

The Urgency of Mediation of the Religious Courts System on Islamic Law Perspective

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Abstract

Mediation is a Religious Court facility to resolve disputes outside the court; however, it is often found that the phenomenon of cases that have not been completed from the handling of mediation, for example, in family law disputes, is divorce. What is interesting to study is, what is the role and position of mediation in the Religious Courts? This paper aims to describe and analyze the role and function of mediation in the religious court environment, with the type of qualitative research in the form of library *research*. The conclusion of this study is that the court has carried out the mediation process with the position of the judge as a mediator. In contrast, the judge is the main role as well as the policymaker, so it becomes a very difficult task to be able to resolve cases outside the court plus, a case that has been entered into court are cases that have been screened through family, community and even customary approaches, and did not visit thoroughly and then refer to the court, what is often the problem is that the mediator who has been the judge, while the judge has a dual role, namely adjudicating and concurrently being a mediator.

Keywords: Role, Position, Mediation

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INTRODUCTION

Mediation in Islamic teachings is known as *al-islâh* and *hakam*. (Nuraningsih, 2011) *Al-islâh* which means repairing, reconciling, and eliminating disputes or damage, trying to create peace, bringing harmony, encouraging people to make peace with one another doing good deeds and behaving as saints (Dahlan, 1996) *Ishlâh* or *sulhu* according to language can also mean improvement. (Warson Munawwir, 1997) Peace in Islamic law is highly recommended, because peace will prevent the destruction of ties of friendship and hostility between the parties involved. dispute can be ended.

In terminology, the term *ishlâh* can be interpreted as a commendable act in relation to human behavior. (E. Van Donzel, 1990) Therefore, in Islamic terminology in general, *ishâh* can be interpreted as an activity that wants to bring about a change from a situation that is bad to good. Meanwhile, according to fiqh scholars, the word *ishlâh* is defined as peace, which is an agreement established to eliminate disputes between warring humans, both individuals and groups. (Muhammad Mahmud Ibn Ahmad al-Aynayni, tt)

Among Muslims, *tahkim*. In the Encyclopedia of Islamic Law, *tahkim* is the protection of two disputing parties to those they agree with and agree with and are willing to accept their decisions. To settle their dispute, the two disputing parties take refuge in the person they appoint

(as an intermediary) to decide or settle the dispute that occurs between those who are in dispute. (Dahlan, 1996)

A peace must have reciprocity in sacrifice on for the parties to the litigation, there is no reconciliation if one of the parties in a case succumbs entirely by acknowledging the demands of the opposing party in full, similarly there is no reconciliation if two parties agree to submit the settlement of the case to arbitration (separator) agree to submit to an advice which will be given by a third person (*binded advice*). (Situmorang, 1993)

The court institution is one of the dispute resolution institutions that has played a role so far. However, the court's decision has not been able to create satisfaction and justice for both parties to the dispute. Court decisions tend to satisfy one party and unsatisfactory to the other. The party who can prove that he has the right to something, then that party will be won by the court. On the other hand, a party who is unable to present evidence that he has rights to something, then that party must be defeated by the court, even though that party essentially has the right. In this context, dispute resolution through the court requires formal proof, regardless of the ability of the parties to present evidence. Win or lose is the result that will be accepted by the parties if the dispute is resolved through court.

Consequences of winning and losing will foster dissatisfaction of one party with the court's decision. The losing party will use legal remedies because he feels it is unfair to a decision. Legal remedies tend to be used by the losing party if they are still given the opportunity by a legal system. As a result, dispute resolution through the courts takes a long time.

On the other hand, as a state of law that is subject to *the rule of law*, the position of the judiciary is the executor of judicial power which acts as a pressure valve for all violations of law and public order. The judiciary can also be interpreted as the last place to seek truth and justice, so that theoretically it is still relied on as a body that functions and plays a role in upholding *the truth and justice* (Yahya Harahap, 2008, p. 229). The problem faced by Indonesian society today is the ineffectiveness and inefficiency of the justice system. Case resolution takes a long time. Starting from the first instance, appeal, cassation, and review. On the other hand, justice-seeking communities need a quick settlement of cases that are not merely formalistic. (Dewi, ed, 2010)

On the other hand, it is often found in practice that the costs incurred by the disputing parties sometimes exceed the total amount. the value of the object of the disputed property. This indicates that the settlement of disputes through the courts has a negative impact on the strained relationship between the disputing parties. To overcome the problems of an ineffective and efficient judicial system as well as other problems caused by settlement through the judicial route, an alternative dispute resolution with peace has emerged. In procedural law in Indonesia, it is found in Article 130 of the *Herziene Inlandsch Reglement* (hereinafter referred to as HIR) and Article 154 of the *Rechtsreglement Voor De Buitengewesten* (hereinafter referred to as R.Bg). The two articles referred to recognize and require the settlement of disputes through peaceful means.

