The Position of Deaf Witnesses in Proving Divorce (Syiqaq) Cases in Religious Courts

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Abstract

Based on article 22 of PP Number 9 of 1975, article 76 of Law Number 7 of 1989 and article 134 of Presidential Instruction Number 1 of 1991, Divorce (syiqaq) where disputes and quarrels are continuous must be proven by witness testimony, so The position of the witness is an important thing in deciding a divorce case. Witnesses who are present in court must materially see, hear and experience directly the legal events that occur, this must be in accordance with article 172 HIR/308 Rbg in conjunction with article 76 Law Number 7 of 1989. Meanwhile, in Islamic law, the position of deaf witnesses is that the majority of ulama seemed to have absolutely no tolerance for their opportunity to be witnesses. They agreed that hearing what the parties said and understanding what they meant was an absolute requirement for witnesses. The argument is because something that is the object of the witness is words. Law No.19/2011 about concerning ratification of the CRPD and the principle of Equality Before the Law also states the same thing, which does not differentiate between people in person. trial, while formally a deaf witness is not a mentally disabled witness, he just lacks hearing but can see and judge events well.

1. Introduction

The convention related to the protection of the rights of persons with disabilities was ratified which resulted in changing views regarding the human rights of persons with disabilities.[1] However, in certain positions the law is always late and left behind (limping along) which in the legal adegium is known as Het recht hinkt achter de feiten aan. One of the reasons for this delay can be seen from the absence of procedural law regarding the position of testimony of people with disabilities.

Deaf people are individuals who have hearing impairments, either permanent or non-permanent. Because they have obstacles in hearing, deaf individuals have obstacles in speaking so they are usually called speech impaired. This condition makes a deaf witness have at least two difficulties, firstly difficulty hearing and difficulty conveying what he hears. So, if there is a deaf witness, the judge is required to be observant and must be able to position the situation well to explain a case.

In divorce trials at the Religious Courts, in general the position of witnesses is very decisive, they must have the requirements to see, hear and directly experience the legal events that occur, this must be in accordance with article 172 HIR/308 Rbg in conjunction with article 76 of Law Number 7 of 1989. Meanwhile In Islamic law, the position of deaf witnesses also has different views.

Witnesses at trial are materially people who see, hear directly and fulfill the requirements of an event that is expressed as testimony before the trial.[2] Herein lies the problem that arises if the panel of judges at the Religious Courts is faced with the testimony of people with sensory disabilities (in this study the focus is on deafness) in a divorce (shiqaq) trial where apart from positive legal norms, religious norms also apply, with differences of opinion of the ulama regarding the position of deaf witness. So what is the position of the testimony of a deaf witness as evidence that explains an event in the household of the parties in a divorce case?

There is still no research investigation that discusses the position or evidentiary value of deaf witnesses regarding testimony in divorce cases in the Religious Courts. However, there are at least several previous studies (literature reviews) regarding the position of witnesses with sensory disabilities from various study perspectives, as follows:

Firstly, the journal by Mukhammad Nur Hadi examines how the Islamic jurisprudence of the rulers in Malang City relate to deaf witnesses as marriage witnesses, where this research focuses on the internalization of benefits in the Islamic jurisprudence reasoning which is manifested in the form of concerns about leaving Islamic law, on the one hand, and stability in following fiqh and the opinions of local ulama', on the other hand. Nevertheless, fiqh still represents the ruler's "advocative reasoning" regarding the rights

[1] Degener, T. (2016). Disability in a Human Rights Context. Laws, 5(3), Article 3. https://doi.org/10.3390/laws5030035

[2] Sulaikin Lubis, *Hukum Acara Perdata Peradilan Agama di Indonesia* (Jakarta: Prenada Media, 2005), hlm.133

of Deaf marriage witnesses by elaborating on sociological aspects and scientific developments. Here it can be found that the dominance of old fiqh reasoning among the princes is related to the weak influence of the ideas of the Malang City government which wants to create an inclusive city.[3]

