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MEDIATION OPPORTUNITIES IN SETTLING DIVORCE CASES THROUGH E-LITIGATION (CASE STUDY OF JUDGES' EXPERIENCE IN MARTAPURA CLASS IB RELIGIOUS COURT)

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Abstract
In the e-litigation trial process the judge cannot meet directly with the parties, so that Article 130 HIR and Article 154 RBg are not maximally realized by the panel of judges in the e-litigation trial. In the non-e-litigation trial process, the judge has the opportunity to meet and reconcile the litigants directly, which often occurs at every stage of the trial. The focus of this research aims to determine the opportunities for mediation in the settlement of divorce cases through e-litigation at the Martapura Class IB Religious Court and what obstacles hinder mediation opportunities in the settlement of divorce cases through e-litigation. This type of research is empirical legal research. Using a qualitative descriptive approach. Mediation opportunities in the settlement of divorce cases through e-litigation at the Martapura Class IB Religious Court are very small. The panel of judges only has mediation opportunities in the settlement of divorce cases through e-litigation at the first trial stage and during the evidentiary hearing. The obstacles that hinder mediation opportunities in the settlement of divorce cases through e-litigation are found in the trial system and the type of case. According to the author, the only way to overcome the obstacle of limited mediation opportunities in the e-litigation trial system is to make peace outside the court. In this case the judge cannot do much, the judge can only invite the parties to reconcile by providing advice and motivation.
Keywords: Mediation, Divorce, E-Litigation

Abstract
Pada proses persidangan secara e-litigasi hakim tidak dapat bertemu secara langsung dengan para pihak, sehingga Pasal 130 HIR dan Pasal 154 RBg tidak terealisasi dengan maksimal oleh majelis hakim pada persidangan secara e-litigasi. Pada proses persidangan non e-litigasi majelis hakim memiliki kesempatan untuk bertemu dan mendamaikan para pihak yang berperkara secara langsung, yang dimana sering terjadi perdamaian pada setiap tahapan persidangan. Fokus penelitian ini bertujuan untuk mengetahui peluang mediasi dalam penyelesaian perkara perceraian melalui e-litigasi di Pengadilan Agama Martapura Kelas IB dan kendala apa saja yang menghambat peluang mediasi dalam penyelesaian perkara perceraian melalui e-litigasi. Jenis penelitian adalah penelitian hukum empiris. Menggunakan pendekatan deskriptif kualitatif. Peluang mediasi dalam

penyelesaian perkara perceraian melalui e-litigasi di Pengadilan Agama Martapura Kelas IB sangat kecil. Majelis hakim hanya memiliki peluang mediasi dalam penyelesaian perkara perceraian melalui e-litigasi pada tahapan sidang pertama dan pada saat sidang pembuktian. Adapun kendala yang menghambat peluang mediasi dalam penyelesaian perkara perceraian melalui e-litigasi yaitu terdapat di sistem persidangan dan jenis perkara. Menurut penulis satu-satunya cara untuk mengatasi kendala terbatasnya peluang mediasi dalam sistem persidangan secara e-litigasi adalah dengan melakukan perdamaian diluar pengadilan. Dalam hal ini hakim tidak bisa berbuat banyak, hakim hanya dapat mengajak para pihak untuk berdamai dengan memberikan nasihat dan motivasi.

Katakunci: Mediasi, Perceraian, E-Litigation

INTRODUCTION

The development of technology must be utilized as well as possible in all aspects of life. Human civilization faces many challenges due to advances in science and technology, especially in the field of communication and information. Technological advances have various advantages and benefits for access to communication and information. Meanwhile, modern humans cannot fulfill their basic needs without technology. In life, modern humans have no other choice but to learn and master technology to overcome various problems faced daily. [1]

The development of technology has had an impact in various sectors, including the judicial sector. One of the innovations that emerged as part of judicial modernization is electronic justice. Electronic justice was marked by the emergence of PERMA Number 3 of 2018 concerning Case Administration in Court Electronically and then refined again in PERMA Number 1 of 2019 concerning Case Administration and Trial in Court Electronically or commonly referred to as e-litigation.[2] Electronic trial is a new breakthrough within the Supreme Court of the Republic of Indonesia in the field of information technology of the judicial system.[3]

With e-litigation, it is expected that the trial process can take place more quickly and easily. More explicitly regulated in Article 4 Paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, namely in the form of a trial carried out simply, quickly, and at low cost. In the explanation, it is explained that simple is an examination carried out in an

[1]Man Suparman Sastrawidjaja, *Standard Agreements in Cyberspace Activities, Cyberlaw: An Introduction* (Jakarta: Elips II, 2002), pp. 14.

