Jurnal Studi Ilmu Hukum Islam dan Pranata Sosial

journal homepage : ejournal.iainkendari.ac.id/al-adl

The Effectiveness of the Relaas Call in Settlement of Divorce Cases in the Religious Courts

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ARTICLE INFO

Article History :

Received: 2020-09-21

Accepted: 2020-10-28

Published: 2020-01-27

Keywords :

Effectiveness,
Judiciary, Relaas
Vocation

ABSTRACT

Relaas call is one of the most important instruments in court proceedings. Without a call, the presence of the parties in the Court has no legal basis. Relaas Summons in the Civil Procedure Code is categorized as authentic deeds. Relaas did not convey to the parties in the litigation. The Respondent did not know about the trial schedule and the claim him, which resulted in the Respondent or Defendant losing the right to answer or defend himself against the plaintiffs' demands or the applicants. This study examines the Relaas summons' effectiveness through the Kelurahan in divorce cases at the Bitung Religious Court. Through field research with a qualitative descriptive approach using data mining techniques, observation, interviews, and documentation. The results prove that the Relaas concept in Islamic Law is contained in KHI Article 131, Articles 138 s.d. Article 140. Likewise, the Relaas image in positive Law is included in the Herzien Indlandsch Reglement or abbreviated as HIR

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and Rechtsreglement Voor de Buitengewesten, which are Civil Procedural Laws for areas outside Java and Madura. or abbreviated as RBg. The implementation of Relaas summons through the kelurahan was not effective in four cases, namely Case Number 55 / Pdt.G / 2018 / PA Bitg, Case Number 91 / Pdt.G / 2019 / PA Bitg, Case Number 0061 / Pdt.G / 2017 / PA Bitg and Case Number 0150 / Pdt.G / 2017 / PA. However, official and proper elements have subsequently been fulfilled.

A. Introduction

The Religious Court is one of the judicial authority implementing agencies that provide services to the disputing parties to achieve a fair decision, for example calling the disputing parties to attend the trial. The parties' summoning is carried out by bailiffs, who are then delegated to substitute bailiffs (Sy 2005).

The trial process in the Religious Court is an attempt by judges as law enforcers to find the truth. Therefore, in resolving civil cases at the trial, the litigants' presence must be so that judges can hear both parties' information and give fair decisions. For both (Nur 2016).

If the people want court intervention in seeking justice, he must submit an application letter signed by him or his proxy addressed to the Chairman of the Court. The latter controls the jurisdiction of the residence of his opponent or Defendant. If the Court has received the application letter, the Court must summon the disputing parties to examine the dispute's subject based on a lawsuit that has legal reasons.

Law Number 7 of 1989 concerning Religious Courts Article 57, Article 58, Article 59, and Article 60 describes the Procedural Law applicable to Courts within the Religious Courts. Civil Procedure Law applies to Courts within the General Court, except for those already regulated explicitly in Law Number 7 of 1989 concerning the Religious Courts. In providing justice to Muslims who seek justice to the Religious Courts, this is based on Islamic personality. Before the Law (equality before the Law), the principle of equality, the direction of peace, the focus of the open trial to the public, the principle of legality, simple, fast, and low cost.

Even though the Law provides such complete and detailed procedural, Law in the religious Court, in the religious court process, the problems found

where some parties felt aggrieved even though everything went according to the existing procedures.

The procedure that the researcher means is the practice of *Relaas* (summoning litigants), which only refers to Article 390 paragraphs (1), (2), and (3) HIR and Article 148-Article 151 R.Bg. about the ordinances of summoning according to the Law. This provision states that every summons except mentioned below must include delivery by himself to the person concerned at his residence. If not found there, the Village Head is obliged to notify the letter immediately. The summons to the person himself, in this last case, there is no need for a statement according to the Law (Article 390 paragraph (1) R.Bg.), and extended article (2) includes the heirs if the person has passed away.

At the end of 2018, the woman with an emotional came to Bitung Religious Court. Her anger showed that she was so annoyed and disappointed because she felt that she did not know anything about her husband's divorce to the Bitung Religious Court. Suddenly she got information from her husband's supervisor and showed him a copy of the divorce certificate obtained from her husband's boss. After being traced by the office, it turned out that the case in question registers with number 55 / Pdt.G / 2018 / PA.Btg, whose divorce decision was dated November 23, 2018. And including the unseen case, this immediately made the woman even angrier. The person concerned does not accept it is said to be disregarded. In other words, his whereabouts are unknown even though the person concerned is still in Bitung City and often meets and talks by telephone with the Petitioner, her husband.

