



The Effectiveness of the Occult Vocation and Its Effect on the Wife's Rights After Divorce

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Abstract. This study aims to examine the occult in the settlement of divorce cases at the Slawi Religious Court. Given the importance of the summons process, the court is still obliged to carry out the summons even though the residence of the defendant/respondent is unknown because based on the warrant the judge can examine, hear and decide on the case being handled. The main sub-chapter of this article is case Number. 1842/Pdt.G/2020/PA.Slw. In this case, it was found that the respondent existed and had a clear place of residence but was hidden. Thus, this causes the respondent to lose the right to answer and defend himself against the demands made by his husband because during the trial process the respondent has never received or heard a summons against him. Thus, this study aims to determine whether the implementation of the warrant in case Number. 1842/Pdt.G/2020/PA.Slw is by the applicable procedural law procedures. And to find out the effectiveness and the effect of the magical summoning. This research is a type of field research, primary data sources obtained through interviews and secondary data sources obtained through laws and regulations and case decision Number. 1842/Pdt.G/2020/PA.Slw. The results of the study show that the procedure for summoning case Number. 1842/Pdt.G/2020/PA.Slw is by the provisions of Article 27 of Government Regulation Number 9 of 1975 and Article 138 of the Compilation of Islamic Law calls occult made via radio, it is no longer effective because based on so many parties who do not come. Findings in the field indicate the limitations of radio frequency and the very short duration of calls during broadcasting. This also becomes an obstacle in achieving the purpose of the summons, therefore that there is very little chance for the unseen to hear the call. In addition, the occult also affects the fulfillment of the wife's rights such as unilaterally making decisions without defense and her knowledge.

Keywords: Occult Call · Divorce · Wife's Rights after Divorce

1 Introduction

The summons process is one of the most important parts of the trial process because based on the summons, the judge examines, hears, and decides on the case being handled. Therefore, the residence of the defendant/respondent is unknown, the court is still obliged to carry out the summons. As regulated in Article 27 paragraph (1) of Government

Regulation Number 9 of 1975, it is stated that if the residence of the defendant is not clearly known as stated in Article 27 paragraph (2), the summons shall be made by placing the claim on the notice board at the Court and announcing it through one or several newspapers or other mass media as determined by the Court.

In the Slawi Office Religious Court itself, there are 862 divorce cases in which the respondent/defendant is not known to exist or can be said to be supernatural. Most of the occult cases are not present at the trial. One example is case No.1842/Pdt.G/2020/PA.Slw, where the case is one of the occult cases where the summons is via radio and has been decided since 2020 at the Slawi Religious Court.

On September 1st, 2021, due to the wife's ignorance regarding the divorce filed by her husband, the wife also filed a lawsuit at the Brebes Religious Court in the case register No.3512/Pdt.G/2021/PA.Bbs. After filing the lawsuit, the wife only found out that there was a divorce decision filed by her husband at the Slawi Religious Court. This suddenly surprised the wife because she had never heard or received a summons from the Slawi Religious Court, and did not even know if there was a divorce trial for her even though she was there and had a clear residence in Brebes Regency.

This shows that there is a discrepancy in the process carried out so that this can happen. Where the wife as the defendant in the case has a clear place of residence, however in the case filed by the plaintiff the wife is hidden. Besides, the summons made by the Slawi Religious Court did not entirely reach the person in the supernatural, although in the process of delivering the summons it was in accordance with legal procedures. Seeing the case above, certainly this is very unfortunate because it can harm one party. Where this can cause the wife to lose her right to defend her interests before the court.

Moreover, after the termination of the marriage there are legal consequences for both husband and wife. So that, if one of the parties is unable to attend the trial, it can cause a person to be free from his obligations. As described in Law number 1 of 1974 concerning marriage in Article 41 paragraph (c), due to divorce, the court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife. Article 149 of the Compilation of Islamic Law states that in the event of a divorce, the ex-husband has several obligations during the iddah period such as providing a living, mut'ah, food, kiswah, and paying hadhanah fees for children who have not reached 21 years.

