

The Effectiveness of the Implementation of the Principle of Simple Court Procedures, Fast and Low Cost in a Case of Divorce Lawsuit

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ABSTRACT

The purpose of this study is to investigate the effectiveness of the implementation of simple, fast and low-cost religious court procedures in the divorce case at the Religious Court, Palu. This study used qualitative research, while the data were collected through observation, interviews and document reviews. The effectiveness of the religious court procedures in regards to topic being investigated was measured through the theory of legal effectiveness. The results of the study showed that the effectiveness of simple, fast and low-cost judicial principles could be effectively achieved due to a simple trial process, continuous revision throughout the process (from registration to decision) and affordable case costs. 2) The factors that support the accountability of the Religious Court when implementing the principles are the existence of a one-stop integrated service system, Electronic Court (E-Court), free litigation, Legal Aid Post and observable court. 3) A simple, fast and low-cost judicial principles have been effective because they have fulfilled the five aspects as stated by Soerjono Soekanto

ARTICLE INFORMATION

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1. Introduction

Everyone always longs for a household that remains harmonious and loving, peaceful and tranquil in which family members can create a bond of love, affection, sympathy and mercy.¹ However, in the attempts to achieve such a household a couple would experience many obstacles, trials and tribulations which would bring intermittent shock(s) in the household.²

In reality, life shows that building a household is easy. However, to maintain and nurture family to the level of ideal happiness and well-being is very difficult.³ This is due to problems that often arise in one marriage in which individuals of different types, traits, character, traits, education and outlook are united in a sacred bond of life.⁴ With these differences, it is very often a couple is led to estrangement and disputes which in many cases husband and wife would come to court to resolve their household problems and in worst cases it would end up with divorce.

Based on the results of a preliminary survey, divorce rate in the Religious Court Office Palu Class I A has been continuously increasing in recent years due to various disputing

factors when it comes to navigating the household ark. In the last seven years, it was noted that number of applicants for divorce is coming from wife side. The ratio showed that in the divorce application noted, one husband is equal to three wives. This becomes a big question mark why the rate of divorce application is more coming more from wife instead of husband. This ratio implies that the role of a husband in a household is no longer dominant. Consequently, a wife does no longer hesitate to file for divorce.

Basically divorce is lawful according to the teaching of Qur'an and hadith of Prophet Muhammad (p.b.u.h.). However, divorce is hated by Allah. In this issue, divorce is not hated, but causes leading to divorce such as bad relationship of husband and wife and many other disputes that occur between the two should be taken into account.⁵

Based on the above problems, disputes often occur in a family have been caused by differences in character and desires between husband and wife that lead to divorce. Then, in the order of social life, a legal institution is needed to handle process of an existing litigation. With the assistance of a legal institution which provides significant contribution, divorce could be annulled. In the context of the study, the legal institution intended is a religious court office.

¹ Ahamd Azhar Basyir, *Keluarga Sakinah Keluarga Surgawi* (Yogyakarta: Titin Ilahi Press, 1994), 11

² Rusli, R. (2018). Fikih Ekologi dan Kearifan Tradisional: Tinjauan Terhadap Konsep Ihya' al-Mawat dan Hima. *Hunafa: Jurnal Studia Islamika*, 5(3), 287-298.

³ Ahmad Azhar Basyir, *Hukum Perkawinan Islam* (Yogyakarta: UII Pres, 2000), 1

⁴ Djamil Latif, *Aneka perceraian di Indonesia* (Jakarta: Galia Indonesia, 1982), 12

⁵ Rusli, R. (2009). Gagasan Khaled Abu Fadl tentang "Islam Moderat" versus "Islam Puritan" (Perspektif Sosiologi Pengetahuan). *Jurnal Ilmiah Ilmu Ushuluddin*, 8(1), 99-123.

A religious court office is a legal institution that has the task to examine, decide and settle cases of Muslim in cases of marriage, inheritance, wills, grants, endowments, zakat, infaq, sadaqah and Islamic economics. These cases are mentioned in the article 49 of Law Number 3, 2006 concerning renewal of Law Number 7, 1989 in regards to Religious Courts.⁶

The Republic of Indonesia has regulated procedure / process of divorce with the issuance of Law Number 1, 1974 concerning Marriage. CHAPTER IV, there are several articles regulating cancellation of marriage, including Article 25 reads, "An application for a marriage cancellation shall be submitted to court in jurisdiction where it is held or in the residence of both husband and wife".⁷ Chapter VI, if husband and wife are negligent of their rights and obligations, then it applies to both. Article 34 paragraph 3 stated: "If a husband or wife neglects their respective obligations, they can file a lawsuit to court".⁸

Recently, there has been a significant increase in divorce rates. The rate shows that there have been eight hundred more cases (specifically divorce cases). The number of divorces is classified as the highest compared to

previous years.⁹ With the high divorce rate, there is one principle proposed to help resolve the existing cases. The principle of law can be called the basis or the reason for the formation of a rule of law or so called a ratio-legis of a rule of law which contains values, souls, ideals, social or ethical legislation to be realized. Therefore, the principle of law is the heart or the bridge of a legal rule that connects with other legal regulations.¹⁰

In the procedural law there is a principle that is applied in a trial process. The principle is a principle of justice that the authors are referring to which is simple, fast and low-cost, making this principle of justice to facilitate litigants in court and law enforcers.