Second, the Journal by Octavia Dewi Indrawati and I. G. N. Dharma Laksana examines the strength of the evidence of witnesses with sensory disabilities (deafness) in the criminal justice process. The results obtained from this research are the testimony of witnesses who are deaf, the strength of the evidence is the same as the testimony of non-disabled witnesses, as long as the person meets the requirements as a witness in accordance with Article 168 of the Criminal Procedure Code and is willing to take an oath before explaining his testimony. Regarding whether or not the testimony can be accepted is the authority of the panel of judges as law enforcement officers.[4]

From the previous research explanation above, it was found that the problem that became the difference and focus of the researcher was formulated in the problem formulation, namely: What is the position of deaf witnesses according to Islamic Law and Positive Law in divorce cases in the Religious Courts?

It is important to answer this formulation regarding the position of witnesses with disabilities who are deaf to give testimony in divorce trials. Where deaf individuals have hearing impairments, either permanent or non-permanent. Because they have obstacles in hearing, deaf individuals have obstacles in speaking so they are usually called speech impaired.

2. Research Method

a) Type of Research

Legal research methods generally recognize two research methods, namely normative legal research (Doctrinal Legal Research) and empirical legal research methods (Emprical Legal Research).[5] Normative legal research where researchers are directed to see the law as a norm, whereas in empirical legal research methods where the whole is an effort to see symptoms of people's behavior)[6]. Both of these are forms of legal existence. In the empirical legal model, the law can be said to exist as judged by its implementation, where there is community compliance with the law. Meanwhile, in normative research, law can be said to exist and be real by proving the existence of regulations, judge's decisions, and so on.

[3] Hadi, Mukhammad Nur. (2021). Nalar Fikih Penghulu di Kota Malang dalam Saksi Nikah Tuli: NKLUSI Journal of Disability Studies, Volume 8, Number 2, 2021, hlm. 180-181. https://ejournal.uin-suka.ac.id/pusat/inklusi/article/view/2472

[4] Indrawati, Octavia Dewi dan Laksana, I.G.N. Dharma (2020). Kekuatan pembuktian keterangan saksi Penyandang disabilitas sensorik (Tuna Rungu) Dalam Proses Peradilan Pidana: Kertha Wicara : Journal Ilmu Hukum, [S.l.], v. 9, n. 3, p. 1-18, feb. 2020. ISSN 2303-0550. Available at: <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/55150>. Hlm. 15-16

[5] Depri Liber Sonata, *Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum,* (Lampung, Fiat Justisia, Vol. VIII, No. 1, Januari, 2014), hlm. 11

[6] Depri Liber Sonata, *Metode Penelitian Hukum Normatif dan Empiris,* hlm.*14*

This research uses a normative legal method (Doctrinal Legal Research), where it is understood that normative legal research is research related to principles/foundations, systematics, synchronization, comparison and legal history. Normative Legal Studies is a part of research that uses secondary data sources with an emphasis on theory with qualitative analysis, also known as library research or document study.[7]

b) Research Approach

Sugiyono stated that qualitative research methods must be: First, carried out in natural conditions, directly with the data source and the researcher as the key instrument. Second, qualitative research is descriptive. Where the data is collected in the form of words or images, so there is no need to emphasize numbers. Third. Qualitative research emphasizes the process rather than the product (outcome). Fourth. Qualitative research is inductive data analysis. Fifth. Qualitative research emphasizes meaning or intent (the data behind what is observed).[8] So the researcher used qualitative research in this research with a normative juridical approach to the position of witnesses with sensory disabilities, namely deafness, in proving divorce cases (syiqaq) in the judge's efforts to find formal and material truth.

