

December 9th 2016



The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

UNISSULA PRESS

ISBN. 978-602-1145-41-8

TABLE OF CONTENTS

Front Page	i
Information of the International Seminar	ii
Committee Composition	iii
Preface.....	iv
Greeting From The Dean Faculty of Law	vi
INDONESIA’S KPK AND NSW’S ICAC: COMPARISONS AND CONTRASTS	
Prof. Simon Butt	1
CAN INDONESIA FREE ITSELF FROM CORRUPTION IN 2020?	
Prof. Dr. Hikmahanto.,S.H.,LLM	4
AN ACT TO ESTABLISH THE ANTI-CORRUPTION AGENCY, TO VEST POWERS ON OFFICERS OF THE AGENCY AND TO MAKE PROVISIONS CONNECTED THEREWITH.	
Rohimi Shapiee.....	7
STRATEGY TO CREATE INDONESIA FREE CORRUPTION IN 2020	
Dr. Jawade Hafidz, S.H., M.H	11
THE NETHERLANDS INGLOBAL CORRUPTION	
Siti Malifah Marlou Feer, M.A.	28
ROBUST YET FRAGILE: EFFORTS IN COMBATING CORRUPTION IN INDONESIA	
Laras Susanti.,S.H., LLM.....	33
LEGAL STATUS OF AKTOR’S FOR CORRUPTION (In the Perspective of Islamic Law)	
Sumarwoto Umar	37
THE ROLE OF LAW IN THE POVERTY REDUCTION STRATEGY	
Lantik Kusuma Aji	46
THE INDEPENDENCY OF THE INSTITUTION FOR THE PROTECTION AND THE ESTABLISHMENT OF HUMAN RIGHTS TOWARDS THE GLOBALIZATION ERA 2020	
Khalid	55
THE URGENCY OF ANTI CORRUPTION EDUCATION FOR COLLEGES IN INDONESIA	
Siska Diana Sari.....	62
THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST	
Elis Rahmahwati.....	78
DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT	
Agung Widodo.....	87
DIVERSITY ADULT AGE LIMITS POSITIVE LAW IN INDONESIA (Studies in Multidisciplinary Perspective)	
Muhammad Andri	102

THE APPLICATION OF BALANCE IDEA IN SETTLEMENT OF DOCTOR MALPRACTICE CASE THROUGH PENAL MEDIATION Yati Nurhayati.....	111
MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL THROUGH ENFORCEMENT OF ETHICS Dr. Sukresno, SH, M.Hum	118
CORRUPTION POTENCIES IN LAND USE POLICY (A Case Study in Kuningan Regency) Haris Budiman	126
CORRUPTION PREVENTION AND CONTROLS INP Budiarta	133
ISLAMIC LAW VALUES TRANSFORMATION IN THE RECONSTRUCTION OF THE LEGALITY PRINCIPLE OF INDONESIAN CRIMINAL CODE Sri EndahWahyuningsih	145
JUSTICE AND CHARITY IN JAKARTA’S NORTH COAST RECLAMATION PROCESS THAT WILL LEAD TO INDONESIA CLEAN OF CORRUPTION Untoro	155
CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED Zulfiani.....	162
THE REFLECTION OF ISLAMIC BANKING IN THEORY AND PRACTICE Anis Mashdurohatun	171
THE IMPLEMENTATION OF LOCAL WISDOM SIRI’NA PACCE AS AN EFFORT OF CORRUPTION ERADICATION IN INDONESIA Muh. Afif Mahfud	181
DISCOURSE POLITICAL LAW IN INDONESIA ON A COMPLETION OF PLATO PHILOSOPHY Adrianus M. Nggoro,SH.,M.Pd.....	189
STUDY OF INDONESIA’S PARTICIPATION IN ICSID Agus Saiful Abib.....	202
NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED ON THE PRINCIPLE OF GOOD GOVERNANCE Aris Yulia	211
ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT IN THE PERSPECTIVE OF HUMAN RIGHTS Ariyanto,SH.,MH.....	221
SOCIAL WORKING PENALTY AS SOLUTION IN ERADICATING CORRUPTION IN INDONESIA Desy Maryani.....	232
LEGAL POLITICSOF EMPLOYMENT IN TERM OF PART OF TASK HANDOVER TO OTHER COMPANIES IN INDONESIA Endah Pujiastuti.....	244

RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE IN THE COMPANY EMPLOYING OUTSOURCING SERVICE Pupu Sriwulan Sumaya	256
THE APPLICATION OF CORRUPTION LAW TO WARD CRIMINAL ACT IN THE FIELD OF FORESTRY Ifrani	267
THE EFFORTS OF ERADICATION OF CORRUPTION THROUGH INSTRUMENTS OF MONEY LAUNDERING LAW AND RETURN ACTORS' ASSETS Yasmirah Mandasari Saragih.....	276
AFFIRM ROLE OF EXISTENCE <i>RECHTSVERWERKING</i> TO ACHIEVING LEGAL CERTAINTY IN LAND REGISTRATION Rofiq laksamana, Setiono, I Gusti Ayu Ketut Rachmi Handayani, Oloan Sitorus.....	287
ANTI-CORRUPTION EDUCATION AT AN EARLY AGE AS A STRATEGIC MOVE TO PREVENT CORRUPTION IN INDONESIA Ida Musofiana.....	304
FREED INDONESIA'S CORRUPTION BETWEEN HOPE AND REALITY Dr. Tongat, SH., MHum., Said Noor Prasetyo, SH., MH.....	313
UTILIZATION OF INDONESIA MARINE RESOURCES IN AN EFFORT TO REALIZE INDONESIA TOWARDS THE SHAFT OF THE MARITIME WORLD Dr.Lathifah Hanim, SH.M.Hum., M.Kn. and Letkol (mar) MS.Noorman, S. Sos., M.Opsla.....	319
POTENTIAL CORRUPTION IN THE VALIDATION POLICIES ON ACQUISITION TAX OF LAND AND OR BUILDING Lilik Warsito.....	325
THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION IN SOUTH SUMATERA Sri Suatmiati.....	334
ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT Siti Zulaekhah.....	344
AN EXPANSION OF CONCEPT THE STATE ECONOMIC LOSS IN CORRUPTION IN INDONESIA Supriyanto, Hartiwiningsih, Supanto.....	354
JURIDICAL STUDIES ON SUBSTANCE AND PROCEDURE OF THE DISMISSAL OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMATION Siti Rodhiyah Dwi Istinah.....	364
THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG Aryani Witasari.....	376
SEMARANG CITY GOVERNMENT ROLE IN CONSERVATION AND ENVIRONMENTAL PROTECTION TO THE CAPITAL OF THE NATIONAL HERITAGE IN INDONESIA Achmad J Pamungkas (<i>Indonesia</i>), Carlito Da Costa (<i>Timor Leste</i>)	390

STUDYING THE WISDOM OF ZAKAT Moch. Gatot Koco (Indonesia), Basuki R Suratno (Australia)	398
HOMOLOGATION RECONSTRUCTION IN BANKRUPTCY THAT IS BASED ON DIGNIFIED JUSTICE Agus Winoto	410
RECONSTRUCTION OF EXECUTIVE AND LEGISLATIVE AUTHORITY IN MAKING GOOD GOVERNANCE (GOOD GOVERNANCE) VALUES BASED ON WELFARE Mohamad Khamim	420
THE TASK RECONSTRUCTION AND BPKP'S AUTHORITY IN THE CASE OF JUSTICE VAUE BASED CORRUPTION Sarbudin Panjaitan	429
THE RECONSTRUCTION OF MADLIYAH AND IDDAH MAINTENANCE AND MUT'AH IN DIVORCE CASE FOR JUSTICE AND WELFARE Mustar	438
JURIDICAL ANALYSIS OF THE ALLEGED CRIMINAL OFFENSE TO MANUFACTURE A NOTARY DEED Subiyanto	446
REVITALIZATION DEAL IN AKAD HYBRIDS IN SHARIA BANKING VALUE BASED ISLAMIC JUSTICE Masduqi	452
RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION IMPLEMENTATION OF VALUE-BASED JUSTICE Kukuh Sudarmanto Alugoro	462
ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW ERADICATION OF CORRUPTION (LAW NUMBER 31 OF 1999 JO. LAW NUMBER 20 OF 2001) BASED ON VALUE OF JUSTICE As'adi M. Al-ma'ruf	472
RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT LAW BASED ON JUSTICE Christina N M Tobing	479
THE LAW AND THE IMPACT OF MARRIAGE SIRRI Sahal Afhami	489
CRIMES AGAINST CHILDREN AS ACTORS Muhammad Cholil	503
RECONSTRUCTION OF CRIMINAL PROCEDURAL LAW (KUHP) ABOUT THE DETENTION Muhammad Khambali	512

