

## THE EFFORT OF JUDGES IN FINDING THE SOLUTION OF DIVORCE CASE WITH RECONCILIATION VERDICT REFERS TO MAQASID AL-SHARIA PERSPECTIVE (Case Study at The Religious Court of Polewali Class 1 B)

**Zulkifli Achmad**

Postgraduate of Alauddin State Islamic University of Makassar

Email: kiflialafasy@gmail.com

**Supardin**

Lecturer at the Faculty of Sharia and Law UIN Alauddin Makassar

Email:

**Asni**

Lecturer at the Faculty of Sharia and Law UIN Alauddin Makassar

Email:

**Abstract:** The research aims to know the reasoning factors that divorcement is happened in Polewali's Religious Court Class 1B, to know the factors which affect the action implemented by the judge in finding the solutions of divorcement case that will be ended peacefully to both sides in Religious Court Class 1B with reference to *Maqasid al-Sharia*. This research uses a Qualitative research by pairing with the research field. It also uses a sociological approach and normative. The result shows that firstly, the factors that cause the divorcement in Religious Courts Class 1 B among them is the lack of religious' understanding. Secondly, the procedures and efforts implemented by the judge in finding the solutions of divorcement case that will be ended peacefully refer to the jobs and functions. Thirdly, the understanding to the husband and wife and family related to religious knowledges refer to the kindness concept in Maqasid al-Sharia..

**Keywords:** *Divorce; Religious Court; Maqāṣid Al-Sharīa*

### INTRODUCTION

The divorcement is a term that can be happened because of a marriage tie as mentioned in Islam, "a marriage is a covenant or contract which contains a duty of intercourse (sexual intercourse) between husband and wife by saying marriage voice or contract or like with them"<sup>1</sup> With this contract, the process of family development is starting and by of it, will be developed a community.

The purpose of marriage is to form a harmonious family, happy and permanent, *sakinah mawaddah warahmah*. By of it, between husband and wife must be helpful and to gather each other, in order that they can develop their personality and achieving a spiritual and material prosperity. But in process, its reality is conversely with the purpose.

As the purpose of marriage, the principles of marriage as mentioned in the rules of RI no.1 1974 that marriage is to ease a bridegroom or contrarily to complicate the divorcement. So therefore, the divorcement is possible if a certain reason not to be contrasted in gathering the family and it must be conducted in front of an authority court.

---

<sup>1</sup>Al-Anshari, Syekh Zakaria *Fathul Wahab*, Juz II (1994: Beirut, Darul Fikr)

*THE EFFORT OF JUDGES IN FINDING THE SOLUTION OF DIVORCE CASE WITH  
RECONCILIATION VERDICT REFERS TO MAQASID AL-SHARIA PERSPECTIVE (Case Study at  
The Religious Court of Polwali Class 1 B)*

The divorcement verdict towards the divorcement case in a religious court, generally caused by a judge who fails to reconcile to both sides and concludes that the both sides cannot be reconciled and their request accepted (divorce lawsuit) because the requirements determinant are acceptable according to the applicable laws. The reasons of divorcement, applied in RI rules no.1 1974 about Marriage and Islamic law compilation.

In RI's rules no.1 1974 about the Marriage and Islamic law compilation, explained as following :

1. The divorcement just can be conducted in front of the court session after the court has tried to reconcile to the both sides and not succeed to reconcile them.
2. To realize the divorcement, it must be a certain reason, that between husband and wife cannot be living in harmony as husband and wife again.
3. The ways of the divorcement in front of the court session regulated in self regulation<sup>2</sup>

Meanwhile, the reasons of divorcement in accordance with presidential instruction no.54 in 1991 about Islamic law compilation article 116, that the divorcement can be realized because of the reasons below:

1. One of the both sides which has done an adultery or drunkard, smoker, gambler et cetera that are difficult to recovery.
2. One of the both sides, leaving another side for two years consecutively without any permittance for another side and no acceptable reason or another out of his ability.
3. One of the both sides, punishing in Jail for 5 years or a heavier punishment after wedding party undergoing;
4. One of the both sides, doing a criminal action or hard persecution that endangers another side;
5. One of the both sides, suffering a body defect or disease that cannot undergo his/her obligation as a couple of husband and wife.
6. Between husband and wife continuously be at odds and in friction, no expectation to them living in harmony.
7. A husband deviates an agreement of divorce.
8. A religious convert or apostate that causes disharmony in household.<sup>3</sup>

The significance of peace commitment in the divorcement case according to Roihan A.Rasyid means to own a nobleness by itself, by achieving a peace between a husband and wife in the divorcement case, not only a household solidity can be saved but also careness to the children saved, means the sustainable of careness to the children will be implementing indeed <sup>4</sup> In order to implement the function of peace in the divorcement

---

<sup>2</sup>Republik Indonesia, Basic Constitution 1945, No.1 Year 1974, No.1, Year 1974, Article 39.

<sup>3</sup>Republik Indonesia, *Presidential Instruction number 54 year 1991* about The Islamic Law Compilation (KHI), Article 116.

<sup>4</sup>Roihan A. Rasyid, *The Procedural Law of Religious Court* (Jakarta: Publish Raja Grafindo Persada, 2000), P. 97-98.

case by the judge effectively therefore the judge must find the reasonable factors to how dispute happened as its background.

The human in his life will be consequently requires an interaction to one another and even makes mutual dependence among them. With the interaction among them as a social creature sometimes creates a matter or dispute which is referring to the human created at the beginning by thought and desire, they will depend their rights continuously including their self-esteem. Beside the conflict or dispute, at last will be a accomplishment. To achieve a deal in accomplishment for a conflict or dispute, every human tends to own various ways. In Indonesian law, the first step to accomplish the dispute is by mediation process.

A law or rule in a community won't be created directly without a certain goal. In Islam, Allah as a Sharia creator, will create a law to intend a mean and purpose in it. Basically a goal to have a Sharia is to achieve a prosperity of moslem people on the earth and hereafter. Via the law product created namely Al-Qur'an and Hadits, contains a lot of stipulation of law, shows that every sharia stipulation proposes to the prosperity of people to realize a kindness and avoid the destruction.<sup>5</sup>

According to Abdul Manan, in the divorcement case, because of quarrel and continous dispute, expected by the judge to find the factors of conflict and dispute. If it is known by the judge, easily he invites and asks to both sides to reconcile as previously.<sup>6</sup>

The Judges' conscience must be responded to attempt a peace effort in order that not to trap in finding the quality of the conflict itself while the judges misunderstand the factors of causality of the dispute because of temporarily knowledge to the case. If it so, the effort to direct to the peace will be unrealized and no benefit to both sides.

M. Yahya Harahap explains that in the divorcement case, the principles to reconcile to the both sides is imperative. An effort to reconcile is an obligation which is obliged by the law to the judge, in every investigating, judging, and deciding the divorcement case. Consequently the effort to reconcile in the divorcement case in the basis of conflict and squabbling continuously, must be conducted by the judge optimally.<sup>7</sup>

Every divorcement case towards the reason of conflict and squabbling continually investigated by the judge and has not tried to make a reconciliation optimally, the verdict condemned by the judge in this case is cancelled before the law or at least reproached, because of unfulfilling the procedures and the rules of applied constitution. This is based on the principles article 31, verse (2) PP No.9, 1975.

---

<sup>5</sup>Eka Nurhalisa, "The Implementation of Mediation of Civil Case in the Perspective of Maqasid Sharia According to Al-Syatibi". *Intizar* 26, no.2 (2020) P. 96-97.

<sup>6</sup>Abdul Mannan, *Various Materials of Legal Issues in the Practice of Religious Court* (Jakarta: Pustaka Bangsa,2000), P. 103.

<sup>7</sup>M. Yahya Harahap, *Discussion of National Marriage Law Based on Law Number 1 of 1974 and Government Regulation Number 9 of 1975* (Medan: CV. Zahir Trading. Co, 1993) h 267.

