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DIVORCE WITHOUT IN-BETWEEN: AN EMPIRICAL STUDY ON THE FAILURE OF MEDIATION IN THE RELIGIOUS COURT OF SENGETI JAMBI PROVINCE

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Mediation is a dispute accomplishment by peaceful, precise, and effective ways to provide the boarder access into fair and satisfactory arbitration. Since the validation of the Supreme Court Law No. 2/2003, mediation has been enacted in many courts in Indonesia to exchange with peace foundations. The mediation is also under rule of the Supreme Court Law No. 1/2008 and No. 1/ 2016. In Religious Courts, mediation is thoroughly aimed to reduce divorce, but this effort is not effectively functional to do with it. A large number of secondary data of mediation studies in Indonesia suggest a complex failure of the implementation of mediation in some areas of this country. Firstly, a short duration caused the failure of taking mediation in between disputed parties. Secondly, every mediator has different capabilities in the execution of mediation. Thirdly, many religious courts did not have legal certificate to carry out mediation. Fourthly, some social, political, even religious issues are not regarded as having to be compatible with mediation, but jurisdiction. Fifthly, some mediators have lack of prestige and capability, even without having support from the Board of Advice, Development, and Preservation of Marriage (BP-4). This study grounded a hypothetical result of the large number of failure in mediation of household disputes in Religious Court at Sengeti Jambi. Since the last six years (2010-2016), mediation has not been the first way of accomplishment to resolve divorces or any local dispute. The Board has lack of involvement in family building and divorce accomplishment. The suggested implication of this study, especially for the Supreme Court, is to promote a mediation or in between ways to resolve household dispute and, finally, to reduce a number of divorce, and to encourage BP-4 in an effort to actively develop family building in Indonesia.

Keywords: divorce, mediation, religious court

I. Introduction

The fact that mediation rules in the Religious Court and the role of BP-4 are not adequately functional suggests a need to improve both institutions with their similar aims to provide the better consensus among the disputed parties, particularly to resolve any household conflict. A large number of the recent studies show a continuous failure of mediation, either in household or in general socio-religious issues, in Indonesia without having a full support from the BP-4. A legal recommendation for reconciliation was under ruled in Handbill of the Supreme Court No. 1/2002 on the Improvement of the First Class Court in Peace Building. This Handbill got revised in the Supreme Court Law (PERMA) No. 2/2003 on Mediation Procedures in Court that mediation is regarded as "an effective instrument to avoid an accumulated number of lawsuits in courts (PERMA No.1, 2003).

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Although the term *mediation* as a part of Alternative Dispute Resolution (ADR), (Ratna Lukito,2006). was included into the PERMA, its further elaboration *to avoid an accumulated number of lawsuits in courts* basically impinged a basic morale of mediation as fair process of getting wayout among the disputed people. This statement has been eventually revised in the later 2008 and 2016 PERMA on mediation.

PERMA No. 1/2008 issued that mediation is regarded as quick and inexpensive process of dispute resolution *to* provide a boarder access in getting satisfactory accomplishment and meeting a fair consensus. Since the mediation is periodically processual, a long duration is necessary to make sure the effectiveness of the practice. However, PERMA No. 1/2008 provides a limited period by only 40 work-days since the first appointment of mediator and a possible extension for 14 work-days. The total of 54 days is approximately equal to two months of work-days, and it is too short for taking a risk of critical mediation. The fact that some mediators are also adjudicators with having a regular job to deal with other lawsuits also indicates a difficult implementation of mediation by fair and rightful ways of conflict resolution.

By the limited duration of mediation, many issues are not resolved, and the disputed people find themselves in a deadlock of jurisdiction. The further consequence of this short duration is endless lawsuits which badly injured either disputed people or their affiliated ones. For instance, an unresolved dispute between a couple will have a psychological or social impact on their children. In this case, the resolution is possible by many ways, and among them is by mediation with its strict procedures or by an active participation of BP-4 in family building.

Based on the background of the problem, the purpose of writing a scientific article is to know and analyze failures and lax regulation of divorce mediation functions of an Advisory Board, Development and Preservation of Marriage (BP-4), the Religious Court District Sengeti of Jambi Province, Indonesia.