The reconciliation effort referred to in Article 130 paragraph (1) of HIR is imperative. (Yahya Harahap, 2008) This means that the judge is obliged to reconcile the disputing parties before the start of the trial process. The judge tried to reconcile in good ways to reach a common

ground so that there was no need for a long and tiring trial process. Nevertheless, the peace efforts carried out continue to prioritize the interests of all parties to the dispute so that all feel satisfied, and no one feels disadvantaged. This peace effort in religious courts is known as mediation.

There are several studies on mediation within the Religious Courts, namely Idris Talib, *Forms of Dispute Settlement Decisions Based on Mediation*. The purpose of this research is to find out how the legal arrangements regarding dispute resolution by mediation and how the form of decisions for resolving disputes through mediation is made. Based on normative legal research, it is concluded that; *First*, the form of dispute resolution according to law consists of dispute resolution through the courts (Litigation), and dispute resolution outside the court (non-legitimacy). Meanwhile, the settlement of disputes outside the court is divided into two major parts, namely through arbitration, and through alternative dispute resolution which includes the following methods: Consultation, Negotiation, Mediation, Consolidation, and expert judgment. *Second*, mediation is a way of deliberation and consensus, to reach an agreement for the parties to the dispute, through the intermediary of a mediator. If an agreement is reached, reinforcement is needed in the form of a peace deed as a mediation decision that is registered and upheld by the District Court. When an agreement is reached through mediation, the dispute automatically ends or ends. (Idris, 2013)

What is interesting to study is, what is the role and position of mediation within the Religious Courts in dispute resolution? This study aims to analyze the extent of the role and position of mediation in the Religious Courts outside the Court process, which is still dominated by judges, who on the other hand are also enforcers of justice.

RESEARCH METHODS

This research is a qualitative study with library research, which examines the philosophical meaning of mediation itself, both etymologically and in terms of terminology, then the role and position of mediation in the Religious Courts environment, given that the role of mediators is less than optimal. So far, judges still dominate as mediators, so it is necessary to explore the root of the problem and the factors that cause it.

RESULT AND DISCUSSION

In the context of mediation, Irman Allah *swt*. In Surah al-Hujraat verses 9 and 10 found the sentence (*ashlaha*) with the *dhomir*, namely *لِخَوَا* which means reconciling two disputing groups. The word of Allah *swt* in the Qur'an letter al-Hujraat verse 10. Al-Qashimi quotes from Ibn Jarir's commentary in his book "*al-Quran al-Azim*" *fa ashlihuhu bainahum* means; invites both to judge the book of Allah and be pleased with its laws. (Al-Qasimi, 1997) M. Quraish Shihab said that the word *ishlah* or *shalah* is semantically interpreted as the antonym of the word *facade* (damage).

Meanwhile, according to the term *syara'*, *ishlah* is a contract with the intention of ending a dispute between two people, what is meant here is ending a dispute with peace because Allah loves peace. (Al-Tarablisi, tt) Meanwhile, according to fiqh scholars, the word *ishlah* Peace is defined as peace, which is an agreement established to eliminate disputes between warring humans, both individuals and groups. In line with the above definition, *Hasan Sadily* stated that

ishlah is a form of problem between the parties concerned to settle disputes amicably and peacefully, which can be useful in families, courts, wars, and others.

The definition *ishlah* or *al-sulh* in terms is a contract that ends a dispute between two parties. (Al-Syarbini, tt) Meanwhile, according to Hanabilah, the definition *ishlah* is: an agreement made for peace between the two disputing parties". (Qudamah, 1994) Meanwhile, according to syara', *ishlah* according to *syara'* is an agreement with the intention of ending a dispute between two people who are in dispute and the person doing the contract is called *mushalihan*, namely the person who does *islah*. (Sabiq, 1971)

Based on the understanding and explanation of several definitions above, the essence of mediation is a dispute resolution process which is facilitated by a facilitator called a mediator for a settlement by peaceful means. So, in the Islamic concept of peaceful settlement this is called the term "*as sulhu*" which literally means "*kot un niza*" that is, deciding a dispute. (Sabiq, 1971) We often get the word *ishlah* in the Qur'an. Anul Karim. The command *ishlah* in general is a comprehensive improvement including *taslihul-aqidah* (improvement of *aqidah*), *tashlihul-ibadah* (improvement of morals), *tashlahul-iqtishadiyah* (economic improvement), *tashlihulsiyasah* (improvement of the political system) and others. These commandments are more focused on improvement, namely the sincerity to maintain, preserve and even improve what is already good.

The term mediation is quite popular lately, universities, non-governmental organizations and various institutions have paid quite a lot of attention to mediation, but the term mediation is not easy to define completely and thoroughly, because its scope is quite broad. (Munawir, 1984) This understanding is based on the Qur'an letter al-Nisa' verse 35.