According to Retno Wulan Soetanto, if there is a peace commitment in a divorce case, the case must be revoked. Towards this things, there are two possibilities which are equally implemented in practice, namely:

1. The abrogating of the case is noted in the court minutes and the case is crossed out in the list that is still existing in the religious court.
2. The abrogating of the case is not only noted in the court minutes session but also in the product namely stipulation or verdict. It means that to know a huge cost of the case paid by litigant or applicant.<sup>8</sup>

Referring to both possibilities above, to be more making a sense for the religious court is in investigating the verdict of divorce case or its stipulation. Along with the Supreme Court jurisprudence RI no.216 K/Sip 1953, date August 21, 1953, which mentions that the lawsuit must be rejected if both sides has reconciled and if it so, must be made a product of resolution or determination along with the validity of stipulation applied.<sup>9</sup>

Based on the data obtained from a clerk of the Religious Court, that the divorce case has been decided for one year recent (2020 till 2021) seems there is no the divorce case verdict which is ended by reconciliation, in which a number of case decided for one year amount 685 cases. From 685 cases lied on repudiation divorce or qadi divorce with number of 198 and divorce by litigation 487 cases. The most decision maker in settlement the case that is ended by reconciliation is the judge. It can be seen actually so how great of role of the judge in settlement the case ended by peace in Religious Court of Polewali. Therefore to measure the rate of the emergency and the priority of each divorce cases, viewed by Maqasid Al-Sharia perspective.

Starting from the description above, the author is interested in raising this issue in the form of a thesis research, with the aim of reviewing the efforts of judges in resolving divorce cases with an amicable decision from the perspective of Maqāṣid al-Sharīa (case study at the Religious Court of Polewali Class 1B).

## **THE SETTLEMENT OF DIVORCE CASE**

A divorce or divorce means a separation, added by affixes per-an with etymology is a separation of husband and wife connection, talak, discord life between husband and wife as both still alive. The wedding constitution on article 38 and KHI on article 113 stated that the divorce is one of causalities of the breaking up of marriage.

Meanwhile, the terminology of divorce “talak” derived from the word ‘ithlaq’ means to ‘release or to leave’. Talak means to release the marriage tie or breaking up of the marriage. The divorce by talak means the divorce stated by husband towards his wife, hence their marriage tie is broken off. A husband intends to divorce his wife at first submitting a request to the religious court where placed at his region. The divorce by litigation is a divorce which is based by a lawsuit, submitted by a wife in order that her

---

<sup>8</sup>Retno wulan Soetanto dalam M. Djamil Latif, *Various Divorce Laws in Indonesia* (Jakarta: Ghalia Indonesia, 1982), P. 45.

<sup>9</sup>M. Djamil Latif, *Various Divorce Laws in Indonesia*, P. 46.

marriage to be broken off. A wife intends to divorce from her husband at first submitting a request or lawsuit to the Religious Court.

The divorce is a breaking up of marriage tie between husband and wife because of the intention of both due to the court's verdict.<sup>10</sup>

Based on the definitions above, can be concluded that the divorce is a breaking up of the relationship between husband and wife that still alive or their marriage is off. It is able to be implemented by (divorce by talak) or (divorce by litigation).

The reasons that can be made as the reason of divorce according the Rules of RI no.1 1974 as follows:

1. One of the parties committed adultery, gambler, etc which is difficult to cure.
2. One of the parties leaves the other party for two consecutive years without admittance of the other party and without a valid reason because of beyond his control.
3. One of the parties gets in prison sentence of 5 (five) years or a heavier sentence after the marriage took place.
4. One of the parties commits cruelty or severe persecution that endangers the other party.
5. One of the parties gets a physical disability or illness with the result of not being able to fulfill his obligations as a husband or wife.
6. Between husband and wife, there are continuous disputes and quarrels and no hope to live in harmony again in the household.<sup>11</sup>

### **The Divorce Law**

Regarding the law of Talak, the clerics of islam differ with one another. Among of them forbid to do Talak except if it is justified reasons by Sharia. From the clerics of islam to forbid the divorcement are Mazhab Hanafi and Hambali.