2. Literture Review

Conceptualization of Mediation**.** The term *mediation* is defined as the use of the third party as mediator/consultant to resolve a dispute (Anonim, 1998). *Kamus Besar Bahasa Indonesia* defines mediation in the possible three elements. Firstly, mediation is process of dispute or conflict resolution among two or more parties. Secondly, those who involve with process of dispute resolution must be from those outside of them. Thirdly, the third party who mediates them serves as an advisor or consultant without having any authority to taking a consensus (Syahrizal Abbas, 2010).

Mediation is a process of negotiation to resolve dispute in which an impartial party works together with disputed parties to search for satisfactory agreement, contract, or consensus among them. Unlike arbiter or adjudicator, a mediator is

person without having authority to decide a reconciliation of dispute. Mediator is assumed as being able to transform social dynamics and powers into the better condition of the dispute by the ways of providing the more effective knowledge and information. It suggests that mediator is possible to help them in resolving the dispute issues (Gary Goodpaster, 1993).

Mediation is defined as voluntary process in which the disputed parties negotiate their reconciliation procedures with a mediator (Anonim, 1984). The mediation process should be having positive impact on the ways their reach a consensus. This process will effectively work only if the mediator is able to facilitate and cooperate with both parties in the basis of the established procedures. The consensus they reached must be treated as the best result to avoid a dispute or divorce (John W. Friess, 1966).

Mediation is to resolve a dispute by involving the impartial third party (mediator) without having authority to help the disputed people to reach a settlement (solution). Mediation will be regarded as *emergent mediation* if the mediator is a part of social hierarchy of the disputed people with a special relationship with them, or with having his/her interest in the process of mediation or with providing good impression as his/her soldier friend.

Mediation is a harmonious process in which the disputed parties delegate a mediator to resolve their dispute in order to reach the rightful final result without an expensively cost and fully acceptable among them. The third party (mediator) plays an important role to assist, guide, and advise them in resolving any kind of dispute (Priatna Abdurrasyid, 2006).

Mediation is a helpful procedure in the coordination of their activities as it provides more effective bargaining process (Nuraningsing Amriani, 2012). Without negotiation, mediation is plagued. Before submitting to the court, the result of mediation is necessary to reach an *islah* (reconciliation) or win-to-win solution. *Islah* is a taking decision of the dispute, or in Islamic tradition it is a legal contract with an intention to discontinue a dispute. It refers to a process of fair dissolution of the dispute as Allah loves a peace (‘Alâ’ al-Dîn al-Tsarablîsî, 2002).

Some basic principles of mediation have been included in a number of literatures. They provide philosophical grounding of mediation and preparatory framework for mediators to implement it without impinging its basic foundation of the practice (Michael Hoynes, Cretchen L. Haynes, and Larry Sun Fang, 2006). By referring to Ruth Carlton’s classification, David Spencer and Michael Brogan elaborate the five philosophical principles of mediation. They consist of principles of confidentiality, of volunteer, of empowerment, of neutrality, and of a unique solution.[3]

To some extents, *islah* with its requirement to mutual-forgiveness and mutual-consciousness on weakness and strength among two disputed parties are more preferable than jurisdiction with its psychological or moral impact on the victims

or subjects. In Islamic tradition, a dispute settlement is preferred to do with *islah,* and it suggests that mediation and reconciliation are regarded as reasonable wayout from the dispute (Percy R. Luney, Jr, 1998).

The concept of *Islah* is also equivalent with *tahkim*, in Arabic terminology, referring to "delegating a person (usually jurist/*hakim*) for making decision we have to accept it." *Tahkim* suggests an attempt to appoint individuals or groups to reconciliating a conflict between two persons or groups. The Koran recited "*And if they are called for Allah and His Messenger, as the Messenger became adjudicator among them, suddenly some of them rejected to come"* (QS. An-Nur: 48).

