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The Effectiveness of the Peace Effort In The Case Of Divorce Court in Religion

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Abstract
The purpose of this study is to know and analyze how the effectiveness of judge efforts in the mediation of divorce cases according to Supreme Court Regulation No. 1 of 2016 and To know and analyze the factors that affect the effectiveness of peace efforts in the case of divorce in the Religious court. This research employs empirical research empirical research approach to the implementation of empirical legal rule and law effectiveness with regard to research object..

Keyword: The Effectiveness, The Peace Effort

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I. INTRODUCTION

The Unitary State of the Republic of Indonesia is a State of law that guarantees the supremacy of the law, reflected in the enforcement of law and equality under the 1945 Constitution of the State of the Republic of Indonesia, meaning that any matter must be based on law, divorce to the Religious Court in Makassar City.

In a jurisdiction subject to the rule of law the position of the judiciary is regarded as the executor of judicial power acting as a pressure valve for all violations of law that occur in social interactions and violations of public order and comfort. The judiciary can also be interpreted as the last place to seek truth and justice.

The Indonesian people are currently facing the reality that the ineffectiveness and inefficiency of the judicial system in Indonesia. It is evident that the settlement of the case takes a long time from the first level, the appeal level, the appeal level, and the review. On the other hand, the Indonesian society seeking justice requires a quick and precise settlement of the matter and not just a mere formality. Thus, the judge does not immediately decide the case in just one or two hours. But the effectiveness of the process in litigation is the demand of society. Courts must process cases in accordance with applicable law, and not stall for no reason justified by law.

Judges play a very important role in the judicial system. Judges are not only law enforcers and justice, but judges are also state officials who have a noble duty in the context of realizing the rule of law and always strive to provide legal certainty and benefit in the midst of social life through its legal decision in court.

The stage that the judge must perform in a case against him is to bring peace to the parties to the dispute. MA has issued Supreme Court Regulation (PARMA) No. 1 of 2008 which is expected that mediation can be an alternative dispute resolution with low cost. In addition, in the Supreme Court Regulation No. 1 of 2008 obliges the mediation of every case that goes to the Court. Considering the effectiveness of PERMA No. 1/2008 on mediation procedures in court has not been optimal to meet the need for more efficient mediation implementation, and able to increase the success of mediation in court, on February 02, 2016 MA issued PERMA Number 1 Year 2016 About Mediation Procedure In Court..

Peace efforts in religious courts are called mediation. According to PERMA No. 1 Year 2016 definition of mediation as provided for in Article 1 Paragraph 1, namely "Mediation is a way of dispute resolution through negotiation process to obtain agreement of the parties with the help of mediator".

Neutral parties are called mediators with the task of providing procedural and substantial assistance. The consensus approach in the mediation process implies that everything generated in the mediation process must be the result of agreement or agreement of the parties.

This mediation process is desirable so that the parties to the fringe or the dispute can come to terms through negotiations to reach an agreement between them toward a mutually beneficial solution.

In Indonesia, the Religious Courts are a forum for Muslims seeking to seek justice and legal certainty that are expected to provide satisfaction and tension within the Islamic community, which include marriage, inheritance, endowments, grants and others. In addition, the Religious Courts in implementing certain civil laws in accordance with Islamic rules and norms. Regarding the case filed by the justice seekers on possible matters,

the judge first strives for peace (islah), to avoid so that after the judge decides the case there are those who feel harmed. No matter how fair the judge's decision is, the loser will feel dissatisfied.

The judge's obligation to reconcile the litigants is in line with the guidance of Islamic teachings. The parties litigant here especially in the matter of family or husband and wife. Islamic teachings order that resolving any disputes between human beings should be resolved by way of peace.

Thus it can be said that the efforts made by the judge is a priority or obligation for the judge and the mediation must be done seriously. His explanation of the verse above is very precise and clear that the duty of the judge is to mediate husband and wife rather than divorce keduannya. The use of the above verse as an obligation in the matter of reconciling (mediation) that is in the religious court most cases of divorce requesting the process of mediation in addition to other disputes that are also still within the family. In order to achieve the desired peace, it takes the sincerity of the judge to pursue an appeal for peace. The judge is a framers and digger of the values of the law that live among the people and able to explore the feelings and sense of justice that lives in the community. Thus the judge can give a decision that is in accordance with the law and sense of justice. In addition, the evil and the good qualities of the litigants must be considered in considering the decision to be imposed. The judge may also prescribe the settlement of the relief of both parties, which may be attempted by the mastery of the field of Islamic legal material and applicable legislation.