[2]Zil Aidi, "E-litigation as the Amenities for the Principle of Contante Justitie Manifestation of Civil Jurisdiction in Indonesia," *JCH (Journal of Legal Scholarship)* 6, no. 2 (2021), p. 210. 210.

[3]Ifah Atur Kurniati, "Restoring the Image of the Judiciary through E-Court," in *Conference on Communication and News Media Studies*, vol. 1, 2019.

efficient and effective manner, then light costs refer to the cost of cases that can be borne by the public economically without overriding the rigor in seeking truth and justice.[4]

The demand to implement the principles of simple, speedy and low cost trials aims to create an efficient judicial administration system, especially in terms of justice segmentation and bureaucratic services.[5] Electronic trials (e-litigation) can be likened to online business transactions (*e-commerce)* that do not require direct meetings, but can be conducted online.[6]

In the e-litigation process, apart from being easy, fast and cheap, there are advantages and disadvantages, especially in implementing the provisions of Article 130 HIR and Article 154 RBg where in divorce cases such as contested divorce and divorce, at each trial the judge has the obligation to reconcile the two parties who are litigating. The peace in question is a form of peace known as *"dading"* in the practice of civil procedural law. Dading is an agreement between the two parties in a legal dispute in court to stop the trial process and reach a mutually beneficial settlement.[7] This is in accordance with the provisions of Article 82 Paragraph (4) of Law Number 7 of 1989 concerning Religious Courts where it is stated that as long as the case has not been decided, efforts to reconcile the parties to the case can be made at each trial.

The Supreme Court criticized the lack of effectiveness of the application of these articles, with an evaluation of the attitude and behavior of judges who seemed less serious in reconciling the parties to the dispute. As a result, reconciliation efforts tend to appear as a mere formality. Therefore, an idea emerged to integrate mediation into the judicial system or commonly referred to as *court connected mediation*.[8] With the issuance of PERMA Number 1 of 2019 concerning Case Administration and Electronic Court Proceedings, the court proceedings are divided into two, namely e-litigation and non-litigation proceedings. In the e-litigation trial process the judge cannot meet directly with the parties, unlike the non-e-litigation trial the judge can meet directly with the parties. So that Article 130 HIR and Article 154 RBg are not maximally realized by the panel of judges in the e-litigation trial, in this case the panel of judges is passive to reconcile the litigants. In the non-e-litigation trial process, the panel of judges has the opportunity to meet and

[4]Sayed Akhyar, "The Effectiveness of the Implementation of Simple, Fast and Low Cost Judicial Principles in Relation to the Jurisdiction of the Sigli District Court," *Syiah Kuala Law Journal* 3, no. 3 (2019).

[5]Muhamad Iqbal Susanto and Wawan Supriyatna, "*Creating an Efficient Justice System with E-Court System in State Court and Religious Court of Rights,*" *International Journal of Arts and Social Science* 3, no. 3 (2020).

[6]M. Beni Kurniawan, "*Implementation Of Electronic Trial (E-Litigation) On The Civil Cases In Indonesia Court As A Legal Renewal Of Civil Procedural Law,*" *Journal of Law and Justice* 9, no. 1 (2020).

[7]A. Mahyuni, "*The institution of peace in the process of civil case settlement in court*," *Ius Quia Iustum Law Journal* 16, no. 4 (t.t.).

[8]M. Yahya Harahap, *Civil Procedure Law: About Lawsuits, Trials, Seizures, Evidence, and Court Decisions* (Jakarta: Sinar Grafika, 2017), pp. 294-295. 294-295.

reconcile the litigants directly, which often occurs at every stage of the trial before the case is decided.