BASED ON JUSTICE PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)	
Esti Ningrum	520
RECONSTRUCTION REGIONAL MINIMUM WAGE (UMR) IN RENEWAL OF EMPLOYMENT LEGAL REMEDIES BASED INDONESIA THE VALUE JUSTICE PANCASILA	
Urip Giyono	531
IMPLEMENTATION OF LAW AS TO MAINTAIN SECURITY IN THE CONTEXT OF PROFESSIONAL POLICE POLMAS (CASE STUDY IN LAMPUNG POLICE)	
Muhammad Yaman	539
RECONSTRUCTION OF CRIMINAL SANCTIONS PENAL CODE ACTORS ON ABORTION CRIME BASED ON THE VALUE OF JUSTICE	
Hanuring Ayu Ardhani Putri	549
REGISTRATION FIDUCIARY GUARANTEE REALIZE LEGAL PROTECTION OF CREDITORS AND DEBTOR	
Ansharullah Ida	556
RECONSTRUCTION OF LEGAL DISPUTES MEDIATION IN HEALTH CARE FOR PATIENTS HOSPITAL BASED ON THE VALUE OF JUSTICE	
Teguh Anindito	569
RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE	
Maria Marghareta Titiek Pudji Angesti Rahayu Teguh Anindito	579
IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW	
Aji Sudarmaji	587
FAIR SETTLEMENT RECONSTRUCTION OF PROBLEMATIC CREDIT DISPUTE AT BANK RAKYAT INDONESIA (STUDY CASE AT MEDAN-SINGAMANGARAJA BRI BRANCH OFFICE)	
Bachtiar Simatupang	594
RECONSTRUCTION OF THE WASTE MANAGEMENT LAW BASED ON WELFARE VALUE	
M. Hasyim Muallim	616
RECONSTRUCTION LAW OF PUNISHMENT AGAINST CHILDREN NARCOTICS ABUSE-BASED PROGRESSIVE LAW	
Salomo Ginting	625
LEGAL PROTECTION PROBLEM OF WIFE AND CHILDREN OF POLYGAMY SIRRI IN INDONESIA	
Muhlas	639

IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009 (CASE STUDY IN SUMATERA UTARA PROVINCE)	
Ahmad Zaini	648
IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT	
Ruslan	658
RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE	
Jufri Ghalib	667
RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE	
Elpina	679
RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE	
Ramon Nofrial	693
RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY	
Hakim Tua Harahap	706
RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE	
Ulina Marbun	726
RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE	
Zaenal Arifin	740
THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE	
Abdul Kholiq	751
THE RECONSTRUCTION OF LEGAL AID LAW FOR CHILDREN WHO GET CONFLICT WITH LAW IN PROCESS OF JUSTIFICATION FOR CHILDREN BASED ON THE VALUE OF PANCASILA	
Adi Mansar	767
MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)	
Mariah S.M. Purba	778
POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015)	
Warman	790

LAW ENFORCEMENT AGAINST CORRUPTION IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA Sekhroni	798
THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN'S RIGHT PROTECTION FOR CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA Indriyana Dwi Mustikarini	809
PREVENTING LAND MAFIA USING POSITIVE LAND REGISTRY SYSTEM Bambang Sulistyowati	816
UNRULY PASSENGER IN AVIATION: THE REGULATIONS AND CASES IN INDONESIA Adya Paramita Prabandari	826
EDUCATION ANTI-CORRUPTION IN INDONESIA: PROBLEMS, CHALLENGES AND SOLUTIONS Alwan Hadiyanto	839
SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING CORRUPTION IN INDONESIA Sulistyowati	852
SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA Sarjiyati	863
CONSISTENCY MODEL OF COURT DESIGNATION TO FOSTER PARENT RIGHTS AUTHORITY DUE TO DIVORCE ON CHILDREN Erna Trimartini	873
AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL JUSTICE SYSTEM IN INDONESIA Sukmareni	885
PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN INDONESIA Anis Rifai	903
PENAL MEDIATION IN SOLVING MEDICAL MALPRACTICE CASES AS AN ALTERNATIVE OF PENAL SANCTIONS BASED ON LOCAL WISDOM Sri Setiawati	913
SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM Achmad Sulchan	922
MORAL REFORM BUREAUCRACY AS PREVENTION OF ILLEGAL PAYMENTS TO INDONESIA CLEAN OF CORRUPTION Herwin Sulistyowati	932
STANCE AND AUTHORITY OF PEOPLE'S CONSULTATIVE ASSEMBLY DURING REFORMATION ERA 1945 Ahmad Mujib Rohmat	944

