THE EXISTENCE

OF CIVIL PROSEDURE LAW IN RELIGIOUS COURT

The existence of this daras book is very important for law students at the Faculty of Law and Islamic Law, IAIN Parepare. This Daras book can be a hand book in sharpening and deepening the knowledge of law for students in Civil Procedure Law in Religious Courts. In addition, this daras book can be a provision for law students later when they become law practitioners. Hopefully this daras book can be useful and add to the horizon in Civil Procedure Law in Religious Courts.

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ISBN:978-623-6622-77-3
9 786236 622773

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Design

Hariyanto

ISBN: 978-623-6622-77-3

I+ 141 hlm | 14.8 x 21 cm
Cetakan I, Desember 2020

Diterbitkan Oleh:
IAIN Parepare Nusantara Press
Jalan Amal Bakti Soreang, Parepare, Sulawesi Selatan
E-mail. nusantarapress@iainpare.ac.id

FOREWORD

Praise be to Allah who has given His grace and guidance to all of us so that we can carry out all activities as usual. We do not forget to give prayers and greetings to the Prophet Muhammad, who has shown us the way of truth.

A big thank you to the compilers of destroying all those who helped in the process of making this daras book, so that we can finish it well. This book is structured to fulfill the in-depth study of the subject Civil Procedural Law of Religious Courts.

The composer realizes that there are still many mistakes and shortcomings in this Daras book, therefore criticism and suggestions that are constructive from the readers are very much hopeful for the improvement of this Daras book in the future.

And I hope this book will be useful for all of us and produce useful knowledge, Amen.

Parepare, Desember 2020

Author

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CHAPTER 1

INTRODUCTION

A. HOW TO UNDERSTAND THE CIVIL PROCEDURE LAW IN RELIGIOUS COURT

1. Religious Courts and Islamic Courts

Religious Courts in the official literature are state courts that exercise legal powers of Justice to handle Islamic civil cases in Indonesia. There are four judicial environments that are recognized by the state, namely the District Court (PN) in the General Court, the Military Court in the Military Court (PM), the State Administrative Court (PTUN) in the State Administrative Court, and Religious Courts (PA) within the Religious Courts. Previously as regulated in the RI Law. No. 7 of 1989 that the Religious Court is one of the Special Courts, two of which are the Military Court and the State Administrative Court. Mentioned Special Court, because the Religious Courts adjudicate or handle certain cases concerning certain groups of people. In other words, the Religious Courts have the authority in the civil-Islamic field only, not handle criminal cases for Muslims in Indonesia.[1]

Starting from history, it is called the Religious Court which cannot be separated from the term used by the Dutch government through Staat Blad (Stb.) No. 152 of 1882. It is affirmed that the Religious Courts in question are Islamic Courts for people who are Muslim in Indonesia, because all types of cases that can be tried are all types of cases based on the Islamic religion. If it is constructed from the term "Islamic judiciary", it shows that the case which is the authority to be

[1]H. Roihan A. Rasyid, Procedure for Religious Courts (Cet. XIII; Jakarta: PT. RajaGrafindo Persada, 2007), h. 5-6.

accepted, examined and tried includes all cases according to Islam. Strictly speaking, the Religious Courts are limitative Islamic Courts, which have been adapted to the conditions in Indonesia.[2]

Even so, what is meant by the Religious Court is the Islamic Court?. Often there is a mistake or confusion in understanding that the Religious Courts are able to handle all cases of all religions. Even though of course the existence of the Religious Court is devoted to Islamic civil cases, so that only those who have the right to administer the trial are Muslims. Usually it appears in the debate that the naming of the Religious Courts covers all religious matters, not only those of being Muslim, but also cases of other religions. That way, it can be straightened out in the Religious Court, that is, it is not for adherents of other religions outside of Islam. In short, the Religious Courts are Islamic Courts in handling Islamic civil cases for people who are Muslim.

2. Islamic Justice

The term Islamic justice when viewed from the term in Indonesian, the meaning of Islamic justice shows the concept in Islam universally. Islamic judiciary is authorized in all types of cases based on the teachings of Islam as a whole. Therefore, an Islamic state or a country that implements Islamic law, the state that administers the judiciary is called Islamic justice. Unlike the case with the Islamic Court in Indonesia which is called the Religious Court.[3] Moreover, the power of Islamic law in Indonesia is only accommodative in the context if it has been regulated by statutory regulations.

[2]H. Roihan A. Rasyid, Procedure for Religious Courts, h. 6.
[3]HA Basiq Djalil, Islamic Justice (Cet. I; Jakarta: Amzah, 2012), p. 6.

From the start, based on the previous description of the Religious Courts, it is still considered inaccurate, accurate and can lead to misunderstanding of the use of the term Religious Courts. Although the term is considered inaccurate or is a misperception, the law mentions the term Religious Court. However, at that time it did not show the formulation of names or other terms that appeared to replace the term Religious Courts which some people might consider wrong. This is at least expressed in the history of the Religious Courts in Indonesia.[4]

Interpretation of the word Religious Courts in the reform era as regulated in the RI Law. No. 3 of 2006 the position of the Religious Courts is no longer called a special court, but the same all the positions of all judicial institutions in Indonesia. In addition, returning to the term Islamic justice the scope is much broader or more universal, which includes the courts of Islamic countries or countries that are predominantly Muslim or Muslim countries that have the basis of an Islamic state.

3. Definition of Civil Procedure Law

Enforcement of material law is carried out through formal law. Formal law, often referred to as civil procedural law, is a collection of provisions which aims to be a reference or guide for people who seek truth and justice. If there is a conflict in the household that leads to divorce, for example, its relevance to the applicable provisions in material law means giving civil procedural law as the law of its administration in the judiciary. Civil Procedure Law includes all provisions regarding how people administer civil law to settle cases in order to obtain legal certainty and justice through judges' decisions, so that if their interests or rights are violated by others, they may be prosecuted in court. Therefore, Civil Procedure Law

[4]HA Basiq Djalil, Islamic Justice, p. 8.

is how to defend rights that have been violated by others in order to obtain the truth and legal certainty based on a judge's decision in court. If the person suspected of being guilty of manipulating their rights, they can be prosecuted by filing a case in court.[5]

Enforcing material civil law, including in the event of a violation or in order to maintain material civil law, in the event of a claim for rights, a number of other legal regulations are required in addition to the civil law. These legal regulations are known as formal civil procedural law or civil procedural law. Civil Procedure Law can also be understood as a law that is a legal rule by regulating how to ensure compliance with material civil law through judges in court.[6]

Furthermore, in other terms, Civil Procedure Law can be understood as a number of legal regulations that are applied to determine how to guarantee or enforce the implementation of some material civil laws in court. The meaning that can be considered more concrete is that the Civil Procedure Code is a collection of laws that apply to regulating how to file claims for rights that have been violated by others, accept and decide and implement the judges' decisions in court.[7]

Therefore, enforcing material civil law, the function of Civil Procedural Law greatly determines the implementation of material civil law so that it cannot be enforced without being supported by Civil Procedural Law. Wirjono Projodikuro explained that what is called Civil Procedure Law consists of a number of regulations which contain how the court can implement each other for the

[5]R. Soeroso, Practices of Civil Procedure Law Procedures and Court Processes (Cet.IV; Jakarta: Sinar Grafika, 1999), p. 3.

[6]Bambang Sugeng and Sujayadi, Introduction to Civil Procedural Law and Examples of Litigation Documents (Cet.III; Jakarta: Prenadamedia Group, 2015), p. 2.

[7]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Litigation Documents, h. 2.

implementation of material civil law regulations. In addition, Sudikno Mertokusomo argues that the object of Civil Procedural Law is the entire regulation that aims to implement and maintain or enforce material civil law by means of state power that occurs in court.[8]

Seeing the limitations put forward by the two legal experts, it can be seen that the Civil Procedure Law is a law that regulates the procedures for filing the Plaintiff's lawsuit, how the Defendant defended himself from the plaintiff's lawsuit, how the judges acted well before the examination was carried out and how The judge decides the case filed by the plaintiff and how to implement the decision properly in accordance with the applicable regulations, so that the rights and obligations as stipulated in the Civil Procedure Code can run properly.[9]

The Civil Procedure Law that applies in every court environment functions to apply material civil law. Material civil law that will be implemented through the Civil Procedure Law in the Religious Courts is a number of legal regulations related to marriage law, divorce law, sharia economic law, and worship laws such as zakat, shadakah and waqf laws.

