam penanganan perkara gugatan perceraian yang melibatkan narapidana, terdapat kesamaan dalam pengakomodasian hak-hak narapidana sebagai tergugat. Majelis hakim tidak membedakan perlakuan terhadap narapidana dengan tergugat lainnya, sehingga prinsip keadilan tetap ditegakkan sesuai dengan Hukum Acara Peradilan Agama yang berlaku.

Namun, terdapat kendala dalam menghadirkan narapidana dalam persidangan. Banyak narapidana yang tidak hadir dalam proses gugatan perceraian, walaupun telah dipanggil melalui surat relaas sebanyak dua kali. Kendala yang dihadapi narapidana dalam hadir di persidangan mungkin terkait dengan prosedur administratif dan izin yang diperlukan dari lapas. Meskipun demikian, kehadiran narapidana dalam persidangan merupakan faktor penting dalam pembuktian dan pengambilan keputusan oleh majelis hakim.

Dalam kasus-kasus tersebut, putusan yang dijatuhkan biasanya berupa putusan verstek, dimana narapidana sebagai tergugat tidak hadir dalam persidangan. Banyak narapidana yang merasa keberatan dengan putusan verstek yang menguntungkan penggugat, namun tidak banyak yang melakukan upaya hukum verzet untuk melawan putusan tersebut. Kendala yang dihadapi narapidana dalam mengurus diri mereka sendiri

dan memahami proses hukum menjadi salah satu faktor yang mempengaruhi rendahnya jumlah upaya hukum yang diajukan.

Fourth Appendix

DOCUMENTATION DURING THE RESEARCH

1. Malang Correctional Institution Class I

a) Photo Interview with Prison Officers

(Head of Correctional Guidance Section (Kasie Bimkemas) and Staff)



(When digging for information about prisoners involved in divorce lawsuit

With Mr Muhammad Faishol and Mr Uzman)

(Photo taken during research on April 13, 2023)

b) Photo interview with prisoners



Photo with Prisoner Initials ABH



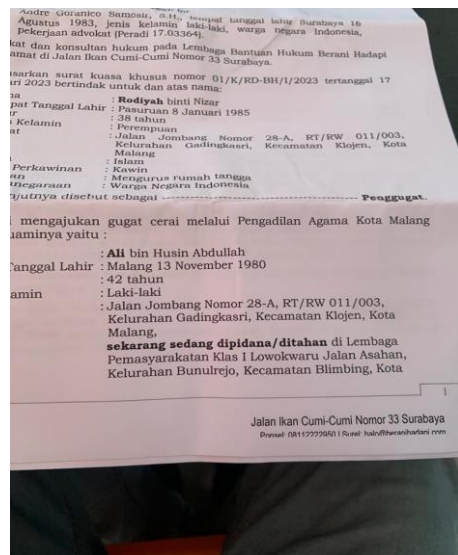
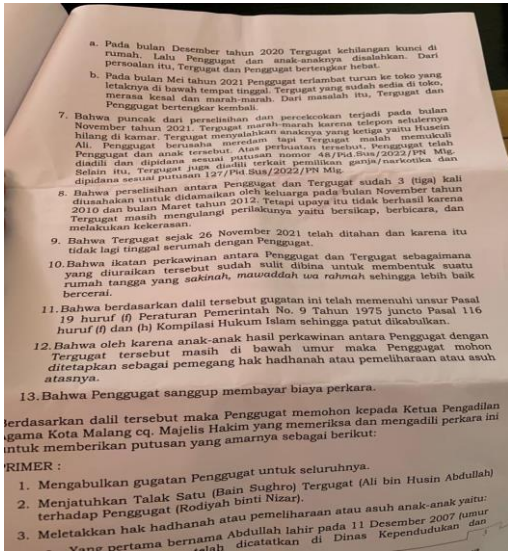
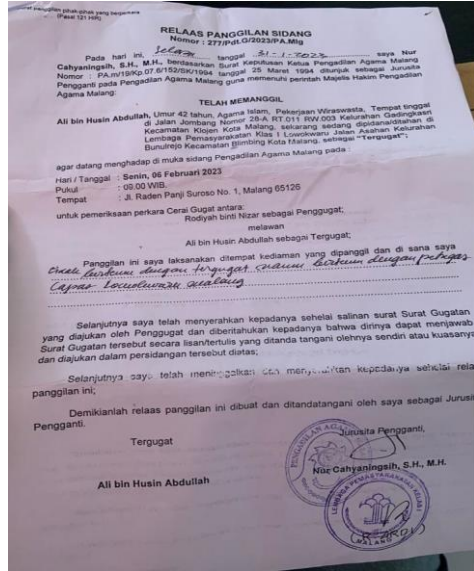
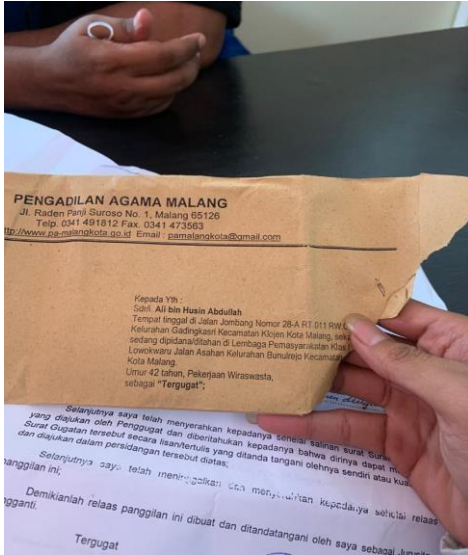
Photo with Prisoner Initials NH