The principle of justice is simple, fast and low cost, also known as informal procedure and can move quickly.¹¹ This is one of the principles implemented in justice system in Indonesia. The existence of this principle has been dated back to the issuance of Law Number 14, 1970 concerning basic provisions for Judicial Power. However, it is no longer valid with the emergence of Law Number 48, 2009 concerning Judicial Power, which reads court helps justice seekers and seeks to overcome all obstacles to

⁶ Undang-Undang Nomor 3 Tahun 2006 Tentang Pembaharuan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama.

⁷ Undang-Undang Republik Indonesia No. 1 Tahun 1974 Tentang Perkawinan, Bab IV Pasal 25 (Jakarta: Raja Grafindo Pers, 2002), 155

⁸ *Ibid*, 158

⁹ Dokumen Pengadilan Agama Kelas 1A Kota Palu, 06 Maret 2019.

¹⁰ Satjipto Raharjo, *Ilmu Hukum*, (Bandung: Alumni, 1982) 85-86

¹¹ Kerisna Harahap, *Hukum Acara Perdata Mediasi, Arbitase dan Alternatif*, (Bandung: PT Grafitri Budi Utami, 2008), 14

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achieving a simple, fast and low cost trial.¹²

Reflecting on the eight hundred divorce cases and the existence of several factors that influence the implementation of the principle of simple justice, fast and low cost, the authors are interested in investigating this topic through empirical methods of inquiry. Specifically, the authors focus more on the effectiveness of the implementation of the principle of simple justice, fast and low cost in divorce cases in the Religious Court of Palu.

2. Literature Review

2.1 Basis for Legal Effectiveness Theory

The term legal effectiveness theory comes from English, Dutch, and German translations. In the Dutch language, it is called *effectiviteit van the juridische theorie*. The German language, on the other hand, it is *wirksamkeit der rechtlichen theorie*.¹³ There are three syllables contained in the theory of legal effectiveness: theory, effectiveness and law.

In a large Indonesian dictionary, there are two terms related to effectiveness, namely effective and effectiveness. Effective means (1) there is an effect (effect, effect, impression), (2) efficacy or efficacy, (3) can bring results, succeed (about effort and action), (4) Effective (of regulatory laws).

¹² Sukarno Aburaera, *Kekuasaan Kehakiman*, (Makassar Arus timur, 2012), 13

¹³ Salim HS, dan Erlies Saptiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, (Jakarta: Rajawali Pers, 2016), 301

Effectiveness means (1) influential circumstances, memorable things, (2) efficacy; efficacy, (3) Success, (4) Commencement of regulations or laws.¹⁴ Hans Kelsen presents a representative definition of legal effectiveness. The effectiveness of the law is:

Do people in fact act according to a way to avoid sanctions that are threatened by legal norms or not, and whether sanctions are actually implemented if the conditions are met.¹⁵

The concept of effectiveness in the definition of Hans Kelsen is focused on the subject and sanctions. The subjects who carry it out, namely people or law enforcement. These people must implement the law in accordance with legal norms. For people who are subject to legal sanctions, the legal sanctions have actually been implemented or not.¹⁶

The above understanding only presents the concept of legal effectiveness, but it does not examine the concept of legal effectiveness theory. Having synthesizing the above understanding, it can be put forward that the concept of the theory of legal effectiveness is as follows: "The theory

¹⁴ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesai* (Jakarta: Balai Pustaka, 2005), 219

¹⁵ Jimli Asshiddiqie dan M. Ali Syafa'at, *Teori Hans Kelsen Tentang Hukum*, (Jakarta: Konstitusi Pers, 2009), 39

¹⁶ Rusli, R. (2013). The Role of Musalahah in Conflict Resolution: A Historical Perspective. *Hunafa: Jurnal Studia Islamika*, 10(2), 203-220.

that studies and analyzes success, failure and factors that influence the implementation and application of law".¹⁷

There are three focus of the study of the theory of legal effectiveness:

1. Success in implementing the law;
2. Failure in its implementation; and
3. Factors that influence it.

The success in the implementation of the law is that the law has been made and its aim has been achieved. The purpose of legal norms is to regulate human interests. If the legal norms are obeyed and implemented by the community and law enforcement, the implementation of the law was declared to be effective or successful in its implementation. This can be seen when people are aware of placing their obligations to the state of satisfaction (100%).¹⁸

Meanwhile, the failure in the implementation of the law is shown in a way that the provision of the law determined cannot achieve its purpose. The analogy can be demonstrated in Mining Business Permit (IUP) issued by a Mayor where the holder of the permit cannot carry out their business properly because there is a constant resistant from local community.¹⁹

Many factors influence the implementation of the law. These factors

can be assessed from two aspects. First, substance of the law, structure, culture and facilities are those that would contribute to the implementation of the law. Legal norms are declared successful or effective if the norm is obeyed and implemented by the community and law enforcement. This can be exemplified when the community has carried out the payment for credits they have got from the bank (people's business credit -KUR) on time. Second aspect describe potential failure of the law implemented. In many cases, vague or unclear law, corrupt law officers, and people are not aware of the law or obey it which is espoused with poor or limited facilities lead to failure of the implementation of the law.²⁰

The theory of the effectiveness of the law has been put forward by experts including: Bronislaw Malinowski, Lawrance M. Friedman, Soerjono Soekanto, Clearance J. Dias, Howard Mummers.