The mediation institution is one of the institutions that until now in the practice of the court has brought many benefits both judges, with the mediation means that the parties to the dispute have contributed to the implementation of the principle of fast, simple, and low cost. While the benefit for the parties to the dispute is the occurrence of mediation that means saving the cost of litigation, accelerate settlement, and avoid contradictory decisions.

The purpose of the mediation process produces two possibilities, namely the parties reaching a peace agreement or failing to reach a peace agreement. Therefore, in the mediation process required a mediator who is really professional. This tendency is evident from the provision in PERMA Number 1 Year 2016 concerning Mediation Procedure in Court, that in principle every person performing mediator function must have mediator certificate obtained after attending training organized by accredited institution from Supreme Court of Republic of Indonesia.

Marriage is a noble goal listed in Article 1 of Law Number 1 Year 1974 on Marriage formulating the meaning of marriage as follows: "Marriage is the inner bond between a man and a woman as husband and wife in order to form a happy family (household) and eternal by virtue of the divine omnipotence. "The word Belief in the One Supreme" here is the basis of marriage is also listed in Article 2 paragraph 1 of Law Number 1 Year 1974 on marriage.and "Marriage is lawful if done according to the law of each religion and trust " The Republic of Indonesia has various religions and beliefs whereas marriage has been recognized by us as an inseparable part of religion, especially Islam governing in complete and detailed ways of marriage, marriage, dowry, divorce and others. According to Islamic view, marriage is considered as a sacred institution because it is done with a sacred ceremony that both parties are linked to married couples and ask each other to become a life partner by using the name of Allah. In the community, it is not uncommon for a family to fail to cultivate a household caused by the poor condition of a marriage. With the breaking of the marriage ropes, it is seen as the best last resort for both sides after a failed peace attempt has been attempted.

Peace is viewed from the perspective of the Civil Code as well as in terms of Islamic Law including the field of treaties that demand the conditions as regulated in Article 1320 Civil Code. Peace in divorce cases has its own noble value. With the peace achieved between husband and wife in divorce cases, not only the intimacy of marriage bonds that can be saved, as well as can be saved the continuity of maintenance and coaching children normally.

II. PROBLEM FORMULATION

1..... How is the effectiveness of judge's efforts in mediating divorce cases according to PERMA No 1 of 2016 in Religious Courts?

2..... what factors affect the effectiveness of peace efforts in divorce cases in the Religious Courts?

A. ..... Theoretical Framework

The effectiveness of the Law

Law is a collection of rules or rules that have a general and normative content, common because it applies to everyone, and normative because it determines what should be done, what not to do, and determine how to implement compliance with the rules. (Sudikno Mertokusumo.1985: 41) Hans Kelsen in his book

"Reine Rechtslehre", states that the law is composed of a method-kaedah according to which one must apply. (Nurul Qamar, dkk.2017: 39)

The judiciary is conducted on a simple, quick, and low cost basis. Simple means the process of examination and the settlement of the case done efficiently and effectively, not too bureaucratic and not convoluted. Fast means the examination and settlement of the case not too long which can cause the process of the case until many years, even must be continued by the heirs. While the low cost means the cost of the case is affordable by justice seekers.

In an effort to realize such a simple, quick and light tribunal, the courts assist the parties to the dispute and try to overcome any obstacles or obstacles to the achievement of such simple, quick and lightly charged courts. One way to make it happen is by integrating it because it has become a common doctrine (communion doctorun) that mediation dipadang as a way of dispute resolution faster and easier than the litigation process. This can be justified because if the mediation succeeds, both parties feel that the peace ruling is fair to them, good relations are maintained, no one feels let down, so there is no need for legal remedies. Thus called simple because the process is efficient, there should be no answer-answer agenda and proof that cause hostility and hatred among the parties. Fast because the time required relatively short not boring but fun, because it can meet the psychological satisfaction of the parties in addition to content or substance satisfaction. Mild cost because the cost is relatively small, because it does not need to repeatedly present to the court and the time spent in fighting for the right relatively short. (I.Made Sukadana, 2012:200).