(When seeking information about the divorce lawsuit experienced and the reasons for not attending the trial at the Religious Court of Malang City)

(Photo taken during research on May 9, 2023)

c) **Relaas (summons) sent by the religious court and received by the Malang class I prison**



(Photo taken during research on May 9, 2023)

2. Malang City Religious Court Class IA

A. Photo with religious court staff

a) Pre-research Photo with Judge of Malang City Religious Court Class IA)



**(When digging up information about divorce lawsuits involving prisoners
With Mr Masykur Rosih)**

(Photo taken during pre-research on October 10, 2022)

b) Photo of Research Interview with the Deputy Legal Registrar of the Religious Court



**(When digging up information about divorce lawsuits involving prisoners,
with Mr Muhammad Dedi)**

(Photo taken during research on April 11, 2023)

B. Recapitulation of Statistical Data on Divorce Cases at the Religious Court of Malang Class IA in 2021-2022

1) Divorce Cases in 2021

LAPORAN PERKARA YANG DITERIMA PENGADILAN AGAMA KOTA MADYA MALANG BULAN JANUARI s/d DESEMBER TAHUN 2021																																			RK-3		
Nomor	Jenis Perkara Pengadilan Agama	A. Perkawinan																																			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	
1	Januari	0	0	0	0	0	98	259	2	3	1	0	0	0	3	0	0	0	8	0	3	0	38	1	0	2	0	0	0	0	0	0	0	9	4	431	-
2	Februari	1	0	0	0	0	58	167	1	1	0	0	3	0	11	0	0	0	13	0	6	0	28	0	0	0	0	0	0	0	0	4	6	299	-		
3	Maret	1	0	0	0	0	66	180	2	1	1	0	0	0	12	0	0	0	6	0	4	0	17	1	0	3	0	0	0	0	0	6	10	310	-		
4	April	1	0	0	1	0	38	116	2	2	0	0	0	0	12	0	0	0	7	0	2	0	18	0	0	1	0	0	0	0	0	9	4	213	-		
5	Mei	1	0	0	0	0	41	103	0	1	0	0	0	0	5	0	0	0	6	0	1	0	15	0	0	0	0	0	0	0	0	4	4	181	-		
6	Juni	0	0	0	0	0	90	204	1	1	0	0	1	0	6	0	1	0	14	0	6	0	35	3	0	2	0	1	0	0	13	6	384	-			
7	Juli	0	0	0	0	0	49	106	0	2	0	0	0	0	7	0	0	0	2	0	0	0	14	1	1	0	0	1	0	0	6	4	193	-			
8	Agustus	1	0	0	0	0	47	154	2	2	0	0	0	0	10	0	6	0	0	0	0	7	0	0	1	0	1	0	1	0	0	6	0	237	-		
9	September	0	0	0	0	0	50	207	2	3	1	0	0	0	16	0	0	0	9	0	2	0	26	2	1	0	0	1	0	0	11	11	342	-			
10	Oktober	0	0	0	0	0	55	146	3	3	0	0	0	0	12	0	0	0	2	0	4	0	27	2	0	4	0	0	0	0	12	7	277	-			
11	November	2	0	0	0	0	53	146	1	0	0	0	0	0	10	0	0	0	5	0	8	0	20	0	0	1	0	0	0	0	11	2	259	-			
12	Desember	1	0	0	0	0	55	186	0	2	0	0	0	0	14	0	0	0	12	0	3	0	16	2	0	1	0	0	0	0	8	4	304	-			
JUMLAH		8	0	0	1	0	700	1974	16	21	3	0	4	0	118	0	7	0	84	0	39	0	261	12	2	15	0	4	0	0	99	62	3430	-			