In the rules of *Ulumul Quran*, an understanding is taken because of the generality of the *lafadz* not because of the specificity of the cause. If this rule is stipulated in the verse above, it will conclude that the *hakam* can not only function in the divorce process as explicitly stated in the verse of the Qur'an but can be broad in all disputes. This retrieval method is supported by paying attention to other methods, namely in the form of *isyarah texts*. (Khalaf, 1996)

One of the provisions regarding the relationship between individuals is a conflict resolution mechanism when humans experience legal disputes. The Qur'an regulates the process of resolving this dispute through court or out of court. The dispute resolution process through non-court channels can be carried out, among others, by a *judge*. In the Qur'an itself, the concept of *hakam* in various forms is mentioned in seven suras. While the mention of the word *hakam* itself is stated in the Qur'an letter an-Nisa verse 35 which explains the process of resolving divorce disputes in the family by appointing a *hakam* from the husband's or wife's family.

Al-Qur'an al-Nisa verse 35 which has been mentioned above has ordered that if there is concern about a dispute between the two (husband and wife), then send a *hakam* (mediator) from the male family and a *hakam* (mediator) from the male family. woman. The role and function of the *hakam* in Islamic courts means peacemakers, namely peacemakers who are sent by two parties, husband, and wife in the event of a dispute between the two, without knowing who is right and who is wrong between the two husbands and wives. (Et al, 1999) It is mentioned in the Qur'an in the letter of Ali Imran verse 159. The word of Allah *swt.*, in the letter al-Hujraat verse 10. The word of Allah *swt.*, in Surah al-Baqarah verse 224.

Apart from what has been mentioned in the Qur'an above, the practice of mediation was also carried out by the Prophet Muhammad, both before he became an Apostle and after him. The process of resolving conflicts (disputes) can be found in the event of the laying of the *Black Stone* (black stone on the side of the Kaaba) and the event of the *Hudaibiyah*. The events of the laying of the Stone of *Hajar Aswad* and the *Hudaibiyah* have conflict resolution (dispute) values and strategies, especially mediation and negotiation, so that these two events have the same perspective, namely realizing peace.

In laying the *Black Stone* there are many values contained in it, the value of resolving disputes between tribes in creating peace and can be identified, among others: the value of patience, respecting others in an equal position, the value of togetherness, commitment and being proactive in resolving disputes (al-Raziyy). , 1990) These values are the capital for the parties to carry out negotiations, mediation, and even arbitration, both in disputes between individuals and between groups.

In the event of the *Hudaibiyah*, which occurred in the year 6 Hijriyah or to be precise on March 13, 628 AD, the Prophet Muhammad led about a thousand Muslims leaving Medina to go to Mecca to perform Umrah. Leaders *Quraysh* did not allow Muslim caravans to enter Mecca.

In such a condition the Prophet PBUH. not giving up hope, the Apostle conducted long negotiations with the *Quraysh*, which eventually resulted in an agreement known as the *Hudaibiyah* which contained, among other things; *First*, Prophet Muhammad, was not allowed to visit the Kaaba in that year (6 H/628 AD) but could visit next year. *First*, each visit is only carried out for three days and does not carry weapons except a sword that has been sheathed. *Third*, Muslims are obliged to return Meccans who came to Medina to convert to Islam without the approval of their guardians. *Fourth*, the Muslims of Medina and the *Quraysh* Mecca agreed to a ceasefire for 10 years. *Fifth*, every tribe is free to enter an alliance (alliance) with the *Quraysh* or the Muslims, and the alliance is respected by both parties.

If we look further, the *Hudaibiyah* is a diplomatic victory for the Muslims, where the Apostle for the first time succeeded in bringing the *Quraysh* to the negotiating table and came to an agreement. Mediation is also stated in the hadith, namely "*between fellow Muslims may make peace except peace which forbids what is lawful or makes lawful what is unlawful, and every Muslim is above his own conditions except for conditions that forbid what is lawful or make lawful what is unlawful*". (Reported by Tamuzi and this hadith is authenticated). (bin Ismail al-Kahlani, 1973)

Another hadith explains: "*Has told me Abu Bakr bin Abi Saybah, he said, I heard the Messenger of Allah, said: "Among fellow people Muslims may make peace except peace that forbids what is lawful or makes lawful what is unlawful."*" (HR. Ibn Majah). (Al-Qazwani, 1989)

In addition, the practice of *ishlâh* or *al-suhl* was carried out at the time of the Prophet Muhammad., with various forms. To reconcile husband and wife who are fighting, between Muslims and infidels, and between one party and another party who are in dispute. *Ishlah* or *al-suhl* becomes a method for reconciling with the willingness of each disputing party without a judicial process being carried out before a judge. The main goal is so that the disputing parties can find satisfaction with a solution to the conflict that occurs, because the principle is the willingness of all parties.