To divorce is a part of denial towards Allah SWT's gift, because marriage is one of Allah's enjoyment so to disobey it is illicit. By the way, to divorce is deniable, except in emergency condition. An aspect of emergency condition that allows to divorce if a husband doubts to his wife's virginity and dislikes to her attitude or his love towards his wife is away, because his feeling is on Allah's authority. If it is no any reasons in divorce, the divorcement is a form of denial towards Allah's authority and a crime towards a wife. Hence, the divorcement as like above disliked by Allah and forbidden in (Sharia).

### **The woman able to Divorce**

The woman who can be divorced is a woman properly divorced. It has several conditions below :

---

<sup>10</sup>Febri Handayani & Syaflawar, "Implementation of Mediation in the Settlement of Divorce Cases in the Religious Courts" *Jurnal al-Himayah*, vol. 1 no. 2 (2017), h. 234. <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/586> (Diakses 10 Juni 2022).

<sup>11</sup>Febri Handayani & Syaflawar, "Implementation of Mediation in the Settlement of Divorce Cases in the Religious Courts" *Jurnal al-Himayah*, vol. 1 no. 2 (2017), h. 234. <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/586> (Diakses 10 Juni 2022).

*THE EFFORT OF JUDGES IN FINDING THE SOLUTION OF DIVORCE CASE WITH RECONCILIATION VERDICT REFERS TO MAQASID AL-SHARIA PERSPECTIVE (Case Study at The Religious Court of Polwali Class 1 B)*

1. If it is wedding relationship as husband and wife still legal according to Legal aspect.
2. If a woman is still in 'iddah time talak raj'i or iddah talak ba'inshughra' because a wedding relationship to two conditions are valid according to the law till iddah time ends.
3. If a woman is still in iddah which is caused by expectation as a talak. Like a separation caused by her husband unconvert to Islam after his wife converts to Islam or due to 'Ila. A separation likes this regarded as talak behalf of Mazhab Hanafi.
4. If a woman is still in iddah because a separation regarded as fasakh, but her marriage is not cancelled. A separation caused by a wife converting due to fasakh of this condition, can continue the wedding process even though has not happened yet. The marriage as this condition regarded legal covenant

The basis of divorce law in the Marriage Rules lie on chapter VIII about the breaking up of marriage and its implication article 38 and 39 while in KHI on chapter XVI about the breaking up of marriage chapter 113-chapter 129. Beside the codified rules, the fiqh'clerks also have different opinion about the law of the divorce regard to Islam. The most correct opinion that always regarded as fundamental is the people said forbidden except by the correct reason. They who contend as above included Hanafi and Hambali. The reason of this, is Rasulullah SAW said that Allah curses every person by which feels and divorce". (hobby for marriage and divorce).

This matter caused by that divorce is unbeliever towards Allah's enjoyment. While marriage is a gift and unbeliever towards enjoyment is illicit. So it is no kosher to divorce, except in emergency. The emergency allows to divorce if the husband hesitates the holy of his wife's deed or no feeling of love to her. Hambali's grup explained more details as following : "Talak sometimes is obligatory, sometimes is illicit, sometimes allowance and Sunnah"<sup>12</sup>

According to Sayyid Sabiq, the obligatory of talak is the talak or divorce that is fallen by the hakam side (the mediator), because the rupture between the husband and wife is becoming complicated. It is happened if the hakam concludes that talak is only way to stop the rupture. The illicit of talak is a talak without reason or unreasonable. Because it can be harmful for husband and wife and no prosperity to achieve due to the talak/divorce, so it is illicit.