(Data accessed through the Deputy Registrar of Law of the Malang City Religious Court Class IA, on May 9, 2023)

2) Divorce Cases in 2022

LAPORAN PERKARA YANG DITERIMA PENGADILAN AGAMA KOTA MADYA MALANG BULAN JANUARI s/d DESEMBER TAHUN 2022																																			RK-3
Nomor	Jenis Perkara Pengadilan Agama	A. Perkawinan																																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34
1	Januari	0	0	0	0	0	74	178	0	2	0	0	0	0	0	0	0	0	9	0	8	0	21	1	0	1	0	0	0	0	12	5	320	-	
2	Februari	0	0	0	0	0	49	112	1	0	0	0	0	0	8	0	0	0	4	0	1	0	9	1	0	0	0	0	0	0	9	8	202	-	
3	Maret	1	0	0	0	0	60	179	1	0	0	0	0	0	10	0	0	0	14	0	5	0	13	0	0	1	0	0	0	9	5	298	-		
4	April	0	0	0	0	0	32	100	3	0	0	0	0	0	4	0	0	0	6	0	3	0	14	0	0	0	0	0	0	11	5	179	-		
5	Mei	1	0	0	0	0	58	155	1	0	0	0	0	0	9	0	0	0	6	0	1	0	11	1	0	1	0	0	0	8	3	255	-		
6	Juni	2	0	0	0	0	67	169	1	2	0	0	0	0	11	0	0	0	15	0	7	0	25	1	0	0	0	0	10	6	316	-			
7	Juli	1	0	0	0	0	57	146	1	0	0	0	0	0	10	0	0	0	6	0	7	0	10	2	0	0	0	1	0	8	6	255	-		
8	Agustus	0	0	0	0	0	56	158	0	1	0	0	0	0	9	0	0	0	9	0	13	0	5	1	0	2	0	0	0	8	4	266	-		
9	September	0	0	0	0	0	55	177	3	2	0	0	0	0	8	0	0	0	12	0	5	0	25	0	0	1	0	0	0	7	3	298	-		
10	Oktober	0	0	0	0	0	59	149	1	2	0	0	0	0	10	0	0	0	8	0	5	0	27	0	0	1	0	0	0	8	4	274	-		
11	November	1	0	0	0	0	70	156	1	1	0	0	0	0	11	0	1	0	13	0	2	0	19	2	0	1	0	0	0	5	5	288	-		
12	Desember	0	0	0	0	0	30	105	0	0	0	0	0	0	4	0	0	0	7	0	3	0	14	1	0	0	0	0	2	3	169	-			
JUMLAH		6	0	0	0	0	667	1784	13	10	0	0	0	0	103	0	1	0	109	0	60	0	193	10	0	9	0	1	0	97	57	3120	-		