Library study is a series of activities regarding library data collection methods, by reading, recording and processing research materials.[9] Meanwhile, content analysis is a research technique in which the researcher attempts to search for and discover regular forms, structures and patterns contained in the text and on the basis of the regularities found, conclusions are made.[10] so that in this research the researcher used a library research approach and content analysis using legislation related to the protection of the rights of persons with disabilities in the Religious Courts, and legislation related to the evidentiary process in trials.

c) Data Source

To obtain complete data, researchers used library research to answer the first problem formulation, namely regarding the concept of rules and regulations regarding witness requirements in civil trials, especially divorce (syiqaq), as well as the position and rights of people with disabilities in court. in general and especially in the Religious Courts. In the process, descriptions and analysis of research objects obtained from collected data, reference books and other literature related to the problem formulation will be carried out. Content analysis is used to examine the position of deaf witnesses in their position as witnesses in divorce trials (syiqaq).

This research relies on ready-to-use data or pre-existing/pre-recorded data, as the only data and content analysis techniques used in processing the data. Meanwhile, in terms of data types, researchers use primary data and secondary data. Primary data is data in the form of legislation related to formal and material requirements for witnesses, laws

[7] Ediwarman, *Monograf Metodologi Penelitian Hukum* (Medan, 2009), hlm. 19
[8] Sugiono. *Memahami Penelitian Kualitatif,* (Bandung: Alfabeta, 2005) hlm. 9-10
[9] Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Indonesia, 2008), hlm.3
[10] Abdul Majid, *Analisis Data Penelitian Kualitatif* (Makassar: Aksara Timur, 2017), hlm. 60

protecting the rights of people with disabilities and secondary data used in the form of books, journals, or print/electronic media related to research.

3. Results and Discussion

Conditions and Protection of Deaf Rights.

CRPD (Convention on the Rights of Persons with Disabilities), namely the convention on the Rights of Disabled Persons/Persons with Disabilities, has been ratified by the Republic of Indonesia in Law of the Republic of Indonesia Number 19 of 2011 (hereinafter abbreviated to Law No. 19/2011) concerning CRPD endorsement. CRPD is an international and national human rights instrument in an effort to respect, fulfill and Protection of the Rights of Persons with Disabilities in Indonesia (Development tool and Human Rights Instrument). The aim of this convention is to promote, protect and guarantee equality of fundamental rights and freedoms for all persons with disabilities, as well as respect for the dignity of persons with disabilities as an inseparable part (inherent dignity).[11]

This research focuses on people with deaf sensory disabilities, so it is necessary to understand several conditions of deafness. The definition of deafness is an individual who has hearing impairments, either permanent or non-permanent. Because they have obstacles in hearing, deaf individuals have obstacles in speaking so they are usually called speech impaired. Meanwhile, the blind are individuals who have visual impairments. Blind people can be classified into two groups, namely: total blindness (blind) and low vision.[12] The degree of ability based on the size of the audiometer instrument which uses the dicibel (dB) measurement causes the classification of deafness as follows:[13]

1) 0-26 dB still have normal hearing;
2) 27-40 dB has mild hearing difficulties and is still able to hear distant sounds. The person concerned needs speech therapy;
3) 41-55 dB including mid level. Can understand conversational language. The person concerned needs a hearing aid;
4) 56-70 dB including heavy medium levels. Able to hear at close range, requires hearing aids and requires special speaking practice;
5) 71-90 dB including heavy levels. The person concerned includes people who are deaf, only able to hear loud sounds that are approximately one meter away. Difficulty distinguishing sounds that are related to regular sounds;
6) 91-onwards. Including individuals who experience profound deafness. Can't hear sound. Needs special help to intensively acquire specific conversational skills;

Deafness in certain conditions is not only difficult to hear but also difficult to

[11] Rahayu Repindowaty Harahap, Convention On The Rights Of Persons With Disabilities (CRPD) vol VIII Nomor 1, 2015.

