

The Socio-legal Study Related to the Increase of Divorce Case Number in Medan

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Abstract: Every year The Religious Court of Medan has high number of divorce case. Its proven based on the data that the court has from January 2016 until June 2018 there are 7.443 case of divorce. 1.618 cases were initiated by men and the rest were initiated by women. With the result there were 5.362 cases which are approved by the court, 36 cases were rejected, and 100 cases were refused to be gone into the trial process. Furthermore there were 145 cases fall and 19 cases were succeed to be solved through the mediation process. the number of case that solved in the mediation process is low. There are also a lot of people who only know the theoretically meaning of marriage. But in the other hand they don't know the essential meaning of marriage. Based on this its hard for us to achieve the goal of Indonesian Marriage Law to create an eternal love and relationship between husband and wife as a complete family. In the current condition there are many reasons which used by people to have divorce. Some of the reasons are not being acknowledged by the marriage law, and some of them are being acknowledged.

1 INTRODUCTION

Human is a social being (*zoon politicon*) which means human always walk together with other human in their society life. Life together in society is on of usual indication for human and only certain human who have special need able to live alone in this world. One form of live together as a group is family. A family consists of parents and children which formed because of the marriage.

Marriage is one important dimension in human life which become a strong and deep bond to connect a man and a woman to form a family or household. Because the importance of marriage not surprisingly that many religions, traditions and culture or even government create regulation of marriage in society life.

The government of Republic of Indonesia has had a law to regulate marriage in Indonesia. This law also cater the principles and give a base of marriage law which become orientation and obtain for all layer of society. The Indonesian Marriage Law named Act Number 1 1994 about Marriage which known as UUP.

Based on the UUP, marriage means there is physical and spiritual bond between a man (husband)

and a woman (wife). The definition of marriage in Islamic point of view is different with private law (KUHPperdata) point of view. Marriage in Islamic point of view has a sacred value as a form of religious service. But even though marriage has a sacred value and also form of religious services, Farid Ismail the secretary of Badilag in a focus group discussion at the Indonesian Vice President Secretariat office said that we can negate the fact that the number of divorce case in Indonesia is increasing year by year. In the other side if we using the research of Mark Cammack one of South western School of Law Professor in 1950, the number of divorce case in southeast asia including Indonesia is one of the highest in the world. In that decade, 50 out of 100 marriage is ended by divorce but in 1970-1990 the number of divorce case in Indonesia decrease significantly and back to increase since 2001 until 2009. Based on the Direktorat Jendral Badan peradilan Agama data in 2009 the number of divorce case by man is 28,76%, 57,89% divorce case is initiated by woman and the rest 13,35% is the other type of divorce case.

Divorce also being recognized by the act number 1 1974 about marriage in article 30 and 199. But one principal in Indonesia National Marriage Law is to make the procedure of divorce become more difficult. This is because the government of Republic of

Indonesia want to reduce or prevent the divorce which contradict with the Indonesia Marriage Law purpose.

The degradation of social values which is happening in Indonesian society makes the number of divorce case increase and become higher than before. Because of the social development there is a mutation of reasons of divorce. In many cases the court approve the divorce proposal with reasons which are not in Indonesia Marriage law.

In the court process the existence of mediation as an attempt to prevent divorce is so important. Furthermore the role of mediator in trial process is also important to make the husband and wife who want to have a divorce to re-think again about their plan to have a divorce. The role of mediator is expected to manage and create a win-win solution to solve the husband and wife problem so the husband and wife agree to not have a divorce. But if we see the number of divorce case which is increasing constantly we can assume that the government purpose to suppress the number of divorce case is not success.

Although marriage is seen as physical and spiritual bond between the husband and wife, there is still high number of divorce case which basically contradict to the definition and the purpose of the marriage itself. The following questions will be answered through this research by analysing how the society see the meaning and goal of a marriage, what is the common reason of society to have a divorce, and how the role of mediator in mediation process based on the response of society member who are facing trial of divorce case in The Religious Court of Medan.