If the subject matter in the realm of Indonesian law concerning the effectiveness of law in the community, of course the focus is how the law works to regulate, forcing people to obey and obey the law. The effectiveness of the law can be interpreted as the study of legal rules that must be eligible, yuridis, sociological, philosophical. (Zainuddin Ali.2011.94)

The author should first describe the definition of the term Theory of Legal Effectiveness. The term the theory of legal effectiveness comes from the English translation, namely the effectiveness of the legal theory, the Dutch language called effectiviteit van de jurisdische theorie, the German language, wirksamkeit der rechtlichen theorie.

There are three syllables contained in the theory of legal effectiveness, namely theory, effectiveness, and law. In the Big Indonesian Dictionary, there are two terms related to effectiveness, namely effective and effectiveness. Effective means (1) there is effect (consequently, its effect, its impression), (2) efficacious or efficacious, (3) can bring results, effective (about business, action), (4) come into force (on laws,). Effectiveness means (1) state of affairs, impressive things, (2) efficacy; efficacy, (3) success (effort, action), and (4) matters of coming into force (laws, regulations). (Salim, H.S.2013: 301).

Hans Kelsen presents a definition of legal effectiveness. The effectiveness of the law is: Do people in fact act in a way to avoid sanctions threatened by legal norms or not, and whether they are actually implemented if conditions are met or not met. Anthony Allot argues about the effectiveness of the law. He argues that:

The law will be effective if the purpose of its existence and its application can prevent undesirable actions to remove the chaos. Effective law in general can make what is designed to be realized. If a failure, then there is the possibility of easy rectification if there is a need to implement or apply the law in a different new atmosphere, the law will be able to resolve it.

Both views above, only presents about the concept of legal effectiveness, by conducting synthesis of the above two views, it can be put forward the concept of the theory of legal effectiveness. Theories of legal effectiveness are: "Theories that examine and analyze the successes, failures and factors that influence the implementation and application of the law.

There are three focuses on the study of the theory of legal effectiveness, which includes Success in the implementation of law, failure in its implementation; and the factors that influence it

The theory of legal effectiveness was put forward by Bronislaw Malinowski, Lawrence M. friedman, Soerjono Soekanto, Clearence J. Dias, Howard and Mummers.

Bronislaw Malinowski (1884-1942) presents the theory of the effectiveness of social or legal control. He presents the theory of legal effectiveness by analyzing the following three issues, which include:1. In modern society, the social order is maintained in another way by a compelling system of social control, that is, the law; to do so, the law is supported by a system of power tools (police, judiciary, etc.) organized by a State;2. In primitive societies such power powers are sometimes absent; and. Thus, whether in primitive societies there is no law.

According to Krabe and Paul Sholten (Ahmad Ali, 1998: 192) says that law can apply effectively in society if supported by awareness or values contained within man about the existing or expected law, even though the legal awareness has been owned by citizens society is not an absolute guarantee that law will be obeyed

Theory of Legal Functions

Theory To achieve its objectives, the law must be functioned according to certain functions. What is the function of the law? the answer depends on what we want to achieve? in other words, the function of the law is broad, depending on the purpose of general law and the specific objectives to be achieved. The general purpose of the law we have discussed above. Whatever the general purpose of the law, seyoginya implemented in order to achieve these goals.

Joseph Raz saw the function of law as a social function, which distinguished it into direct function and indirect function. Meanwhile, the author himself distinguishes it into:

1. Legal function as a tool of social control
2. Legal function as a tool of social engineering
3. Legal function as a symbol
4. The function of law as a politicial instrument and
5. Legal function as integrator.

According to Ronny Hantijo Soemitro (1984: 134): "Social control, a normative aspect of social life or can be referred to as a deviation deficit and behavior and its consequences, such as prohibitions, demands, loss". From what Ronny points out above, we can grasp the sign that the law is not the only means of control or social control. Law is only one of the tools of social control in society.

The function of the law as a means of social control is to establish the behavior that is considered from the rule of law. In addition, to establish sanctions or actions taken by law in the event of such deviation. Furthermore, Ronny (1984: 143) writes that: "Distorted behavior is an action that depends on social control. This means, social control determines what behavior is a distorted behavior. The more dependent the behavior is on social control, the heavier the value of deviation perpetrators. The weight of the deviant behavior depends. "

Each society has a different quantity of sanctions against a legal deviation. For example, for a society consistent with the Islamic Shari'a, the penalty for adulterers is a severe physical punishment, but for Western European societies, the penalty for an adulterer (overspel) is much lighter. Thus, exactly the theory put forward by Ronny above.