The research also found a similar incident. Namely, a man who came to the Bitung Religious Court was a little disappointed because he felt betrayed by his wife. This incident occurred recently at the end of June 2019. To the Bitung Religious Court's Security Unit Officer (SATPAM), he admitted that he had never received a summons, even did not know at all if a divorce trial was proceeding against him. He found out about it precisely from his neighbor. The researcher also validated the data, and it turned out that the case in question was registered with number 91 / Pdt.G / 2019 / PA.Btg.

By delivering the summons to the Village Head/ *Lurah*, the bailiff's task in conveying the call is declared complete. This summons means that the bailiff does not need to validate that the village head has submitted the call to the litigant. As a result, some cases were decided by the panel of judges /

stipulated by the Bitung Religious Court, but the Defendant did not know about them.

B. Discussion

1. Relas Call in Indonesia

Maintaining litigation arguments in Court is not only a matter of answering or arguing, but all of them must be supported by a robust legal basis in defending their views. This *relas* helps judges seek Law (law-making) in deciding cases brought to them. This regular basis can be in statutory regulations, doctrines, court practices, and customs recognized as Law (Lemek 1993).

Summons of the parties is essential parts in examining and resolving divorce cases at the Religious Courts. After the Panel of Judge's appointment appointed to handle divorce cases by the Religious Courts. After the presiding judge decides on the day and date of the first trial (Setiawan 2019), as a stage before entering the test, a summons has an important role. It must meet specific requirements to become the basis for the prosecution (Bintania, 2016).

Historically it is not found in the literature on summoning procedures during the time of the Prophet. In contemporary Islamic Law in the KHI Islamic Law Compilation in Indonesia, it explains the procedures for summoning litigants. In this case, the Petitioner and the Respondent have regulated articles 131 and 138 to 140 KHI. (Ministry of Religion, 2000).

The legality norms of calling for divorce proceedings as regulated in Article 122, Article 388 and Article 390 HIR, Article 146 and Article 148 RBg, Article 26 paragraph (3), Article 27 and Article 28 of Government Regulation (PP) Number 9 of 1975, and Article 138 s/d Article 140 the compilation of Islamic Law cannot accommodate and adapt to changes developments. That occurs in social institutions and organizational structures of the village/ village government in Indonesia. Even so, in internal forums of the Supreme Court of the Republic of Indonesia, it is often discussed about the possibility of changing and expanding the definition of the legality of a summons or summons (Saifuddin et al., 2019).

The summons' voluntary position is critical because the summoning process is the first process before the trial process. The parties' summoning to be present at the trial will determine the next trial process because the two litigating parties will assist the judge in hearing both parties' reasons. It parties to be then considered by the judge before giving a verdict on the case (Nur 2016).

Summons of the parties is one of the most important parts in the process of examining and resolving divorce cases at the Religious Court, and this is carried out after the determination and appointment by the Chairperson of the Syar'iyah Court of the Religious Court regarding the Panel of Judges appointed to handle a divorce case, and after the Chairperson. The Panel of Judges determines the day and date of the first trial (Saifuddin et al., 2019).

Summons in the Civil Procedure Code is the formal and appropriate summons to the parties involved in a case in Court to fulfill and carry out the things requested and ordered by the judges' panel. The summoning must be appropriate according to the procedure determined by the prevailing laws and regulations. It is proper that in determining the trial's date and day, it is necessary to pay attention to the proximity of the parties' residence in dispute, i.e., less than three days before the trial starts and does not include or holidays.

Summons are the stages before the trial that determine the trial and decision. The summons of Law give grounds for a trial. A valid summons can provide a reason for a claim to be granted in the absence of an opponent. On the other hand, invalid summons causes the trial to be unable to carry out (Nur 2016).

2. The Effectiveness of the Relaas Call in Bitung

From the description of the data in Chapter IV, it is known that in the structure and procedure of the litigation or proceeding at the Bitung Religious Court, especially those related to the summons, there are no significant problems. What became an issue and became interesting to discuss was the observation at the Bitung Religious Court that one of the litigants did not know that her husband had divorced her. He Relaas called her through the Kelurahan even though she was later declared unseen. Likewise, in other

divorce cases with Relaas summons through the Kelurahan and Relaas the summons was never received by the Respondent or the Defendant until the decision was not present and was decided by verse the Bitung Religious Court in the sue divorce decision.