Tahkim is aimed to resolve a dispute among people who have been given a freedom to select any *hakam* (mediator) with his/her capability as the impartial referee to search for a well-reconciliation. During period of Prophet Muhammad, putting black-stone (*hajar aswad*) into Ka'bah exemplify a complex-dispute among the Muslims and the ways Prophet was able to resolve it by delegating one member of each tribal/religious group of Mecca to pick up the stone by holding each corner of turban. The reconciliation of Hajar Aswad, and of other cases such as Hudaibiyah Contract, suggests a highly valued political, social, and religious contributions on the union of Muslims. (Hamadi Redissi and Jan Erik Lane, 2007). *Hakam*, at the time, was functional not merely to reduce a possible divorce, but also to resolve any dispute in relation between Muslims and Muslims, or between Muslims and other religious believers (T. M. Hasbi Ash-Shiddieqy, 1970).

Regarding with the importance of reconciliation, Umar ibn Khattab said, "Let's hand over any dispute to members of family, as they are able to arrange reconciliation, since the dispute settlement in the court brings about its inconvenience (Departemen Agama RI, 1985)." Surah An-Nisa', 35, also describes the role and function of *hakam* in Islamic court as peace-negotiator (*juru damai*) to whom couples delegated their conflict without having to exactly determine roots of problem between both of them (Slamet Abidin, et. Al, 1999). In Indonesia, mediation is undertaken in two possible institutions: court or non-court. Before the written legal system determined procedures of reconciliation, an informal convention is used, usually taking a traditional habit or custom. During the period of Dutch occupation, a district peace-jurist (*hakim perdamaian desa*) was under ruled in Ch. 3a *Reglement op de Rechterlijke Organnisatie en het Beleidder Justitite* (Rules of Court Organization and Prudence of Justice), or abbreviated as RO (S. 1933 No. 102) issued that a dispute among traditional people must be resolved through district peace-jurist.

The dispute settlement in traditional law is always directed to recovery and equilibrium of social order without any imprison (Rechtelikjke Organisatie, 1935). The type of dispute settlement in the basis of deliberation has developed from empire until colonial period. The district peace institution got legal certificate based on Ch. 3a RO which includes that traditional jurists are not allowed to take

a punishment, and that they have to resolve it by fair mediation. Although the district jurist has no right to give a punishment, the fact that dispute settlement by using punishment is almost inseparable in many district courts in Indonesia, particularly since the rule is not largely accessible for many Indonesian villagers (Hedar Laudjeng, 2003). Due to society's great reluctant to use legal rather than traditional law, they have gradually preferred to deliver the dispute settlement to the state jurist because it was regarded as having sense of justice and legal assurance.

The Ch. 3a RO suggests that mediation has greatly played important role to resolve a dispute in the legal institutions established by either society or state. They got interested in the inexpensive and effective mediation which has been proven to successfully resolve conflict among Muslims and non-Muslims of Arab during praislamic period. The mediation practice was getting stronger as it was ruled under authoritative legal institution, such as the Supreme Court in Indonesia. The mediation must be taken before going into legal course of investigating lawsuit in religious or state courts. It has been issued under PERMA No. 1/2008 on mediation procedures in courts as a revised rule of PERMA No. 2/2003.

The encouragement for mediation is undertaken before or during registering the lawsuit. Every jurist who gets involved with a dispute always provides mediation or reconciliation, even before the court trial has started, by asking "do you want to reconciliate, and we can discontinue this session by peace certificate." After the Supreme Court Law has been enacted, mediation got a special place without having to be undertake0;n during the court trial. The reconciliation in the context of religious court focused on reducing the increased number of divorce in Indonesia.

PERMA with its special status for religious and state courts is PERMA No. 1/ 2008 as revision of PERMA No. 2/2003 on Procedures of Mediation in Court which included: 1) an obligation for taking mediation in regard with process of litigation in front of the court (Ch. 2, V. 1); 2) an obligation to follow procedures of dispute settlement through mediation; 3) a legal consequence of canceling verdict on the ignorance of mediation in the basis of Ch. 130 HIR or Ch. 154 Rbg; 4) an obligation for jurist to clarify that he/she attempted to resolve a conflict through mediation by mentioning mediator's name for the dispute.