Bronislaw Malinowski (1884-1942) presents the theory of the effectiveness of social or legal control. He presents the theory of legal effectiveness by proposing three problems analysis:

1. In a modern society, social order is maintained by, among other things, a coercive social court system, namely the law. To implement the law, it must be supported by a system of instruments of power (for example:

¹⁷ Salim HS, dan Erlies Saptiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, (Jakarta: Rajawali Pers, 2016), 303

¹⁸ Ibid, 303

¹⁹ Rusli, R. (2017). Wahdah Islamiyyah Palu: on Contemporary Islamic Legal Issues in The Internet. *Hunafa: Jurnal Studia Islamika*, 14(2).

²⁰ Salim HS, dan Erlies Saptiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, (Jakarta: Rajawali Pers, 2016), 304

police, court and so on) created by a country;

2. In primitive societies such power tools sometimes do not exist; and
3. Therefore, in a primitive society there is no such thing as law?²¹

Bronislaw Malinowski analyzes the effectiveness of law in society. Society can be divided into two types: modern and primitive society.

Modern society is a society whose economy is based on a broad market, specialization in industry and use of advanced technology. In a modern legal society, law made and implemented by competent authority which is upheld by police, court and others. Primitive society is a society where a simple economic system develops amongst its members. In primitive societies, people do not recognize the instruments of power.

Lawrance M. Friedman suggests three elements that must be considered in establishing law. The three elements include structure, substance and legal culture.²² Legal system structure consists of:

1. The elements of number and size of court, its jurisdiction (i.e. type of case they examined, how and why);
2. How to appeal from one court to another;
3. How legislature is organized, how many people sit on federal trade

commission, what can and should not be done and what procedures must be followed.

Understanding substance of law includes:

1. Real rules, norms and human behavior within legal system;
2. Products produced by people who are in legal system both decisions they issue and new rules they draft.

Legal culture as attitudes and values that have relationship with law and legal system. The following attitudes and values provide both positive and negative influences on behavior related to the law. Legal culture can be divided into two types, namely: External and internal legal cultures.²³

2.2 Simple, Fast and Low Cost Principle

Principle is basic, (something that becomes foundation of thinking or opinion,²⁴ whereas simple in language means medium, (mid, neither high nor low).²⁵ So simple principle is clear, easily understood and not convoluted. With the principle implementation, flexible procedural law in the interests of those who want a simple program could be manifested.²⁶

Sudikno Mertokusumo, defines the word '*simple*' as a clear event, easy to understand and straightforward. The

²¹ Koentjaraningrat, *Sejarah Teori Antropologi*, (Jakarta: UI Pers, 1987), 167-168

²² H. Salim HS, *Sistem Hukum Prespektif Ilmu Soisal (A Legal Sistem A Social Science Perspective)* di terjemahkan oleh M. Khozim, (Bandung: Nusa Media, 2009), 7-9

²³ Ibid, 293

²⁴ Sudarsono, *Kamus Hukum*, (Jakarta: PT Rineka Cipta, 1992), 36

²⁵ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesai* (Jakarta: Balai Pustaka, 2005), 163

²⁶ A. Murti Arto, *Mencari Keadilan*, (Yogyakarta: Pustaka Pelajar Offset, 2001), 64

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less formalities that are required in court proceedings, the better procedures to be achieved.²⁷

Justice system which is complicated will injure the simple principle. The making of this simple principle is to make it easier for litigants to seek justice and to make justice seekers not hesitate to go to court.

The principle of rapid means short time. Short time means that there are not many ins and outs in its procedures.²⁸ Fast refers to tempo which means sooner or later completion of the case could be achieved. The word quickly refers to the judicial net. Too many formalities are handicaps for justice process. Formalities in this case cover proceedings of trial, hearing of trial, completion of examination of a case report until signing of decision by a judge and an executor.²⁹ It is not uncommon for a case to be delayed for years because witnesses do not come or parties take turns not to come. There is even a case that has been continued by his inheritor.³⁰

Likewise judges in handling each case, they must be able to decide the case in time that has been determined.

Supreme Court in circular No. 1 1992 provides a maximum time limit of 6 months, meaning that each case must be resolved no later than six months after the case registered in the Registrar's Office. However, when the case could not be proceeded to to complete within time limit as it has been observed, then the other way should be taken into account.³¹

This fast principle is not intended to have judge examined and decided divorce cases within one or two hours. What is aspired in this context is an examination process relatively does not take a long period of time up to years.³² Hence, this principle demands how a judge should not slow down a trial process he leads. Various factors in judicial process must be carried out quickly and should not be convoluted by judge. Therefore, a trial process should not take a long time. In terms of this fast principle judges should not be subjective in examining cases. Judges must continue to examine each and every case to create justice for those who litigate.