In the Bitung Religious Court, the summons for unseen parties are conveyed through the mass media determined by the Bitung Religious Court's Head following the Bitung Religious Court Number W18-A5 / 31 /SK/HK.00.8/1/2019 dated January 2, 2019, namely Radio Republik Indonesia (RRI) Manado. The mass media's determination is always updated every year by the Head of the Bitung Religious Court.

Based on the information above, it shows that there is no gap in the summoning process with the Calling Relaas because everything has been regulated in the regulations regarding the calling procedure, it is clear because if all processes have been carried out according to applicable laws and regulations, the delivery of summons can be said to be effective. However, according to the background of the author's problem in case Number 55 / Pdt.G / 2018 / PA.Bitg is a Ghaib case, where according to the Respondent's complaint, in this case, she did not accept Relaas summons and did not know about the divorce submitted by her husband.

According to procedural Law, this situation is because Relaas, the unseen summons through RRI Manado, the bailiff or substitute bailiffs no longer search for the Respondent at the address listed in the application are they given to the Village Head.

In the chronology, Relaas summons at the first and second trial, the Village Head did not sign the Relaas summons for the Bitung Religious Court's Respondent. Substitute Bailiff then signed the petition's supernatural petition, even though according to the acknowledgment that the Respondent was still a resident of the sub-district and the applicant, Respondent yet frequently met talked by telephone.

Not signed Relaas summons submitted by the Jurusita because the Respondent is not registered as a Village resident. Then it was strengthened by a certificate of unseen by the Kelurahan, which resulted in formal legal calls for Relaas as valid through RRI Manado. So that until the case is over, the Respondent is not aware of a trial. Maybe if the Respondent often listens to the Radio of the Republic of Indonesia, this will not happen where the Respondent does not know if he has been lost by the judges' panel based on an unseen statement from the Kelurahan submitted by the applicant.

Another problem that the writer raised about the summons' effectiveness was in case Number 91 / Pdt.G / 2019 / PA.Bitg. In this case, the Defendant was shocked to hear from his neighbors that his wife had divorced the Defendant. Defendant questioned the divorce issue filed by his wife which was unknown to Defendant. After tracing the case, Relaas was terminated from the first trial until the decision was made through the sub-district and was signed and stamped by the Kelurahan.

Facts in the field In the process of searching for data, the researcher found several problems related to Relaas calls through the Village, and some of the findings that the authors found during the research process found several similar problems, such as case number 61 / Pdt.G / 2017 / PA.Bitg, case Number 26 / Pdt.G/2018/PA.Bitg, case Number 150 / Pdt.G / 2018 / PA.Bitg and, the Defendant / Respondent did know that the person concerned was in domestic problems and was being divorced by her husband / the wife concerned. Still, after being interviewed, the Respondents / Defendants never received Relaas summons through the Kelurahan, so they did not know the trial's day and date. At the time of the trial. The Village Head signs all Relaas summons.

Confession from the Respondent in case Number 61 / Pdt.G / 2017 / PA.Bitg that the person concerned received information on a court summons from his relative who visited the urban village office and was then asked by the urban Village to tell the Respondent to take a summons at the sub-district office. This case shows that the urban Village did not deliver Relaas for the call.

The author in the research in the field found several problems. In interviews with several village heads, it was stated that the kelurahan did not know the rules regarding the delivery of calls. This case indirectly shows that the village head has no legal reasons by arguing that they do not know the Law regarding summoning rules, such as the interview results described in Chapter IV.

Furthermore, in the interview results with the kelurahan, there is no sanction against the kelurahan party who does not convey Relaas to the litigant. This result shows no form of responsibility from the village side to the mandate handed to the Kelurahan. In the minutes of the Relaas Summons through the village head, the sub-district is forwarding Relaas to the litigant where the party in the case is a member of the village head.

Some of the findings stated above can show that the Relaas summons through the kelurahan are ineffective because there is no legal certainty that the summons will have been conveyed or not the Relaas summons through the kelurahan. The Kelurahan administration's negligence resulted in the litigant not knowing about the Court summon against him.

An interview with the substitute bailiff shows that the summons had been submitted according to the applicable procedural Law. If not found at the address, a summons shall be submitted to the Kelurahan. Some of the findings put forward by the substitute bailiff were some obstacles when making a call, namely if the address entered in the lawsuit only included the name of the sub-district, then the RT or RW or neighborhood does not have a house. Number, so that the substitute bailiff has trouble finding the plaintiff's residence and then adding it. Again, in the absence of a telephone number that can be contacted, this can allow the Bailiff / Substitute Bailiff to submit a call to the Kelurahan.