TAXES AND ALMS SEEN FROM ISLAMIC LAW	
Mohammad Solekhan	954
DIVERSION IN COURT (Case Studies in Karanganyar District Court)	
Anita Zulfiani	964
International Seminar	
Photos.....	971

THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST

Elis Rahmahwati

Students of the Doctoral Law Program, Sebelas Maret University, Surakarta
elis_1842@yahoo.com

ABSTRACT

Religious Courts is a special Court and its specialization lies on the principles of Islamic personality. One of its absolute authorities is on the marriage, which also includes divorce cases.

Divorce cases in the Religious Courts can be combined with the child custody matter, children living cost, wife living cost, and joint property, with the aim to establish the principles of simple, fast, and low cost.

But in reality, it cannot be fulfilled because it would hold up the divorce process itself, which at the beginning the parties have no objection to divorce, but then become objected to the unification, such as joint property lawsuit. Thus on those kinds of cases, a legal efforts will be conduct altogether with the divorce process that included the main claim, and it took years on the process.

The theory of justice based on expediency based on Mill's opinion and a theory of the Islamic law is to bring the benefits and avoid madharat (damage). The divorce cases that being cumulated turned out bring more madharat. Stages of the trial, like mediation, can be the anticipation of the extended process. An agreement made by the parties will results in a divorce case that is simple, fast, and low cost, without any legal efforts made by the party which feel any disadvantages due to the decision given by the Judges.

Keywords: cumulation divorce, religious court, mediation.

I. Introduction

Religious Courts is one of the executors of judicial power for the Moslem people seeking justice regarding particular case (Article 2 of Law No. 7 of 1989 on the Religious Courts, amended by Law No. 3 of 2006 and Law No. 50 2009), conducted by the Religious Courts and the Religious High Courts culminating in the Supreme court as the country's highest court.

Religious Courts is one of the executors of Judicial Power (Judicial Power), based on Article 2 of Law No. 4 of 2004 jo Law No. 48 of 2009 on Judicial Power. The article mentions that the organizers of the judicial power is done by the Supreme Court and judicial bodies underneath in the public courts, religious courts, military courts, administrative courts and the state by a Constitutional Court. These four judicial bodies have their own competence and proceedings.

The Religious Courts as a legitimate state courts as well as a special court that the Islamic court in Indonesia, which is authorized by state legislation to create material Islamic law within the limits of its power.¹

As one of the executors of the judicial authorities, Religious Courts have absolute competence that examine, decide and finalize certain judge actions, as stipulated in Article 49 paragraph (1) of Law No. 7 of 1989. The article explains that: "the duty and authority of Religious Courts is to examine, disconnect and complete the first level cases among people who are Muslims in the field of:

- a. Marriage²
- b. Inheritance
- c. Testament
- d. Grant
- e. Benefaction
- f. Alms
- g. Infaq
- h. Sadaqah, and
- i. Economic Sharia.³

In theory, the existence of the court is an institution that serves to coordinate disputes that occur in the community, and is 'the home protection' for people seeking justice, who believe in the path of litigation, as well regarded as a 'company of justice' who are able to manage the dispute and issued a product of justice.⁴

The procedural law applicable at the Courts of religion is the law applicable to the general courts. It is stated in Article 54 of Law No. 7 of 1989 that:

¹ Raihan A.Rasyid, *Hukum Acara Peradilan Agama*, Raja Grafindo Persada, Jakarta, 2005, pp. 10.