The principle of low cost means money spent on establishing administration incurred for handling letters and case costs such as summons and stamp duty.³³ Meanwhile, lightness here refers to a lot or a small amount of costs that must be incurred for justice seekers

²⁷ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty Yogyakarta, 2006), 36

²⁸ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesai* (Jakarta: Balai Pustaka, 2005), 792

²⁹ M. Yahya Harap, *Kedudukan, Kewenangan Dan Acara Pengadilan Agama*, (Jakarta: Grafika Offset, 2003), 71

³⁰ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty Yogyakarta, 2006), 36

³¹ A. Murti Arto, *Mencari Keadilan*, (Yogyakarta: Pustaka Pelajar Offset, 2001), 65

³² M. Yahya Harap, *Kedudukan, Kewenangan*, 72

³³ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesai* (Jakarta: Balai Pustaka, 2005), 113

when resolving their dispute before court.³⁴

This principle fades perception off regarding high cost of litigation in court because many people are afraid of not being able to pay bills for their cases. Whereas the principle of low cost in this case means no other costs are needed unless it is actually needed in real terms for settling a case. All payments in court must be clear and accountable for finances which allow litigants to see them at any time.³⁵

Religious Courts have rules which contain a very clear and detailed administration of case costs, in which the rules explain who is responsible for the cost of the case, when the case cost was incurred and so on.³⁶

For justice seekers who are categorized as people who are unable to pay bills of their cases, they can also conduct or undergo trials at judiciary. In connection to court fee for unfortunate people, services can be given to obtain free legal protection (Prodeo) as stipulated in the Article 237-245 HIR / the Article 273-277 R.Bg.³⁷ Litigant can submit a request to the head of court for a dispute for free, accompanied by a statement of disability from the head of village as

stated in the article 60 paragraph 1,2,3 of Law No. 5, 1986.³⁸

1. Basic Laws of Simple, Fast and Low Cost

All legal guidelines or regulations have clear legal principles and must be adhered to in order to achieve these legal principles. Likewise in religious court procedural law, there are principles that guide judges in court proceedings.

The principle of simple, fast and low cost is also known as informal procedure and can be motion quickly.³⁹ The existence of this Principle has existed since the issuance of Law Number 14, 1970 concerning the principal provisions of Judicial Power. This simple, fast and low cost principle is then contained in Law No. 4, 2004 concerning Judicial Power.

The article 4 Paragraph 2 reads: trial is carried out simply, cheaply and quickly.⁴⁰ However, this law is no longer valid with the advent of Law Number 48, 2009 concerning Judicial Power. The explanation of the article 2 paragraph 4 as follows: simple is the examination and settlement of cases carried out in an efficient and effective

³⁴ Setiawan, *Aneka Masalah Hukum dan Hukum Acara Perdata*, (Bandung PT: Alumnus, 1992), 749

³⁵ A. Murti Arto, *Mencari Keadilan*, (Yogyakarta: Pustaka Pelajar Offset, 2001), 67

³⁶ Buku pedoman Pelaksana Tugas dan Administrasi Pengadilan Agama, Buku II

³⁷ A. Murti Arto, *Mencari Keadilan*, 67

³⁸ M. Tufik Makarau, *Pokok-Pokok Hukum Acara Perdata*, (Jakarta : PT Rineka Cipta, 2004), 70

³⁹ Kerisna Harahap, *Hukum Acara Perdata Mediasi, Arbitase dan Alternatif*, (Bandung: PT Grafitri Budi Utami, 2008), 14

⁴⁰ Undang-undang No. 4 Tahun 2004 Tentang Kekuasaan Kehakiman, (bandung: PT Fokus Media, 2004), 3

manner. Low cost is the cost of a case that can be reached by community.⁴¹

A simple, fast and low cost court is also contained in the Law of the Republic of Indonesia Number 7, 1989. A simple and fast court of law is contained in the article 57 paragraph 3 which reads "the court helps to overcome all obstacles to achieve a simple, speedy trial, and low cost."⁴²

2.3 Divorce Legal Process in Court

In this context, the authors focus on filing divorce in Religious Court as a case study. Historically, religious justice as a judicial body in Muslim societies existed in Indonesia before the arrival of the Dutch invaders and continued to provide legal services even though they were hampered by colonial powers.⁴³

After Indonesia's independence, the existence of religious court was consolidated with the issuance of Emergency Law Number 1, 1951 and the Government Regulation number 45, 1957. The existence and role of the Religious Courts was even more stable with the issuance of Law number 40, 1970, the Law Number 1, 1974, Law Number 14, 1985 and Law Number 7, 1989.

Broadly speaking, divorce process is divided into two types, depending on which party submits the

claim. First, when the claim filed by a husband, it is called divorce. Second, a wife who files for divorce is called a litigated divorce. So in divorce legal process, a husband has legal status as the applicant, while a wife has legal status as the respondent.