Based on PERMA No. 1/2008 on Mediation that mediator in the religious court must meet some conditions as mentioned in Ch. 5, V. 1 and V. 3 issuing: "except for Ch. 9/V. 3, and Ch. 11/V. 6, every people who played role as mediator basically need a mediator certificate taken from a special training held by the Supreme Court accredited institution (Anonim, 1980). For getting accreditation, an institution must meet some requirements, including: 1) sent an application to the Chief of Supreme Court; 2) together with an instructor who has a certificate of mediator training and education or ever participate twice in mediator training; 3) at least organize twice the mediation training not for certified mediator in the court;

4) possessed a mediation training and education curriculum under legal validation of the Supreme Court.

The most challenge for the state or religious courts in Indonesia is to consistently implement the rules and procedures of mediation in order to make sure the positive advantage of the practice. The today's courts in this country have to deal with frequently happened issue: divorce. However, mediation has lack of success, particularly in the Religious Court of Sengeti, since it has not been committed to the 2008 PERMA's goal of reconciliation. The household dispute is not to do with mediation and reconciliation, and it has consequences on the increased number of divorce. This condition is certainly contraproductive with the 2008 PERMA's expectation that theoretically the mediation is possible to reduce number of disputes in many courts, keep the cost inexpensive, and make the dispute settlement quicker and easier.

PERMA No. 1/2016 clarified that mediator is a jurist or other party with mediator certificate as an impartial individual assisting them in the process of negotiation in order to search for the possible resolution without having to compel it. However, many mediators did not have a mediator certificate, and uniquely it has been administered in Ch. 13/V. 2 that based on Decree of Head of Court, a non-certified jurist is possible to be mediator, since it has unlimited number of certified mediators in the court as mentioned in the PERMA No. 1/2016.

PERMA No. 1/2016 Ch. 5/V. 3 also provides easy and inexpensive procedures of the process of mediation by allowing people to have a mediation meeting through distant audio-visual teleconference which makes every people possible to directly communicate and participate in the meeting. The Ch. 6/V. 2 also issued that a distant communication through audio-visual devices is regarded as a direct presence.

Regarding with the cost for mediator, the Ch. 8/V. 1 and 2 administered that no cost is paid for the mediator's service, except for non-jurist mediator by shared-cost as agreed between both parties. It suggests that the disputed parties should have an easy access to mediator without having to burden the cost, but the fact is many difficult ways during the process of negotiation because they are commonly obliged to pay for the certain costs.

This study attempts to depict the increased number of divorces in the religious court of Sangeti, Muaro District, Jambi, and their relation with some factors contributing to the failure of mediation and lack of BP-4's participation, such as limited duration of mediation, lots of non-accredited jurist in the court, etc. The religious court of Sengeti is a representation of the court with its failure of mediation and its lack of BP-4's participation as an institution of marriage preservation.

3. Method

Based on the background and purpose of writing, the method of writing this article is a method of qualitative analysis based on empirical experience and empirical

data. The empirical data derived from the data sourced from the secondary and primary data as well as the study of literature.

4. Results & Discussion

Reposition of BP-4

The weakness of dealing with family endurance and the increased number of divorce settlement suggest the failure of mediation and the lack of BP-4's participation. To respond this issue, the Minister of Religious Affair launched Pre-Marriage Course Program cooperated with social organizations (such as BP-4), religious organizations, and many more. The Minister realized the quality of family and its high impact on the quality of nation (Anonim, 2013).

Since the first establishment of BP-4 on January 3, 1960 and its legal registration in the Decree of Minister of Religious Affair No. 5/1961, the Board became the only institution focusing on the Advisory of Marriage and Reduction of Divorce. The function of BP-4 is consistently to carry out the Law No. 1/1974 and other laws on Marriage, and by doing that the Board is highly expected to actualize the high quality, harmony, and endurance of marriage in Indonesia (Anonim, 2016).

The current issues regarding with the marriage and family quickly varied, ranging from the high number of divorce, household violence, hidden contract of marriage, *mut'ah* marriage, polygamy, to marriage under age, with high consequences on the existence of family. This study tried to build an empirical framework for that issues regarding with the failure of mediation and the lack of BP-4 participation in dealing with such problems which always extremely increased until today.