[12]https://spa-pabk.kemenpppa.go.id/index.php/perlindungan-cepat/anak-pendengan-disabilities/723-pendengan- disability

[13] Tim Pengembang Ilmu pendidikan FIP-UP. Ilmu dan Aplikasi pendidikan: Bagian 2 Ilmu Pendidikan Praktis (Bandung: IMTIMA, 2008), hlm.50

communicate. In the social realm, there are attitudes towards the deaf. People who are deaf or hard of hearing are more likely to be excluded than people who are crippled or blind. Maybe this is because deaf people look just like everyone else. Therefore, their behavior in a social situation is more annoying because it is very difficult for both the group and the disabled person themselves to accept the situation. People with normal hearing often look down on people who are deaf because they (the deaf and hard of hearing) ask a lot of questions but have difficulty understanding what has been said.[14]

Deafness itself is not an emotional disability. An important factor in personality development is what the disabled person himself thinks about his situation and what the disabled person himself thinks about his situation, and what he thinks and feels about his disability is largely a reflection of what other people think. Because the attitude of normally hearing people towards deaf people is somewhat unstable compared to non-deaf people.[15]

From a legal point of view, all people are equal. Therefore, people with deaf and visually impaired disabilities can also access the judicial process and can become witnesses in trials in accordance with applicable laws and regulations. This has been explicitly regulated in Article 9 letter a of the Law on Persons with Disabilities which states that persons with disabilities have the right to equal treatment before the law. One of the principles, namely the principle of Equality Before the Law or equality before the law, also states the same thing which is in line with what applies in the religious justice environment which is contained in the Decree of the Director General of the Religious Courts Agency of the Supreme Court of the Republic of Indonesia Number: 2078/DjA/HK.00 /SK/8/2022 Regarding Guidelines for Implementing Disability Friendly Services In Court Within the Religious Court Environment.

Requirements and Position of Witnesses in Divorce Trials (Syiqaq)

Syiqaq means quarrel, this word is usually associated with husband and wife so it means a quarrel that occurs between husband and wife which cannot be resolved by either of them alone. Shiqaq is a quarrel between husband and wife, this dispute may be caused because the wife is nusyuz or perhaps also because the husband is cruel and abusive to his wife.[16] Among the Shafi'iyah, al-syiqaq is a dispute that occurs between husband and wife which is very intense and it is feared that there will be harm if the marriage continues. Sayyid Sabiq explained that divorce that occurs because of al-syiqaq is classified as a dangerous divorce (al-dharar). He also believes that the form of dharar is that a husband likes to hit, likes to insult, likes to hurt his wife's physical body, and forces her to do evil.

[14] Semium, Yustinus. *Kesehatan Mental* 2: *Gangguan-gangguan kepribadian, rekasi-rekasi sinthom khusus, gangguan penyesuaian diri anak-anak luar biasa dan gangguan mental yang berat*. (Yogyakarta: KANISIUS, 2006), hlm. 300

[15] Semium, Yustinus. Kesehatan Mental 2: Gangguan-gangguan kepribadian, rekasi-rekasi sinthom khusus, gangguan penyesuaian diri anak-anak luar biasa dan gangguan mental yang berat. (Yogyakarta: kanisius, 2006), hlm. 300

[16] Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*. (Jakarta: Kencana, 2017), hlm.403

This understanding has been formulated in the explanation of article 76 paragraph (1) of Law of the Republic of Indonesia Number 7 of 1989, that al-syiqaq is a sharp and continuous dispute or dispute between husband and wife. This law is based on QS.an-Nisa paragraph (35) which is a systematic step from the previous paragraph which regulates the husband's position in the family and the issue of the wife's nusyuz. Syiqaq means quarrel, this word is usually associated with husband and wife so it means a quarrel that occurs between husband and wife which cannot be resolved by either of them alone. Shiqaq arises when the husband or wife or both do not carry out the obligations they must bear.[17] Shiqaq is an argument between husband and wife, this dispute may be caused because the wife is nusyuz or maybe also because the husband is cruel and abusive to his wife.[18] Among the Shafi'iyah, al-syiqaq is a dispute that occurs between husband and wife which is very intense and it is feared that there will be harm if the marriage continues. Sayyid Sabiq explained that divorce that occurs because of al-syiqaq is classified as a dangerous divorce (al-dharar). He also believes that the form of dharar is that a husband likes to hit, likes to insult, likes to hurt his wife's physical body, and forces her to do evil.