In another story told that the talak is hated by Allah SWT, The messenger of Muhammad said :

حَدَّثَنَا كَثِيرٌ بْنُ عَبِيدٍ حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ عَنْ وَاعِظِ بْنِ وَاصِلٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ تَعَالَى الطَّلَاقُ

Artinya:

---

<sup>12</sup>HandarSubhandiBakhtiar, *Definition of Divorce and the Legal Basis of Divorce*, <http://handarsubhandi.blogspot.co.id/2014/11/1.html>

Narrated by Katsir bin Ubaid, narrated by Muhammad Khalid from Mu'arif bin Washil from Muharib bin Ditsar from Ibn Umar from the messenger of Muhammad saw "a thing which kosher but hated at most by Allah is Talak" (HR Abu Daud and stated shahi by Al-Hakim).<sup>13</sup>

The talak is hated if there is no reason regarded in truth, even from Rasulullah SAW. To name the talak as kosher deed because it has broken the marriage which contains the goodness recommended by our religion. Talak Sunnah is due to the wife disobeys her obligation to Allah, for instance Sholat et cetera, while the husband cannot force his wife to run her obligation of Shalat, or his wife ashameless. With this condition, a husband acts toughly is not a fault to his wife, so she wishes to pay a bride price back to divorce. Allah swt says in QS An-Nisaa 4:19.

### THE METODOLOGY OF RESEARCH

This kind of research is a field qualitative research. Its analysis implemented by using a qualitative analysis, intends to find a systematically description about a phenomena, indications, and the conditions occurred and generates accurately its condition which is related to the researched variable. This qualitative research used is observation, interview and documentation.

### THE RESULT OF RESEARCH

**The factors that influence the effort, implemented by the judge in solving the divorce case to realize the verdict with an amicable ending in Religious Court of Polewali Class IB in perspective of Maqasid al-Sharia**

Islam proposes that before a divorce happened, an effort of reconciliation must be conducted by both sides that are encouraged by the judge (hakam). A judge in reconciling the both sides must be along with the religious' guide. Islam commands to solve every conflict's case among the humans involving the peace ways. The goal of mediation is not only ending the conflict, but also to build a sincerity and willingness to both sides without any blaming each other. Hence, the last goal of the mediation which is written on the peace certificate becomes the best choice to both sides, which is based on by a sincerity. So therefore, the courageous and expertise of the mediator is so essential to solve the conflict by both sides. The role to reconcile to the disputed parties is more primary than the judge who imposes the verdict towards the case adjudicated. If a reconciliation can be committed, it will better to end a conflict because of no lose no win but a harmony and kinship.<sup>14</sup>

Through interviewing with the informant of mediator of judge of Religious Court Polewali, he says ; "an effort for reconciliation, committed by the judge or by mediator, mostly affected by the third party including the lawyer".<sup>15</sup> One of the successful ways to reconcile process is the third party, the third party means the informants namely the

---

<sup>13</sup>Mansyur Ali Nashif, *The Principles of The Hadith of the Prophet Muhammad Volume 2* (Bandung: SinarBaruAlgensindo, 1993), h. 1023.

<sup>14</sup>Diana Firiana, "The Factors for Successful Mediation in Divorce Cases", *De Jure Muhammadiyah Cirebon* III, no.2 (2019): P. 60-61

<sup>15</sup>Abdul Jabbar, "Judge" *The Written Interview, Polewali Religious Court Office*, date 22 July 2022.

inward family or an inward person that want to see the couples back to the peace and close the case in the court because it is possibly to know the reasons how this couples are in conflict each other. Then the informant also conveys that the participation of lawyer influences mostly in committing the reconciliation, it can be seen that he involves with related to the law case due to his capability in represent the law because it is a task of lawyer.

Another informant also adds that:

The factors which are influencing are (1) the condition of all sides, if there is one side still wishes to find a way peace and won't get divorced so the judge must optimize the effort of reconciliation.(2) the ripeness of judge's knowledge whether religious science or social science able to touch both sides to reconcile. (3) his ability to make an interpersonal communication like a technical asking, his ability to search the problem deeper from both sides and giving a positive encouragement for both sides in order that they want to negotiate to find a peace than ending by a divorce.<sup>16</sup>

The Mediation in the law structure, is one of some problem solving or conflict by non litigation, without following the procedures decided in the court session. The mediation practice which is regulated in PERMA No.1 2016, obliges to implement the mediation in the first lawsuit and reviewed directly from its *Maqasid al-Sharia*.