4. Enforcement of Civil Procedural Law in the Religious Courts Environment

Religious Courts are Civil Courts as well as Islamic Courts in Indonesia. That way, the Religious Courts must implement all Islamic laws in the laws and regulations made by the state and Islamic law at the same time. In relation to the Civil Procedural Law and the Religious Courts, the formulation of the Civil Procedural Law that applies in the Religious Courts can be formulated to be all legal

[8]Abdul Mannan, Application of Civil Procedural Law in Religious Courts (Cet.VI; Jakarta, Predana Media Group, 2012), p. 2.

[9]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 2.

regulations that come from state laws and regulations as well as from Islamic law which regulates how people act before the Religious Courts. In addition, Civil Procedure Law can be interpreted as a law that regulates how the Religious Courts receive, examine, adjudicate and settle cases, to realize Islamic material civil law as the competence of the Religious Courts.[10]

The practical aspect in proceeding is that the Civil Procedure Law that applies in the Religious Courts is similar to the procedural law system in the District Court. This means that the application of Civil Procedural Law which is applied in the environment of the Religious Court is the same as in the environment of the General Court. In addition, in the application of the Civil Procedure Law in the Religious Courts, there has not been any debate by the scholars regarding how judges conduct trials. The application of the Civil Procedure Code has become a reference without causing disruption when judges hear at the Religious Courts.

Even so, going back to the past history that the religious court institutions in the Java and Madura areas that had been established by the Dutch government on the basis of its effectiveness were Stb. 1882 No.152 jo. Stb. 1937 No. 116 and also Stb. 1973 No. 610, in South Kalimantan, Stb. 1937 No. 635 and Stb. 1937 No. 639. After the independence of the Republic of Indonesia, the government established Religious Courts outside Java, Madura and South Kalimantan, with the enactment of Government Regulation no. 45 of 1957. However, the regulation does not mention at all the Civil Procedure Law which is absolutely enforced by judges when examining, hearing and deciding every case before the Religious Court. Therefore, There are no official provisions regarding the Civil Procedure Law that are enforced

[10]H. Roihan A. Rasyid, Procedure for Religious Courts, h. 10.

in Religious Courts throughout Indonesia, in adjudicating cases before the Religious Courts use the essence of Civil Procedure Law which is contained in fiqh books. That way, in applying the Civil Procedure Law there is uniformity between one Religious Court and another.[11]

Regulatory provisions regarding Civil Procedure Law in Religious Courts only existed when the RI Law came into effect. No.1 of 1974 concerning Marriage jo. Government Regulation No. 9 of 1975 concerning the implementing regulations. This is only a small part of what is regulated in these two regulations. Regulatory provisions regarding Civil Procedure Law that apply in the environment of the Religious Courts are only stated clearly and firmly when applicable with the RI Law. No.7 of 1989, apart from regulating the organizational structure and competence of the Religious Courts, this law also regulates the Civil Procedural Law that is enforced within the Religious Courts. The Civil Procedure Code in question lies in the provisions of Chapter IV which consists of 37 articles in the RI Law. 7 of 1989. Not all regulatory provisions in the Civil Procedure Law that apply to the Religious Courts are fully contained in the RI Law. 7 of 1989, as can be seen in Article 54. It is stated that the Civil Procedure Law that applies in the courts within the Religious Courts is the Civil Procedure Law which is enforced in the courts within the General Court, unless it has been specifically stipulated as contained in that law. .[12]

That way, the Civil Procedural Law that is enforced within the General Court is the Herziene Inlandsch Reglement (HIR) for the Java region, and furthermore in the Madura area and the Voor De Buitengewesten (R.Bg.) Rechtreglement for outside Java and Madura areas, of course Of course, the two legal regulations

[11]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 6.
[12]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 7.

regarding the Civil Procedure Code are also enforced within the Religious Courts, except for matters that have been specifically determined in the RI Law. No. 7 of 1989. For example, this includes the imposition of case fees that should have been paid by the Petitioner / Plaintiff, proof on grounds of shikak, divorce suits based on cheating by committing adultery (lian), and a number of other provisions that are specifically determined.

B. LEGAL SOURCES OF PROCEDURE FOR RELIGIOUS JURISDICTION

The sources of Civil Procedure Law, which are part of the legacy of the Dutch Government, are scattered throughout the legislation and jurisdiction which can be stated as follows:

1. HIR (Het Herziene Indonesisch Reglement) or RIB (Indonesian Reglement renewed), regulated in Stb. 1848 No. 16 jo. S. 1941 No. 44. This regulation is specifically applicable in the Java and Madura regions.
2. Rbg. (Rechtreglement Buitewengesten) or Reglement Daerah Seberang, regulated in Stb. 1972 Number 227. This regulation applies to areas outside Java and Madura.
3. Rsv. (Reglement op de Burgerlijke Rechtsvordering) is set in Stb. 1847 Number 52 jo. S. 1849 No. 63. This regulation actually applies to the Rad Van Justitie court which has been devoted to European groups residing in Indonesia. At this point in time, this provision is deemed invalid, but in some cases it remains a guideline in practice if the legal provisions in HIR / Rbg. gave no settings.
4. BW (Burgerlijke Wetboek) Book IV about proof and expiration.
5. RI Law. No. 4 of 2004 concerning Judicial Power.

6. RI Law. No. 3 of 2009 jo. RI Law. No. 5 of 2004 jo. RI Law. No. 14 of 1985 concerning the Supreme Court.
7. RI Law. No. 8 of 2004 jo. RI Law. No. 2 of 1986 concerning General Courts.
8. Jurisprudence on Civil Procedural Law.
9. The doctrines put forward by experts.[13]

Civil Procedural Law sources, which are legacy of the Dutch Government, are still declared valid to serve as references in every judicial environment in Indonesia. However, sources of Civil Procedural Law have progressed by following changes and developments in the structure of the judiciary, for example the organizational structure of the Religious Courts was previously under the authority of the Ministry of Justice and the Ministry of Religion, but since the Republic of Indonesia Law came into effect. No. 3 of 2006 concerning Religious Courts which require one roof with the Supreme Court. This means that the development of Civil Procedure Law in the current context is partly sourced from statutory regulations, Supreme Court Regulations (Perma), and Supreme Court Circular Letters (SEMA).

Roihan A. Rasyid in his book "Procedural Law of Religious Courts" states that in order to carry out the main tasks of receiving, examining and adjudicating and settling cases, and its function is to uphold law and justice, the Religious Courts used to use Civil Procedural Laws scattered about in various statutory regulations, even the Civil Procedure Law in unwritten law means Islamic formal law that has not yet been realized in the form of statutory regulations of the Indonesian state. But now that after the issuance of Law no. 7 of 1989, came into effect as of the date

[13]Bambang Sugeng AS, and Sujayadi, Introduction to Civil Procedure Law and Sample Litigation Documents, p. 2-3.

of promulgation of 29 December 1989, the Civil Procedural Law within the Religious Courts becomes concrete.[14]

Article 45 RI Law No. 1989 reads: "The procedural law that applies to Courts within the Religious Courts is the Civil Procedure Law that applies within the General Courts, unless specifically regulated in this law."[15]

In general, Article 45 of Law No. 7 of 1989 shows that the Civil Procedure Law in the Religious Courts is rooted in two regulations, which are contained in Law No. 7 of 1989 and enforced within the General Court. Regarding the Civil Procedure Law that is enforced within the Religious Courts, of course it cannot be separated from the RI Law. No. 7 of 1989 which now continues to experience changes with the enactment of the RI Law. No. 3 of 2006 and is still undergoing changes with the enactment of the RI Law. No. 50 of 2009 concerning Religious Courts.

Mapping of statutory regulations at the core of the Civil Procedure Code of General Courts, including HIR (Het Herziene Indonesisch Reglement) or also known as RIB (Renewed Indonesian Reglement), Rbg. (Rechtreglement Buitengesten) or Reglement for the Opposite Region, meaning for areas outside Java and Madura, Rv. (Reglement op de Burgerlijke Rechtsvordering) which was applied in the Dutch colonial era to Rad Van Justitie which is known today is the Supreme Court, BW (Burgerlijke Wetboek) or also known as the European Civil Code, and RI Law. No. 2 of 1986 concerning General Courts.[16]

[14]H. Roihan A. Rasyid, Procedure for Religious Courts, h. 20.
[15]Law of the Republic of Indonesia Number 7 of 1989.
[16]H. Roihan A. Rasyid, Procedure for Religious Courts, h. 21.