1. Submitting Application for Divorce and Litigated Divorce

A Muslim husband who wants to divorce his wife must rely on the Article 66 jo, the Article 67 of Law No. 7 1989 jo. Law no. 3, 2006 jo. The Law Number 50, 2009 states that a husband or a wife submits a request to Religious Court to hold a hearing to witness divorce pledge. Meanwhile, a divorce suit regulated in the article 73 of Law no. 7, 1989 jo. UU no. 3, 2006 jo. Law Number 50, 2009, submitted by the wife as a plaintiff or attorney to Religious Court whose jurisdiction covers their residence.⁴⁴

Requests for child control, child living, wife's livelihood and wealth together with husband and wife can be submitted together with requests for divorce or after decision. So Religious Court does not only deal with divorce cases but also child control, child income, wife's living, and property disputes with husband and wife which are legal consequences of the broken marriage.⁴⁵

2. Examination and Peace-agreement

⁴¹ Sukarno Aburaera, *Kekuasaan Kehakiman*, (Makassar Arus timur, 2012), 13

⁴² Undang-Undang Republik Indonesia Nomor 7 Tahun 1989, (Jakarta: PT Sinar Grafika, 2004), 21

⁴³ Muhammad Syaifuddin, Sri turatmiyah dan Annalisa yahanan, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2014), 230

⁴⁴ Ibid, 240-255

⁴⁵ P.N.H. Simanjutak, *Pokok-Pokok Hukum Perdata Indonesia*, (Jakarta: Djambatan, 2007), 192

Examination of divorce and litigated divorce applications is conducted by Judges of Religious Court no later than 30 (thirty) days after the file or letter for divorce is registered at the partnership. Examination of the request for divorce will be conducted in a closed session. A period of 30 days stated in the article 68 of Law no. 7, 1989 jo. UU no. 3, 2006 jo. Law Number 50, 2009 for Religious Court Judges is intended to provide Panel of Judges the opportunity to examine the case carefully.⁴⁶

Sudikmo Mertokusumo explained that the principle of simple, fast and low cost is a principle that is no less important than other legal principles that must be considered when examining civil cases in the Court.⁴⁷ This principle could help justice seekers and law enforcement cases in court.

In the first session, the Panel of Judges tried to reconcile two parties. In this session husband and wife have to come in person except in a case where one of the parties live abroad or outside of town. When this happens, he or she has to send information specifically to his attorney to represent his or her attendance on the trial.

Peace efforts must be carried out by means of mediation by a judge appointed as a mediator in Religious Court. Mediation is conducted on the basis of Supreme Court Regulation

Number 1, 2008 concerning Mediation, for a maximum period of 40 (forty) days and may be extended for 14 (fourteen) days.⁴⁸

As a mediator, a judge appointed must have a certificate of mediator. In other cases, a judge could be appointed by the Chair of Religious Court. The Panel of Judges when appointing a mediator must read out in front of the hearing board. A copy of divorce application will be submitted entirely to a mediator to mediate the parties. Typically, suggestions given by a mediator include:

1. Provide enlightenment regarding negative effects of post-divorce.
2. Ignoring the awareness that marriage is a sacred bond and contains value of worship, while divorce is something that is hated by God.
3. Remind the parties about the purpose of divorce.

Once mediation process completed, the parties made a statement not to repeat the act which was the reason for divorce. When peace-making is achieved, a mediator sends a letter to the Panel of Judges who examines a divorce case, which reads that a husband and a wife have made peace agreement and will not continue their desire to divorce. After divorce, Religious Court made a statement that the case was cancelled, and asked plaintiff to withdraw their claim from Religious Court.⁴⁹

⁴⁶ Muhammad Syaifuddin, Sri turatmiyah dan Annalisa yahanan, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2014), 242

⁴⁷ Sudikmo Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 2006), 36

⁴⁸ Ibid, 246

⁴⁹ Muhammad Syaifuddin, Sri Turatmiyah dan Annalisa yahanan, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2014), 247

In contrast, when mediation fails, a Mediator makes a letter to be submitted to the Panel of Judges explaining that a husband and a wife failed to reach peace agreement. Consequently, the Panel of Judges must continue divorce trial process until verdict is made unless the applicant or the plaintiff withdraws their petition for divorce in the middle of the trial.⁵⁰

3. Pledge of Divorce / Court Decision

Once the Panel of Judges of Religious Court concluded that the two parties were unlikely to reconcile again and they have sufficient grounds for divorce, the Religious Courts Panel of Judges, based on the Article 70 of Law No. 7, 1989 jo. UU no. 3, 2006, Law No. 50, 2009, stipulates that the application was granted. When a husband submits the petition, a divorce pledge will be implemented.

The decision of Religious Court obtained permanent legal force, as well as bearing all legal consequences after the divorce. The Registrar is obliged to make a divorce certificate as a proof that there has been a divorce between a husband and a wife. The act of divorce is issued no later than 7 (seven) days after the decision of the Panel of Judges of Religious Court.⁵¹

3. Methodology

This study uses qualitative approach taking the Religious Court Office of Palu Class IA. The subjects of the study are personals from whom

information regarding the topic of the study could be obtained. They are the Head of the Palu City Religious Court, judges, and their employees.