In the case of divorce, the Qur'an explains about *ishlâh* or *al-suhl* in surah al-Nisa verse 128. This verse was revealed in connection with the story of Sauda bint Zam'ah, the wife of the Prophet Muhammad when she reached old age, the Messenger of Allah wanted to divorce her. Then Sauda gave Aisyah her share of the day as an offer if she was not divorced. Rasulullah SAW accepted this and gave up his intention to divorce her. (Bin Katsir al-Qurasy al-Damsqy, 1999)

The interpretation of this verse is also in our *Sahih al-Bukhari*. It is explained that what is meant by a woman who is afraid of *nusyuz* or the indifferent attitude of her husband is a woman whose husband no longer has any desire for her, that is, wants to divorce her and wants to marry another woman. Then the woman (his wife) said to her husband: "Defend me and do not divorce. Please you marry another woman, you are free from a living and need for me ". So, the word of Allah swt., in that: *So, there is nothing wrong with both of them seeking true peace, and peace is better (for them)*. (Bin Ismail al-Bukhari, 2000)

Because of the revelation of this verse, the author is of the opinion that Sauda was making peace efforts when a divorce was about to occur. He tried to maintain the integrity of his household by giving up his share of the day given to Aisyah, the youngest wife of the Prophet Muhammad. In this case, there is no third party as a mediator. However, what Sauda did was an alternative form of dispute resolution which was later confirmed in Islamic law with the revelation of the letter an-Nisa verse 128.

That's how Sauda maintains the integrity of his household by giving his day to Aisyah. The distribution of the quota is also mentioned in the hadith narrated by Abu Dawud as follows: *"Said Ahmad bin 'Amr bin al-Sarh, said Ibn Wahb from Yunus from Ibn Shihab: That 'Urwah bin Zubeir said to him that Ayesha blessed: Rasulullah SAW when he did not travel lottery among his wives. Whoever is named in the lottery will join him. And the Messenger of Allah (saw) divided the days for each of his wives, except for Sauda bin Zam'ah, who gave Ayesha his day.* (bin al-Asy'ats al-Sijistani, tt)

The form of peace between husband and wife who are in disagreement is also in the deepest part of the Qur'an as explained above, namely the letter al-Nisa verse 35, where the verse is identical with the meaning that stated in the Indonesian regulations contained in PERMA Number 1 of 2008 concerning Mediation Procedures in Indonesia. The verse also explains that if there is a *shiqaq*/ dispute between husband and wife, the judge sends two *hakam*/ peacemakers. The two *judges* are tasked with studying the causes of the dispute and finding the best solution for them, whether it is for them to make peace or end the marriage. The requirements for *hakam* are reasonable, *baliqh*, fair and a Muslim.

The selection of *judges* is not required to come from the husband's or wife's family. The command in the Qur'an Surah an-Nisa verse 35 above is recommended. (Sabiq, 1971) It could be that *judge* outside the family is better able to understand the problem and find the best solution for the dispute between the two parties (husband and wife). wife) it.

In this regard, the author argues that the order to reconcile in Surah an-Nisa verse 35 is not much different from the concept and practice of mediation in general in Indonesia. Where the judge sends *judge* who meets the requirements like a professional mediator. A *judge* also has the right to conclude whether the marital relationship between husband and wife who are fighting is worth maintaining or even better dissolving. It is no different from the task of the

mediator who reports the results of the mediation with two options, success or failure in mediation or peace.

The concept of Islam in dealing with disputes between husband and wife is to maintain the integrity of the household. In living domestic life, it is impossible to pass without differences in attitudes and opinions that accumulate in a conflict. Therefore, Islam always instructs its people to always try to avoid conflict in the family.

But if it happens, peace is the main way that must be taken as long as it does not violate the Shari'ah. This is as the words of the Messenger *Allah* in a hadith narrated at-Tirmidhi, which is as follows: "*Peace is allowed among Muslims except peace which forbids what is lawful or makes lawful what is unlawful. And Muslims may determine conditions except conditions that forbid the lawful or justify what is unlawful*". (HR. al-Tirmidhi). (Az-Zuhaili, tt)

The author concludes that peace in disputes related to civil relations in Islam, including divorce cases is permissible, even recommended. So, mediation in civil cases such as divorce does not conflict with Islamic principles which prioritize the integrity of the household. Even making peace efforts as an alternative for resolving husband and wife disputes to avoid divorce by prioritizing the benefit of domestic life.