In addition, it is also stated that the laws and regulations on Civil Procedure Law which jointly apply to the General Courts and the Religious Courts are as Law RI No. 14 of 1970 concerning Basic Provisions of Judicial Power, RI Law No. 14 of 1985 concerning the Supreme Court, RI Law no. 1 of 1974 and Government Regulation Number 9 of 1975 concerning Marriage and Its Implementation.[17]

It is also important to mention the Civil Procedure Law relating to the judicial powers in force in the RI Law. No. 14 of 1970 experienced changes as a result of the Republic of Indonesia entering the reform era so that inevitably it had to change these legal regulations in following the demands of reform. The change in legal regulations that can be seen is the RI Law. No. 35 of 1999 also underwent changes with the enactment of Law no. 4 of 2004. However, the change in judicial power did not stop there with the enactment of Law no. 48 of 2009. All of these legal regulations can be enforced in the environment of the Religious Courts which incidentally also apply with no difference in the environment of the General Courts.

C. LEGAL PRINCIPLE OF CIVIL PROCEDURE

Some of the principles of Civil Procedure law that are enforced within the Religious Courts are stated, as follows;

1. Judge is Waiting

The principle of procedural law in general, including civil procedural law, is its implementation, namely that the initiative to file rights claims is fully left to those concerned. Whether a case or claim will be filed or not, it is fully submitted to

[17]H. Roihan A. Rasyid, Procedure for Religious Courts, h. 21.

the parties concerned. If there is no right claim or prosecution, there will be no judge or it is called Wo Kein klager ist, ist kein richter; nemo judex sine actore.[18]

That way, the right claimant is the party with an interest, while the judge is waiting for the right claim to be submitted to him (iudex ne procedat ex officio) in Articles 118 HIR and 142 Rbg., While the state is organizing the process. However, once a case is submitted to a judge, one may not refuse to examine and try, even on the pretext that the law is unclear or unclear (Law No. 14/1970). The prohibition against refusing to examine a case is due to the assumption that the judge knows the law (ius curia novit). Therefore, if the judge does not find written law, he is obliged to explore, follow and understand the legal values that live in society (Article 27 of Law Number 14 of 1970).[19]

2. Judges are Passive

Judges in examining cases are passive in nature in the sense that the scope or extent of the principal of the dispute submitted to the judge for examination is principally determined by the parties in the case and not by the judge, the judge may not expand or reduce the subject matter of the dispute submitted by the litigant. In addition, the parties can freely terminate a dispute that has been submitted before the court, while the judge cannot prevent it. Termination of this dispute can be in the form of reconciliation or withdrawal of the lawsuit.[20]

Furthermore, for cases filed before him, the judge is obliged to judge (examine and give consideration) all claims and is prohibited from passing on cases

[18]Sudikno Mertokusumo, Indonesian Civil Procedural Law (Cet. I; Yokyakarta: Liberty Yokyakarta, 1998), p. 10.

[19]Sudikno Mertokusumo, Indonesian Civil Procedural Law (Cet. I; Yokyakarta: Liberty Yokyakarta, 1998), p. 10.

[20]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Litigation Documents, h. 4.

that are not charged or grant more than what is charged. Then on the decision handed down by the judge, whether or not it is concerned will file an appeal or not is not in the interests of the judge.[21] The context is that judges in the Religious Courts in every case filing are judges are not allowed to ask the litigant to try them.

3. The open nature of the trial

The nature of the openness of the trial is that in adjudicating a case filed by the plaintiff, the trial is open to the public because it can be null and void by law.

4. Heard Both Sides

The purpose of hearing both parties is to hear information about legal events from both parties, namely the judge in the trial, before giving a decision on the case submitted by the parties, must obtain actual information from both parties, if in the statements regarding the sit case In fact, the judge due to his position has the right to order the parties in a case to present witnesses who have heard, experienced and witnessed the occurrence of legal events.[22]

5. Decisions Must Be Accompanied by Reasons

All court decisions must contain the reasons for the decision on which to judge. That reason is intended as the responsibility of the judge rather than his decision to the public, so because the decision has an objective. So that the Supreme Court in its decision once stated "that a decision that is incomplete or insufficiently considered is a reason for the case and must be pronounced." Sometimes to account for decisions, jurisprudence and scientific support are often sought.[23]

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[21]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Litigation Documents, h. 4-5.

[22]Sarwono, Civil Procedural Law Theory and Practice (Cet.III; Jakarta: Sinar Grafika, 2012), p. 20.

[23]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Litigation Documents, h. 6.

Judges in applying the arguments or positive legal basis must be very observant and careful, in accordance with the disputes faced by the parties, because if in an application decision the legal basis is wrong and in accordance with the problems faced by the parties, the court decision being issued will be legally flawed and can be canceled, modified and corrected at the appeal level. Thus, the application of a legal basis that is correct and in accordance with the problems faced by the parties in a lawsuit is intended in addition to being accountable for decisions that have been issued can also reflect justice, so that decisions issued by the court if other legal remedies are filed will not result in being canceled, corrected and amended at the level of appeal, cassation and review.[24]

However, in practice if the opposing party who is defeated in a case at the first level trial submits another legal remedy in the form of an appeal without strong reasons, then the appeal against the decision of the court at the first level will not be granted by the high court judge on the grounds that his resistance was groundless. For this reason, in another legal effort the party who is defeated in court must use valid reasons in the hope that the appeal, cassation and review levels will be accepted so that the legal effort is not in vain. In addition, the attorney must be able to explain in detail to the power of attorney who was defeated in the trial about the possibilities that would occur if not accompanied by valid reasons.[25]

6. The Judgment Must Be Implemented After 14 (Fourteen) Days

The principle that the decision must be implemented after 14 (fourteen) days is that each court decision can only be implemented after the 14 (fourteen) grace period has passed and has permanent legal force or there is no other legal remedy

[24]Sarwono, Civil Procedure Law Theory and Practice, h. 24-25.
[25]Sarwono, Civil Procedure Law Theory and Practice, h. 25.

from the defeated party, unless there is a decision " provisional and uit voerboar bij voorraad. " It is clear that the court's decision can only be implemented after 14 (fourteen) days have passed and the decision has been in kracht van gewijsde or there are no other legal remedies from the defeated party in the trial in the form of bandin, cassation and reconsideration. So,[26]

Furthermore, in a provisional decision, although a final decision has not been given in the trial, the execution of the object of the dispute against the plaintiff's movable property which is in the hands of the defendant or in the hands of a third party can be implemented first. If there is a suspicion that the defendant will embezzle the plaintiff's property which is in the hands of the defendant and / or is in the hands of a third party without the plaintiff's consent. Whereas in the uit voerboar bij voorraad verdict, the execution of collateral either movable or immovable can be carried out first, although there is a legal remedy or appeal by the opponent who is defeated in the trial can be carried out first[27]

7. There is a fee

Civil litigation is subject to fees in principle. The fees include registration fees, call fees and stamp duty fees. Even if the parties ask for help from an advocate, it must also be incurred. For those who are unable to pay the court fee, they can file a case free of charge (prodeo) by obtaining permission to be exempted from paying the court fee, by submitting a letter of incapacity made by the sub-district head, who carries the area where the interested party resides.[28]

[26]Sarwono, Civil Procedure Law Theory and Practice, h. 26.
[27]Sarwono, Civil Procedure Law Theory and Practice, h. 26.
[28]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Litigation Documents, h. 6.

8. There is no need to represent

As long as the parties in a case are allowed to attend the trial, it is imperative that all parties be directly involved in the trial process held in the Court. This is intended so that all parties in a case can receive equal treatment before the law (equality before the law), without feeling that there are parties who are discriminated against or have their rights harmed during the trial process.