### **The Mediation in the Structure of Law**

About *Maqasid al-Sharia* perhaps, there is a little explanation to make clear of this research toward *Maqasid al-Sharia* perspective. At first to explain on behalf of the notion of *Maqasid Sharia* if it is browsed in etymology, meant as an intention of the law. *Maqasid*, derived from *qashada* which is meant an intention. Here, this intention is the result expected by the law or the rules. In Al-Qur'an and As-sunnah has been mentioned directly about and the clerics have concluded it. All scientist deal that *Maqasid Sharia* is the urgency of benefit fulfillment (*jalb al-masalih*) for the humans along with saving the humans from various dangers (*daf'u al-mafasid/dar'u al-mafasid*). The benefit refers to the nurture of five things namely religion, soul, mind, heredity/generation and treasures. With these five pillars to be a reference by human beings. So if these pillars unmaintain, possibly the humans' life cannot achieve a glorious life perfectly.<sup>17</sup>

Al-Syatibi himself is not explaining in details the definition of *Maqasid Sharia* in his books. He has explained directly in details the content of *Maqasid Sharia* with its division. He has divided *Maqasid* into 2 parts, *qashdu al-syari'* (the goal of God) and *qashdu al-mukallaf* (the goal of mukallaf). The goal to prescribe the law is thoroughly to maintain the prosperity to the human and avoid the human from the wickedness whether on the earth or hereafter. In order to realize the benefitful of 5 components that must be maintained and implemented by the humans. The five primary components namely religion (*Hifzh al-Din*), Soul (*Hifzh al-Nafs*, Mind/thought (*Hifzh al-'agl*), heredity/generation (*Hifzh al-Nasl*), and the last, treasure (*Hifzh al-Mal*). After that he

---

<sup>16</sup>Dwi Rezki wahyuni, "hakim" Interview, Polewali Religious Court Office, date 4<sup>th</sup> August 2022.

<sup>17</sup>Eka Nurhalisa, "Implementation of mediation in Civilian Cases in the perspective of *Maqasid Sharia* According to Al-Syatibi". Intizar 26, no.2 (2020) P.100-101.

divides *qashdu syari'* to be 4 kinds. Firstly, *qashdu al-syari' fi wadh'I al-sharia* (the goal of God to put the syariat); Secondly, *qashdu al-syari' fi wadh'I al-sharia li al-ifham* (the meaningful of God to put the sharia to be understood); Thirdly, *qashdu al-syari' fi wadh'I al-sharia li al-taklif bi muqtadhaha* (the meaningful of God to put syariat to give a burden/responsibility to his slaves). Fourthly, *qashdu al-syari' fi dukhuli al-mukallaf tahta ahkami al-sharia* (the meaningful of God to assign his slave to do syariat. Meanwhile, a part of *qashdu al-mukallaf Syatibi* does not describe its divisions.<sup>18</sup>

Next, the author will focus in explaining the kinds of *qashdu al-syari'* (the goal of God to put the syariat). The meaningful of Allah determines the syariat only for the importance of his Slave' benefit. Syatibi divides the definions into 3 consequence rates from the human needs, they are *dharuriya*, *hajjiyah*, and *tahsiniyyah*. Dharuriyyah holds the highest rate of consequences because the human cannot live without it. If a person does not provides his *dharuriyyah maslahah*, his life will be in suffering in the world and hereafter. The level of his suffering to be adapted with dharuriyyah maslahah, considering lost from five pillars namely religion, self, nasab/heredity, mind, and treasure.<sup>19</sup>

The existence of religion, soul, mind/thought, heredity and treasure which are mentioned as the primary components then connected with the group of the rate of daruriyyah, hajjiyyah, along with tahsiniyyah must be implemented to be an analysis of the enforceability of PERMA Nomor 01, 2016 about mediation. Therefore the stipulation of PERMA number 01,2016 must be generated into five main components (religion,soul,mind/thought,heredity and treasure), analised by using the three grups of daruriyyah,hajjiyyah, and tahsiniyyah to elaborate the meaning of stipulation of PERMA number 01, on 2016.