² In the explanation of Article 49 paragraph 1 of the Law of Religious Courts paragraph a concerning matters in marriage is mentioned: Permission to have more than one, Permit into marriage for those who have the age of 21 (twenty-one) years, in the case of parents guardians, or family in straight lines there are differences of opinion, dispensation of marriage, Prevention of marriage, refusal of marriage by Employees Registrar of marriage, cancellation of marriage, claim negligence on duty of the husband or the wife, divorce by husband, divorce by wife, joint property settlement, Mastery children, mother can bear the cost maintenance and education of children when the father should have the responsibility not to obey, determination of the obligation to give the cost of living by the husband to the former wife or determination of any liability for ex-wife, ruling on the legitimacy of a child, Decision on revocation of parental authority, revocation of a guardian's authority, appointment others as a guardian by the court in terms of the power of a guardian revoked, appointment of a guardian in the case of a child who is not old enough 18 (eighteen) years in living both parents, imposition of liability for damages on the child's assets which were under his control , determination of the origin of a child and establishment of adoption based on Islamic law, Decision about denial of information to perform mixed marriages, statements about the validity of marriages that occurred before the Act No. 1 of 1974 on marriage and executed according to other regulations.

³ As the latest authority of the Religious Courts after the enactment of Law No. 3 of 2006, although this rule states that there are choices of law which is the Religious Court or District Court. But after the second changes of Religious Courts Law with the enactment of Law No. 50 of 2009 to the absolute authority of the Religious Courts.

⁴ Adi Sulistiyono, *Krisis Lembaga Peradilan di Indonesia*, Lembaga Pengembangan Pendidikan (LPP) UNS dan UPT Penerbitan dan Percetakan UNS (UNS Press), Surakarta, 2006, pp. 3.

"The procedural law applicable in the Religious Courts is the law applicable in the General Courts, except as specifically regulated in this law".

In Article 66 Paragraph (5) of Law No. 7 of 1989 as amended by Law No. 3 of 2006 and Law No. 50 of 2009 states: "lawsuit on the child custody matter, children living cost, wife living cost, and joint property of husband and wife may be filed together with the application for divorce or after the divorce pronounced pledge. "

And Article 86 Paragraph (1) states: "Claims about the child custody matter, children living cost, wife living cost and joint property of husband and wife may be filed together with the suit after divorce or divorce judgment obtained permanent legal force."

Based on the article provides legal basis in terms of cumulative or merger lawsuit. In practice, the cumulation may occur when a person files a lawsuit or during the case investigation. The second way is in the civil procedure law with a "rekonvensi" lawsuit.

Cumulation lawsuit can provide a positive impact, on the other hand can also cause negative effects. The positive impact of a cumulation lawsuit is the proceedings can be simple, quick and low cost. The negative effects such as, the rules that granted a divorce can be blocked, if one of the parties take legal actions against others claims, so the case becomes longer.

Maia Estianty's case on November 16, 2007 filed for divorce combined with the child custody matter and children living cost of her husband Ahmad Dhani. The case was decided on September 23, 2008 by the South Jakarta Religious Court by granting the divorce and child custody granted to Maia, and Dhani are required to provide a living for their children Rp. 7.500.000, - / month for one child. Dhani appealed to the Jakarta Religious High Court, but was canceled and the appeal is still granted the child custody to Maia. The cassation decision was issued in January 2011. Then Dhani file a judicial review and was terminated on May 14, 2013.

It can be seen that divorce in cumulation would be a long process with their legal efforts, thus the divorce process become longer. In this case, it took about three years since the decision made by the court of first instance to appeal.

Regarding the impact of positive and negative impacts of litigation with the cumulation by Yahya Harahap,⁵ that combines a divorce case and joint property lawsuit is more beneficial, as well as it can solved two problems in an examination and judgment,

⁵ M. Yahya Harahap, *Kedudukan dan Kewenangan dan Acara Peradilan Agama*, Sinar Grafika, Jakarta, 1993, pp. 293.

energy, time and cost efficient and the enjoyment of the community property will be more quickly.