Al-Islâh or *al-sulhu* which comes from the word *shaluha* means peace. Wahbah al-Zuhaili means linguistically deciding a dispute or dispute. Meanwhile, according to syara', *al-sulhu* is a contract that aims to end a dispute between two disputing parties. (Az-Zuhaili, tt) Meanwhile, *mushalih* means peacemaker or peacemaker. (A. Ali & Zuhdi Muhdlor, 2006) Implementation in this peace the parties agree to release some of their demands, this is intended so that the dispute between them can end, to restore harmony between the two warring parties. (al-Tabari, 1999) Al-Qasani said that the dispute would not occur unless because humans are concerned with worldly matters, only follow their passions, and tend to personal interests, *al-sulh* will be a pillar of justice that will lead to mutual love between humans. (Al-Qasimi, 1997a) Each party to the dispute is called *musalih*, something that disputed is called *musalah 'anh*, the substitute for the disputed one is called *musalah 'alaih*. (Sabiq, 1971)

Wahbah al-Zuhaili m said that *al-Sulh* is permissible in cases where the truth is not clear between the two parties. Meanwhile 'Audah is of the opinion that *al-sulh* is allowed in cases that violate the rights of adami, not the rights of Allah *swt.*, so that peace can be the cause of the death of the *qisas* with the forgiveness of the victim. As for appointing a judge to reconcile between the conflicting parties, it is not coercive. (Az-Zuhaili, tt) The legal basis for allowing *al-sulh* in a case without going through legal channels is based on the Qur'an, Hadith and Ijma'. (Az -Zuhaili, tt)

Peace has several pillars, namely the presence of a person or party who is committed to making peace called *mushalih*, the object in dispute is called *mushalih 'anhu*. There are actions taken by one of the parties to decide disputes by peaceful means called *masalih 'alaihi* or *badalush sulh*, and there are consent and qabul from both parties who make peace. Another opinion says that the pillars of peace are consent and qabul by using any lafad that has the meaning of peace. (Al-Tabari, 1999)

The terms of peace are, *first*, the party who invites peace must be reasonable, not apostate, and competent in law. *Second*, the conditions relating to *musalah 'alaih* (a substitute for something that is demanded or disputed). first condition must be in the form of property,

valuable lawful for the party concerned), the property rights of the party being sued, must be clear and definite. (az-Zuhaili, tt) *The* , (mutaqawwamis the right of adami, not the right of Allah *swt.*, although not property like *qisas*, but if it is the right of Allah *swt.*, then there is no peace, so in the case of *qadzaf* because the punishment for violating *qadzaf* is to provide a deterrent effect so that society does not destroy honor (Sabiq, 1999) The next condition is that *musalah 'anh* must be the right of *musalih*, and it must be a permanent and positive right for *al-musalih* in the object of *al-sulh*. The last condition is related to consent and qabul, namely that acceptance must be in line with ijab. If qabul is different from ijab, then peace is not valid. (Az-Zuhaili, tt)

According to the same opinion, Ash Shiddiqy also explained that the conditions for *mashalih bih* or disputed items are in the form of assets that can be valued, can be handed over and useful, and the goods must be clearly identified to minimize the possibility of reoccurrence of disputes. In addition, the disputed item does not have the rights of others in it. In this case, the scholars agree that it is invalid for the form of agreement, if there are other people's rights in the disputed property/property. (Ash Shiddiqy, 2001)

Meanwhile, Sayyid Sabiq (Sabiq, 1971) and Wahbah al-Zuhaili (az-Zuhaili, tt)) categorizes three types of peace, namely; *First*, the pledge peace, namely the peace that occurs if the defendants justify the plaintiff's claim and then they make peace; *Second*, renegade reconciliation, namely a lawsuit filed by the plaintiff to the court on the grounds that the defendant has reneged on an agreement that they previously agreed upon. When they make peace, it is called renegade peace. *Third*, peace *tribal*, ie if someone sues another person about something, then he just keeps silent without justifying or denying it. If both parties make peace, then there has been *tribal*.

The provisions in Islamic law consist of tiered (layered) norms. In the past, the coating consisted of two levels of norms, concrete legal regulations (*al-ahkam al-fariyyah*), and general principles (*al-ushul al-kulliyah*). The general principles in the view of classical Islamic jurists cover a broad category that includes the basic values (*al-qiyam al-asaasiyyah*) of Islamic law. Therefore, practically the norms are divided into three levels, namely (1) concrete legal regulations, (2) general principles, and (3) basic values. (Anwar, 2007)

Values The basis contained in the provisions of Islam are the basic values of Islam itself, because Islamic law is based on the basic values of Islam. According to Syamsul Anwar, in the Qur'an, literally and implicitly, there are many basic Islamic values which are also the basic values of Islamic law. For example, monotheism, justice, equality, freedom, benefit, brotherhood, *shura*, *amanah*, *fadilah*, *tasamuh*, *ta'awun* and so on. (Anwar, 2007)

According to Musdah Mulia, the principles of justice (*al-'adâlah*), honesty and responsibility (*al-amânah*), freedom (*al-hurriyah*), equality (*al-musâwah*), brotherhood (*al-ukhwah*), pluralism (*al-ta'adudiyah*), deliberation (*as-shura*), peace (*as-silm*), and control (*Amar ma'ruf nahi munkar*). (Mulia, 2001) Amin Abdullah, several principles in Islamic law that lead to the creation of peace include: forgiveness, respect for fellow human beings, creative, fair and compassionate. (Abdullah, 2009)