LITERATURE REVIEW

Definition and Legal Basis of Mediation

Mediation is derived from the Latin mediare which means to be in the middle. This meaning indicates the mediator's role as an intermediary who tries to mediate the conflict between two disputing parties. Mediators must be neutral and impartial when resolving disputes. In addition, the mediator has the responsibility to ensure that the interests of both parties to the dispute are fairly safeguarded.[9] Mediation, in other words, is an attempt at peace through negotiation to reach an agreement involving a mediator.[10]

In general, peace is regulated in Article 130 Paragraphs (1), (2), (3), and (4) HIR with slight editorial differences with Article 154 Paragraphs (1), (2), (3), and (4) RBg. However, the essence remains the same, namely asking the judge as an intermediary to try to reconcile the two parties who are litigating when they are present at the trial.[11]

In Islam, peace is known by the *term* which means to repair, reconcile and eliminate disputes or damage. In terms, *ishlah is* defined as one of the praiseworthy actions in human behavior. Meanwhile, according to the scholars of fiqh, *ishlah is* defined as a way of peace with an agreement established to resolve disputes between framed communities, both individually and in groups.[12]

Islam provides a teaching that if there is a dispute between husband and wife that can potentially lead to divorce and damage to the household, then a *hakam* (peacemaker) should be sent to resolve the dispute between husband and wife by prioritizing deliberation as a middle way so that household life remains intact.

According to Imam Shafi'i, the command to mediate by sending a *hakam* (peacemaker) is obligatory. He argues that the action is to eliminate injustice. According to him, *hakam* (peacemaker) does not have to come from the family of the parties, but may come from other parties who are not related to the parties. However, it is better if it comes from the parties' families. This is because they are the ones who know more about the situation of each spouse.[13]

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[9]Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law, and National Law* (Jakarta: Prananda Media, 2011), p. 2.

[10]Rachmadi Usman, *Court Mediation: In Theory and Practice* (Jakarta: Sinar Grafika, 2012), pp. 24.

[11]Nurnaningsih Amriani, *Alternative Mediation for Civil Dispute Resolution in Court* (Jakarta: PT RajaGrafindo Persada, 2011), pp. 33-34.

[12]H. Syaikhu, *Issues of Legal Applicability of Inheritance Disputes* (Yogyakarta: K-Media, 2018), p. 12.

[13]Abu al-Hasan Ali al-Mawardi al-Bashry, *al-Hawi al-Kabir fi Fiqh Mazhab Imam al- Shafi'i, Juz 9* (Beirut: Daar al-Kutub al-Ilmiyah, t.t.), pp. 601-602.

The majority of scholars are unanimous on the issue of assigning a peacemaker when there is a dispute between husband and wife.[14] Among the scholars of *ushul fiqh* there is a rule, namely the absolute lafaz *amr* (command) indicates that it is obligatory.[15] It is preferable that the peacemaker should come from the family, whether it is from the husband or the wife. If there are none from either side, then one should be sent from among those who have knowledge of the husband and wife's affairs. This explains that, choosing a *hakam* (peacemaker) must understand the issues that are disputed by husband and wife.[16]

The primary function of a *hakam* (peacemaker) is to reconcile. Every individual who is entrusted with certain responsibilities has an obligation to carry out the duties and authority given. The same applies to a *hakam* (peacemaker) who is tasked with defusing conflict between two disputing parties. The *hakam's* job is to make decisions without requiring the consent of the disputing parties. They are tasked with examining the problems faced by the husband and wife to understand the dispute. Their aim is to provide advice and find an amicable solution for both parties in dispute.[17]

The Judge's Role in the Mediation Process

Judges have a very important role as an apparatus in the court, so that the judicial function can be carried out properly. The role of judges based on Law Number 48 of 2009 concerning Judicial Power is to hear, examine and decide cases. In addition, in PERMA Number 1 of 2016 concerning Mediation Procedures in Courts judges can become mediators for litigants.