(Data accessed through the Deputy Registrar of Law of the Malang City Religious Court Class IA, on May 9, 2023)

CURRICULUM VITAE



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RIWAYAT PENDIDIKAN FORMAL

Jenjang Pendidikan	Sekolah/Instansi/Universitas	Periode
TK	TK Miftahul Ulum	2004-2006
SD	SDN Mojowono	2006-2012
SMP	SMPI Brawijaya	2012-2015
SMA	MAN 3 Jombang	2015-2018
S-1	UIN Maulana Malik Ibrahim Malang	

RIWAYAT PENDIDIKAN NON FORMAL

Jenjang Pendidikan	Sekolah/Instansi/Universitas	Periode
TPQ	TPQ Nurul Hidayah Mojowono	2004-2012
Pondok Pesantrean	PP Sabilul Muttaqin Mojokerto	2012-2015
Madrasah Diniyah	Madin Sabilul Muttaqin	2012-2015
Pondok Pesantrean	PP Al-Mubtadi-ien BU Tambakberas Jombang	2015-2018
Madrasah Diniyah	Madin Ash-Sholihyyah	2015-2018
Karantina Tahfidz	Yayasan Karantina Tahfidz Al-Quran Nasional	Oktober -November 2018
Pondok Pesantrean	PP Riyadlul Falah	Januari - July 2019
Pondok Pesantrean	MSAA UIN Malang	Agustus - Februari 2019
Pondok Pesantrean	PP Ribathul Qur'an Wal Qira'at Malang	2020 - Sekarang

RIWAYAT ORGANISASI

Jenis Organisasi	Nama	Periode
Organisasi Tingkat Fakultas	Law Debate Community	2020-2021
Organisasi Tingkat Fakultas	Ainu Syams Club	2019-2020
Organisasi Intra Kampus	HTQ UIN Malang	2019-2020
Organisasi Intra Kampus	UKM LKP2M UIN Malang	2020-2022
Organisasi Ekstra Kampus	HMI Komisariat Syariah Ekonomi	2020-2023
Organisasi Ekstra Kampus	PKPT IPNU IPPNU UIN Malang	2021-2023
Organisasi Tingkat Regional	IKASA Al-Mubba Malang raya	2019-2022
Organisasi Tingkat Regional	PD Al-Khidmah Mojokerto	2022-Sekarang
Organisasi Tingkat Regional	Paralegal LPBHNU PCNU Kota Malang	2022-Sekarang

RIWAYAT PELATIHAN

Jenis Pelatihan	Penyelenggara	Periode
Sertifikasi Guru Metode Bacaan Tilawati	TPQ Manarul Huda Kota Mojokerto	2021
DIKLAT Indoor	UKM LKP2M UIN Malang	2021
Sekolah Penelitian Pemula	UKM LKP2M UIN Malang	2022
Inkubasi Jurnal Lorong	UKM LKP2M UIN Malang	2022
Latihan Kader (LK) 1	HMI Komisariat Syariah Ekonomi UIN Malang	2020
Pelatihan Paralegal	LPBHNU PCNU Kota Malang	Oktober 2022
Diklat Kepemimpinan Nasional (DIKLATPIMNAS III)	Diktis Kemenag RI	Desember 2022
A New Way Off Academic Writing	Syabbul Bachri M.HI	April 2023

KARYA TULIS

Jenis Karya	Judul Karya	Tahun dan Link
Resensi Buku	Menguji Universalitas Dan Aktualitas Spirit Profetik Fikih Ekonomi Di Tengah Dinamika Ekonomi Global	https://doi.org/10.59001/pjeb.v1i1.7 2022
Jurnal	Urgensi Pemenuhan Hak Atas Nafkah Batin Narapidana Dalam Perspektif Fikih Islam	https://doi.org/10.1234/lorong.v1i1.2695 2022