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Article 76 of Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning Religious Courts, which essentially requires that the plaintiff and defendant can present witnesses during the divorce process which is registered against the background that Shiqaq has occurred. This law requires witnesses to be able to hear their testimony in front of a judge as per the HIR and RBG rules which explain that if someone feels they have rights in a case then they must convince the judge by trying to prove it.[19]

The requirements for witness requirements at trial are regulated in Articles 1895-1912 of the Civil Code, the essence of which can be taken from article by article, the terms and criteria are classified into formal and material requirements as follows:

1) Formal requirements include:
   - Witnesses must be competent (they are adults according to the law, not crazy, not under protection, or in other words able to take responsibility for their actions);
   - Have no blood or joint family relationship with any of the parties, unless otherwise stipulated in the law, including marital relations even though they are divorced;

[17] Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, (Jakarta: Kencana, 2009), hlm.194

[18] Abdul Manan, Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama. (Jakarta: Kencana, 2017), hlm.403

[19] Muhammad Ariza Hafizhullah, *Urgensi Adanya Saksi saat Cerai dan Relevansinya Terhadap Konsep Maslahah Asy-Syathibi*. Dalam Jurnal Sakina: Journal Of Family Studies Volume 5 Issue 2 2021 ISSN (Online) (2021), hlm.400

- There is no employment relationship with receiving wages, unless otherwise provided in the Law;
- Appear before the court, be examined one by one, and take an oath;

2) Material requirements include:
   - Explain what you have seen, heard and experienced yourself;
   - Know the reasons why the witness knows about an event to be examined;
   - Not an opinion or conclusion of the witness himself;
   - Compatible with each other and do not conflict with common sense.

The position of Deaf Witnesses in Islamic law

In Islamic law regarding testimony, terminology that refers to Ragib's opinion, testimony can be interpreted as bayyinah, namely clear evidence, either 'aqliyyah (reason) or mahsushah (sensory).[20] This kind of meaning presents a more egalitarian and inclusive perspective. This means, as long as a witness can prove through one aspect; intellect and five senses, then his testimony should be worthy of consideration. Thus, it is not right if there are still people who doubt their intellectual abilities just because of sensory (sensory) disabilities.

Regarding conditions of physical disability, Ulama Syafi'iyyah is of the view that the testimony of people with visual disabilities cannot be accepted. The reason is because testimony to words cannot be accepted only by the ability to hear. This opinion is nothing more than the lack of ability to differentiate between an accuser and a defendant,[21] which may arise due to the similarity of voices between the two parties.[22] In this context, what is meant is that what is expressed by one person to another cannot be known with certainty and validity when a witness does not have a visual disability. Because of speech, its validity cannot be determined except by just seeing and hearing.[23] Nevertheless, the majority of ulama recognize and consider valid the testimony of blind people when they can hear and can differentiate someone's voice convincingly.[24]

In addressing the status of deaf witnesses, scholars have different opinions. The majority of clerics appear to have absolutely no tolerance for their opportunity to be witnesses. They agreed that hearing what the parties said and understanding what they meant was an absolute requirement for witnesses. The argument is that the object of the witness is words.[25] According to Az-Zuhaily, it is clear that the validity of deaf testimony cannot be

[20] W. Al-Islamiyyah, *Al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah* (Vol. 26). (Wizarah al-Awqaf wa asy-Syu'un al-Islamiyyah, 1983), hlm. 217

[21] W. Al-Islamiyyah, *Al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah* (Vol. 26). (Wizarah al-Awqaf wa asy-Syu'un al-Islamiyyah, 1983), hlm. 217