Judges can become mediators to reconcile the parties to disputes submitted to the Religious Courts and carry out their role as mediators to reconcile the parties to the dispute to resolve the case through peaceful means.[18] Adhering to the principle that peaceful settlement is preferred rather than relying on imposed judicial decisions. To realize this, a judge must provide advice, consideration, and input regarding the steps taken by the parties to the dispute so that they continue to make peace efforts.[19]

Based on Article 130 HIR and Article 154 RBg, it is important that a judge encourages the parties to a dispute to resolve the matter amicably. Peace efforts can be made by both judges and mediators, but the focus in this article is peace efforts made by judges at trial. Peace efforts by judges at trial can be carried out from the beginning of the trial, during

[14]Ibn Rushd, *Bidayatul Mujtahid, Transl. Abdurrahman* (Semarang: as-Syifa', 1990), pp. 554.

[15]Muhammad ibn Ahmad al-Mahalli, *Sharh al-Waraqat* (Indonesia: al-Haramain, 2006), pp. 51-52.

[16]Abi Bikrun Muhammad Ibn Abdullah Al-Ma'ruf Bi Ibni Al-Arabi, *Ahkamul Qur'an Tahqiq Ali Muhammad Al-Bajwi*, t.t. pp. 7061.

[17]Muhammad Nasib Ar-Rifa'I, *Tafsir al-Aliyyul Qadir li al Ikhtisar Tafsir Ibn Kathir, Terj. Shihabuddin* (Jakarta: Gema Insani, 1999), pp. 706.

[18]Harahap, *Civil Procedure Law,*. p. 159.

[19]Ibad Syaifullah Arief, *Optimizing the Role of Judges in Peace Efforts in Court*,. p. 3.

the trial process to the limit in Article 82 Paragraph (4) of Law Number 7 of 1989 concerning Religious Courts, namely before the imposition of a decision.

To achieve this goal, judges need to act seriously, actively, and routinely lead the parties. In order to play an active role as mediator, the judge needs to have a deep understanding of the case in dispute. According to civil procedural law, the judge is responsible for making the disputing parties aware and convincing them that resolving disputes through judgment is not an effective method as many believe. The judge does not have the right and authority to force the disputing parties to reconcile. The willingness of the parties to settle is absolute and cannot be ignored.[20]

In an effort to encourage parties to avoid resolving disputes through decisions, judges can motivate them to be more inclined to reach amicable agreements. A judge needs to have competence outside the legal field and have an understanding of psychology. Among them are non-verbal communication skills, non-verbal communication is a form of communication that involves observing the expressions and gestures of the speaker. Nonverbal communication consists of visual communication and voice communication. As judges it is important for them to understand and interpret voice and body messages.[21]

Through reconciliation, case settlement has a higher level of effectiveness and efficiency and has benefits both in terms of substance and psychology, one of which is low cost. In contrast to the judicial system or arbitration which incurs very expensive costs. Therefore, a judge is obliged to offer a way of peace at every stage of the trial, because settlement using peace is far more profitable than the judge having to make a decision as a final settlement.[22]

The involvement of the closest party or family in peace efforts is very important in resolving divorce cases. Judges have the authority to involve the families of both parties to reconcile the two parties to the dispute. Through legal channels, the judge will continue to resolve the case if these efforts are unsuccessful.[23] Judges are required to seek peace in every trial, which is a principle of religious court law.[24]

If peace is achieved, the case will be withdrawn with the consent of both parties. After that, the judge will issue a determination stating that the case is revoked because

[20]Maskur Hidayat, *Mediation Strategies and Tactics* (Jakarta: Kencana, 2016), pp 128-129.

[21]Functional Technical Education and Training Project for Judges and Non-Judges of the Supreme Court of Indonesia, *Mediation and Peace* (Jakarta, 2003), p. 50. 50.

[22]Abdul Manan, *Application of Civil Procedure Law in the Religious Courts* (Jakarta: al Hikmah Foundation, 2000),. pp. 95.

[23]Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law, and National Law,.* pp. 293.