JS Roucek (1951: 3) states: "The mechanism of social control is everything that is carried out to carry out planned and unplanned processes, to educate, to invite, or not to force citizens to adapt self with the habits and values of the people's life. "

Theory of Legal Purposes

In some legal jurisprudence books, the discussion of the purpose of law is often confused with the function of law. In fact, there is a difference between legal objectives and legal functions. This will be much clearer if exemplified in the means of transportation. For example Garuda Airways aircraft has a function to transport passengers to the destination. Is it a legal objective? The answer to this question is just as difficult as jawaaban to other questions that concern the nature of the law, such as what is the law? what is the science of law?

Various experts in the field of law as well as in the field of other social sciences put forward their views on the purpose of law, in accordance with their starting point and point of view.

Achmad Ali (2011: 59) argued that the problem of legal objectives can be studied through three points of view, each as follows.

1. From the standpoint of positive-normative jurisprudence, or dogmatic jurisdiction, where the purpose of law is emphasized in terms of legal certainty.
2. From the point of view of legal philosophy, where the purpose of law is focused on the aspect of justice3. From the point of view of the sociology of law, where the purpose of law is emphasized in terms of its usefulness.

Achmad Ali (2011: 60) himself doubts the view that the purpose of the law is solely justice. Therefore, justice itself is something abstract, because justice also concerns the ethical value held by someone. Justice is the permanent and constant will of the will, to give what is right for everyone. There is another who sees justice as justification for the execution of the law, which is contrary to arbitrariness.

Therefore exactly what is written by N.E. Algra (1977) states: "Whether something is just (rechtvaarrding), depends more on the rechtmatigheid (conformity to the law) of an assessor's personal opinion. It is better not to say: 'it is adi', but it says: 'it is fair to me'. looking at something just is an opinion of value in person.

The author himself certainly does not support the opinion that says that the law is merely for the sake of justice, for however nila justice is too subjective and abstract. The authors agree that justice together with the benefits and legal certainty is made a priority legal objective, in accordance with the case in concreto..

All theories of justice are theories on how to unify the different interests of all members of society. As you know, according to the concept of fairness utilistic, a fair way of uniting different human interests is always trying to increase happiness.

According to Rawls, however, a fair way to unite the different interests is through the balance of these interests, without paying special attention to the interests themselves. Strictly speaking, the principles of justice are the principles upon which a rational person will choose if he does not yet know his position in society (whether he is rich or poor, high status or low status, smart or stupid).

The principle of justice is what we will choose if we do not know our status. Since people will always act according to their own interests, we can not have a person with his or her interests deciding on his or her own case. The only way we can decide whether it is to imagine a state in which we are tadak or not have interests. In these circumstances, there is no choice but to decide honestly.

Rawls thinks the same way about justice. A rational person would balance the interests neutrally, as he would cut a cake neutrally or honestly if he did not know which part he would receive himself. A rational person who does not know which part he will receive, will certainly cut the cake half-way. Rawls says that a rational person will know which part he will receive from society will choose fair principles of justice (neutral, honest and fair).

Rawls theory is often called: Justine as fairness (justice as kajujuran). So, the main thing is the principle of justice which is the most fair, that's what must be followed.

According to Rawls, there are two basic principles of justice. The first principle, called the principle of freedom. This principle states that everyone deserves the greatest freedom, provided that he does not harm others. Strictly speaking, according to this principle of freedom, everyone should be given the freedom to choose, to be an official, to freedom of speech and to think, to freedom of possessions, freedom from without reason, and so on.

III. DISCUSSION

The judge's efforts in the mediation of divorce cases

In Indonesian grammar, peace comes from a word of peace which means no disagreement, no hostility, no violence, no war, etc., thus giving rise to a harmonious, secure and peaceful life. In the interaction among peers, peace is the cessation of problems, conspiracy to stop the problems encountered (Compilation Team of Big Indonesian Dictionary, 2002: 233).

Kholid Muhammad (1990: 15) states that, peace in Arabic is termed by the "Ash-shulhu" pronunciation textually contains the notion of breaking quarrels or disputes. Meanwhile, according to syara 'formulated by Sayyid Sabiq (1993: 189) as follows: a type of contract to end the resistance between two opposite people.