In Circular Deputy Chief Justice of the Supreme Court of Environmental Affairs of Religion No. 17/TUADA-AG/IX/2009 on September 25, 2009, Cumulative case of divorce by joint property, livelihood and child custody, stated as follows:

- 1) According to the provisions of Article 86 paragraph (1) of Law No. 7 of 1989 as amended by Law No. 3 In 2006, a lawsuit about the child custody matter, children livelihood, wife livelihood and joint property of husband and wife, can be filed together with the divorce suit. Thus, the Law does not require contested divorce cases always cumulative by the joint property, livelihood and child custody.
- 2) To simplify and speed up the process for settling disputes, divorce lawsuit should not be coupled with a dispute joint property, livelihood and child custody.

II. Cumulation divorce in the Religious Court

Our state Constitution states that Indonesia is a state based on law (*rechtstaat*).⁶ In a constitutional dimension, power over the implementation of the law is one of the three branches of state powers as expressed by Montesquieu with the theory of sovereignty of the country where the executive branches as implementers and regulators together with the legislative branches, and judicial branches as the executor of judicial power. Correlation of the law and these powers, in line with the theoretical concept of Analytical Jurisprudence from John Austin who called that the law should contain at least 4 (four) elements, namely: 1) sovereignty, 2) command, 3) duty, 4) sanction.⁷

Law as a product of evolutionary dialectic community should undoubtedly continue to evolve in the scope of date and time, the law once regarded as a necessity, gradually began to be abandoned and replaced by a law that role more relevant to the times and at certain times.

John Stuart Mill presents the theory of justice, argued that: "There is no theory of justice that can be separated from the demands expedience. Justice is the term is given to the rules that protect the claims deemed essential to the welfare of society, claims to hold the promise treated equally, and so forth".⁸

⁶ The constitution of the Republic Indonesia 1945 section 1 (3).

⁷ Bernard L. Tanya, dkk, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, 2013, pp. 109.

⁸ Karen Lebacqz, *Teori-teori Keadilan*, Nusa Media, Bandung, 2015, pp. 23.

In his book, Mill argued: “Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain”.⁹

The principle goal of Islamic Law is how to realize the benefits to all mankind, which includes a 'benefit' in the life of this world and in the hereafter.¹⁰ One of the important concepts and fundamentals of the subject in the philosophy of Islamic law is the concept of maqasid at tasyri 'or maqasid Al Sharia asserted that Islamic law is prescribed to realize maslahah introduced by Imam Al-Syathibi, Al Mawardi, Al Ghazali, Najamuddin Al Thufi Ibn Taymiyyah, Al Tabatabaei, Mustafa Zaid and Abdul Wahab Khalaf.

In Arabic, maslahah (plural mashalih) is synonymous with the word "benefits" and the opposite of the word mafsadat (damage). As a figure of speech, the word can also be used for actions that contain a benefit. In the study of law, maslahah can be used as a term to express a special sense, although it cannot be separated from its original meaning, namely attractive benefits or reject madharat (damage).¹¹

In relation to the law and the Islamic community, the use of Al Syatibi maslahah theory in his book Al Muwafaqat. Maslahah as the destination of sharia should be the policies holders of powers, legislative, executive, and judicial. Maslahah theory teaches that, firstly, the law was made for human benefit, which is to protect the welfare of religion, life, intellect, lineage, wealth and human, in order to get the benefits and avoid damage. Secondly, if in realizing the benefit of the change is to the law, then the law must be changed to follow the thats maslahah, although it must deviate from or different from the legal text. Third, if the benefit should be established for the realization of the new law, the new law can be formed even though there is no command in the sharia. Fourth, in the event of a discrepancy or difference the benefit of each other, then taken maslahah greater or benefit the most superior (strong), according to the purpose of sharia. Fifth, through the establishment of a new law based on human reason maslahah (mursalah) must not conflict with the provisions of the texts (sharia) that are 'ubudiyah back to Allah SWT.¹²

⁹ John Stuart Mill. *Utilitarianism* . 2009.. The Floating Press. (E-book)

¹⁰ Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence): Termasuk Interpretasi Undang-Undang (Legisprudence) Volume 1 Pemahaman Awal*, Kencana, Jakarta, 2013, pp. 216.

¹¹ Abdul Manan, *Reformasi Hukum Islam di Indonesia Tinjauan dari Aspek Metodologis, Legalisasi, dan Yurisprudensi*. RajaGrafindo Persada, Jakarta, 2007, pp. 260-261.