The informant of the judge mediator of Polewali Court explains that the divorcement frequently committing in the Religious Court of Polewali because so many cases of divorce that on average of them lack of understanding to the knowledge of Religion and sharia, from of these raise the conflict due to lackness of the knowledge of religion.<sup>20</sup>

The explanation of informant above is so clear that how the problem of divorce always occurs because of the reason that they are misconception of sharia as well as instructed by Allah SWT. From five main components existed in Maqasid Sharia is one of them to keep the religion (Hifs al din) becomes a problem, and other components either. When our religion has been affected, surely other problems will be raising. Beside keeping the religion. *Hifs an nasl* or to preserve our heredity affected too. Because the household's broken will raise an household's trouble. This informant also reexplains that when a man or a family which is obedient to the religious' doctrine, his family will be on the right track, and the process in the religious court will be in reconciliation as long as obedient to the religious doctrines.

---

<sup>18</sup>Eka Nurhalisa, "Implementation of mediation in Civilian Cases in the perspective of Maqasid Sharia According to Al-Syatibi". Intizar 26, no.2 (2020) P.101-102.

<sup>19</sup>Eka Nurhalisa, "Implementation of mediation in Civilian Cases in the perspective of Maqasid Sharia According to Al-Syatibi". Intizar 26, no.2 (2020) P.101.

<sup>20</sup>Abdul Jabbar, "Judge" Interview, Polewali Religious Court Office, tanggal 21 Juli 2022.

A short explanation about 5 main components of *Maqasid al-Sharia*:

- a. To keep the religion (*Hifz ad-din*). An obligation to mediate as seen in PERMA No.01/2016 will assist to prevent the destruction of a man's religion because of raising the conflict or squabbling in a case. It is possibly able to connected with a phenomenon in a family when he or she conducts a prohibited deed that is forbidden by the religion such as adultery, drunkard, gambling, murder. and some kinds of them. It can destruct our religion particularly moslems because such action, very hated by Allah.
- b. To keep the soul (*hifz an-nafs*). An obligation to carry on a mediation process on every civilian case in the court giving an important notion to soothe your soul. As explained before in religious' maintaining. When your soul is unkeeping, it will be broken your body and your soul.
- c. To keep our mind (*Hifz al-agl*). All sides who take in case are susceptible to run into stress because of his dilemma. For example when husband and wife are in discord, their thinking will be disturbed. They sometimes take a step or wrong decision in the household caused by their emotional and even impacted to their healthiness. If it is continually happened, possibly gives a effect to their healthy of thought, in particular to female side. With implementing the mediation and assisting of mediator, facilitating to both sides in muting their anger until finding the mid way.
- d. To keep the heredity (*hifz an-nasl*). The stipulation in PERMA Nomor 01 in 2016 to implement the mediation in civilian case expresses so many kindness, including to maintain the heredity. The heredity is a long term investment for the parents hence its existence must be maintained from all damages. It sometimes a child gets a big impact from his divorced parents. A child usually is committing some negatives things that can be broken his life because he gets no hug and attention from his parents. It can destruct his mentality health and falls into a long term traumatic in his life. By mediation in talak/divorce expected to the parents to more concern to their child's life hence it is able to give a parenting set which is kind to his next life.
- e. To keep the treasure (*Hifz al-mal*). In talak/divorce matters, the problem of the seizure of property can be a long trouble among them after divorce decided. It sometimes falls into the case about the sharing of inheritance. Surely it will cause consecutively conflicts. By implementing the mediation expected to be able to solve the problem related to the sharing of inheritance and finish it wisely even it is possible to reconcile both sides by aborting to divorce, by that way, the utilization and distribution of treasure/inheritance can be used and owned as it should be. Another examples in seizure of property as explained before, will be in take a long time to both sides and no over to finish it, it can destruct a person' religion and also his soul. Because of the seizure of property is related to treasure/richness that is able to give an effect to the maintenance of treasure.