Based on the description above, the author is interested in studying the occult summons at the Slawi Religious Court to examine their effectiveness. Therefore, it can be concluded that the formulation of the problem is how the procedure for implementing the occult summons in case No. 1842/Pdt.G/2020/PA.Slw, as well as how effective the summons is in the settlement of divorce cases and how it affects the rights of the wife after divorce.

2 Method

This research is a type of field research, in which data acquisition is taken from primary data sources and secondary data sources. Primary data was obtained through interviews, while secondary data was obtained from primary legal materials such as legislation, secondary legal materials such as data concerning supernatural summons and the decision of

case no. 1842/Pdt.G/2020/PA.Slw and tertiary legal materials such as Indonesian/English dictionaries, legal dictionaries, and encyclopedias.

3 Result and Discussion

3.1 Procedure for Implementing Magical Summons in Case No. 1842/Pdt.G/2020/PA.Slw

Before the start of the trial process, the court usually first calls the litigants even though there are conditions in which the address/residence of the summoned party is no longer known with certainty, the summons must still be carried out to show an attitude of justice, namely impartiality, equality, and fairness. In other words, the parties must be heard together, not only from one party, this is under with the principle of *audi et alteram* and the principle of to each his own which demands that everyone be given rights or a share. Therefore, even though the domicile of one of the parties is no longer known, the court is still obliged to make a summons to the parties under with the established procedure. [1]

Summons for parties whose residence is unknown will still be carried out, however, under the conditions for parties whose domicile is no longer known, the procedure and procedure for summoning will be different from the summons in ordinary cases. Where for the summons to a case that one of the cases was not carried out at his residence (*occult*) it is regulated in Article 27 of Government Regulation Number 9 of 1975 and Article 138 of the Compilation of Islamic Law, which for the summons process can go through two stages, namely: [2].

- If the residence of the defendant is not clear or the defendant does not have a permanent place of residence, the summons shall be made by placing the claim on the notice board at the Religious Court and announcing it through one or several newspapers or other mass media as determined by the Religious Court.
- Announcements through newspapers or newspapers or mass media as referred to in paragraph (1) shall be made 2 (two) times with a grace period of one month between the first and second announcements.
- The time lag between the last summons as referred to in paragraph (2) and the trial is set at least 3 (three) months.
- In the event that it has been carried out as referred to in paragraph (2) and the defendant or his attorney is still not present, the claim is accepted without the presence of the defendant, unless the claim is without rights or without reason.

The summons process above can be carried out based on the factor where when the lawsuit filed in court is written explicitly on the identity of the respondent or the defendant that his domicile or address is now unknown or, in the lawsuit filed in court on the address identity of the respondent or the defendant is written clearly, but when the bailiff made the summons, it turned out that the respondent or the defendant was not found at that place, therefore it was accompanied by a *miruda* letter, namely a statement from the ward/village where the mysterious person last resided, which in the letter stated that the party concerned (defendant/respondent) has left his residence and now it is no

longer known where he lives. Then the magical summons can be carried out following with the rules described above. [2]

In case Number.1842/Pdt.G/2020/PA.Slw according to the clerk of the Slawi Religious Court because in the application letter the address of the wife is no longer known to be with the evidence submitted by the applicant in the form of proof of the applicant's ID card, photocopy of marriage certificate, 2 witnesses which is the applicant's younger brother and the applicant's neighbor as well as miruda's letter stating that the respondent's place of residence is now unknown in the jurisdiction of the Republic of Indonesia so that based on the basic evidence the Slawi Religious Court summoned the respondent with a magical summons, namely a summons made via radio Slawi Ayu FM which has been determined by the Court and summons has also been carried out 2 times, namely on July 2nd, 2020 and August 2nd, 2020.

If the author concludes simply that the litigation and proceedings at the Slawi Religious Court do not have significant problems because the summons made are in accordance with the applicable procedural law where the summons made in case Number. 1842/Pdt.G/2020/PA.Slw is following with the basis of the lawsuit filed by the applicant which is written explicitly on the identity of the respondent or defendant that his domicile or address is currently unknown, supported by a statement from the village and witnesses. However, what is interesting and becomes a critical point in this research is the evidence in case Number.1842/Pdt.G/2020/PA.Slw, such as the witness evidence presented, does not have direct contact with the respondent. In addition, the author found the fact that after marriage, the respondent and the last applicant resided at the residence of the respondent's parents whose address was in Brebes Regency for 3 years and 5 months.