¹² A. Mukti Arto, *Peradilan Agama dalam Sistem Ketatanegaraan Indonesia Kajian Historis, Filosofis, Ideologis, Politis, Yuridis, Futuris, Pragmatis*, Pustaka Pelajar, Yogyakarta, 2012, pp. 20.

Law No. 7 of 1989 jo Law No. 3 of 2006 jo Law No. 50 of 2009 allowed the filing of divorce by cumulation. The provisions described in Article 66 Paragraph (5) in conjunction with Article 86 Paragraph (1) of Law No. 7 of 1989 Article 66 Paragraph (5) these laws.

The general principles of the Religious Courts basically refer to the main principles of justice as determined by Law No. 14 of 1970 as amended by Law No. 4 of 2004. The principle can be seen in the whole body of Law No. 7 of 1989. It said the general principle become the general foundation and general guidance in carrying out the implementation of all the soul and spirit of the law.¹³

Furthermore, the general principles of the Religious Courts in outline inventoried as follows:

1. The principle of Islamic Personality
2. The principle Mandatory Reconcile
3. The Principle of Simple, Fast and Low Cost
4. The Principle Trial Open to Public

Article 81 Paragraph (2) of Law No. 7 of 1989 states: "A divorce is considered to occur with all the legal consequences as from the decision of the Court obtained permanent legal force."

In the procedural law of the Religious Courts settling disputes in divorce and community property can be filed at the same time or after the pledge of divorce or divorce does have binding legal force (vide Article 66 paragraph (5) and Article 86 paragraph (1) of Law No. 7 of 1989).

Two cases of cumulation divorce:

1. Case No. 0533/Pdt.G/2014/PA.Ska, a wife filed a divorce to her husband combined with joint property, the child custody matter and children livelihood. That case registered on August 12, 2014 and decided on June 16, 2015. Although in the case of her husband did not mind divorced yet another lawsuit objection. Later on it made an appeal that was disconnected on September 1, 2015 and the appeal terminated on June 16, 2016.
2. Case No. 273/Pdt.G/2012/PA.Dpk. A wife filed a divorce to her husband combined with joint property on Februari 7, 2012. The husband did not mind on the divorce, but minded the joint property. During the trial, the husband and wife negotiate and make an agreement due to divorce on June 26, 2012. On July 17, 2012 handed down the verdict for divorce and by agreement of the parties adhere to punish contents of the agreement.

¹³ M. Yahya Harahap, *Kedudukan dan Kewenangan dan Acara Peradilan Agama*, *op.cit*, pp. 56.

In principle purpose is to require the incorporation of a lawsuit opposing the verdict and judicial realize simple, fast and low cost. In relation to the settlement of cumulation divorce, it turns out that goal is not reached. Simple Justice did not materialize due to the accumulation that occurs makes the case becomes long. Even more, when there are remedies that divorce before the decision is permanent legal power does not happen, but in fact between husband and wife was not a harmonious and even had split beds or separate house.

In all two cases above, the firstcase is very clear that divorce in cumulation does not reflect the principle of simple, fast and low cost. Parties in any legal actions require no small cost. Not to mention a long time must be taken in the process of remedy, but to divorce the parties did not mind and in fact they were not irreconcilable even had separate home. This raises madharat (damage) for both (husband and wife) with the objections of one party to an additional lawsuit. While in the second case because there is an agreement due to divorce, so that the principle is simple, fast and low cost was fulfilled and protracted divorce.

The theory of justice based on expediency based on Mill's opinion and a theory of the Islamic law is to bring the benefits and avoid madharat (damage). The divorce cases that being cumulated turned out bring more madharat, thatif requested remedy be long, especially court assessor (additional) for such a lawsuit property that the parties' objections, makes the process too long divorce itself. Benefit of a divorce case that is not combined with community property, so that it first resolved is a matter of divorce.

Islam teaches in a foster home (marriage) commanded by the husband and wife to get along well, mutual respect, and love between husband and wife, so as to create a domestic life on the basis of sakinah¹⁴, mawaddah¹⁵ and rahmah¹⁶ principles. If in the future, they are conflict-affected households up to divorce, Islam teaches to finish in a good way too. In the sense of parting with a good way, have a broad scope including divorce are implemented according to the demands of law, absence of attitudes hang divorce between the two parties.

Similarly, the completion of the result of the divorce, the problem of child care, a livelihood of the wife and issue joint property. In order for the settlement is going well, when in completing the divorce and its consequencesare based on faith.