Data were collected through observation techniques, in-depth interviews and studies from shared written documents. Meanwhile, data analysis covers data reduction and verification techniques with various data sources.^{52 53} The reduced data is then analyzed by claiming to theoretical concepts used in this study.⁵⁴

4. Result and Discussion

4.1 Application of the Simple, Fast and Low Cost Judicial Principle in Divorce Cases

Religious Courts are one of the recognized Indonesian State Courts, special judiciary, authorized in certain types of Islamic civil cases for Muslims. Judiciary must optimize the implementation of the principle of simple, fast and low cost. As stated in the Law of the Republic of Indonesia Number 48, 2009 concerning Judicial

⁵² Nurdin, N. (2017a). Research in Online Space: The Use of Social Media for Research Setting *Jurnal Sistem Informasi (Journal of Information System)*, 13(1), 67-77.

⁵³ Nurdin, N. (2017b). To Research Online or Not to Research Online: Using Internet-Based Research in Islamic Studies Context. *Indonesian Journal of Islam and Muslim Societies*, 7(1), 31-54.

⁵⁴ Nurdin, N. (2016). The Roles of Information Technology in Islamic Bank Knowledge Management: A study of Two Syariah Banks in Palu. *Hunafa: Jurnal Studia Islamika*, 13(2), 181-217. <https://doi.org/https://doi.org/10.24239/jsi.v13i2.444.181-217>

⁵⁰ Ibid, 260

⁵¹ Ibid, 260

Power, Article 2 Paragraph 4 explains that Judiciary is conducted with a simple, fast and low cost. In implementing the principle of simple, fast and low cost, it is not only from the court but also justice seekers.

To investigate the effectiveness of the simple principle of fast and low cost in the Religious Court of Palu, the researchers have conducted interviews with judges, clerks, advocates / lawyers and litigants. The implementation of the principle in the Religious Court is as follows:

File a lawsuit or request

The Religious Court of Palu has made it easier for justice seekers to submit lawsuits or requests for divorce in a number of ways including provision of a one-stop integrated service system.⁵⁵ This is found out to be very helpful for the parties. Mr Rivaldi (the petitioner) was a doctor who had just completed his divorce case at the Palu Religious Court said, *"I have been assisted a lot by the Court (in the administrative field), where I can determine my trial date, because there is something"*.⁵⁶

In addition to the one-stop integrated service system, the Religious Court of Palu used electronic court applications (E-Court), which makes it easy for advocates to submit lawsuits / requests without having to come to court. Sudirman (lawyer) said "e-court is

very helpful for us because with the application, the case administration process and court services will be simpler, faster, and less cost. Information regarding lawsuit/request for divorce can be obtained from emails, thus making it easier for us to see time and trial date".⁵⁷ The one-stop integrated service system and Electronic Court was explained in detail below (factors supporting the implementation of the principle of a simple justice, fast and low costs).

The mechanism for depositing lawsuit / petition for desk I as many as number of parties, and three copies for the panel of judges. The desk of clerk I receives and checks completeness of files using a check list. In estimating the down-payment of case costs, the clerk was guided by the head of the court. In determining the down-payment in court fees, the Chair of the Court must refer to regulation NO. 53, 2008 concerning Non-Tax State Revenue (PNBP), Republic of Indonesia Supreme Court Regulation Number 2, 2009 concerning the Cost of Case Settlement Process and its Management at the Supreme Court and the Judiciary Body under it and other related regulations.⁵⁸

The estimated PNBP component includes registration fee and editorial rights, while the registration and editorial costs are estimated by

⁵⁵ Wawancara dengan bapak Muhktar selaku Kepala Kantor Pengadilan Agama Palu, 21 Juni 2019

⁵⁶ Wawancara dengan Bapak Rivaldi, selaku pemohon dalam perkara perceraian di pengadilan Agama Palu, 25 Juni 2019

⁵⁷ Wawancara dengan bapak Sudirman selaku pengacara yang telah memiliki legalitas, Palu 26 Juni 2019.

⁵⁸ Muhammad Syaifuddin, Sri turatmiyah dan Annalisa yahanan, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2014), 225

themselves, not included in the cost augmentation. The agency estimates the cost of the case as follows:

- a) Number of litigants.
- b) Distance of residence and conditions of parties.
- c) For lawsuit divorce cases the cost of calling the parties to divorce pledge must be taken into account.
- d) The cost of summoning the parties to attend mediation process is firstly charged to the plaintiff through a case deposit.⁵⁹

After estimating the court fee in advance, the desk of clerk I made a letter for a mandate holder to pay (SKUM) in 4 (four) copies: green sheet for bank, white sheet for plaintiff / applicant, red sheet for cashier and yellow sheet for filing holder. The Decree of the Chairperson of the Religious Court regarding the down-payment of case fees must be pinned on the Court's notice board.

The following procedure deals with the Desk I officer returns plaintiff / petitioner which is to be forwarded to cashier. The plaintiff / applicant pays in advance determined case fee in accordance with the mandated letter for payment (SKUM). Furthermore, cash holder gives the number, sign and stamp the letter. The case sequence norm is the serial number in the case financial journal. The cash holder directs a duplicate of the claim / request letter that has been given a case number to be registered at table II.