2 RESEARCH METHODOLOGY

A normative legal research and an empirical approach were used in this research by focusing on the primary data which was supported by secondary and tertiary data to analyze how the implementation or the actualization of positive law in certain law phenomenon. This focus is to make sure whether the result of implementation of the positive in society life is suitable with the law purpose or not based on its specifications, it is categorized as an normative empirical research the data that used in this research was collected through direct observation and interview to the society members who are facing the divorce case in The Religious Court of Medan (Medan Religion Court).

3 RESULT AND DISCUSSION

3.1 Personal Comprehension of Society Members Who Had Filed a Divorce Lawsuit to the Religious Court of Medan Regarding the Significance of Marriage Pursuant to the Law of Republic Indonesia Act Number 1 of the Year 1974 on Marriage and the Islamic law Compilation

The definition of marriage in pursuance of the first article on Marriage Law No. 1 of 1974 is as stated "Marriage is a physical and spiritual bond between a man and a woman as husband and wife, having the purpose of establishing a happy and lasting family founded on the Belief in God Almighty." Concerning the interpretation of the law, it was mentioned that a marriage is a physical and spiritual bond, marriage is not only seen as an outward bond, but mental bond as well. Hence emphasizing that marriage holds more meaning than merely a connection physically but also spiritually between the two parties. A physical bond could be defined as a visible bond between the husband and the wife and a spiritual bond is an invisible bond perceived by only the pair. If this inner bond does not exist in a marriage, the marriage can be equated with an inert body.

The second essential meaning of marriage pertaining to the intention of marriage, is to establish a happy and eternal family. The word "bond" has been defined as "a binding relationship" according to the Great Dictionary of the Indonesian Language of the Language Center (abbreviated in English and Indonesian as KBBI) as the official dictionary of the Indonesian Language. Whereas the word "lasting" in KBBI means "to remain, does not shift for eternity". It can be concluded that a happy and lasting family is an eternal bond that remains forever.

Both of fore mentioned essential meanings are related to the third, that is "founded on the Belief in God Almighty". Aurelius Augustinus (354-430) acknowledges the natural processes of the universe take place according to God's plan. The law originated from God is termed as "*Lex Aeterna*" (the eternal law). It should be understood that if the husband and the wife carry out all their rights and obligations according to the teachings of their religion. Because all religions basically teach goodness and virtue.

Based on data obtained through interviews with 30 respondents present at the Religious court of Medan, it was found that 90% (27 people) regarded

the marriage as sacred, 6,67% (2 people) assumed marriage as one of the human needs and 3.3% (one person) takes marriage as a status demand. This shows that the parties who filed the lawsuit to the Religious Court of Medan knew the meaning and purpose of marriage theoretically. But why did they still file a divorce lawsuit? The answer is that they understood marriage in theory but not in its essence.

MS, one of the respondents who filed a lawsuit claimed that for 23 years of marriage to her husband who often lied to her. MS believed that for 23 years she had held back her ego from having a fight with her partner. However, because she made mistakes several times, her husband filed a lawsuit to the court. It can be concluded that the understanding and comprehension towards the meaning and purpose of marriage in theory and essence can not only be understood by only one party. To help, to forgive each other and hold back their own egoistic nature each becomes the primary key to creating a solid physical and spiritual bond based on the belief of God Almighty.

3.2 Reasons for the Cause of Divorcement in the Religious Court of Medan

Based on the data achieved from the religious court of Medan regarding the number of divorce cases in a period of time between January 2016-June 2018 was found a striking number of 7.443 cases which consist of 5.825 (78.26%) contested divorce case and 1.618 (21.74%) conditional divorce case. In year 2016, a number of 634 contested divorce cases and 2.327 conditional divorce cases with a total of 2.961 cases had occurred. In year 2017 there were 604 cases of conditional divorce and 2.292 cases of contested divorce with a total of 2.896 cases. In year 2018, from the period of time in between January-June a number of 380 cases of conditional divorce and 1.206 cases of conditional divorce had occurred.