CHAPTER 2

GENERAL PRINCIPLES OF RELIGIOUS COURTS

A. THE PRINCIPLE OF ISLAMIC PERSONALITY

The principle of Islamic personality means that those who submit or allow to be subdued through the power of the Religious Courts are Muslims. In other words, a non-Muslim adherent does not have to submit and also does not have to be forced to submit to the power of the Religious Court. This principle is regulated in Article 2, as contained in the general explanation of number 2, the third paragraph as well as Article 49 paragraph 1. These three explanations are seen in the principle of Islamic personality that coincides with certain civil issues, as far as disputes are the competence of the Religious Courts. Therefore, the submission of Muslim personalities to the area of the Religious Courts does not represent the submission as a whole, which only covers all areas of civil law.[1]

The firmness of the principle of Islamic personality which means that the parties in dispute are obliged to be Muslim, civil cases in dispute must relate to a number of cases listed in the fields of marriage, inheritance, wills, grants, endowments as well as alms. The attachment to law which underlies certain civilization is rooted in Islamic law.

The application of the principles of Islamic personality is based on general standards and benchmarks when there is a legal relationship. The general standard means that if a person has professed to be Muslim, he has adhered to the principle of

[1]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia (Cet. III; Jakarta: Prenada Media Group, 2005), p. 65-66.

the Islamic personality. The principle of Islamic personality based on the time when the legal relationship occurs is determined by 2 (two) conditions, namely as follows;

a. When there is a legal relationship, both parties in the case are both Muslims.
b. The legal relationship they carry out is based on Islamic law.[2]

This benchmark is in accordance with the Supreme Court Letter dated 31 August 1983 addressed to the Chairperson of the Ujung Pandang High Religious Court (now Makassar). The main content of the letter confirms that what is used as a measure that determines whether the Religious Courts are competent or not in examining and adjudicating cases between people who are Muslim or non-Muslim in marriage disputes, especially in the case of divorce, is the law that applies at the time of the marriage. If the marriage is carried out based on the Islamic religion (at the KUA) then the marriage dispute becomes the competence of the Religious Court, even if one of the parties is no longer Muslim. On the other hand, if it is not based on Islamic law, the marriage dispute is not the competence of the Religious Court.[3]

B. THE PRINCIPLE OF FREEDOM

The principle of freedom or independence of judicial power is the most central principle in judicial life. This principle refers and originates from the provisions stipulated in Article 24 of the 1945 Constitution and Article 1 of Law Number 14 of 1974 concerning Basic Provisions of Judicial Power jo. Law Number 4 of 2004 concerning Judicial Power, namely judicial power is the power of the judiciary which

[2]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts (Cet.I; Jakarta: Sinar Grafika, 2009), p. 38.
[3]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, p. 38.

is the power of an independent state to administer the judiciary to enforce law and justice based on Pancasila, for the sake of the implementation of the constitutional state of the Republic of Indonesia The elucidation of Article 1 reads: "The independent judicial power in this provision implies that the judicial power is free from interference by extra-judicial powers. except in cases as stated in the 1945 Constitution of the Republic of Indonesia. " Freedom in exercising judicial authority is not absolute because the judge's duty is to uphold law and justice based on Pancasila, so that his decisions reflect the sense of justice of the Indonesian people.[4]

The contextualization of the meaning of freedom of judicial power in carrying out the function of freedom of judicial power is as follows;

a. Free from interference by other state powers, means being free independently, not under the influence and control of the executive, legislative or other bodies of power.
b. Free from coercion, directives or recommendations coming from extra-judicial parties, meaning that judges may not be forced to be directed or recommended from outside the jurisdiction of the judiciary.
c. Freedom to exercise judicial authority. In this case, the nature of legal freedom is not absolute, but is limited to: (1) applying the correct and appropriate laws originating from statutory regulations in resolving the case being examined; (2) interpreting the law through a justified method of interpretation; (3) free to seek and discover law, foundations and legal

[4]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 39.

principles through the doctrine of legal science, customary law, jurisprudence and through the realism approach.[5]

C. MANDATORY PRINCIPLES

The principle of compulsory reconciliation is contained in Article 65 and Article 82 of Law Number 7 of 1989 concerning the Religious Courts. The elucidation of Article 82 states that as long as the case has not been decided, efforts to reconcile can be made at every examination hearing at all levels of the court. The principle of compulsory reconciliation is also stated in Article 39 of Law Number 1 of 1974 concerning Marriage, Article 31 of Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 and Article 143 paragraphs 1 and 2, as well as QS. Al-Hujurat (49) verse 10.[6]

The role of judges in reconciling the parties in a case is limited to suggestions, advice, explanations and to provide assistance in the formulation as long as it is requested by both parties. Therefore, the final outcome of this peace must truly be the result of an agreement on the free will of both parties. Because peace is viewed from the point of view of Islamic law and Western Civil Law (KUH Perdata), including the field of contract law. Article 1320 of the Civil Code regulates the terms of the validity of an agreement, namely; (1) there is an agreement based on the free will of both parties. This means that in the agreement there must be no defects that contain errors (dwaling), coercion (dwang) in all forms, whether it is physical, spiritual or deception (bedrog); (2) ability to take legal action; (3) regarding certain matters; and (4) based

[5]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 68.

[6]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 41.

on lawful causes. These are important things that should be known and understood by judges in carrying out the function of reconciliation.[7]

Regarding divorce disputes, the meaning of peace has a very high value. The reason is that by achieving peace between husband and wife in divorce disputes, the integrity of the marriage bond can be saved. In addition, it can be saved the continuation of the normal care and upbringing of children. Mental and mental growth they avoid feelings of inferiority and alienation in social life. Therefore, in order for the judges to carry out the function of reconciling them more effectively, judges must try to find the factors underlying the dispute.[8]

D. BASIS OF SIMPLE, FAST AND LIGHT COST

The principle of simple, fast and low cost justice in Law Number 7 of 1989 is regulated in article 57 paragraph 3. Basically this principle originates from the provisions of Article 4 paragraph 2 of Law Number 14 of 1970. Then the broader meaning of this principle is , stated in the general explanation and explanation in Article 4 paragraph 2 itself. In the general explanation contained in number 8 which reads in full: "The provision that the trial is carried out simply, quickly and at low cost" must be adhered to as reflected in the law on Civil Procedure Law which contains regulations on examination and proof that are far from simple. . " Furthermore, the meaning and meaning of this principle is further emphasized in the explanation of Article 4 paragraph 2 which reads: "The judiciary must meet the expectations of justice seekers who always want a trial that is fast, precise, fair and

[7]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 69-70.

[8]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 70.

low cost. No need for cumbersome examinations and procedures that can lead to years of proceedings, sometimes even having to be continued by justice-seeking heirs. Low cost means the lowest possible cost so that it can be borne by the people. This is all without sacrificing thoroughness to seek truth and justice. "[9]

The meaning and purpose of the principle of simple, fast and low cost as stipulated in Law Number 14 of 1970 are fully applicable in Law Number 7 of 1989. This can be read in the general explanation of number 5, fifth paragraph which reads: "The main principles judiciary that has been stipulated in Law Number 14 of 1970, including open sessions to the public, every decision begins with the sake of justice based on Almighty God, justice is carried out simply, quickly and at low cost and other provisions, in law this law is more emphasized and republished. "[10]

M. Yahya Harahap emphasized that in fact, the sound of this general explanation was not completely consistent. This inconsistency has the words "more emphasized" again. Even though what happened was the re-inclusion of the principles contained in Law Number 14 of 1970 without being accompanied by a broader explanation and affirmation, there was no explanation and affirmation at all, so if you wanted to find and know the meaning and purpose of that principle, you had to sought in the elucidation of Law Number 14 of 1970. There is no additional explanation and affirmation of the elucidation formula contained in that law. If so, if you want to understand the meaning and purpose of simple, fast and low cost judicial principles, you must refer to the explanation of Law No. 14/1970.[11]

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[9]M. Yahya Harahap, Position of Authority and Procedures for Religious Courts Law No.7 of 1989 (Cet.I; Jakarta: Sinar Grafika, 2001), p. 69.

[10]M. Yahya Harahap, Position of Authority and Procedures for the Religious Courts Law No.7 of 1989, p. 70.

[11]M. Yahya Harahap, Position of Authority and Procedures for the Religious Courts Law No.7 of 1989, p. 70.