For In more detail, the following principles will be explained, namely, *First*, Prioritizing Forgiveness. The pattern of the Prophet's behavior shaped by the core value of forgiveness is a manifestation of the teachings of God's revelation. (Abdullah, 2009) It is stipulated in the Qur'an

that forgiveness is the duty of Muslims, even when they are angry. This is based on the word of God in QS. al-Syra [42]. *First*, Respect for Human Dignity. As a teaching concept, Islam places humans on an equal footing with other humans. Sebagai dasar kebebasan beragama adalah “Tidak ada paksaan dalam beragama, sesungguhnya telah jelas jalan yang benar dan jalan yang salah”. Hal ini sesuai dengan firman Allah *swt.*, (QS. Al-Isra': 70).

Third, Creative and Fair in Problem Solving. If referring to the historical event when the Prophet Muhammad *saw.*, in the case of fighting over the authority of who has the most right to lay the black stone, according to M. Amin Abdullah that the Prophet Muhammad. put forward the main values in creating peace, including patience, respect for humanity of all parties, sharing together and creativity in solving problems. (Abu Nimer, 2010)

The Qur'an repeatedly reminds Muslims of the value of justice in various ways, which is described not merely as an option but as a command of Allah *swt.*, this is as explained in His word (Surah al-Nisa: 58). Based on another verse, then *qist* (a matter of dealing fairly with others, equality and being fair) is social justice in a broad sense. *First*, in man's relationship with God, and *second*, in man's relationship with society. From this point of view, Muslims have a *sacred* to treat each other fairly. (Abu Nimer, 2010) As stated by Parven S. Ali that *Justice has always been included among the qualities of head and heart which give moral luster and spiritual dignity to human affair.* (PS Ali, 2007)

Fourth, Reconcile the World with Love. Islam and the Shari'ah contained in it are universal. Islam is a religion that is a mercy for all nature, therefore Islam is very full of the ethics of compassion. In essence, love, which represents the spirit of Islamic truth, is far more vital for Islamic teachings than others. (Ali Engineer, 2004) Islamic teachings and their missionary treatise can be summarized in the Qur'an in the letter al-Anbiya verse 107, namely: *"And We have not sent you except to be a mercy for the worlds."*

In relation to this principle, Nurcholis Madjid as followed by Budhy Munawar Rachman and Muhammad Shofan said that: the principle of compassion dominates everything so that the spirit of compassion is the main element of divine morals ordered by the Qur'an. Enforcement of love for fellow human beings, namely with the spirit of humanity, is generally associated with the message of upholding patience. For people who receive grace from Allah *swt.*, differences do not become an element of conflict. (Munawar Rachman & Shofan, 2010)

The manifestation of compassion is manifested in several important attitudes and actions. *First*, spend wealth for others in need, not only in free time, even in tight times. *Second*, holding back anger and *third*, forgiving others. Islam is a religion that has flexibility which is expressed through appreciation of the heart of the faith itself (the teachings of compassion). From here the teaching of compassion becomes very important. During any differences, it must be based on love, so that differences do not cause social conflict. Compassion must be an external mechanism, especially in the relationship between Muslims and other religious people. (Munawar Rachman & Shofan, 2010)

The value that underlies the prophetic paradigm is one of the Prophet's compassions for others. Theologically, God shows that the purpose of sending the Prophet was *"as mercy for the whole world"*. It is this universal compassion that permeates the existence of the Prophet. (Baidowi, 2010) By showing such an attitude, Muhammad *saw* trying to build a typology of ideal society that is full of universal human values. However, it is very unfortunate that Muslims

themselves except the Sufis and their followers forget the emphasis of the Qur'an on the importance of compassion. The Sufis place great emphasis on the word love. Their fundamental doctrine is known as *sulhi kull*, namely peace towards all, which means there is no violence and aggression. (PS Ali, 2007)

Some of the core values of Islam as mentioned above, according to M. Amin Abdullah are quite conducive to efforts to create peace and avoid acts of violence both in the internal (internal) religious community and the external (external) religious community. Amin Abdullah emphasized that the values in Islam that need to be continuously identified are manifestations of the divine purpose embedded in Muhammad's prophetic mission. Islam *rahmatan lil 'alamin* is only understood through the perspective of the fundamental values offered, namely values that can apply to all ethnicities, races, nations, and religions without any conditions.

In addition, the Qur'an contains and provides several principles of conflict resolution and conflict resolution that can be used by humans in realizing a prosperous, harmonious, just and peaceful life. Human involvement with conflict has been informed by the Qur'an long before the creation of humans. The Qur'an clearly describes how Allah's will, to make man as His Khalifa on earth, was challenged by the angels. Angels are worried about the existence of humans as *khalifatullah fi ardh*, this is due to human nature which always tends to cause damage and bloodshed on earth. This is as explained in the Word of Allah *swt.*, in the Qur'an surah al-Baqarah verse 30.