The next procedure is the clerk of desk II records the case in the list of

lawsuit / application in accordance with the case number that has been listed on the SKUM. The clerk of Desk II submits a duplicate claim / application letter which has been registered, then enters the claim / application letter in the case file folder with filled in form. Within 2 (two) working days of the above case file, it must have been received by the Chair of the Palu Religious Court. Afterwards, the file reaches the Chief Justice and he is allowed to determine the panel of judges within 7 (intended) days. However, to apply the principle of speedy trial, the Chair of the Palu Religious Court needs 1 (one) day to determine the panel of judges.⁶⁰

For husband and wife who are not financially capable, then they can file a petition for a divorce for free (based on the case procedure Prodeo) on the condition that they attach a letter of recommendation of the head of the village or equivalent in regards to his or her incapability. This is applicable in Religious Court and District Court.

2. Calling

Once a lawsuit or an application letter has been received by the court, those who are litigants are waiting for a trial call. A summons is made by a dispossessor to litigant at least 3 (three) business days before trial. When the researchers asked a dispossessor of the Palu Religious Court about what difficulties he faced when delivering an

⁵⁹ Ibid, 226

⁶⁰ Muhammad Syaifuddin, Sri turatmiyah dan Annalisa yahanan, *Hukum Perceraiaan*, (Jakarta: Sinar Grafika, 2014), 226-227

invitation to the summon, Mr. Hasanuddin as the dispossessor said in the following ways:

"Whereas in the summoning constraints that I face are very small, usually the respondent / defendant has moved his house or his house has been damaged after the earthquake (Perumnas and Petobo), but when we confirm it to the plaintiff / petitioner, the sum can be resolved. As for what makes the dispossessors underestimate the obstacles in the summon, because every summon we get a reward that is quite satisfying".⁶¹

In the Article 49 of Law No. 7, 1989 jo. UU no. 3 of 2006 jo. UU no. 50, 2009, the panel of judges was given a time limit for up to 30 (thirty) days to make summons. Meanwhile, for the panel of judges at the Palu Religious Court, it normally takes 7 (seven) days after the lawsuit / application for admission.⁶²

3. Trial Process

Trial process conducted by the panel of judges in a closed session arranged in the article 80 of Law No. 7, 1989 jo. UU no. 3, 2006 jo. UU no. 50, 2009 actually deviates from the principle of open public hearing contained in the Article 13 paragraph 1 of Law No. 48, 2009. That is, court decisions are only

valid and have legal force if they are pronounced in a hearing open to public. In fact, paragraph 3 Article 13 of Law No. 4, 2009 asserts legal consequences of violations of the principle of open trial hearings to public or so called "*null and void verdicts*".⁶³

The article 13 paragraph 1 of Law No. 48, 2009 turned out to provide an exception, in the sense that it may deviate from the principle of a public hearing trial open to public if the law determines otherwise. In this context, the article 80 of Law No. 7, 1989 jo. Law No.3, 2006 jo. UU no. 50, 2009 is a law enforced by the article 13 paragraph 1 of Law no. 48, 2009, which requires that divorce hearings to be closed to public. The premise is that it is based on legal ratio that divorce cases are very personal for husband and wife, even relating to disgrace in their household, which must not be published or should not be notified to public in general.⁶⁴

Moreover, based on the argumentation of the role of logic towards Article 13 paragraph 4 of Law no. 48, 2009, it can be concluded that divorce hearings that are open to public result in legal ruling of the Religious Court of Palu judges is invalid and has no legal force, because it is null and void.

The next procedure is in the first session, the panel of judges tried to reconcile the two parties. Peace-making

⁶¹ Wawancara dengan bapak Hasanuddin selaku juru sita Pengadilan Agama Palu, 25 Juni 2019.

⁶² Wawancara dengan bapak Muhktar selaku Kepala Kantor Pengadilan Agama Palu, 21 Juni 2019

⁶³ Muhammad Syaifuddin, Sri turatmiyah dan Annalisa yahanan, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2014), 257-258

⁶⁴ Ibid, 258

efforts must be carried out by mediation which is a way to reconcile husband and wife mediated by a judge as the appointed mediator. Mediation is conducted on the basis of PERMA No. 1, 2008. A mediator is a judge who has a certificate to become a mediator, or a judge appointed by the Chair of the Palu Religious Court. The panel of judges when appointing a mediator read it out in front of the hearing board. Afterwards, mediation process is left entirely to the appointed mediator.

Once the mediation process is successful, the mediator makes a letter to be submitted to the panel of judges who examine the divorce case. The letter explains that husband and wife have made peace agreement and do not any longer have desire to continue their divorce application. On behalf of the Palu Religious Court, the appointed mediator made a statement that the case of divorce was revoked, and asked them (the applicant / plaintiff) to withdraw their request or claim.⁶⁵

In contrast, if the mediation fails, the mediator prepares a letter to be sent to the panel of judges examining the case, which explains that the husband and wife's marriage failed to reach peace agreement. Consequently, the panel of judges must continue the divorce law. When the authors ask the litigants about their trial process, they answer that the process they made during the trial session was easy /

simple, the language used was very easy to understand and there were no obstacles at all.⁶⁶

4.2 Supporting and Inhibiting Factors

In implementing a law, we often encounter something that can support and inhibit the implementation of the law. In this sub-chapter the researchers described supporting and inhibiting factors in implementing the principle of simple, fast and low-cost justice to divorce cases in the Palu Religious Court office. The supporting factors are as follows:

1. One-Stop Integrated Service System

Public services in every government institution in the Republic of Indonesia continue to seek ways for improvement.^{67,68} At present, the Supreme Court and its subordinate courts constantly strive to organize, improve, and simplify public services by implementing the One Stop

⁶⁶ Wawancara dengan Ibu Rostanti selaku penggugat cerai di kantor Pengadilan Agama Palu, 24 Juni 2019

⁶⁷ Nurdin. (2014, 28-30 May 2014). Understanding government e-procurement effectiveness from users' perspectives: A case of social media discussion in Indonesia local government. Information and Communication Technology (ICoICT), 2014

⁶⁸ Nurdin, N. (2018). Institutional Arrangements in E-Government Implementation and Use: A Case Study From Indonesian Local Government. *International Journal of Electronic Government Research (IJEGR)*, 14(2), 44-63.
<https://doi.org/10.4018/ije.gr.2018040104>

⁶⁵ Wawancara dengan bapak Muhktar selaku Kepala Kantor Pengadilan Agama Palu, 21 Juni 2019

Integrated Service system (here in referred to as PTSP). Through this PTSP, the Supreme Court wants to provide excellent services in terms of public services whose management process starts from the initial stage to the end carried out in one place. The urgency of the Supreme Court and its subordinate court regarding the implementation of the PTSP was carried out with the issuance of the Decree of the General Director of the General Judiciary Number 77 / DJU / SK / HM02.3 / 2/2018 concerning the Guidelines for One Stop Integrated Service Standards.⁶⁹

The Religious Court of Palu as a judicial institution under the Supreme Court, since 2018 has begun to apply PTSP standards in accordance with the Decree of the General Director of the General Judicial Agency Number 77 / DJU / SK / HM02.3 / 2/2018 concerning the Guidelines for One Stop Integrated Service Standards. PTSP is carried out by providing integrated services in a unified process starting from initial stage to completion of court service products through one door. The PTSP is always carried out with the basic principles of integration, effective, efficient, economical, coordinated, accountable, and accessible.

The scope of PTSP in the Religious Court of Palu covers all administrative services which are within the scope of its competence / authority as stipulated in the Decree of the Chief

Justice of the Republic of Indonesia Number 026 / KMA / SK / II / 2012 dated February 9, 2012 concerning Judicial Services Standards and other applicable laws and regulations.⁷⁰ PTSP itself is intended to create a simple, fast and low-cost judicial process, to provide administrative services that are free of corruption to service users and to maintain the independence and impartiality of the court apparatus.⁷¹

In addition to simplifying, this one-stop service can also save litigation costs because the PTSP Program was formed as an effort by the Supreme Court to prevent and eradicate corruption or extortion that can occur in various Indonesian judicial institutions. This is in line with the objectives of PTSP as stated in the decision letter of the General Director of Badilag. With the presence of PTSP it is expected that the litigants and non-litigants can only interact with the court in the front (front-liner) to obtain the wanted services and prevent more interactions that can lead to corruption.⁷²

5. Conclusion

Based on the description from the previous chapters, the researchers can draw the conclusion that the

⁶⁹ Wawancara dengan bapak Muhktar selaku Kepala Kantor Pengadilan Agama Palu, 21 Juni 2019

⁷⁰ Surat keputusan mahkama Agung No. 26 Tahun 2012 tentang Standar Pelayanan Peradilan dan peraturan perundangan

⁷¹ Wawancara dengan bapak A. Kadir selaku ketua Panitera Pengadilan Agama Palu, 21 Juni 2019

⁷² Wawancara dengan bapak Abdul Kadir Wahab selaku ketua Hakim Pengadilan Agama Palu, 24 Juni 2019

implementation of the principle of simple justice, fast and low costs in the Religious Court of Palu Class 1 has been in practice and it could be categorized to have moved on the right track. The results of the study showed that: 1) The Religious Court of Palu helps every person who is less capable in filing their divorce applications, 2), In a court of law judges do not use complicated language that is difficult for divorce applicants to understand (confusing), 3), Law enforcers and employees in the Religious Court of Palu are very slow in providing streamline for the examination of the lawsuit, dismissal until verdict. 4), Case Costs are still affordable for justice seekers.

In the application of the principle of simple justice fast and low cost there are two factors that influence: the inhibiting and supporting factors. It is often delayed or suspended during hearings which potentially hinder this principle, because litigants are usually slow in moving and so do the judges.

The supporting factors of the application of the principle of simple justice, fast and low cost, includes: a one-stop integrated service system, Electronic Court (E-Court) Prodeo (litigation), Legal Aid Post and mobile court. These are the factors that play major role in the application of the principle in divorce cases in the Religious Court of Palu.

The results of the study shows that the implementation of the principle of simple, fast and low cost justice in the Religious Court of Palu has been effective. This is indicated by the feeling

expressed by justice seekers as they apply for litigation in the Religious Court of Palu. The benchmarks for the effectiveness of the law applied by Soerjono Soekanto - five factors: The existence of the law that regulates, the existence of law enforcement, infrastructure that are steady, as well as community and cultural factors that obey judicial procedure have been in place in the Religious Court of Palu.

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