The meaning and purpose of this principle does not merely emphasize the elements of speed and low cost. Nor is it aimed at getting judges to examine and decide divorce cases within an hour or two. However, what he aspires to be is an examination process that does not take a relatively long time to years, in accordance with the simplicity of the procedural law itself. If a judge or court is deliberately stalling for time with irrational reasons, then the judge is immoral and unprofessional and has violated the principles of simple, fast and low cost court.[12]

E. THE PRINCIPLE OF AN OPEN TRIAL TO THE PUBLIC

The principle of being open to the public is regulated in Article 59 paragraphs 1, 2, 3 of Law Number 7 of 1989 concerning Religious Courts and Article 19 paragraphs 1 and 2 of Law Number 4 of 2004 concerning Judicial Powers. The law requires that the proceedings be known not only to the parties in law but also to the public (general). This principle aims to ensure that the trial runs fairly, to avoid arbitrary or deviant examinations and so that the trial process becomes a medium for education and representation, and information for the general public.[13]

In principle, all court hearings are open to the public, unless the law stipulates otherwise or if the judge, for important reasons recorded in the trial minutes, orders that the examination in whole or in part will be carried out with a specialist derogat lex generalis. . This situation is regulated in Article 82 paragraph 2 of Law Number 7 of 1989 jo. Article 33 Government Regulation Number 9 of 1975. This article overrides the general principles stipulated in Article 59 of Law Number 7 of 1989 jo.

[12]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 71-72.

[13]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 42.

Article 19 paragraph 1 of Law Number 24 Year 2004 "Court hearings are open to the public, unless the law stipulates otherwise," and paragraph 2 "Failure to fulfill the provisions as intended in paragraph 1 results in the verdict being null and void by law.[14]

This provision of an open trial to the public is exempted in divorce cases. This is regulated in Article 80 paragraph 2 of Law Number 7 of 1989 jo. Article 33 and Article 21 Government Regulation No. 9 of 1975, which states that the examination of divorce suits is carried out in closed sessions, but in Article 81 it is stated that court envoys regarding divorce claims are pronounced in open sessions to the public. There are 2 (two) important things that need to be stated in a divorce case conducted in a closed session, namely (1) this provision is interactive because this rule has the value of public order, therefore if a divorce trial is conducted in an open court, the result will be an examination. null and void; (2) the decision will still be pronounced in an open court. Closed trial examination in divorce cases only reaches during the examination process, does not include pronouncing the verdict. Because according to Article 20 of Law No. 4 of 2004, that all court decisions are only valid and have legal force if they are pronounced in an open court to the public.[15]

F. PRINCIPLE OF LEGALITY

The legality principle regulated in Article 58 paragraph 1 of Law Number 7 of 1989 is exactly the same as Article 5 paragraph 1 of Law Number 14 of 1970 jo. Law Number 4 of 2004, namely the court shall judge according to the law without discriminating against people. In this way, the legality principle contained in the

[14]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 42.
[15]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 42.

formulation of the article is at the same time coinciding with the affirmation of human rights with regard to the equal rights and degrees of everyone who litigates before the court. The principle of legality itself is essentially a form of human rights, namely human rights relating to legal protection rights, so that in that article two types of human rights are combined, namely the right to legal protection and the right to equality of law.[16]

In principle, the principle of legality is the same as the definition of the rule of law. Courts to judge according to law have the same meaning as courts to judge based on the rule of law, namely a court that functions and has the authority to enforce the law through a court body, must be grounded and based on law. Judges who function and have the authority to move the running of the judicial mechanism through the court body, by not acting outside the law. All actions taken in an effort to carry out the functions and authorities of the judiciary must be in accordance with the law. Starting from the act of summoning the parties to the case, confiscation, examination at court, decisions that are passed, and execution of decisions, all must comply and be based on law. Not according to the taste and will of the judge, but must be according to the will and will of the law. Law is above everything, namely the law that holds supremacy and domination. Judges and anyone else, all must submit to the rule of law and domination.[17]

[16]M. Yahya Harahap, Position of Authority and Procedures for the Religious Courts Law No.7 of 1989, p. 82.

[17]M. Yahya Harahap, Position of Authority and Procedures for the Religious Courts Law No.7 of 1989, p. 82-83.

G. PRINCIPLE OF EQUALITY

The principle of equality or commonly called the principle of equlity means equal rights. If the principle of equality is related to the function of the judiciary, it means that everyone who comes before the court hears the same rights and position. In other words, equal rights and position before the law. The opposite of the principle of equal rights and standing before the court or law is discrimination, namely differentiating the rights and positions of people before the court.[18]

Strictly speaking, the principle of equality of rights and position before the law is that judges must not differentiate between the rights and positions of people before a court session. Judges may not differentiate service treatment based on social status, race, religion, ethnicity, gender and culture. The principle of equality is regulated in Article 5 paragraph 1 of Law Number 4 of 2004 and 58 paragraph 1 of Law Number 7 of 1989, namely that the judiciary shall judge according to law without discriminating against people. The implementation of the principle of equality in court proceedings is as follows;

a. *Equal before the law,* namely equality of rights and degrees in court hearings.
b. *Equal protection on the law,* that is, equal protection rights by law.
c. *Equal justice under the law,* that is, get the right of equal treatment by law.[19]

H. ACTIVE PRINCIPLE GIVES HELP

This principle is stated in Article 58 paragraph 2 of Law Number 7 of 1989 jo. Article 5, paragraph 2 of Law No. 14 of 1970, namely the courts assist justice seekers

[18] [18]M. Yahya Harahap, Position of Authority and Procedures for the Religious Courts Law No.7 of 1989, p. 83.
[19]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 44.

and try their utmost to overcome all obstacles and obstacles to achieve a simple, fast and low cost trial. Furthermore, in the process of case examination in court the judge acts as head of the trial. Therefore, the judge regulates and directs the examination procedure. In addition, the judge also has the authority to determine the law applied and has the authority to decide the disputed case. Settings in HIR and Rbg. Determine the position of the judge as an active leader, namely, among others, conducting direct trial examinations and processing oral minutes. Direct trial examination means that between the parties and the judge there is a live direct relationship, from the beginning to the end of the trial. The judge faced and heard and recorded all the statements and answers submitted by the parties and witnesses. The judge himself poses questions and checks in the trial. Likewise, if an oral trial process is required, basically the case examination in a court session between the parties takes place by verbal question and answer. However, it is possible to replace it with a written answer. The judge himself poses questions and checks in the trial. Likewise, if an oral trial process is required, basically the case examination in a court session between the parties takes place by verbal question and answer. However, it is possible to replace it with a written answer. The judge himself poses questions and checks in the trial. Likewise, if an oral trial process is required, basically the case examination in a court session between the parties takes place by verbal question and answer. However, it is possible to replace it with a written answer.[20]

The provisions of Article 58 paragraph 2 of Law Number 7 of 1989 jo. Article 5 of Law No. 14 of 1970 is a guideline for judges in carrying out their function of providing legal assistance. However, the provisions of this article only emphasize the

[20]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 78-79.

subject, namely "seekers of justice." There is an opinion which states that the words of the justice seeker carry the connotation of the plaintiff. When viewed from the point of view of the wording of civil law, it is the plaintiff and the defendant who are litigating before the court session and are both seeking justice. Therefore, the opinion stating that the seeker for justice is only the plaintiff is not correct. Based on this description, the words of the justice seekers include the plaintiffs and defendants.[21]

The activeness of judges in providing assistance is limited to formal legal issues, not related to material law or the subject matter of the case. The formal legal issues in question are limited to the following:

1. Help make a lawsuit or petition for letters. This is regulated in Article 120 HIR / Article 144 paragraph 1 Rbg., That is, if the plaintiff cannot submit his lawsuit verbally to the chairman of the court who made notes or ordered to make a record of the lawsuit.
2. Provide directions for the procedure for "prodeo" permits (Articles 144 and 145HIR).
3. Providing advice on the validity of the power of attorney (Article 123 paragraph 3 HIR / Article 147 Rbg. Jo. SEMA RI No.01 / 1971 dated 23 January which contains:
    a. It must be in writing (can be an underhand deed made by the power of attorney and the recipient of the power of attorney, it can be a deed made by a legalized court clerk or a judge.
    b. Must confirm about the disputed, including the type and object of the dispute.

[21]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 79.

c. Specifies the limits for actions taken by the authorized person.