[22] H. bin. 'Audah al-'Uwaisyiyyah, *Al-Mausu'ah al-Fiqhiyyah fi Fiqh al-Kitab wa as-Sunah alMuthahharah* (Vol. 22). (Dar Ibnu Hazm, 2002), hlm.21

[23] M. al-Khin, M. D. al-Bugha, & A. al-Syarbaji, *Al-Fiqh al-Manhajiy* (Vol. 4), (Dar al-Qalam, 1992), hlm. 72

[24] M. al-Khin, M. D. al-Bugha, & A. al-Syarbaji, *Al-Fiqh al-Manhajiy* (Vol. 4), (Dar al-Qalam, 1992), hlm. 72

[25] H. bin. 'Audah al-'Uwaisyiyyah, *Al-Mausu'ah al-Fiqhiyyah fi Fiqh al-Kitab wa as-Sunah al Muthahharah* (Vol. 22). (Dar Ibnu Hazm, 2002), hlm. 298

recognized.[26] Here the ulama seem to measure the validity of the shighat (words) only by how clearly the shighat is expressed by the party.

The Value of Deaf Testimony in Proving Divorce (syiqaq).

The examination of a divorce case, as a civil case, is not aimed at finding material truth so that the judge's beliefs are ignored, but the judge tries to obtain objective truth based on valid evidence. M. Yahya Harahap stated that the law of evidence in civil procedural law occupies a very important and very complex place in the litigation process. The situation of complexity is increasingly complicated, because proof is related to the ability to reconstruct past events as truth. Even though the truth that is sought and realized in the civil justice process is not absolute truth, but is relative truth or even quite probable, searching for such truth still faces difficulties.[27]

In article 22 of PP Number 9 of 1975, article 76 of Law Number 7 of 1989 and article 134 of Presidential Instruction Number 1 of 1991. Because in these three articles, divorce (syiqaq reasons) where disputes and quarrels are continuous must be proven by witness testimony, So the position of the witness becomes an important thing in deciding a divorce case.

Initially, a person was said to be able to become a witness in the evidentiary process if he actually saw, heard and experienced a legal incident himself. However, in today's developments, there is an expansion of the meaning of witness, where a person who has information whose quality meets the requirements for testimony can become a witness before the trial. The quality of a witness takes precedence over his physical condition.

Witnesses are part of the evidentiary process. The word "Proof" originates from the word "evidence" which means "something that states the truth of an event", then begins with the prefix "pem" and ends with "an", so proof means the process of action, a way of proving something that states the truth of an event.[28] J.C.T. Simorangkir is of the opinion that evidence is an attempt by a person to convey as many things as possible regarding a case to a panel of judges, with the aim that the information can be used by the judge as material for consideration in preparing a decision for a case.[29] R. Soesilo expressed his opinion that "witness testimony is information presented before a judge, under oath, regarding a particular incident that the witness heard, saw and experienced for himself."[30]

In terms of procedural law, the most important thing before a trial is evidence, where the court element in upholding law and justice must be based on evidence.31 Among the procedural laws in court, the judge's consideration for giving a wrong decision as

[26] W. Az-Zuhaily, *Al-Fiqhu al-Islamiy Wa Adillatuhu*. (Dar a-Fikr, 1986), hlm.65

[27] M.Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan,Pembuktian, dan Putusan Pengadilan.* Cet. Kedua. (Jakarta : Sinar Grafika, 2005), hlm. 498

[28] Andi Sofyan dan H. Abd. Asis, *Hukum Acara Pidana*, (Jakarta: Prenadamedia Group, 2014), hlm. 230

[29] J.C.T. Simorangkir, *Kamus Hukum*, (Jakarta: Aksara Baru, 1983), hlm.145

[30] R. Soesilo, *Hukum Acara Pidana, (Prosedur Penyelesaian Perkara Pidana Menurut KUHAP Bagi Penegak Hukum)*, (Bogor: Politeia, 1982) hlm.113

[31] Roihan A. Rasyid, *Hukum Acara Peradilan Agama* (Jakarta: Rajawali, 1991), hlm.137

evidence is a competent witness.[32]