BP-4 needs a restructuration of its role and function in order to be applicable with the practical issue of marriage and family. The Board has to precisely make a preparation of complete services, including high quality of human resources and infrastructures. The BP-4 is highly expected to be not merely a institution of marriage consultant, but also of mediation and advocacy. BP-4 has to build a reposition of organization in order to make sure its professionalism and independence in collaboration with the Minister of Religious Affairs in realizing an ultimate goal of every family: *sakinah, mawadah, warahmah*.

This BP-4's mission is equivalent with the Supreme Court's current attempt in realizing the reconciliation and resolving the dispute. BP-4 was openly given under rule of PERMA No. 1/2016 to participate in taking mediation to dispute resolution in many courts. This participation is possible through some steps: 1) preparing BP-4 resources to participate the mediator trainings held by the Supreme Court accredited institutions; 2) registering the prospective mediators with their long experience in participation of certified training to the religious courts; 3) simultaneously rebuilding BP-4 as the independent institution possibly organizing its own trainings.

BP-4 has a possible function as a certified organizer of mediator training or trainer of training in mediation which also rightly issued the verified certificate of mediation. Firstly, BP-4's mission is appropriate to essential goal of mediation. Secondly, BP-4 had a long flight-hours in terms of providing consultation, advisory, and reconciliation. The institutions such as Family Consultant, Family Relationship Center, etc., in Australia or other countries, has been under administration of BP4. Thirdly, those who worked in BP-4 should include religious figures that have been known and obeyed among their society. This condition possibly facilitates the process of reconciliation. The possible success of reconciliation held by BP-4 is greater than what other institutions achieved. Fourthly, BP-4 has been established for long time with boarder network of various districts and many experiences in organizing the courses and trainings on the harmonious family building. The establishment of BP-4 as an accredited institution in organizing the mediator training is theoretically under crisis.

To overcome that crisis, BP-4 has initiated some attempts, including: 1) providing an advice on marriage, divorce, and remarry to whom want to do with it; 2) reducing an increased number of divorce and polygamy; 3) giving an assistance to solve the difficulties and disputes in marriage in the basis of religious law; 4) publishing books or brochures, and organizing some courses, training, discussion, seminars, etc.; 5) working together with domestic and foreign institutions with having similar goals.

In order to improve BP-4's function in reconciliation of disputes under the religious court's authority, there are some suggested agenda they have to be aware of. Firstly, they need to enlarge number of experts in the improvement of insight and knowledge on the psychological field of family and positive law. Secondly, they have to build the boarder network by working together with the religious courts or other institutions in gaining operational fund. The use of non-jurist mediator will burden a number of cost to the disputed parties. The jurist is more preferable than non-jurist to be mediator, since the former is not allowed to receive any additional cost. It will be preferable if that rule is also applied to mediators in BP-4. Thirdly, they need an improvement of organization, as the BP-4 is possibly appointed to be organizer of accredited training and having a right to issue a legal certificate for the prospective mediators.

Mediation in Religious Court of Sengeti

The establishment of the religious court of Sengeti is a logical consequence of the legalization of Law No. 22/1999 on Local Government which provides an opportunity for enlargement of district. The government of Jambi has consistently attempted to enlarge some districts in the area of Jambi Province. A result of this struggle is Law No. 54/1999 on enlargement of district in Jambi Province whose one of the chapter is enlarging Batanghari into two districts: Batanghari and Muaro.

At the time of establishment of Muaro on October 12, 1999, with its capital city Sengeti, the Head of the Religious Court of Jambi with a support from the Head of Religious Court of Muara Bulian asking for a proposal to Minister of Religious Affairs in Jakarta on the formation of the Religious Court of Sengeti. Based on that proposal, through legalization of President's Decree No. 62/2002 on the date of August 28, 2002, a formal establishment of the religious court in Sengeti has been undertaken on April 23, 2003 under a legal approve of General Director of Muslims Counseling and Pilgrimage Organization.