4. Suggest revision of a lawsuit or application, in this case it is usually about an unclear lawsuit (obscure libel / disqualification inpersona).
5. Provide an explanation of valid evidence, both formally material (Article 145 HIR / Article 172 Rbg.) And regarding at least valid evidence (Article 146 HIR / Article 174 RBg.).
6. Provide an explanation of how to submit rebuttals and answers, both relating to exceptions (Article 146 HIR / Article 162 RBg.).
7. Help call witnesses formally. In principle, in a civil case a witness is inherent in himself, but sometimes the parties cannot bring a witness to trial, the court has the authority to formally summon the witnesses, and if two consecutive summons the witness does not want to come, then the witness is presented in person. forced by the police to fulfill their obligations (Article 139 paragraph 1 and Article 141 paragraph 2 HIR / Article 165 and 167 paragraph 2 RBg.).[22]

[22]HMFauzan, Principles of Civil Procedure Law on Religious Courts and Sharia Courts in Indonesia (Cet.V; Jakarta: Kencana Prenadamedia, 2014), p. 13-14.

CHAPTER 3

SUGGESTIONS AND APPLICATIONS

A. SUGGESTIONS AND APPLICATIONS

In civil procedural law, there are basically two kinds of cases being examined, namely; 1) voluntary case, and 2) contentio case. Volunteer cases are usually filed in the form of a petition. In the petition case there are no disputes, so this voluntary case is ex parte (without an opposing party). For example, if all the heirs of an heir jointly go to court to obtain a determination regarding their respective share of the inheritance of the heir based on Article 263 HIR, then in this case the judge is merely a state administrator. This judge issues a ruling or what is commonly known as a declaratoir decision, a decision which has the character of making or just explaining. The judge in this case does not decide a conflict (dispute) as in a lawsuit.[1]

Contentiosa cases are disputed, so that the parties face each other or are opposite. What was filed in the contentio case was a lawsuit. A claim is that there are people or more who feel that their rights or their rights are being violated, but people who are deemed to have violated their rights or their rights, do not voluntarily do something that is requested. To determine who is right or entitled, a judge's decision is required. The judge actually functions as a judge who hears and decides which of the parties is right and who is wrong.[2]

[1]Bambang Sugeng and Sujayadi, Introduction to Civil Procedural Law and Examples of Letigation Documents (Cet.III; Jakarta: Kencana Prenada Media, 2015), p. 17.

[2]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 18.

A lawsuit is a claim of rights filed by the plaintiff to the defendant through the court. A lawsuit is a letter submitted by the plaintiff to the authorized head of the court, which contains a claim for rights which contains a dispute and at the same time forms the basis for the examination of the case. Another case with a petition in which it contains a claim for civil rights by the party with an interest in something that does not contain a dispute, before the competent judiciary. That way, lawsuit and petition in principle must be made in writing by the applicant or applicant or his attorney.[3]

Within the Religious Courts, in marriage cases, although the mention of "petition" does not always mean voluntary. For example, applications for divorce for divorce and permission for polygamy, although using the terms petition, are considered contentious cases. The husband is the applicant, while the wife is the respondent.[4] Understanding as voluntary or as contentio must see the context.

In relation to the number of cases in force within the Religious Courts, for lawsuit cases are coded "Pdt. G, "while the petition case was coded" Pdt. P. " For example, number: ..... Pdt. G / 20 ..... / PA ..... for litigation cases and number: ..... Pdt. P / 20 ..... / PA ..... for petition cases.[5]

The process of examining voluntary cases is different from those of contentio cases, namely:

[3]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia (Cet. III; Jakarta: Kencana Prenada Media, 2008), p. 122.

[4]Mardani, Civil Procedure Law of the Religious Courts and the Constitutional Court (Cet. I; Jakarta: Sinar Grafika, 2009), p. 81.

[5]Mardani, Civil Procedure Law of the Religious Courts and the Constitutional Court, h. 81

1. The examination process is one-sided (ex-parte), simple, namely only listening to the statement of the applicant or his attorney in connection with his application, examining evidence of letters or witnesses submitted by the applicant, and there are no replication, duplication and conclusion stages.
2. During the examination there was no argument from the other party.
3. All principles of trial are not applied, for example the principle of listening to all parties.[6]

B. CONTENT FORMULATION OF LAWS AND APPLICATIONS

Written lawsuit is regulated in Article 118 HIR and Article 142 paragraph 1 Rbg. In these two articles it is determined that a lawsuit must be filed in writing and addressed to the Chairman of the Court who is authorized to hear the case. The written claim letter must be signed by the plaintiff or the plaintiffs. If the case is transferred to the attorney, then the legal representative who signs the lawsuit is the attorney as regulated in Article 123 paragraph HIR and Article 147 paragraph 1 RBg.[7]

Thus, the things that need to be considered are; 1) Registering or submitting an application / lawsuit in writing or orally to the case registration section, namely the sub-registrar of the application; 2) to pay voorschot for court fees. The case for divorce petition, although jurisdictional voluntary, or volutair, does not reduce the

[6]Mardani, Civil Procedure Law of the Religious Courts and the Constitutional Court, h. 81.
[7]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts Environment (Cet.VI; Jakarta: Kencana Prenada Media, 2012), p. 27.

nature of the content in it. Husband as petitioner and wife as respondent. The examination is carried out in a contradictory process.[8]

The lawsuit letter must contain 3 (three) things, the details are stated as follows;

1. The identity of the parties (persona standi in yudicio), such as full name, title, alias, nickname, bin / binti, age, religion, occupation, residence, and status as a plaintiff or defendant.
2. Posita / position (legal facts or legal relationships that occur between the two parties). This posita the plaintiff filed a lawsuit, without a clear posita that could result in the lawsuit being declared unacceptable because it was obscure (obscuur libel). Therefore, making a posita in a lawsuit should be clear, concise, chronological, precise and directed.
3. Petita / petitum (fill in the claim). Petita can be an alternative, in the sense that only one lawsuit is filed and some are cumulative, namely the plaintiff submits more than one lawsuit, for example a wife filed for divorce to the Religious Court, at the same time she also filed a lawsuit regarding hadhanah (child custody)), child support costs and gonogini assets.[9]

[8]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 123.

[9]Mardani, Civil Procedure Law of the Religious Courts and the Constitutional Court, h. 82.

C. COMPLETION OF ACTIONS AND APPLICATIONS

Even if a lawsuit or application has been made, to register at the Religious Court, of course it must be equipped with other requirements. Requirements for completeness of a lawsuit or application, there are general requirements and special requirements.

1. General requirements, namely the minimum to be accepted, a case is registered in court, are as follows;
    a. A written claim or application, or in illiteracy, a lawsuit or application note.
    b. Certificate of residence / residence / domicile for the plaintiff or applicant.
    c. Vorschot case fees, except for those who are poor can bring a letter of incapacity from the lurah / village head which is validated by at least the camat.
2. The special completeness requirement is a condition that is not the same for all cases, so it depends on the type or nature of the case. Examples are as follows;
    a. For the TNI and Police who want to get married and want to divorce, they must have / attach the commander's permission.
    b. Those who want to marry more than one person (other than members of the TNI, Police and PNS) must attach;
        1. The wife's existing written consent letter.

2. A certificate regarding the husband's income, such as a list of salaries or assets that are used as a business to earn his living or income, for evidence that the husband is capable of marrying more than one wife.
3. A statement from the husband that he is able to do justice to his wife or wives and children.
4. For the purpose that if you want a divorce, namely the husband is a civil servant, then these requirements must be added with the permission of the authorities (superior).
5. Marriage cases must be attached with a Marriage Certificate, such as a divorce suit, a request for divorce by a wife by divorce, a claim for the wife's livelihood and so on.
6. Cases relating to the consequences of divorce must attach an excerpt from the divorce certificate, such as the case of a lawsuit regarding mut'ah (giving of suai to a divorced ex-wife due to the intention of divorcing her husband) and so on.
7. Those who wish to divorce must attach a divorce certificate from the kelurahan or village head respectively called the “Tra” model.
8. The claim must be accompanied by a certificate of death of the heir.[10]

[10]Roihan Rasyid, Procedure for Religious Courts (Cet. XIII; Jakarta PT. Rajagrafindo Persada, 2007), p. 70.