[24]Aris Bintania, *Procedural Law of Religious Courts within the Framework of Fiqh al Qadha* (Jakarta: PT RajaGrafindo Persada, 2012), pp. 156.

the peace has been successful. Furthermore, the judge will make a deed of peace that has the same force as a judge's decision, or permanent legal force.[25]

After a reconciliation has been reached, it is prohibited to file for divorce on the same grounds or other grounds that were known at the time of the reconciliation. Divorce can be filed on the basis of new grounds arising after reconciliation.[26] Peace in divorce cases has a special meaning and moral value. With successful reconciliation between husband and wife in divorce cases, the integrity of the household can be maintained and the maintenance of children can continue as it should.[27]

Stages and Process of E-Litigation

At the beginning of the trial, the plaintiff and defendant are summoned to appear in the courtroom. At this stage, the panel of judges examined the documents. The chairman of the panel asked the plaintiff to submit the original lawsuit, the original power of attorney that had been uploaded through the *e-court* application and the original principal approval letter. Furthermore, the chairman of the panel gives an explanation to both parties regarding the rights and obligations related to the e-litigation trial *and the* defendant is offered that he can have an e-litigation trial. [28] In Article 20 Paragraph (1) of PERMA Number 1 of 2019 concerning Case Administration and Trial in Court Electronically, it is stated that an e-litigation trial is conducted after mediation fails to reach an agreement, with the consent of the plaintiff and the defendant. If the defendant agrees, then the defendant will sign a letter of consent to participate in the e-litigation trial. [29] Then the head of the panel issues a determination on the *court calendar* and reads it out as the schedule and stages of the trial. The *court calendar* will determine the schedule of the trial agenda starting from the determination of *the court calendar* to the stage of reading the decision.

After the head of the panel announced the *court calendar, the* next stage was the reading out of the plaintiff's lawsuit. Although the parties were not present at the hearing, the panel of judges continued the hearing in accordance with the procedures that had been determined. Then the chairman of the panel adjourned the trial according to the schedule set in the *court calendar* with the agenda of hearing the answer from the

[25]Supreme Court of Indonesia, *Guidelines for the Implementation of Court Duties and Administration Book I* (Jakarta: Supreme Court of Indonesia, 1998), pp. 115.

[26]Mukti Arto, *Civil Case Practice in Religious Courts* (Yogyakarta: Student Library, 2007), pp. 97.

[27]Abdul Manan, The *Application of Civil Procedure Law in the Religious Courts* (Jakarta: Yayasan al Hikmah, 2000), pp. 103.

[28]Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia, *Implementation of Case Administration and Trial in Court Electronically*, t.t, p. 31. 31.

[29]Aco Nur and Amam Fahrur, *Electronic Procedure Law in Religious Courts* (Sidoarjo: Nizamia Learning Center, 2019), p. 131. 131.

defendant. However, the defendant was ready with his answer at the hearing, so the next hearing will continue the plaintiff's replication. [30]

After the replication and duplicates, at the evidentiary hearing the litigants must be present. The presence of the parties involved in the evidentiary hearing has an important urgency in showing the accuracy of the documents submitted. The accuracy of the evidence is not only a need for examination by the panel of judges, but also important for the opposing party to ensure the authenticity of the evidence submitted. The presence of the parties is also required during the examination of witnesses. This opportunity will not be available if the litigants are not present. With regard to the examination of witnesses, if the witness is located outside the jurisdiction of the court conducting the examination, the examination of the witness can be conducted via *teleconference.* In this case, the president of the court must request the assistance of the president of the court in the area where the witness resides to appoint judges and clerks. The court in the area where the witness resides will appoint judges and clerks who are responsible for administering the oath and supervising the *teleconference in* person. [31]

The last stage is the reading of the decision. On the day set for the reading of the decision, the panel of judges opens the hearing and reads the decision as usual. A copy of the electronic decision or determination already has legal force and effect.[32]

METHOD

Research Design

This type of research is empirical legal research. This research aims to examine the way the law is applied in the general public. This type of research can be categorized as field research.[33] The approach used is descriptive qualitative. The information collected is based on the results of informant interviews conducted by the author. Qualitative research is a form of research that is more inclined to in-depth data analysis. The location of this research is at the Martapura Class IB Religious Court Office. The reason for conducting research at that location is because there are e-litigation divorce cases received by the Martapura Class IB Religious Court Office, both cases of contested divorce and divorce. Apart from that, the opportunity to reconcile the litigants at the e-litigation trial stage is very small.