The most inhabitants of Muaro Jabi, as a central location of the religious court of Sengeti, are Muslims. Historically, the Muaro people were from the Malay tribes identical to Islamic tradition. This religious value has gradually been transformed into traditional ones in most areas of Jambi with the emergence of 'Islamic law based tradition, Holy Scripture based Islamic law. Islamic law is a regulator, traditional law is a user' (*Adat bersendi syara', syara' bersendi kitabullah. Syara' mengato, adat memakai.*) The current census database figured out more than 10 large tribes in Muaro Jambi, and the largest one is Malay tribe. The Malays are indigenous people in Jambi with its high number of the use of the Malay tradition, while the Javanese are the second largest tribe after massive transmigration via Bahar river.

In dealing with the problems of household, the Malays prefer to use the reconciliation since they have a great sense of embarrassment when these issues are openly public. For that reason, despite of the very most difficult situation regarding with household, they always use reconciliation as the first initiative of solution, in the limited scale of members of family, with delegating an elder, societal figure, or trusted people in taking a mediation of the conflict. Like many other households, it is difficult to find a continuous harmony of family, but the Malays tried to hide a familial defeat by using mediation. However, today's accumulated number of household issues made them almost impossible to conceal their own familial business, and they have to resolve it in the court. The social transformation also contributes to a perspective on the household issue, as clarified by many social scientists (Soerjono Soekanto, 1982), (Irwan Abdullah, 2006).

The more complex the modern life issues must be handled, the more varied the religious and social values are left behind. The traditional values in the certain society highly contribute to the positive or negative transformation of established social order. The new values finally produced new ways the society adapt and communicate with others. It is also case in terms of the use of mediation to resolve a dispute in many households at Jambi, since they have to respond the more opened problems of household by delivering them to the religious courts.

The preference for resolving the household conflict in the court, or as more called as litigation, is greater by giving a pressure on the couple who have been ashamed with the publicly known problems of their household. It suggests that

most families have considered, and consequently transformed, their previous practices which regarded a dispute settlement in the courts is a shame. The current research shows that a number of disputes in the religious court of Sengeti have been largely increased. In 2010 from 38 cases of mediation, only 1 was successfully, in 2011 from 63 cases only 2, in 2012 from 55 cases only 2, in 2013 from 29 cases only 1, in 2014 from 57 only 2, in 2015 from 56 only 1, and in 2016 from 18 only 1. The more details on failure of mediation in Sengeti are described out in the table below.

TABLE 1: A COMPARISON ON FAILED AND SUCCESSFUL MEDIATON IN THE RELIGIOUS COURT OF SENGETI JAMBI DURING 2010-2015

Year	*Number of Mediated Lawsuit*	*Successful Mediation*	*Failed Mediation*	*Mediation on Progress*
2010	38	1	37	
2011	63	2	61	
2012	55	2	53	
2013	29	1	28	
2014	57	2	55	
2015	56	1	55	
April 2016	18	1	17	

Source: Office of Religious Court District Sengeti Jambi Province.

Regarding with the type of lawsuits persecuted by Sengeti people to the religious court, divorce lawsuit (*gugatan cerai*) is at the top of the list, followed by divorce repuditation (*cerai talak*). The divorce lawsuit is a proposal for taking a divorce by a wife's family which is at the first rank. Meanwhile, the divorce repuditation is a proposal for taking a divorce by a husband's family which is at the second rank. These two lawsuits are followed by other issues, such as inheritance, marriage abolition, *adhal* guardian, *istbat* marriage, etc.

TABLE 2: THE REPORT ON DECIDED LAWSUITS IN THE RELIGIOUS COURT OF SENGETI JAMBI DURING 2011-2016

No	*Year*	*Lawsuit (Last Year)*	*Received Lawsuit*	*Total*
1	2011	41	328	369
2	2012	49	343	392
3	2013	36	357	393
4	2014	45	414	459
5	2015	60	543	603
6	2016	64	58	122

Source: Office of Religious Court District Sengeti Jambi Province.

Causes of Divorce

The common factors contributing to the divorce include economic and psychological ones. The economic factors are usually consist of the case in which the husband did not work, while the psychological factor is closely related to disharmonious situation in which household violence and dishonesty. In line with the more accessible information on women's rights and causes of divorce, they get unafraid to fight for their rights. In the context of public servant, the divorce reached 5 percent, which commonly resulted from dishonesty and family intervention.