CHAPTER 4

REGISTRATION PROCEDURE

A. REGISTRATION OF CASES

The process of a case in court begins with the registration of the case to the competent court, either by itself or by a proxy. The lawsuit or application letter must be attached with complete requirements, except for those who are illiterate can register orally to the Religious Court through the clerk of the Religious Court.[1]

When the clerk of the Religious Court receives the file, the lawsuit or application will be examined and examined in two ways: (1) Whether the lawsuit or petition is clear, is not reversible starting from the identity of the parties, the posita section and about the petitioner, whether the posita has been directed according to the map and so on; (2) Does the case include the powers of the Religious Courts, either relative power or absolute power.[2]

The process of case administration in the Religious Courts can be briefly described as follows;

1. The plaintiff or his attorney came to the case registration department at the Religious Court, to state that he wanted to file a lawsuit. A lawsuit can be filed in the form of a written letter, orally, or with a power of attorney shown to the head of the Religious Court by bringing proof of identity, namely KTP;

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[1]Mardani, Hukum Acara Perdata Peradilan Agama dan Mahkamah Syariah (Cet.I; Jakarta: Sinar Grafika, 2009), h. 83.

[2]Roihan A. Rasyid, Hukum Acara Peradilan Agama (Cet. XIII; Jakarta: PT. Rajagrafindo, 2007), h. 77.

2. The Plaintiff is obliged to pay a down payment (voorschot) of fees or case fees (Article 121 paragraph 4 HIR);
3. The clerk of the case registration submits the lawsuit to the various cases, so that the lawsuit can be officially accepted and registered in the case register book;
4. After being registered, the lawsuit is forwarded to the head of the Religious Court and a note is given regarding the number, date of the case and the date of the trial;
5. The Chairperson of the Religious Court determines the panel of judges who will hear and determines the day of trial;
6. The presiding judge or member of the panel of judges (who will examine the case) checks the completeness of the lawsuit;
7. The clerk summoned the plaintiff and the defendant by bringing a proper court summons; and
8. All case examination processes are recorded in the trial minutes.[3]

B. APPOINTMENT OF JUDGE ASSEMBLY (PMH)

In principle, the lawsuit or application received by the Religious Court is then numbered and registered in the register book, within 3 (three) working days, it must be submitted to the head of the Religious Court for the appointment of the Panel of

[3]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki dan Gemala Dewi, Hukum Acara Perdata Peradilan Agama di Indonesia (Cet. III; Jakarta: Prenada Media Group, 2005), h. 65-66.

Judges (PMH) to examine and decide the case. . After the head of the Panel of Judges receives PMH from the head of the Religious Court, he is handed over the case files concerned. The Panel of Judges immediately studied the file, and within one week after the file was received, the Panel of Judges made a Session Day Session (PHS) to determine the day the first trial would begin. At the same time also appointed the court clerk. Then the Bailiff or Substitute Bailiff calls the litigant to appear before the trial.[4]

The PMH determination uses the special letter index code number and the contents indicate who the judge will handle the case in question, who is the presiding judge and members. Furthermore, the court clerk, if the PMH has not been appointed, can be appointed by the chairman of the panel of judges. Change or exchange court clerks for any reason, that is fine and not necessarily with a Decree, so it may be incidental, because court clerks only help to smooth the trial. Although it is not necessary with a Letter of Determination, there should be some kind of written letter that can be used by the court clerk.[5]

Likewise, one day, due to various reasons, there must be a change of judges, the original PMH must be revoked or replaced with a new PMH, if the judge appointed in PMH has never had a trial at all, or if by a change in the chairman of the panel (other than when the decision was pronounced). If there has been a hearing, or a replacement because the panel is only at the time of pronouncing a decision, PMH does not need the trial to be revoked or replaced, it is enough to just be included in

[4]Mardani, Hukum Acara Perdata Peradilan Agama dan Mahkamah Syariah, h. 83-84.
[5]Roihan A. Rasyid, Hukum Acara Peradilan Agama, h. 81.

the Minutes of the Session. It is permissible to add more judges, as long as the number is all gazal, the law only determines at least three people.[6]

C. DETERMINATION OF THE DAY OF THE CONDUCT

The Chairperson of the Assembly makes a Session Day Determination (PHS) to determine the day the first trial will begin. The designation index code number is the agenda number for the special letter. Based on the PHS, the bailiff will call the litigants to attend the trial according to the day, date, time and place designated in PHS. Determination of a trial day other than the "First trial" can only be determined and recorded in the Minutes of Session.[7]

The determination of the Session Day for the first trial is very decisive, because it must be made separately. As it is known that if the defendant has been properly summoned at the first trial, he or his legal representative does not appear, then he will be terminated. If the plaintiff has been properly summoned, he or his legal representatives do not appear before the first trial, then the case will be terminated by dismissing. The juridical basis may be “verstek” and “aborted”, in this case the PHS of the Chairman of the Assembly. However, at the first trial the defendant and the plaintiff were present, then at the following sessions the defendant did not attend, so the verdict given was no longer dismissed, but called a contradictoir decision or "op tegenspraak" decision.[8]

[6]Roihan A. Rasyid, Hukum Acara Peradilan Agama, h. 81.
[7]Roihan A. Rasyid, Hukum Acara Peradilan Agama, h. 82.
[8]Roihan A. Rasyid, Hukum Acara Peradilan Agama, h. 83.

CHAPTER 5

INVITATION PROCEDURE OF THE PARTIES

A. INVITATION PROCEDURE OF THE PARTIES

The definition of summons in Civil Procedure Law is to convey officially (officially) and properly (properly) to the parties involved in a case in court, in order to fulfill and implement the things requested and ordered by the panel of judges or court. According to Article 338 and Article 390 paragraph 1 HIR, the function of making the summons is the bailiff. Only summons made by the Bailiff are considered legal and official. The authority of the bailiff based on Article 121 paragraph 1 of the HIR is obtained through the order of the chairman (Panel of Judges) as outlined in the Determination of Session Day (PHS) or the stipulation of notification. Summons or calls (convocation, convocatie) in the narrow and everyday sense are often identified, only limited to orders to attend trial on a specified day. However,

1. First trial summons to the plaintiffs and defendants;
2. Summons to attend a follow-up session to the parties or one of the parties if the previous session was not present either without valid reasons or based on valid reasons;
3. Summons of witnesses required at the request of one of the parties based on Article 139 of the HIR (in that they are unable to present important witnesses to trial);
4. Apart from that, summons in a broader sense also includes legal actions for notification, including:

a. Notification of PTA and MA Decisions,

b. Notification of request for appeal to the appellant,

c. Notification memory appeal and counter memory appeal, and

d. Notification of request for cassation and cassation memory to the respondent.[1]

After the stage of filing a lawsuit, paying fees, registering, determining the panel regarding the trial date, the next stage is the summoning of the plaintiffs and defendants to appear before the court hearing on the specified day and hour. There are various problems and legal actions that need to be considered in the execution and application of summons, as referred to below;

1. The Assembly ordered the summons.

   After receiving the delegation of files from the head of the Religious Court, the Assembly immediately set a day for the hearing. The decision was followed by the inclusion of orders for the Registrar and Bailiff to summon both parties (plaintiff and defendant) to appear before the court at the time determined for this. Based on Article 121 paragraph 1 of the HIR, the summons includes an order that the parties also present their witnesses.

2. Who carries out the summons.

   The official authorized to carry out or make summons, refers to the provisions of Article 388, jo. Article 390 paragraph 1 HIR and Article 1 Rv:

[1]M. Yahya Harahap, Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence, and Court Decisions (Cet. XIV; Jakarta: Sinar Grafika, 2014), p. 213-214.

a. Conducted by a bailiff, according to the relative authority he has;

b. If the person who is to be summoned is outside his relative jurisdiction, the summons shall be made based on the provisions of Article 5 Rv, namely delegating the summons to a bailiff who is authorized in that jurisdiction. Summons made by a bailiff outside of their relative jurisdiction constitute a violation and exceeding the limits of authority (exeeceding its power) and result in the summoning being considered illegal (illegal) and on the grounds that the summoning was made by an authorized bailiff official (unauthorized bailiff).

3. Summon form.

Based on Article 390 paragraph 1 HIR and Article 2 paragraph 3 Rv, the summons shall be in the form of;

a. In writing,

b. Commonly called a summons or call or call minutes,

c. Summons are not justified in the verbal form (oral), because it is difficult to prove their validity. Therefore, based on Article 2 paragraph 3 Rv, an invitation made by telegram or registered mail is deemed to be an appropriate summon or notification. What about the form of electronic calling via radio, television, or computer via the internet? How is the validity of the call in the form of advertisements through print media? In terms of a narrow legal approach (strict law) and formalistic legal thinking, these forms of summons are considered contrary to law. However, based on the social change approach (social change), such forms can be accommodated. Even specifically

regarding the form of summons through print or mass media, Article 27 of Government Regulation No. 9/1975 has been justified, namely: "if the place of residence of the person summoned is not known, the summons will be made through an announcement in one or several newspapers or mass media; at least twice; the grace period between the first and second announcement is one month.