3.2 The Effectiveness of Occult Calls in the Settlement of Case No. 1842/Pdt.G/2020/PA.Slw

The orientation in research on effectiveness rests on the achievement of goals. In general, effectiveness is a condition that shows how much the target can be achieved well. Therefore, effectiveness can also be interpreted as success that can be achieved with certain efforts that are in line with the objectives. Where the more targets or goals that can be achieved, the more effective the function of a system or activity will be. [3]

According to Soerjono Soekanto, legal effectiveness is a condition in which a certain legal order or legal norm is not considered valid if its effectiveness is lost or reduced. [4] Or the writer can explain that the effectiveness of the law is a condition in which the applicable law can be enforced, and obeyed can be used effectively as a means of social control following the purpose of the law.

The effectiveness of the law in society, it means assessing the working power of the law in regulating and enforcing legal compliance in the community. However, for these laws and regulations to function effectively, this can be returned to law enforcement, as Soerjono Soekanto said the effectiveness of a law depends on 5 factors, namely the legal factor or the regulation itself, the factor of the law enforcer, and the means and facilities that support law enforcement, community factors and cultural factors. [4]

This study aims to measure the effectiveness of magical summons on divorce cases conducted by the Slawi Religious Court and whether the implementation of the summons

has achieved the results following the objectives or not. As with what we know that the purpose of the summons to the parties is the presence of the summoned parties. However, from the statement of Mr. Amroni as the judge of the Slawi Religious Court, he stated that of the 862 occult divorce cases in 2020 while handling occult cases, almost no respondent or defendant was present at the trial.

However, even though almost no respondent/defendants in the occult case were present at the trial, in the interview Mr. Amroni stated that so far the occult summons made via radio was still effective, because apart from being cheap, the implementation of the summons was following existing procedures. Following the provisions of Article 27 of Government Regulation Number 9 of 1975, the summons to parties whose place of residence is unknown is by broadcasting and announcing them through electronic media, in this case broadcasting through the Local Public Broadcasting Institution (LPPL) Slawi Ayu FM as much as 2 times in the broadcast stated that the respondent was asked to come to attend the trial at the Slawi Religious Court at a time determined by the Court.

Based on the statement above, we can indeed understand that the implementation of the occult summons when viewed from the factors of law enforcement and the rules themselves, there are no significant problems because the summoning process they carry out is following applicable law, where the parties are not known to exist. Still summoned through the mass media and asked to come to attend the trial at the time determined by the court. However, this is only seen from the point of view of the process they run, so the implementation of the occult summons carried out by the Slawi Religious Court can be said to be effective.

However, if the analysis is from the point of view of the goal, it can be said that this magical summons is no longer effective. Because when viewed from the factor of facilities or facilities that support law enforcement, this is no longer effective where until now the media selected and used to make supernatural summons at the Slawi Religious Court still uses the local government radio, namely through the Local Public Broadcasting Institution (LPPL) Slawi Ayu. FM, whose radio frequency is very limited only in the district in question, so that, it becomes an obstacle to achieving the purpose of the call.

In addition, it is also mentioned in the journal al is the work of Jamaludin T which states that in several Religious Courts throughout Indonesia, almost most of the summons made did not reach the defendant. This is motivated by the tendency the attitude of the majority of judicial officers who do not want to take risks in carrying out their duties and functions. The lack of initiative from the judiciary in finding a solution so that the rights of justice seekers are fulfilled also one of the reasons why the summons made by the court did not reach the person concerned. Even though the judicial apparatus can provide initiatives by providing innovations such as making calls through internet media, YouTube, Facebook, Instagram, and so on, considering that these media are among the most widely used and can reach all parts of Indonesia and even abroad. [5]

Although we know that one of the reasons for choosing radio media is because the use of radio media is considered the cheapest compared to other media and is following the simple principle of fast and low cost. However, it should also be noted that in addition to the principle of simple, fast and low-cost justice, there is also a judicial principle that cannot be abandoned, namely the principle of justice and the benefits in terms of benefits

alone are lacking because in terms of frequencies, which are only local, then in terms of people who access the radio, they are already very rarely.