The Reason for divorce has been regulated by The UUP. However, based on the data which is obtained from the Religious Court of Medan. Many reasons that are not in accordance with the reasons which are regulated by the UUP, the reasons are :

No.1: The Reasons to have divorce which are not regulated in UUP

No	Reason of Divorce	Number of Case	Percentage
1	Absence of Responsibility	1577	31,94%
2	Polygamy	28	0,56%
3	Economy	189	3,82%

Source : The Religious Court of Medan

The result of interview confirm the data from Religious Court of Medan and based on the result of the research we found the first reason absence of responsibility is also related to the first section of discussion conclusion. The absence of responsibility is caused because the husband or wife ignore their right and responsibilities and prefer to prioritize their own personal interest. This situation is affected by Indonesia Marriage Law. In article 7 chapter 1 in the act number 1 of the year 1974. The article stated that the minimum age for woman to have a marriage is 16 years old and 19 years old for man. We analyzed that these ages are not suitable to be the minimum age to have marriage in this current era. Because 16 and 19 years old still classified as teen. Because teenagers are the one who still 17-25 years old. This data is supported by Mappiarre (2012) who stated that teens are the one who still 12-21 years old for female and 13-22 years old for male. This period negatively called as the un-stage, unbalanced, unstable, and unpredictable period. In this period there are many changes in psychological, social and intellectual. Based on this explanation we conclude that on these ages they tend to take a spontaneous act without considering the outcome of their own action. It makes the absence of responsibility become the most common reason of divorce which happened in Medan.

If we analyze further the third ranked reason is economy reason, we also conclude that this reason also become as one of the most common reason of divorce because the husbands and wives who are still underage unable to get a proper income for their daily need. In the other side the primary, secondary or even tertiary need of people increase day by day. Because if they get marriage before 25 there is big possibility that they don't have bachelor degree yet which make them hard to find a proper job with a proper salary which can fulfill their basic fundamental need. It is supported by a data from Indonesian Education Minister which stated that the average age of a person

graduated and get bachelor degree is 22 years old, which means every couple who marry before 22 years old, most of them don't have bachelor degree which make them hard to find a proper job and get proper income or salary to fulfill their basic fundamental need.

4 CONCLUSIONS

In the current time many people understand theoretically the meaning and the goal of marriage but infact they cannot implement the meaning of marriage and achieve it. It because now days society is too selfish and only prioritize their own personal interest and even sacrifice the interest or need of the family to achieve it. It is worsened by a change of marriage value, most of people only know that marriage has a sacred value and form of physical and spiritual bond. But its not reflected by how they treat their own marriage and family. Based on the data above we also can see that most of the divorce case is initiated by woman or wife. We analyze the trend of gender equality campaign and slogan also has a part on this social phenomenon because now days many wives who don't do their responsibilities well and demand more than their own right have give bad impact to the harmony in one family. Those reasons make people only know theoretically the meaning and goal of marriage but don't know the essential value of a marriage.

Based on the explanation in the discussion we also can conclude there are several reasons of divorce. But in Medan the most common reason behind a divorce is because the absence of responsibility either by the husband or wife. The absence of this responsibility is caused because husband-wife relationship in manage a family doesn't work well. It because one or both of the parties don't do their right and responsibility properly. This is also impacted by the regulation of minimum age of marriage in Act Number 1 of the year 1974 in article 7 which stated that the minimum age for woman is 16 and for man is 19. People in these ages still classified as teens where they are still unstage, unbalanced, unstable and unpredictable. Therefore there are a lot of youth who still 24 years old who already go to the Religious Court of Medan to have a divorce lawsuit. this research conclude this phenomenon happened because the people who get married when they are teens, are not ready to face the problems which can appear in the family life and cannot prioritize the family need and tend to prefer the personal interest first. Furthermore another main reason behind a divorce is economy problem. This

problem appear because the husband or wife unable to get a proper salary in their after-marriage life. They tend to have fight with their couple only because of this economy problem.

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