Participants of the Study

[30]Aco Nur and Amam Fahrur, *Electronic Procedure Law in Religious Courts,* . p. 135. 135.

[31]Aco Nur and Amam Fahrur, *Electronic Procedure Law in Religious Courts,* p. *138.* 138.

[32]Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia, *Implementation of Case Administration and Trial in Court Electronically,* p. 39. 39.

[33]Efendi Jonaedi and Johnny Ibrahim, *Normative and Empirical Legal Research Methodology* (Depok: Prenada Media Group, 2016), p. 149. 149.

Informants are the main data source in this research. The informant is the person who will be asked for information about the problem under study. The informants in this study were 3 Judges of the Martapura Class IB Religious Court. Informant I Muhammad Radhia Wardana, S.H.I., M.H., informant II Hikmah, S.Ag, M.Sy., and informant III Hj. Mursidah, S.Ag.

Instruments

Data is raw material that is processed to obtain factual information and information. The data explored in this research is data obtained from interviews conducted by researchers.[34] Primary data explored in this study is about the experience of judges regarding mediation opportunities in resolving divorce cases through e-litigation and what are the obstacles that hinder mediation opportunities in resolving divorce cases through e-litigation at the Martapura Class IB Religious Court.

Data Analysis *Techniques*

After the data has been collected, the next step is to process the data through the following series of steps:

a. Editing, namely the author reviews the data that has been collected and the author uses several references to complete the unmet data in compiling this research.

b. Classification, namely the author classifies all interview data based on the type and problem, this is done so that the data collected becomes systematic and can provide objective information related to the research.

c. Description, in which researchers explain the data obtained with precise and understandable language.

RESULTS AND DISCUSSIONS

Informant I explained the opportunity for mediation in the settlement of divorce cases through e-litigation during the first hearing. When both parties are present at the first hearing, the judge will reconcile the two litigants as much as possible. If mediation is unsuccessful, the judge will order both parties to mediate through a mediator judge and obstacles that hinder the opportunity to mediate divorce cases through e-litigation, namely because this is a divorce case so it tends to be difficult to reconcile the parties. If the judge has an opportunity to conduct mediation in the e-litigation trial stage, *the* judge wants to reconcile the two parties but usually the parties are irreconcilable and the parties are very sure they want to divorce on their own. To overcome these obstacles, the judge

[34]Husein, *Research Methods for Business Thesis and Thesis* (Jakarta: PT. Raja Grafindo, 2007), pp. 42.

will maximize mediation during the first trial. If it has entered the later stages of the trial the possibility of the two parties reconciling is very small.

Informant II explained that the opportunity to mediate divorce cases through e-litigation is not only during the first trial, but also has the opportunity to be carried out during the evidentiary hearing. The judge can meet again with the parties at the evidentiary hearing stage. So that at this stage the judge has the opportunity to reconcile the parties directly. The obstacles that hinder mediation opportunities in resolving divorce cases through e-litigation are in the system. Because this e-litigation is electronic, the trial is carried out electronically. So that judges do not have many opportunities to meet with the parties except during the first hearing and during the evidentiary hearing. To overcome these obstacles, the judge usually asks the family to reconcile the two parties so that they want to reconcile.

Informant III explained that the opportunity for mediation in the settlement of divorce cases through e-litigation is very small, unlike the ordinary procedure. The only opportunity is during the first trial when the parties appear before the panel of judges. During the first trial, the judge can reconcile the two parties by advising so that both parties want to reconcile and end up withdrawing the case. Furthermore, the informant said that the obstacles that hinder mediation opportunities in resolving divorce cases through e-litigation are in the trial system.

Analysis of Mediation Opportunities in the Settlement of Divorce Cases through E-Litigation

The Supreme Court issued PERMA Number 1 of 2019 concerning Case Administration and Court proceedings electronically. With the existence of PERMA Number 1 of 2019, trials can be conducted electronically or called e-litigation.