As analysis above, when the effort of reconciliation to implement a peace verdict seen from *Maqāsid al-Syaī'ah* and assisted by five essential components namely religion, soul, mind, heredity and treasures in dharuriyyah level, so to do a maintaining sooner. Basically in determining a law verdict at first, it should be considering a goal and benefit that will

be achieved and avoid the damage. To assign towards the maintenance of five elements in dharuriyyah level based on by implementing the mediation, created and obliged to give a benefit for the disputing parties and avoid a damage. In this context, it becomes to be a foundation towards the emergency condition (*daruriyat*) is a causation which is raised by a civilian case. So with the obligation of mediation for the disputing parties, in order that the problem of marriage, inheritance, and other scope of civilian case will hinder and minimize the destruction of five *Maqasid Sharia* in alive as described on analysis before. The existence of the rules of mediation cannot be ignored because the benefit which is obtained, gives a lot of gains. One of its small benefit is to reduce a bulk of lawsuit case in a court. So it is obliged to do a mediation.

## CONCLUSION AND IMPLICATION

### CONCLUSION

After explaining in details the analysis about the effort of judge in solving the divorcement case with a peace verdict by *maqasid al-sharia* (a case study of the religious court of polewali class IB), taken 3 conclusions, according to sub problem in formulation of problem, namely the factors that influence the effort committed by the judge in solving the divorcement case to implement the verdict which ends peace in Religious Court of Polewali class IB in review of *Maqasid al-Sharia*. among the factors are the third party. The third party means the family in soul or having the closeness with the couples of conflict in order to be reconciled and not to run the case in the Court.

### THE IMPLICATION OF RESEARCH

Actually the divorcement won't occur as long as the reconciliation achieved between two parties in a family, by husband and wife. A reconciliation will be so easy to implement if *Hajiyat/secondary*, and *Tahsiniyat/tersier* not only stop in accomplishment concept of *maslahat/Daruriyyat/primet*. So in solving the divorcement case must find a spot.

### REFERENCE

- Al-Anshari. Syekh Zakaria *Fathul Wahab*. Juz II1994: Beirut, Darul Fikr.
- Republik Indonesia. *Basic Constitution of 1945*, No. 1 Year of 1974, No.1, Year 1974, Article 39.
- Republik Indonesia. *Presidential Instruction number 54 year 1991* about The Islamic Law Compilation (KHI) Article 116.
- Roihan A. Rasyid. *The Procedural Law of Religious Court*. Jakarta: Publish Raja Grafindo Persada, 2000.
- Nurhalisa, Eka. "Implementation of mediation in Civilian Cases in the perspective of *Maqasid Sharia According to Al-Syatibi*". *Intizar* 26, no.2 (2020) P. 96-97.
- Mannan, Abdul. *Various Materials of Legal Issues in the Practice of Religious Court*. Jakarta: Pustaka Bangsa,2000.
- Harahap, M. Yahya. *Discussion of National Marriage Law Based on Law Number 1 of 1974 and Government Regulation Number 9 of 1975* (Medan: CV. Zahir Trading. Co, 1993) P. 267.

*THE EFFORT OF JUDGES IN FINDING THE SOLUTION OF DIVORCE CASE WITH RECONCILIATION VERDICT REFERS TO MAQASID AL-SHARIA PERSPECTIVE (Case Study at The Religious Court of Polwali Class 1 B)*

- Soetanto, Retnowulan. *Various Divorce Law in Indonesia*. Jakarta: Ghalia Indonesia, 1982.
- Handayani, Febri & Syaflidar. "Implementation of Mediation in the Settlement of Divorce Cases in the Religious Courts" *Jurnal al-Himayah*, vol. 1 no. 2 (2017), P. 234.
- Nashif, Mansyur Ali. *The Principles of Hadith from Rasulullah SAW. Volume 2*. Bandung: SinarBaruAlgensindo, 1993.
- Firiana, Diana. "The Factors of Successful Mediation in Divorce Cases", *De Jure Muhammadiyah Cirebon III*, no.2 (2019): P. 60-61.