In connection with the author's problem in this paper, the substitute bailiff argues that Relaas calls through the sub-district are the urban Village's responsibility to convey Relaas calls to the litigants. The bailiff/ substitute bailiff at the Bitung Religious Court carries out a summons according to the applicable procedural Law so that after getting a signature and being stamped at the sub-district, it shows that the litigant is indeed the resident of the Village in accordance with the address stated in the Relaas summons and the bailiff's duty to convey Relaas the litigating party is over and will be continued by the kelurahan as the government in the area concerned.

If the substitute bailiff commits an offense in the summoning process related to the summons as authentic deeds such as signature falsification and so on is regulated in article 266 of the Criminal Code "Whoever orders to enter false information in an authentic deed regarding something the act must state the correctness to use or call other people to use the deed as if the information is in accordance with the truth. It shall be punished if such use may result in harm by a maximum imprisonment of 7 years. But then if the negligence of the calling Relaas occurs in the Kelurahan or Desa, for example, the Kelurahan does not deliver the Relaas summons to the litigant, there is no law governing it.

The substitute bailiff in delivering the summons in the example case above has carried out the task according to the applicable procedural Law so that the case settlement process is carried out and decided by verse or a

decision in the absence of the Defendant / Respondent. However, in matters not known to the litigant, the Jurusita revealed that this was the responsibility of the Kelurahan. However, some Saviors took action to leave a summons sheet at the litigant's residence because they were not sure that the Kelurahan would deliver the Relaas summons. This data is following the suggestion put forward by the judges that the bailiff/ substitute bailiff must be more proactive in carrying out their duties to avoid harmful impacts due to the negligence of the kelurahan, namely by giving a summoning sheet signed by a bailiff with a stamp to be given to the family neighbor of the party concerned before submitting to the sub-district

In the interview with the judge regarding the above issues, the judges agreed that in the matter of not receiving Relaas by the litigant at the Relaas summons through the kelurahan, it was possible that the village head did not deliver the summons of Relaas to the party concerned considering the responsibility of the summons to the Village as Relaas was on the kelurahan according to the Head of the Bitung Religious Court. Furthermore, the Chairperson added that the bailiff should not have full hopes of the kelurahan. Therefore he must leave a sheet of summons to the family concerned. Researchers found that every substitute bailiff and bailiff in the

Bitung Religious Court understands the procedures and procedures for conveying summons or taking Relaas summons to those who are litigating at the Bitung Religious Court. Then in the delivery process or the process of taking Relaas calls to the litigant. The first thing to do is to make every effort to meet with the petitioners and Respondent who are litigating to fulfill the element of appropriateness in conveying the Relaas summons. But if all efforts have been made and cannot meet in person, then the last alternative is as stated in the HIR and Rbg.

Whether in delivering letters or calling, the substitute bailiffs expect to have high integrity, build good communication, and ve the summons' artistic and technical skills of are flexible, not rigid, and not teaching, let alone order. Even so, a successor must be able to build beautiful communication. The power of the art of speaking and speaking interesting and alluring words, so that our interlocutors, both the Defendants directly and those we ask for help, namely the Village Head, can be moved. Received and signed the summons and conveyed that they were willing to call the Defendant (Ibrahim, 2018).

According to Law Number 9 of 1975 and Article 138 paragraph (3) and the Compilation of Islamic Law, if the parties summoned are not found at

their place of residence, then the summons must be submitted through the Village Head or Lurah. Regarding this provision, the researcher's opinion here is that the summons is submitted through officials under the Village Head or Lurah, namely the RT, to be considered valid by the community and have legal force. However, RT's summons is invalid and have no legal force because the institution is not a public official (public). Based on Law Number 7 of 1989, the lowest level of public officials is the Village Head. At the same time, the institutions that are under it does not include public officials. Summons in the Civil Procedure Code is the formal and proper summons to the parties involved in a case in Court to fulfill and carry out the things requested and ordered by the judges' panel.

If there are obstacles in submitting summons of the village head, example if one of the parties in a case does not get the *Relaas* summons, then it must be the Village Head's responsibility because the Regent has already implemented it. By receiving *Relaas* from the bailiff or substitute bailiff. Philosophically, the most basic purpose of holding a summons for a hearing is so that the litigant knows will clearly when and where the trial will be saved, and the substitute bailiff or bailiff can directly convey the relation, whether through the Village Head or RT it is not a problem if the parties where he lived, what was important was that the officer conveyed it to the parties summoned. Philosophically, calling through RT is legitimate because RT is the lowest government apparatus and is also an extension of the Village Head or Lurah to community members living in their area.