The purpose of the issuance of PERMA Number 1 of 2019 can be seen in Article 2 of PERMA Number 1 of 2019, namely as a legal basis for the implementation of case administration and electronic trials in court to support the realization of orderly case handling that is professional, transparent, accountable, effective, efficient and modern. From these provisions, electronic trials are expected to provide benefits to litigants because trials can be conducted quickly, simply and at low cost.

The opportunity for mediation in the settlement of divorce cases through e-litigation at the Martapura Class IB Religious Court is very small. So that judges are very difficult to apply the provisions of Article 130 HIR and Article 154 RBg to reconcile the parties directly at each stage of the e-litigation trial.

According to Mr. Muhammad Radhia Wardana as Chairman and Judge of the Martapura Class IB Religious Court, the judge can meet with the parties directly during the

first hearing. At the first hearing the judge will reconcile the two parties by providing advice, consideration, and input regarding the steps taken by the parties to the dispute so that they continue to make peace efforts.

According to civil procedure law, judges are responsible for bringing awareness and conviction to the disputing parties that resolving disputes through judgment is not an effective method in accordance with many presumptions.[35]

According to Mrs. Hikmah as Deputy Chairperson and Judge of the Martapura Class IB Religious Court, the panel of judges can meet again with the parties during the evidentiary hearing stage so that the judge has the opportunity to reconcile the two parties. Because during the evidentiary hearing stage the presence of the parties is also required during the examination of witnesses. At this stage the judge will take advantage of the opportunities available to reconcile the parties by asking for help from both sides of the family to reconcile.

The importance of a mediation opportunity in the e-litigation trial stage requires the judge to ask for help from both sides of the family to reconcile in the hope that the parties will reconcile. The involvement of the closest party or family in peaceful efforts is very important in resolving divorce cases. According to the author, the actions or methods taken by the judge of the Martapura Class IB Religious Court to reconcile the parties are in accordance with Islamic teachings.

Islam provides a teaching that if there is a dispute between husband and wife that can potentially lead to divorce and damage to the household, then a *hakam* (peacemaker) should be sent to resolve the dispute between husband and wife by prioritizing deliberation as a middle way so that household life remains intact.

The majority of scholars are unanimous on the issue of assigning a peacemaker when there is a dispute between husband and wife.[36] Among the scholars of *ushul fiqh* there is a rule, namely the absolute lafaz *amr* (command) indicates that it is obligatory.[37] It is preferable that the peacemaker should come from the family, whether it is from the husband or the wife. If there are none from either side, then one should be sent from among those who have knowledge of the husband and wife's affairs. This explains that, choosing a *hakam* (peacemaker) must understand the issues that are disputed by husband and wife.[38]

The hakam's job is to make decisions without requiring the consent of the disputants. They are tasked with examining the problems faced by the husband and wife

[35]Maskur Hidayat, *Mediation Strategies and Tactics,*. pp. 128-129.

[36]Ibn Rushd, *Bidayatul Mujtahid, Transl. Abdurrahman*,. p. 554.

[37]Muhammad ibn Ahmad al-Mahalli, *Sharh al-Waraqat*,. pp. 51-52.

[38]Abi Bikrun Muhammad Ibn Abdullah Al-Ma'ruf Bi Ibni Al-Arabi, *Ahkamul Qur'an Tahqiq Ali Muhammad Al-Bajwi*,. pp. 7061.

to understand the dispute. Their aim is to provide advice and find an amicable solution for both parties to the dispute.[39] If these efforts are unsuccessful, the judge will resolve the case through the legal process.

Judges of the Martapura Class IB Religious Court always try as much as possible by utilizing this very small opportunity to mediate divorce cases at the e-litigation trial stage, namely during the first trial and evidentiary hearing. In fact, judges always provide an opportunity for the litigants to reach an amicable settlement before the case is decided in accordance with the provisions of Article 82 Paragraph (4) of Law Number 7 of 1989 concerning Religious Courts.