The 2012 database of local government shows a large number of housewives as victims of divorce. In another words, those who had no official profession commonly propose a divorce lawsuit to the religious court because of no livelihood they received from their unemployed husband. The unemployed husband is probably allowed by the housewife, but with the physical violence to which they have no toleration. It is also a case for other reasons, such as insuitability, partly because of dishonesty.

Mediation under Crisis

The are some contributing factors on the crisis of mediation, including the limited duration of mediation, the non-certified mediator, the legal decision to the certain cases, the lack of expert mediator, and the vulnerability of BP-4. The following discussion is elaboration on these factors.

Limited Duration of Mediation

To the cases of proposal for taking divorce in the religious court of Sengeti, the court under PERMA No. 1/2008 has to use mediation to the applicants. However, the mediation is always deadlocked, since both parties have unwillingness to make reconciliation (*islah*) in preservation of family, and it has consequences on divorce in the front of the court.

This study points out zero percent of successful mediation, or 100 percent of failed meditation, with an end of divorce. It is also found that jurist mediators did not optimally use the available time for mediation as ruled in PERMA No. 1/2008 Ch. 13/V. 3 and 4 issued that "(3) mediation is undertaken for longest time 40 work-days since the first appointment of mediator, either by the disputed parties or by the head of court as mentioned in Ch. 11/V. 5 and 6 and (4) based on the agreement between both parties, the duration of mediation is extended until 14 work-days since the last day of mediation as mentioned in V. 3."

The 40 work-days are relatively long enough for the jurist mediator and the disputed parties to go through mediation. These days are highly expected to use in searching the possible solution, but the fact is far away from it. It could be referred to number of decided and consented lawsuits in the court. During four years (2009-2013), the divorce issues which have been consented or decided were not

successfully resolved through mediation because of the failure of using the available time for in-between solution.

The Non-Certified Mediator

The lack of certified mediators in the religious court of Sengeti is another factor contributing to the failure of mediation. From the seven jurists in the court, only two have legal certificate of mediation. The certification is not only to point out the capability of mediator, but also to refer the knowledge and experience as a mediator. This condition suggests that mediation in the religious court of Sengeti is difficult to implement since it has few number of certified mediators, and consequently many people have lack of trust in their competencies.

The jurist mediator seems to be defeated by the will of claimant. Those who propose for taking divorce tried to achieve their goal. Frequently, the jurists are powerless to comply with the claimants' desire for divorce. It indicates that the 40 work-days of mediation with additional 14 work-days for implementing mediation, as ruled under PERMA No. 1/2008 and PERMA No. 1/2016, are not relatively used in the religious court of Sengeti.

The Supreme Court regulation on an obligation for any court to have legal certification of mediation has not met by the religious court of Sengeti. The court has also lack of sufficient room (very constricted and without ventilation) for taking mediation. This condition suggests that they did not meet the requirements of certified institution. In addition to have lack of autodidact knowledge on mediation, the jurist mediators also have lack of infrastructures to support a mediation. A motivation for getting success in mediation did not work simultaneously. They have no great attempt to consider about the importance of mediation as a alternative way to resolve a dispute and to realize harmonious family.

The most frequent attempt is to give an Islamic speech (*tausiyah*) and suggestion for reconciliation. They did not try to breakdown the basic background of divorce and to search for alternative solution for getting peace among the disputed people, either by looking for local approach or certain methods of mediation. These solutions are not relatively considerable among the jurist mediators since they have no experience in mediator training or not certified yet.

Meanwhile, the couple who proposes a lawsuit for divorce has great desire to do with it. They felt there are no good deeds of their partner anymore and have no future to fight for. The fact that divorce has social and psychological consequences on their children is not a part of their consideration. Moreover, many couples attempt to have not led their cases appropriately resolved; some of them consider about the easy ways to make it quicker. This is also a frequent situation in the religious court of Sengeti. It is no wonder if the result of mediation is nonsense except for divorce. There are lots of (infra) structural failures of the religious court of Sengeti that needs a further analysis on searching for an alternative wayout of them.