According to Subekti (1992: 172), peace is an agreement whereby the two parties make peace to end a case, in an agreement whereby each party temporarily releases its rights or demands. Such agreements shall be in writing, or may not be oral.

In the Civil Code of 1851, it is argued that: peace is an agreement of both parties by handing, promising or holding an item, ending a case that is being examined by the Court or preventing the occurrence of a case. Some of the terms of peace which have been put forward, mean that peace is a form of settlement of cases or prevent the occurrence of cases by way of consensus to settle a dispute both outside the court and in advance of the trial, to reach an aqad to end the dispute between two opposing parties. Thus if peace takes place in the hearing, then for divorce cases enough both parties declare to withdraw their business, and for any case other than divorce on what constitutes an end to the dispute (peace) should be made in the form of a peace deed. Then the peace deed was set forth in the verdict and both parties were punished to comply with the peace.

Law of the Republic of Indonesia Law Number 1 Year 1974 Article 39 paragraph (1) regulates: a divorce can only be conducted in front of the court after the court concerned and unable to reconcile both parties (Ministry of Religious Affairs, 2001, 140), while the Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts, which has been amended by the Indonesian Rebuplik Law Number 3 Year 2006. Law Number 7 Year 1989 Article 56 paragraph (2): provisions as referred to in paragraph (1)) did not rule out the possibility of settling the case peacefully. Then reinforced by Article 82 paragraph (1): in the first session of the divorce lawsuit, the judge tried to reconcile the two sides. (2) in the peace proceeding, the husband's wife must come in person, unless one of the parties resides abroad, and can not be personally represented, may be represented by his or her special authorized power. (3) as long as the case has not been decided, peace efforts can be made on each inspection siding. (Ministry of Religious Affairs, 2001: 274).

Mediation Procedure in Court. inspires that peace is a very essential humanitarian commitment and loaded with elements of good. That is why it is not just the laws of human products that emphasize peace, but more than that, morally and juridically, God Almighty. has provided a strategic value to the parties who always put peace in solving every problem

The peace ruling should really end a dispute thoroughly and thoroughly. A peace ruling that does not completely end the current dispute between the two parties is deemed to be ineligible. Such a peace ruling is considered invalid and unbinding to both parties. (Rustan, 2014: 128).

For the verdict of peace to be legitimate and binding to the litigants. So the verdict of peace was made voluntarily and the peace formulation was made by the litigants themselves. This is where the role of the judge is expected to seriously and routinely invite the litigants to make peace. Judges are also expected to be creative in providing advice and advice and clarification of guarantees in the event that there will be unexpected events to the reconciliation of the dispute. besides that the judges must also fully understand the subject matter of the dispute and the ongoing dispute so that with the expertise it possesses can end the disagreement between the litigants with the birth of the peace agreement . (Rachmadi Usman, 2013: 267-268)

The requirement to be the basis of the verdict of the peace should be that the dispute of the parties has already occurred, whether realized or realized, but only to be brought to court so that the peace made by the parties prevent the case in the court. It is understood that the contents of Article 1851 that peace can be born from a civil dispute being examined in court or that has not been filed in court, or a case that is pending in court so that the peace agreement made by the parties can prevent the case in court..

Based on this it can be seen that the verdict of peace only occurs in civil disputes and disputes have been manifestly realized formally. The format of peace submitted to the court may be made in the form of notary deed or also deed under the hand. (Mahyuni, 2009 : 10).

The peace agreement is valid if it is made in writing, it is imperative, so there is no peace agreement if it is executed in an oral manner in the presence of the competent authority. So the peace deed must be made in writing in accordance with the format specified by the applicable provisions. (Abdul Manan, Kencana: 154). According to the stage of the peace agreement, two kinds of consent are known.

It is said that a peace agreement is in the form of a peace ruling if the agreement is set forth in a court decision. In this case the dispute between both parties has been filed to the court in the form of civil lawsuit. If the parties agree to make peace, the peace agreement made is requested by the judge to become a reference judgment. It does not matter whether the agreement was reached before or after the case was examined by the court in court.

Basically the parties may request a verdict of peace at the commencement of the examination, mid or at the end of the hearing. The judge requested to issue a verdict of peace must first observe a peace agreement formulated in a deed, in that peace agreement shall not be contradictory or deviate from the subject matter of his case.