The existence of Circular Chairman of the Youth Environmental Religious Court No. 17/TUADA-AG/IX/2009 about Cumulative divorce with joint property, livelihood and child custody, that divorce in cumulation is allowed, but to simplify and speed up the trial process

¹⁴ Peace

¹⁵ Love

¹⁶ Affection

should not be combined. The word should be here is a suggestion that is appropriate because in practice it is going to require a long¹⁷ and lengthy process¹⁸.

Peacefully efforts through mediation and committed judges to examine the case should be more active to reconcile the parties first they do not mind to divorce. Thus, after successfully in the stages of the peace, the parties made a deal that will be poured in a decision on the case. When it is contained in the decision, there are legal consequences and do efforts to execution.

III. Concluding Remarks

There are some points that can be concluded from the above descriptions:

1. Divorce in cumulation does not meet the principle is simple, fast and low cost, although basically allowed cumulation lawsuit, because it makes the case be longer especially when there are legal remedies that inhibit the process of divorce itself even though the parties have not objected to the divorce.
2. An agreement made by the parties during the process of divorce cases in the cumulative progress and peace efforts of mediation by the mediator with the inclusion of the agreement of the parties litigant making a divorce in cumulation can be completed in a simple, fast and low cost without any legal efforts made by parties who feel harmed by the verdict given by the judges examiner cases.
3. The existence of a circular issued by Deputy Chief Justice of the Supreme Court of Environmental Affairs urging Religion should not combine a divorce by the joint property, livelihood and child custody is breakthrough of the nature of divorce in cumulation.

Furthermore in relation to the divorce in cumulation at the Religious Court the writer recommends the following matters:

1. In order to be revisited existing rules regarding divorce is a cumulation of time-consuming and lengthy process, thus inhibiting the divorce itself.
2. Mediation by mediator efforts and the peace process by judges to be maximized during the trial that the parties get their rights without anyone feels aggrieved.

¹⁷ Need a long time

¹⁸ The process is longer, such as in terms of evidence and in the case of joint property are *descente* (local examination).

REFERENCES

- Ali, Achmad. 2013. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence): Termasuk Interpretasi Undang-Undang (Legisprudence) Volume 1 Pemahaman Awal*. Jakarta: Kencana.
- Arto, A. Mukti. 2012. *Peradilan Agama dalam Sistem Ketatanegaraan Indonesia Kajian Historis, Filosofis, Ideologis, Politis, Yuridis, Futuris, Pragmatis*. Yogyakarta: Pustaka Pelajar.
- Harahap, M. Yahya. 2006. *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Jakarta: Sinar Grafika.
- , 1993. *Kedudukan dan Kewenangan dan Acara Peradilan Agama*. Jakarta: Sinar Grafika.
- Lebacqz, Karen. 2015. *Teori-teori Keadilan*. Bandung: Nusa Media.
- Manan, Abdul. 2012. *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*. Jakarta: Kencana.
- , 2007. *Reformasi Hukum Islam di Indonesia Tinjauan dari Aspek Metodologis, Legalisasi, dan Yurisprudensi*. Jakarta: RajaGrafindo Persada.
- Mardani. 2010. *Hukum Acara Perdata Peradilan Agama & Mahkamah Syar'iyah*. Jakarta: Sinar Grafika.
- Mertokusumo, Sudikno. 2014. *Hukum Acara Perdata Indonesia*. Yogyakarta: Universitas Atma Jaya Yogyakarta.
- Mill, John Stuart. 2009. *Utilitarianism*. The Floating Press. (E-book)
- Rasyid, Raihan A. 2005. *Hukum Acara Peradilan Agama*. Jakarta: Raja Grafindo Persada.
- Sulistiyono, Adi. 2006. *Krisis Lembaga Peradilan di Indonesia*. Surakarta: Lembaga Pengembangan Pendidikan (LPP) UNS dan UPT Penerbitan dan Percetakan UNS (UNS Press)
- Tanya, Bernard L., dkk. 2013. *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta: Genta Publishing.
- Wardah, Sri dan Bambang Sutiyoso. 2007. *Hukum Acara Perdata dan Perkembangannya di Indonesia*. Yogyakarta: Gama Media.