The application of the proof system for divorce cases, which even though it is a civil procedural law system, witnesses are a very important key according to the judge to explain the existence of disputes and quarrels or incidents in the parties' households. Regarding people with sensory disabilities, the judge requires the ability, understanding and accuracy to consider their existence comprehensively. People with deaf disabilities in their capacity as witnesses do have limitations in accessing the process and information during the trial properly. However, these limitations are not an obstacle to obtaining real access to justice. Limitations in the form of not being able to speak spoken Indonesian are good for the deaf, while the blind will not experience difficulties when asked for information in court. However, to ensure that the rights of deaf people are fulfilled in accordance with statutory provisions, they must be accompanied by an adequate sign language interpreter to bridge interactions between witnesses and law enforcers. The judge can appoint the closest person and understand the witness in the sense that that person can interpret the sign language of the deaf witness. The need for interpreter services for a person with a deaf disability in the trial process is also regulated in the provisions of Article 5 paragraph (1) letter d of Law Number 13 of 2016 concerning Protection of Witnesses and Victims which states: "a witness and victim has the right to receive an interpreter."

Within the Religious Courts, which is supervised by the Director General of the Religious Courts (Dirjen Badilag), the Supreme Court of the Republic of Indonesia has issued Decree Number: 2078/DjA/HK.00/SK/8/2022 concerning Guidelines for Implementing Disabled Friendly Services in Courts in the Judicial Environment Religion. In Article 3 paragraph (1) it is stated: "Persons with disabilities in the judicial process are given appropriate accommodation based on the variety of disabilities." Where in article 5, it is mandatory to provide minimum services which include:

a) Non-discriminatory treatment;
b) Fulfillment of a sense of security and comfort;
c) Effective communication;
d) Fulfillment of information regarding the rights of Persons with Disabilities regarding the development of every service at the Court;
e) Provision of long distance audio visual communication facilities;
f) Providing companions and/or sign language interpreters;
g) Provision of Standard Operational Procedures for Services and Procedures for Trials of Persons with Disabilities in Conflict with the Law.

Deaf disabled people in the decision letter of the Director General of Badilag have their own rules for legal protection which are regulated in article 12, including Sign Language Interpreters for Hearing Disabled People:

1) The court provides Sign Language Interpreters for people with hearing disabilities.
2) Sign Language Interpreters as referred to in paragraph (1) must fulfill the basic

[32] Retnowulan Sutantio dan Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek* (Bandung: CV Mandar Maju, 2009), hlm.58

competencies of Sign Language Interpreters based on the decree of the Minister of Manpower of the Republic of Indonesia number 207 of 2021 and number 204 concerning Indonesian national work competency standards for Deaf and Hearing Sign Language Interpreters.

3) Sign Language Interpreters have been certified or have provided professional services as proven by previous work experience, and have obtained approval from Persons with Hearing Disabilities or their families in accordance with the Sign Language preferences and needs of Persons with Hearing Disabilities.
4) In providing Sign Language Interpreters for Persons with Hearing Disabilities as intended in paragraph (1), the Court can cooperate as outlined in the form of a memorandum of understanding/Memorandum of Understanding with the Sign Language Interpreter Service Center (PLJ), Social Service, Disability Service Unit (ULD), Special Schools (SLB), Organizations for Persons with Disabilities and related institutions.

Based on what has been explained above, the evidentiary strength of the testimony of a deaf witness is the same as that of a normal witness as long as the person meets the requirements as a witness and when giving his statement as a witness, he is accompanied by a translator or interpreter (who does not take anyone's side). So what the judge focuses on when examining a divorce case (syiqaq) is whether there is evidence of testimony from a witness with a deaf disability from sight and experience through interpretation which can mean that there are continuous disputes and quarrels between the parties in the trial based on the quality of their testimony supported by instruments. other evidence and not his physical limitations.