In the event that the parties have signed the deed of approval and the content of the peace agreement does not deviate from the subject matter of the dispute, the judge may issue a decision of peace by taking full control of the contents of the agreement and the dictum / verdict punishes both parties to obey and implement the content of the agreement peace.

If the peace effort is successful then a peace deed is made that punish both sides to fulfill the peace contents that have been made them. (Mukti Arto, 1999: 92). If a peace agreement occurs without the intervention of a judge it is called an agreement in the form of a peace deed. If the disputed parties have been or have not been filed as a court action suit. For example, the dispute has been filed as a lawsuit to the court, then interferes the judges of the parties to the notaries to make a peace agreement in the form of a peace deed and with the peace deed the parties withdraw their case from the court and do not seek the approval of the court verdict.

The peace ruling differs from the peace accord, to the peace ruling inherent to the executorial force, whereas the peace deed does not embed the executorial force, and at times it is still open to the parties' right to file suit as a lawsuit. As has been pointed out earlier on the verdict of peace inherent legal force that binds both parties. From the sounding of Article 1858 Civil Code as well as from the contents of Article 130 HIR / Article 154 R.Bg can be drawn conclusions. (A. Patra M. Zen and Maria Louisa, 2006: 207).

Marriage is an important thing in the reality of human life. With the marriage of the household can be upheld and fostered in accordance with the norms of religion and life order of society. In the household gathered two different types of man (husband and wife), they are interconnected in order to get offspring as the successor of the generation. Insan-insan in the household that is called "family". The family is the smallest unit of a nation, the family that aspired in marriage is a happy happy family who always get the pleasure of Allah SWT.

To form a prosperous and happy family, marriage is required in accordance with the norms of religion and rules of the rules. The strong weakness of the household that is enforced and nurtured by the husband and wife is very dependent on the will and the intention of husband and wife who carry out the marriage. Therefore, in a marriage is necessary for the love of inner birth between the couple husband and wife. A marriage built with a false love (not born in spirit), then such a marriage can not be maintained and is usually born with a divorce. If marriage has ended with a divorce then bear the consequences not only husband and wife but the children and the whole family sides participate bear the consequences.

In the dispute of divorce if the reasons for divorce are based on the continuous and continuous dispute and quarrels, then utuk can prove the truth of the reasons under Article 76 (1) and (2) of Law Number 7 Year 1989 are described as follows: Paragraph (1) If the divorce is based on the reason (syiqaq) then to get the verdict of divorce should be heard sanctions from the family or people close to husband and wife. Paragraph (2) The Court upon hearing witness testimony about the nature of dispute between husband and wife may appoint one or more of the families of each party or another person to be a judge. Case of divorce on the grounds syiqaq judge can lift hakamain. From the husband and wife as regulated in Article 76 of Law Number 7 Year 1989 on Religious Courts. The function of hakamain here is as the representative of husband and wife and has no authority at all to divorce husband and wife. (Abdul Manan, 2000: 242).

Particularly in the dispute of divorce cases, the principle of meditation by the parties is imperative. The attempt to reconcile the parties is a burden requiring by law to judges in every examination, trial, and deciding case of divorce. Therefore, the reconciliation efforts in divorce cases on the basis of continuous disputes and arguments must be exercised by the judges in an optimal manner. Whereas in case of divorce for reasons of adultery, disability or mental illness resulting in not being able to perform its obligations, the nature of the peace undertaken by the judge shall still be carried out because it is an obligation but not prosecuted optimally as in the case of divorce for reasons of disputes and persistent quarrels. (Abdul Manan, Kencana, 2005: 164).

Once the importance of peace efforts in the case of a divorce if both parties represent their proxy in applying for divorce to the court, according to Article 82 paragraph (2) of Law No. 7 of 1989 on Religious Courts, determines that the peace effort husband and wife must coming personally should not be represented. The provision means that the judge must maximally present the material, by way of formal and proper calling, if the material parties do not come, then according to the legal presumption both parties will not be peaceful anymore. Of course, such conditions can not be forced to come face to face because the case has been authorized. The judge's attitude is to continue the proceeding process without the need to reconcile the material, and the case must not be declared unacceptable, since the requirement determined by the law has been implemented. (Wildan Suyuti, 2001: 9-10).