From the results, it is known of interviews which show that related to occult summons, of the 826 occult divorce cases that were summoned by radio, almost none of them attended/came to court. So on that basis the author can say that calls made via radio are no longer the right choice, the Slawi Religious Court should take bold steps to change the media used to make supernatural summonses, such as using the internet media YouTube, Facebook, and other media that can reach all regions of Indonesia.

In addition, when we look at the fact that calls made via radio still have many shortcomings, so that one of the causes of the absence of one of the parties in the trial, as we find that nowadays the use of radio is very rarely in demand because it has been eroded by the progress of the times. Moreover, the limited frequency and very short duration of calls during broadcasts such as advertisements became one of the obstacles for the defendant/respondent to hear the summons so the opportunity for the respondent/defendant to come to court was small.

Therefore, based on the description above, the author concludes that the summons made by the Slawi Religious Court is no longer effective and there is a need for changes, given the limitations of radio frequency whose callers only reach the Slawi area and the absence of the defendant/respondent who was present at this trial. Proves that radio is no longer the right tool for making calls. Because the main purpose of carrying out the summons is so that the summoned party is present, if the summoned party is not present as in the case that the author is examining, the purpose of the summons is not achieved.

3.3 Analysis of the Influence of Occult Calls on the Fulfillment of Wife's Rights Post-divorce

Based on the results of the decision review and research conducted at the Slawi Religious Court, the researcher managed to find several facts regarding the effect of supernatural summons on the wife's rights after divorce. Where found the fact that the summons made by the Slawi Religious Court, especially in case No. 1842/Pdt.G/2020/PA.Slw apparently influenced the decision. This is following the results of the researcher's interview with the judge who said that because the wife did not come and her place of residence was not known, the panel of judges in their consideration did not pay attention to the rights of the wife. Even though in this case the respondent can still be detected in Brebes Regency, however in this case the respondent is hidden.

In addition, from the number of occult divorce cases that have entered the Slawi Religious Court, there are almost no defendants/respondents who were present/came to court, therefore, due to the absence of the respondent/defendant, the case was decided *verstek* (unilaterally) without the presence of the respondent. Where in their decision the panel of judges did not pay attention to the rights of the wife after the divorce.

In fact, there is divorce at the initiative of the husband, the ex-wife should be entitled to a living from her husband during the *iddah* period. As clearly regulated in Article 149 of the Compilation of Islamic Law, which in general outlines affirms that the husband is obliged to:

- Give a proper mut'ah, in the form of money or goods, unless the ex-wife is qobla al dukhul.
- Provide a living, food and kiswah while in iddah, unless the ex-wife has been sentenced to divorce ba'in or nusyuz and is not pregnant.
- The husband is obliged to pay off the dowry that is still owed in full and half if it is qobla al dukhul.
- The husband is obliged to provide hadhanah costs for his children who have not reached 21 years.

Based on these rules above, we can observe that the responsibility for living provided by the husband is not only when she is still his legal wife, but these obligations also continue even at the time of divorce such as the obligation to provide iddah, mut'ah, hadhanah, etc.

Moreover, in this case, the absence of the respondent was not at the will of the respondent but his absence was due to the respondent had never received a summons from the Slawi Religious Court even though the respondent resided in Brebes, the respondent had also never heard of a summons against him which was broadcast on the radio. From the results of interviews with the respondent, this respondent even only found out that he was divorced by his husband a year later when the respondent filed for divorce at the Brebes Religious Court. Therefore, this is certainly very unfortunate to see if one of the parties cannot attend the trial to defend their rights due to the summons that did not reach the respondent especially if it can harm one of the parties.