The Legal Decision of the Certain Cases

The divorce is a kind of lawsuits which needs a legal decision even though they are ruled under PERMA No. 1/2016 issuing that mediation is more expected to resolve it. However, the jurist-mediator who played a role of decision-maker frequently made such cases almost impossible to be solved through mediation. In some cases, they felt they did not need mediation, but a jurisdiction. It is a reason that jurist-mediator must be capable in resolving a dispute by using mediation rather than jurisdiction, since the basic goal of the religious court is to preserve the durability of harmonious family. For instance, in terms of divorce lawsuit which involved a shared property, the jurist-mediator has to examine the subjects of lawsuits, such as divorce, for the first time before taking mediation.

The Lack of Expert Mediator

There is an assumption in society that winning a lawsuit is a part of pride and prestige which possibly elevated their social status. It suggests that no matter how much time and money they have to spend, they believe that winning a lawsuit is proud of.

The ability to lead mediation is actually an important part of mediator. A mediation is included into a tool of non-litigated dispute resolution. The preference for non-litigated resolution is the most used settlement because of some reasons: 1) it is important for providing a mechanism of dispute resolution more flexible and responsive for the disputed people; 2) we need a full participation of society in the process of dispute resolution; 3) it is crucial to make a boarder access into a justice, as the certain resolution is not always suitable the certain lawsuit in different time and place. The disputed people are possible to choose the best ways of resolving dispute in accordance with the current situation. The mediation is also possibly implemented in the basis of certain terms and conditions following the stages to make sure the proper decision between both of them.

The Vulnerability of BP-4

The BP-4 has not optimally played its role to build a network with the religious court of Sengeti in giving counseling to reach the best agreement and to reduce the number of divorce. BP-4 needs a restructuration of whole services, including the professional human resources, the sufficient infrastructures, for making sure the sustainable counseling. The BP-4 and the religious court have to work together in achieving an ideal goal of *sakinah, mawadah, warrahmah* family.

5. Conclusion

The people who have been tied with religious and traditional values have recently recognized about an influence of information and technology. At the past time, they have a great sense of embarrassment to everything they assumed as

inappropriate in their household and they tried to search for internal solution through, for instance, mediation. Today, after everything became more transparent, they prefer to resolve a conflict through legal settlement.

The social organizations, such as traditional institution, seem to be immobilized without giving a solution in household conflicts. The traditional institutions have quickly transformed into dispute resolution in society. For example, the divorce lawsuit is not administered by the traditional institutions, but the legal institution since they prefer to believe in the later than the former with a jurisdiction. The fact is that number of divorce is extremely increased from time to time, and frequently dominated by wives who initiated the divorce lawsuit in the religious court of Sengeti.

Either traditional or religious laws suggested that mediation is preferable for resolving the household conflicts. Koran also suggested that mediation is possible to be undertaken by sending *hakam* (jurist-mediator) from husband's party and *hakam* (jurist-mediator) from wife's. In line with religious and traditional norms, the Supreme Court also obliged every jurist-mediator to meditate the conflicted couple. However, the process of mediation held by jurist-mediator in the religious court in Indonesia has not resulted in satisfactory result.

This failure of mediation is caused by some factors. Firstly, the jurist-mediator did not efficiently use the allocated time ruled in PERMA No. 1/2008, including the 40 work-days and the additional 14 work-days with an agreement of the disputed parties. Secondly, many jurist-mediators have not certified yet, as they have no enough experiences and expertise in taking mediation. It is also a case that the religious court of Sengeti has no legal certificate to organize mediator training. Only by having an accredited legal certificate, a religious court is possibly to have an appropriate room for implementing mediation. The last factor is on lack of commitment, either mediator or the mediated people, to resolve a dispute. Both parties have not been committed to reconciliation, and it has a consequence on the difficulty of mediation among them.

Suggestion

The implementation of mediation in the religious court of Sengeti needs a further evaluation in a degree to which the process of mediation can assist them to resolve a dispute. The function and role of BP-4 must be optimally and sustainably performed as the institution of counselor for family, as the family is possible to be *sakinah, mawadah, warrahmah*. The sinergy between the religious court and the BP-4 is necessary to make sure the applicability of mediation to reach such ideal goal of family.[]

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