Obstacles that Impede Mediation Opportunities in the Settlement of Divorce Cases through E-Litigation

a. Trial System

According to the second informant, Mrs. Hikmah, and the third informant, Mrs. Mursidah, the obstacles that hinder mediation opportunities in resolving divorce cases through e-litigation are in the trial system. Electronic trials or also known as e-litigation use a remote or online system. So that the parties can take part in the trial anywhere without having to attend the court in person. That way, the judge cannot reconcile the parties directly.

The electronic trial system or e-litigation should provide convenience for its users, but in reality the electronic trial system is an obstacle for judges to reconcile the parties in the e-litigation trial stage, especially in divorce cases.

The judge does not have many opportunities or chances to reconcile the parties directly because *it* is hindered by the e-litigation system itself. The judge can only meet with the parties and have the opportunity to reconcile the parties during the first hearing and during the evidentiary hearing.

According to the author, the only way to overcome the obstacle of limited mediation opportunities in the e-litigation trial system is to make peace outside the court as stipulated in Article 36 of PERMA Number 1 of 2016 concerning Mediation, namely the parties with or without the assistance of a certified mediator who successfully resolve disputes outside the court with a peace agreement can submit a peace agreement to the competent court to obtain a peace certificate by filing a lawsuit.

This out-of-court peace is a means for the parties to settle their disputes outside the court with a peace agreement, then the peace agreement can be submitted to the authorized court to obtain a peace certificate.

b. Case Type

[39]Muhammad Nasib Ar-Rifa'I, *Tafsir al-Aliyyul Qadir li al Ikhtisar Tafsir Ibn Kathir, Terj. Shihabuddin,*. p. 706.

The first informant, Mr. Muhammad Radhia Wardana, also said that the obstacles that hinder mediation opportunities in resolving divorce cases through e-litigation are in the type of case. Talking about divorce cases itself must involve a person's heart and feelings. There are many reasons why someone chooses to end the dispute between husband and wife by divorce. One of these reasons is because one of the parties feels disappointed and no longer able to continue their household so they choose to divorce. The strong desire of the parties to want a divorce will be an obstacle that hampers the existing mediation opportunities, the panel of judges wants to take advantage of the opportunity to reconcile the two parties, but one of the parties or even both are very sure they want a divorce. In general, the arrival of the parties to the Religious Court is very sure to divorce and mediation conducted by both sides of the family is not successful.

According to the author, in this case the judge cannot do much, the judge can only invite the parties to reconcile by providing advice and motivation so that they are more likely to reach an amicable agreement.[40] The judge does not have the right and authority to force the disputing parties to reconcile. The willingness of the parties to reconcile is absolute and cannot be ignored.[41]

Mediation of divorce cases can be successful if there is a strong desire to reconcile. The success or failure of mediation is left to the two parties themselves, because they are the only ones who know more about the dispute in question. The judge is only limited to encouraging and motivating the parties so that they want to reconcile. Unsuccessful mediation in the settlement of divorce cases through e-litigation will have an impact on the increasing divorce rate.

CONCLUSION

Based on the results of research conducted on the judges of the Martapura Class IB Religious Court, it shows that the opportunity for mediation in the e-litigation trial stage is very small. The panel of judges only has mediation opportunities in the settlement of divorce cases through e-litigation at the first trial stage and during the evidentiary hearing. The importance of a mediation opportunity requires the judge to ask for help from both sides of the family to reconcile.

The obstacles that hinder mediation opportunities in the settlement of divorce cases through e-litigation are the trial system and the type of case. According to the author, the only way to overcome the obstacle of limited mediation opportunities in the e-litigation trial system is to make peace outside the court as regulated in Article 36 of PERMA Number 1 of 2016 concerning Mediation. In this case the judge cannot do much,

[40]Functional Technical Education and Training Project for Judges and Non-Judges of the Supreme Court of Indonesia, *Mediation and Peace* (Jakarta, 2003), p. 50. 50.

[41]Maskur Hidayat, *Mediation Strategies and Tactics*), pp 128-129.

the judge can only invite the parties to reconcile by providing advice and motivation so that they are more likely to reach an amicable agreement.

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