The implementation of the summons litigant is not found at that address. The calling process with *Relaas* will be conveyed through the sub-district and then forwarded by the Kelurahan to the litigant. The substitute bailiff or bailiff asks the kelurahan to sign the *Relaas* summons then the substitute bailiffs submit the summons to the panel of judges.

It is different if the address of the litigant is in the relative jurisdiction of the bailiff. The summons is delegated to another religious court clerk (Article 5 Rv). In a sense, the summoning process with the summons *Relaas* is carried out and under the responsibility of another court bailiff according to the litigant's address in the lawsuit/petition submitted by the Plaintiff / Petitioner. Furthermore, after the summoning process is carried out following the procedural Law by a substitute bailiff/bailiff assigned by the Head of the Religious Court of another Court, *Relaas* Summons is sent back to the Court, which the case is submitted to continue the case examination process.

In contrast to parties whose addresses are unknown or commonly known as unseen cases, the process of summons for trial is carried out following the provisions of Article 27 paragraph (1) to (4) Government Regulation Number 9 of 1975. The criteria for a party in a case to be said to be unseen are regulated in Article 20 paragraph (2) Government Regulation Number 9 Year 1975 (Makarno, 2004).

In the Bitung Religious Court, the summons for unseen parties conveys through the mass media determined by the Head of the Bitung Religious Court following the Decree of the Head of the Bitung Religious Court Number W18-A5 / 31 /SK/HK.00.8/1/2019 dated January 2, 2019, namely Radio Republik Indonesia (RRI) Manado. The mass media's determination is always updated every year by the Head of the Bitung Religious Court.

Facts in the field In the process of searching for data, the researcher found several problems related to Relaas calls through the Village, and some of the findings that the authors found during the research process found several similar problems, such as case number 61 / Pdt.G / 2017 / PA.Bitg, case Number 26 /Pdt.G/2018/PA.Bitg, case Number 150 / Pdt.G / 2018 / PA.Bitg. In the case, the Defendant knew that he had domestic problems and was about to be divorced by the husband/ wife concerned. The Respondent/ Defendant had never received Relaas' summons through the Kelurahan so they did not know the trial's day and date. At the time of the trial. all Relaas summons are signed with the village head.

The information above shows that there is no gap in the summoning process with the Calling Relaas because everything has been regulated in the regulations regarding the summoning procedure. It is clear that if all processes have been carried out according to applicable laws and regulations, then the summons' delivery can be said effective. However, according to the background of the author's problem in case Number 55 / Pdt.G / 2018 / PA.Bitg is a Ghaib case, where, according to the Respondent's complaint, he did not accept Relaas summons and did not know about the divorce. Her husband proposed.

According to procedural Law, this situation is because Relaas, the unseen summons through RRI Manado, the bailiff or substitute bailiffs no longer search for the Respondent at the address listed in the application are they given to the Kelurahan.

We can interpret that Law must follow the development of society, so the Law should also anticipate it through the legislative process if there are

new things in society, so that the Law is interpreted as truly providing protection and convenience, especially for justice seekers. From the views above, the researcher thinks that summons through RT is Judge's *ijtihad* through the method of interpreting whether or not a summons is appropriate. As long as there are no legal remedies, then there is no problem. Still, if it comes to cassation, then the Supreme Court of the Republic of Indonesia will most likely cancel the decision because the judge was wrong in applying the Law.

C. Conclusion

Call through the Head of Village was not yet effective for the four divorce cases studied, even though by law, the official and formal elements had been fulfilled. Not conveying *Relaas* to the party from the village head resulted in the Defendant or Defendant not knowing about the trial schedule and the charges against him. Then, by not delivering *Relaas* to the Defendant or Respondent, the Respondent or Defendant loses the right to answer or defend himself against the demands submitted by either the plaintiffs or the petitioners. The Bitung Religious Court entered into a written cooperation agreement

with the Bitung Government as outlined in a memorandum of understanding (Memorandum of Understanding or MoU). Regarding the implementation of *Relaas* summons through the Kelurahan and urging the urban Village to be pro-active in carrying out legal orders with full responsibility to continue *Relaas* Summons to its citizens as litigants at the Bitung Religious Court.

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