Furthermore, regarding the ability of deaf people to convey information in court because they usually also have speech limitations, assistance by a sworn sign language interpreter, especially if the panel of judges and clerks have sign language competency then this will be an added value, where the judges and clerks understand what is the meaning of deaf witness testimony and minimizing miscommunication from deaf people with speech difficulties. With the principle of ius curia novit or curia novit jus, which means that judges are considered to know all the laws so that the court cannot refuse to examine and try cases,[33] thus apart from judges being considered to know the law, judges must also have the competence to understand all processes in the evidentiary trial, one of which is that the judge has the competence to understand and be able to speak sign language.

If all of the things mentioned above are fulfilled, then the thing that influences the witness's testimony is the suitability of the testimony between one witness and another witness so that there is no reason for the judge to be rejected as a witness on the basis of the witness's physical condition as a witness in the Divorce Trial in the religious court environment.

[33] M. Yahya Harahap, Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan,Pembuktian, dan Putusan Pengadilan. Cet. Ke-enam. (Jakarta: Sinar Grafika, 2016) hlm. 821

4. Conclusion

In article 22 of PP Number 9 of 1975, article 76 of Law Number 7 of 1989 and article 134 of Presidential Instruction Number 1 of 1991. Because in these three articles, divorce (syiqaq reasons) where disputes and quarrels are continuous must be proven by witness testimony, So the position of the witness becomes an important thing in deciding a divorce case.

In divorce trials at the Religious Courts, in general the position of witnesses is very decisive, they must have the requirements to see, hear and directly experience the legal events that occur, this must be in accordance with article 172 HIR/308 Rbg in conjunction with article 76 of Law Number 7 of 1989. Meanwhile In Islamic law, the position of deaf witnesses also has different views.

The majority of ulama recognize and consider valid the testimony of blind people when they can hear and can differentiate someone's voice convincingly. Meanwhile, regarding the status of deaf witnesses, ulama have different opinions. The majority of clerics appear to have absolutely no tolerance for their opportunity to be witnesses. They agreed that hearing what the parties said and understanding what they meant was an absolute requirement for witnesses. The argument is because something that is the object of the witness is words. According to Az-Zuhaily, it is clear that the validity of deaf testimony cannot be recognized. Here the ulama seem to measure the validity of the shighat (words) only by how clearly the shighat is expressed by the party.

It is important to understand that deafness itself is not an emotional disability. An important factor in personality development is what the disabled person himself thinks about his situation and what the disabled person himself thinks about his situation, and what he thinks and feels about his disability is largely a reflection of what other people think.. Because the attitude of normally hearing people towards deaf people is somewhat unstable compared to non-deaf people.

From a legal point of view, all people are equal. Therefore, people with deaf and visually impaired disabilities can also access the judicial process and can become witnesses in trials in accordance with applicable laws and regulations. This has been explicitly regulated in Article 9 letter a of the Law on Persons with Disabilities which states that persons with disabilities have the right to equal treatment before the law. One of the principles, namely the principle of Equality Before the Law or equality before the law, also states the same thing which is in line with what applies in the religious justice environment which is contained in the Decree of the Director General of the Religious Courts Agency of the Supreme Court of the Republic of Indonesia Number: 2078/DjA/HK.00 /SK/8/2022 Concerning Guidelines for Implementing Disability Friendly Services in Courts in the Religious Court Environment.

The evidentiary strength of a deaf witness's testimony is the same as that of a normal witness as long as the person fulfills the requirements as a witness and when giving his or her statement as a witness, he or she is accompanied by a translator or interpreter (who does not take anyone's side) with the deaf witness's confidence in what he saw and

experienced, and heard both imperfectly and in their interpretation of events seen and experienced regarding disputes and quarrels. So the judge's focus is in examining divorce cases (syiqaq) with witness statements assisted by a sign language interpreter, especially if the clerk or judge has the competency to understand sign language based on the quality of their testimony supported by other evidence and not their physical limitations.

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