The Role Of Judges And Mediators In Peace Efforts

The role of the judge in court is to examine every case or dispute brought to court, the role of the judge then proceeds to adjudicate and decide a case fairly. Furthermore, the role of the most important judge is to mediate and to seek peace among the disputing parties in court.The judge in an attempt to deliver a case that is being examined peacefully is of paramount importance, so that the judge in every case he faces must be active in order to always seek peace between the parties. In civil cases the judge shall petrify the litigants and try to maximize all obstacles in order to resolve the dispute faced for the achievement of a simple, quick and costly trial. (Nurnaningsih Amriani, 2011: 99).

The judge's duty in naming the litigants is in line with the guidance of Islamic teachings. Islamic teachings order that resolving any disputes between human beings should be resolved by way of peace (islah) this provision is in line with the word of Allah SWT in QS. Al-Hujurat verse (9) where it is argued that if two groups of believers quarreled then peace, peace should be done fairly and rightly because God loves those who are just. Umar ibn Khattab when he served the Caliph of Arrasyidin in an incident once argued that the settlement of an event by judge's verdict is unpleasant and this will be a continuing dispute and argument, preferably avoided. In the traditional jurisprudence books are also recommended by experts of Islamic law to resolve disputes between Muslims to be implemented by means of islah or peace. (Abdul Manan, 2000: 97).

According to Yahya Harahap, (1993: 51-52), states that every divorce case examination for reasons of disputes and quarrels that have not fulfilled business optimally reconcile, the examination and decision is "null and void" or "irrevocable" lawyer. In any case, the appeals or cassation judiciary should order re-examination through an interlocutory decision to seek an optimal peace. In order to test whether the verification process has met the real demand for an optimum peace effort, it can be examined in the minutes of the hearing did not include a description of the measures of genuine peace efforts, the appellate or cassation courts, must issue an "interlocutory decision" which contains an amar ordering a first-rate court to re-trial for peace. Therefore, the judge in adjudicating a case submitted to him, is expected to play an active role to carry out peace to the litigants. Peaceful efforts should be optimized, so that disputes between the litigants may end without hostility.

Article 1 Paragraph 2 of PERMA No 1 of 2016 provides a definition of a mediator as a judge or a party who has a mediator certificate as a neutral party assisting the parties in the negotiation process to seek possible dispute settlements without resorting to the disconnection or enforcement of a settlement. (Maskur Hidayat, 2016: 58).

Neutral understanding is more focused on a fair or impartial offense process to one party and not solely because of the personal capacity that has a kinship relationship with either party, although it remains important and determines the mediation process can work. (D.Y. Witanto, 2012: 88).

A mediator must have special expertise in the field of dispute resolution as evidenced by a mediator certificate. It is intended that people who become mediators are people who really have communication skills and negotiation techniques are adequate, in addition to a mediator must also dikelaki good communication skills and able to motivate other people who are disputed. A mediator's certificate shall be conducted by a Supreme Court or professional institution which has been accredited by the Supreme Court. The dispute over divorce for continuous quarrels and quarrels, the role of the judge is desirable to look for the underlying factors of disputes and quarrels. If this is already known to the judges, then easily the judges invite and direct the disputing parties to reconcile and reconcile as before. In connection with this, the judges must be summoned in an optimum conscience to pursue peace, not only stuck to the search for the fact of the quality of the dispute itself.

The mediator must have a record of each meeting to avoid repetition of discussions on a negotiating material, for example issues agreed upon at the previous meeting need not be reopened at the next meeting, so that the issue will not come back, notes from each meeting will also assist the mediator in performing recovery and evaluation at each stage of the process as a matter of consideration and to help determine the negotiation strategy at the following meetings. Schedule / calendar has a role to help the parties in understanding their respective views and help locate problems that are important to them. The mediator facilitates the exchange of information, encouraging discussion of differences of interests, perceptions, interpretations of situations, and regulating emotional disclosure. The mediator helps the parties prioritize the issues and focuses on the discussion of public goals and interests.

IV. CONCLUSION

1. The peace effort in divorce cases in the Religious Courts as an attempt to reconcile with the litigants to keep the case from being continued or repealed or to end with a peace ruling has not been effective, which has influenced many factors, namely legal substance, legal structure and legal culture.

2. The effectiveness of divorce in the settlement of divorce cases in Religious Courts, Judges in reconciling the litigants before the trial, either through the Panel of Judges or through mediators.

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