According to the results of Sulaiman's research described in his research, it explains that the researchers found a number of values and basic principles that can be used as the basis for resolving disputes from Qur'anic verses and hadiths are clarified into several categories, namely; *First*, the values that underlie the philosophy of dispute resolution include: the values of glory, honor, equality, brotherhood, and mahabbat; *Second*, the values that must be possessed by the disputing parties include: tolerant values, respect for the rights of others, openness, respect, and willingness to forgive; 1) Values that must be held by the parties who resolve disputes include: fair values, courage, generosity, confidence, wisdom, empathy, and paying attention to others; 2) The values that underlie the ultimate goal of dispute resolution include: the value of nobility, social justice, mercy, ihsan, brotherhood, and human dignity. (Sulaiman, 2017)

For the sake of realizing and creating a peaceful atmosphere, if in the future one *benefit* is contrary to *benefit* another According to Yusuf Qardhawi *benefits* that must be prioritized for the sake of creating peace are the principles in the Fiqh of Balance (*Fiqh al-Muwazanât*) and Priority Fiqh, namely by setting several criteria as guidelines and benchmarks. (Qardhawi, 1995)

Furthermore, Qardhawi explained that all something to consider in urgent or emergency situations and circumstances. Overcoming this situation requires careful considerations without being profitable without having to get out of the basis of Islamic law. In considering these various interests, Yusuf Qardhawi offers to use the rules, namely, *First*, prioritizing definite interests over interests that are suspected to exist, or are still in doubt. *Second*, prioritizing big interests over small interests. *Third*, prioritizing social interests over individual interests. *Fourth*, Prioritizing the interests of the many over the interests of the few. *Fifth*, Prioritizing sustainable interests over temporary and incidental interests, namely, 1) Prioritizing core and

fundamental interests over formal and unimportant interests. 2) Prioritizing strong future interests over weak present interests. (Qardhawi, 1995)

Qardhawi explained that Muslim attitudes in dealing with conflict situations should imitate the Prophet's attitudes and actions when dealing with infidels in the event of the Hudaibiyah agreement. (Qardhawi, 1995) Even according to Ibn Qayyim was quoted as saying by Qardhawi as saying that peace with the polytheists even though in some ways it seemed detrimental to the Muslims, this path was chosen by the Prophet to achieve greater benefit and reject evil. In this case there is the principle of rejecting greater damage by accepting less damage. (Qardhawi, 1995)

The purpose of *al-ishlah* or mediation or peace in Islamic law has the aim of ending a dispute between two or more disputing parties so that both parties' parties can create a good relationship in peace and full of friendship between the two. *Ishlah* according to the provisions of Islamic law is a form of contract that is legally binding at the individual and community levels. The term *ishlah* is used with two meanings, namely the process of restorative justice (*restorative justice*) and the creation of peace as well as the actual results or conditions generated by the process. (Bhaidawy, 2005)

According to Hendi Suhendi, *ishlah* in general terms can be divided into four types, namely as follows: *First*, peace between Muslims and non-Muslim communities. Peace between ruler and rebel. Namely making agreements or regulations regarding State security that must be obeyed; *Second*, peace between husband and wife in a family. (Suhendi, 2002)

Looking at the phenomenon of today's modern era, basically cultural and religious diversity can be a source of division that is not impossible to lead to the emergence of *separatism*. Therefore, considering and seeing that this diversity is a social reality, there is no other choice but to accept and direct it to common interests and goals. Said Agil Husain al-Munawar emphasizes tolerance and harmony among fellow human beings as a way of maintaining peace in relations between religious communities, especially religious communities in Indonesia. (Husein al-Munawar, 2003)

Wahbah al-Zuhaili explained that *al-ishlah* is viewed from the perspective of the various subjects are divided into several parts, (az-Zuhaili, tt) as follows: *First*, peace between husband and wife in household disputes; *Second*, peace between Muslims and *ahl al-harb* or infidels who fight Muslims, namely by using and implementing peace and security contracts. *Third*, peace between the ruling party (government) and the rebels in a country, usually ends with the concession of rights and obligations between the two parties. (Al-Qasimi, 1997) *Fourth*, peace between two people or groups who are in dispute over non-property matters, namely in the crime of *qisas* (Awdah, tt) *Fifth*, Peace between the parties involved in property disputes.

The distribution of peace or *al-sulh* related to property is as follows: *First*, *Sulh al-Iqrar* (Peace accompanied by Confession), ('Ali bin Muhammad bin Habib Al-Mawardi al-Basri, 1999) *Second*, *Sulh al-Inkar* Reconciliation accompanied by denial or denial of the defendant, namely that someone sues another person about something material, debt or benefits, and the defendant rejects the lawsuit or denies what is being sued against him, then they make peace. In this regard, the Maliki, Hanafi, and Hambali schools are of the opinion that reconciliation in this case may be carried out on the condition that what is alleged is clearly true, and the defendant is believed that he does not have the right to do so. This peace is based on the word

of Allah *swt.*, in the letter al-Nisa' verse 128. *Third, Sulh al-Sukut* (Peace accompanied by the defendant's silence). (Az-Zuhaili, tt).