Based on the results of the author's interview, it is known that although in the case of occult divorce when the respondent finds out that her husband has been divorced, the respondent is given the right to be able to file a new lawsuit related to the rights of the wife, such as iddah, madliyah and hadhanah as long as the divorce decision does not prove nusyus' wife. However, if in the decision it is proven that the wife is nusyuz then the rights of iddah and madliyah maintenance are rejected.

Therefore, this magical summons affects the living of iddah and madliyah where these rights can no longer be re-applied, especially if in the decision the wife is proven to be nusyuz. Surely, this is very unfortunate, especially in this case the wife can no longer defend what is alleged by her husband. Thus, the verstek decision on the occult divorce process must be reviewed for its effectiveness, especially if it is still using the radio in its summons which only reaches the relevant district. It means, things like this can affect the parties who are invisible in the form of making decisions unilaterally without a defense and without their knowledge at all. Even though the parties are in the position of being sued or being asked for, it is also good that their statements must be heard, except for those who have heard but do not want to attend the summons then they are worthy of this kind of decision.

4 Conclusion

Based on the discussion above, the researcher can be conclude into three important points, including the following:

- The reality of the occult divorce settlement in the judge's decision at the Slawi Religious Court, based on the results of the review of the decision and interviews in the research process, succeeded in finding the fact that the summons procedure carried out by the Slawi Religious Court in case 1842/Pdt.G/2020/PA.Slw was following the procedure law because if the author analyzes in a formal law there is no error in the process of summoning the occult carried out by the Slawi Religious Court after all of them are following Article 27 of Government Regulation Number 9 of 1975 and Article 138 of the Compilation of Islamic Law. But then what became a problem and interesting in case 1842/Pdt.G/2020/PA.Slw was the finding in the field that in this case the respondent existed and had a clear residence in Brebes Regency.
- The implementation of the occult summons carried out by the Slawi Religious Court is still not effective. Judging from the results of interviews and findings in the field that the facilities and facilities that support law enforcement are still limited, such as the limited radio frequency which only reaches the Slawi area. In addition, in most of the occult cases, no respondent/defendant was present/came to the trial, for example case 1842/Pdt.G/2020/PA.Slw. Due to the limited radio frequency and very short duration of calls when broadcasting such as advertisements, it becomes an obstacle in achieving the purpose of the call so that there is very little chance for the parties to hear the call. Therefore, it can be said that the summons made by radio is no longer effective, because the main purpose of the summons is to make the summoned party present, so if the summoned party is not present, the purpose of the summons is not achieved.
- Then regarding the influence of supernatural summons on the fulfillment of the wife's rights based on the results of a review of decisions and interviews conducted at the Slawi Religious Court, the author can say that the supernatural summons made by the Slawi Religious Court, especially in case No. 1842/Pdt.G/2020/PA.Slw affected on the parties who were invisible in the form of unilaterally imposing a decision without defense and without his knowledge and the panel of judges in their consideration did not pay attention to the rights of the wife. Thus, the verstek decision on the occult divorce process must be reviewed for its effectiveness, especially if it is still using the radio in the summons.

References

1. E. N. Butarbutar, "the Concept of Justice in the Civil Justice System," *J. Mimb. Huk.*, vol. 21, no. 2, p. 366, 2009.
2. H. Setiyowati, "the Effectiveness of Using Radio as a Medium for Summoning the Unseen in the Lamongan Religious Court," *J. Fam. Stud.*, vol. 1, no. 1, p. 2, 2017.
3. Yunimar and Faron Mahendra, "the Effectiveness of the Implementation of the Unseen Summons in a Divorce Suit by the Bailiff (Study at the Religious Court of Painan),", Vol. 1st Issue 2nd, 2021, pages. 184," *PJS J. Polit. Law*, vol. 1, no. 2, p. 184, 2021.

4. Soerjono Soekanto, *the Factors of Influencing Law Enforcement*. Jakarta: PT. Raja Grafindo Persada, 2013.
5. J. T, "the Effectiveness of the Summons of the Occult Against the Divorce Case of the Religious Court (Religious Court Case Study Class of 1st A Watampone)," *Al-Adalah J.*, vol. 3, no. 1, p. 3, 2018.

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