Mediation is an alternative dispute resolution that can be used by parties outside the court. This institution provides an opportunity for the parties to play a role in taking the initiative to resolve their disputes with the assistance of a third party as a mediator. (Echlos & shadily, 2006) The principle of mediation is *awin-win solution*, so that the parties involved in the dispute feel There are no winning and losing parties. Mediation not only speeds up the dispute resolution process, but also eliminates grudges and strengthens friendly relations.

Mediation is the process of involving a third party in resolving a dispute as an advisor. This definition is as explained by the National Alternative Dispute Resolution Advisory Council as follows:

Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role regarding the content of the dispute or the outcome of its resolution but may advise on or determine the process of mediation whereby resolution is attempted. (Spencer & Brogan, 2006)

Mediation is a process in which the disputing parties, with the assistance of a dispute resolution practitioner (the mediator) identify the issues in dispute, develop options, consider alternatives, and attempt to reach an agreement. In this case the mediator does not have a decisive role in relation to the content/material of the dispute or the outcome of the dispute resolution, but he (the mediator) can advise or determine a mediation process to seek a resolution/settlement). So, briefly it can be described that mediation is a process of resolving the conflicting parties to reach a satisfactory settlement through a neutral third party (the mediator).

Mediation is also an alternative dispute resolution or commonly known as "alternative dispute resolution mechanism" which is a translation of "*alternative dispute resolution*" which first grew in the United States. This mediation was born against the background of the slow process of resolving disputes in court, therefore this mediation emerged as an answer to the growing dissatisfaction with the justice system which led to the issue of time, cost and ability to handle complex cases. In the case of the archipelago, the practice of resolving disputes through deliberation has long been practiced. A special term in court is called mediation.

Mediation has become an important part of the entire process of handling cases in court, including the Religious Courts. As emphasized in the explanation of article 2 paragraph (3) PERMA RI Number: 01 of 2008 "related to legal consequences and not taking the mediation procedure based on this regulation, which is a violation of the provisions of Article 130 HIR and or Article 154 Rbg, resulting in the decision being null and void by law." (Compiler, 2008) And including various other clauses encourage attention to mediation to be more intensive.

The spirit that inspires the need for mediation in the examination of cases in court is the fact that peace; if the mediation is successful, it has legal consequences and very good psychological effects for the litigants, because it results from the agreement of the parties themselves, so that the binding force on the settlement of the case becomes stronger, and

therefore the possibility of submitting further legal proceedings is diminishing , and for the court to reduce the accumulation of cases.

For litigants, mediation provides positive values in dispute resolution, such as the importance of respect for others, honor, honesty, fairness, reciprocity, individual participation, agreement, and control of the parties. Which values then counter the prevailing value system in litigation case settlement, such as adversarial, impersonal, control by lawyers and regulatory authoritative orders. (Roberts, 2008)

For religious courts that handle family cases (*ahwal al syakhsiyyah*) which is dominated by divorce cases, mediation provides an increasingly varied advantage, the forms of conciliation that can be offered to avoid divorce. So far there have been peace efforts made by the judge during the examination of the case, peace efforts by the judge, namely the family, specifically in the siqaaq case. With the mediation, the peace efforts before the divorce occurs will be stronger.

The position of peace or peace efforts before further divorce is confirmed in the prevailing laws and regulations in Indonesia: Article 39 of Law Number 1 of 1974 concerning Marriage. (Religion of the Republic of Indonesia, 2005) Article 31 of Government Regulation Number 3 of 1975 Implementation of Law Law Number 1 of 1974 concerning Marriage. (Religion of the Republic of Indonesia, 2005) Article 65 and Article 82 of Law Number 7 of 1989 concerning Religious Courts. (Religion of the Republic of Indonesia, 2005)

Based on the explanation above, the author assumes that peace is related to the relationship Civil law in Islam, including divorce is something that is recommended. Mediation in civil cases such as divorce does not conflict with Islamic principles which prioritize the integrity of the household. Even making peace as an alternative for resolving disputes between husband and wife to avoid divorce while still prioritizing the benefit of domestic life.

CONCLUSION

The conclusion of this study is that the mediation process has so far been carried out by the court with the position of the judge as a mediator, while the judge is the main role as well as the policymaker, so it becomes a very difficult task to be able to resolve cases outside the court, plus that a case that has Admission to the Court is a case that has been screened through a family, community and even customary approach, and did not go through a complete visit which then referred to the court. Novelty, the author, so that the position of the mediator outside the judge can be activated with all approaches, so that divorce cases in the Religious Courts are not too many and can be resolved without causing new cases.

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