4. The contents of the first summons to the respondent.

Regarding this matter regulated in Article 121 paragraph 1 HIR and Article 1 Rv which explains, the first summons contains:

a. The name called.

b. Bring the necessary witnesses.

c. Bring all papers used.

d. The confirmation can answer the lawsuit by letter.

That way, the contents of the summons are cumulative, not an alternative. Its cumulative nature is imperative (forcing) not facultative, so that one neglects to include it, resulting in the summons being legally flawed and considered invalid. However, to avoid a judicial process that is too narrow and rigid, if one of them is not listed, it can be tolerated, provided that the negligence does not concern the name of the person summoned and the day and place of trial. If the hours are not mentioned, it is tolerable for general reasons and common sense, everyone knows the customary court hearings take place from 9 to 14 hours.

5. The valid way of summoning. (related to a person's place and condition described later)
6. The time interval between the summons and the day of the trial.

   Article 122 HIR and Article 10 Rv, regulate the distance between the summons and the hearing, as follows;

   a. The standard determines the time interval, based on the distance between the residence of the defendant and the building where the trial is held. The time interval classification can be guided by the provisions of Article 10 Rv., Namely;

      1. 8 (eight) days, if the defendant's residence is not far from the court building (where the trial is located),
      2. 14 (fourteen) days if the distance is quite far, and
      3. 20 (twenty) days, if the distance is far.

   b. The time interval for summons in an urgent situation, Article 122 HIR regulates the interval between summons and the day of trial in an urgent situation, namely;

      1. The time can be shortened,
      2. Shorten limit, not less than 3 (three) days. However, the urgency is not explained by law.

   c. In principle, the time distance for summoning people outside the country is based on a reasonable estimate. Factors that need attention;

1. The distance between the defendant's country of residence and Indonesia on one side as well as the distance between the defendant's residence and the Indonesian Consulate General, and
2. Bureaucratic factors that must be taken in conveying the call.

d. Determination of time interval, if the defendant consists of several people, in facing the case, the interval between the summons and the day of the hearing in which the defendant consists of several people is not regulated in the HIR. Therefore, it can be guided by the provisions of Article 14 Rv which are irritating;

1. May not be based on the defendant's closest residence,
2. But it must be based on where the respondent is most distant.

7. Prohibition of making summons.

HIR and RBg. does not regulate restrictions on forwarding of calls. It is as if the law does not limit the freedom of the bailiff to convey summons. If this is the case, the law allows a bailiff to convey a call on a holiday or midnight. Justifying permissibility like that, can lead to tyranny or violation of human rights. Avoiding inhumane or cruel characters, summons need to be guided by the provisions of Articles 17 and 18 Rv based on the principle of process order. That is, in order to enforce good court procedures (prosodure of good justice), the court needs to implement the prohibition on the submission of summons as regulated in Article 18 Rv, which consists of:

a. Calls or notifications may not be made before 6:00 am and may not be made after 6:00 pm.

b. Should not be delivered on Sundays.

c. Exceptions to this prohibition can only be made if;

    1. There is permission from the Chief Justice,

    2. Permission can be made at the request of the plaintiff,

    3. Permission is granted in urgent circumstances,

    4. Permission is stated on the head of the summons / notification.[2]

In relation to summons, the Religious Courts as the implementing agency for judicial power must position themselves as the real court of law in accordance with the position given by Law Number 7 of 1989. Thus the Religious Courts need to improve the quality of their apparatus so that they can carry out properly and properly the duties assigned to him. As for what must be done is to implement procedural law properly and in accordance with applicable regulations. One of the elements that must be carried out in the implementation of procedural law is to summon the parties to attend a trial determined by the Religious Court. In connection with that,[3]

The duties of a bailiff as stated in Article 103 of Law Number 7 of 1989 must be carried out properly and responsibly. The duties of a bailiff as regulated in the laws and regulations are to carry out all orders given by the Chairman of the Assembly, deliver announcements and admonitions, notify the rulings and decisions of the

[2]M. Yahya Harahap, Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence, and Court Decisions, p. 225-226.

[3]H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts Environment (Cet.VI; Jakarta: Kencana Prenada Media Group, 2012), h. 135.

religious Courts according to methods based on the provisions stipulated by law. . Bailiffs are prohibited from conveying summons and notification of decisions outside the jurisdiction of the Religious Courts that issue orders and notification of the verdict.[4]

Summons are also called "relaas." In accordance with the Civil Procedure Code, relaas is categorized as an authentic deed. Article 165 HIR and Article 285 RBg and Article 1868 BW., Referred to as authentic deed, is a deed made in front of public employees in the form determined by the applicable law. Also called willingly the call.[5]

Summons and notification of decisions are contained in Articles 122, 388, 390 HIR and Articles 146, 718 RBg., As well as Articles 26-28 of Government Regulation Number 9 of 1975 and Articles 138-140 of the Compilation of Islamic Law. The provisions of this statutory regulation state the technical summons of the parties in a case as follows;

1. In calling in a jurisdiction, there are two principles that must be considered in making a calling, namely; (1) must be carried out officially, meaning that the target or object of the summons must be appropriate in accordance with the procedure determined by the prevailing laws and regulations; (2) must meet an appropriate grace period. This means that in determining the date of the trial day, we must pay attention to the location of the distant proximity, which is determined not to be less than the day before the trial program starts and does not previously include holidays or holidays. The summons are conveyed directly to

[4]H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, h. 136.
[5]H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 136.

the persons who are litigating at their place of residence. If the case is authorized by the attorney, then the summons is conveyed to the attorney, usually addressed to the office where the attorney is practicing. What if the summons are sent directly to the parties and the parties in the case receive the summons? Based on the practice of the Religious Courts so far, such summons are invalid, because they are not delivered directly at the residence of the litigant parties as regulated in Article 390 HIR and Article 718 paragraph 1 RBg. With regard to the person summoned not found at his / her place of residence, the summons shall be conveyed through the Village or Kelurahan Head as stipulated in Article 390 HIR Article 718 paragraph 1 RBg., Government Regulation Number 9 Year 1975 and Article 138 paragraph 3 Compilation of Islamic Law. Such summons are invalid, because they are not delivered directly at the residence of the parties in the case as regulated in Article 390 HIR and Article 718 paragraph 1 RBg. With regard to the person summoned not found at his / her place of residence, the summons shall be conveyed through the Village or Kelurahan Head as stipulated in Article 390 HIR Article 718 paragraph 1 RBg., Government Regulation Number 9 Year 1975 and Article 138 paragraph 3 Compilation of Islamic Law. Such summons are invalid, because they are not delivered directly at the residence of the parties in the case as regulated in Article 390 HIR and Article 718 paragraph 1 RBg. With regard to the person summoned not found at his / her place of residence, the summons shall be conveyed through the Village or Kelurahan Head as stipulated in Article 390 HIR Article 718 paragraph 1 RBg., Government Regulation Number 9 Year 1975 and Article 138 paragraph 3 Compilation of Islamic Law.

2. Summons outside the jurisdiction, if the defendant is outside the jurisdiction of the Religious Court concerned, then the head of the Religious Court requests summoning assistance to the Religious Court where the defendant is located. The letter of application for summons is drawn up and signed by the clerk of which the contents of which request the intended Religious Court to summon the parties (usually the defendants) because they are currently in place within the jurisdiction. The letter of application for the summons must also contain definite provisions on the day of the hearing and order the parties to appear before the Religious Court requesting summoning assistance. Along with the letter of application for the summons, a copy or photocopy of the plaintiff's claim as much as one sheet is attached to be properly acknowledged by the defendant. A summons letter sent to the intended Religious Court without attaching a summons (relaas) from the Religious Courts requesting summoning assistance. The person who made and signed the summons (relaas) was the bailiff of the Religious Court who requested summoning assistance. The Religious Courts requesting assistance in summoning must consider the distance between the Religious Courts where the defendant is located. This is important considering that in order to avoid the occurrence of trials in the Religious Courts where summons have not been received by the Panel of Judges hearing the case. A Religious Court that receives a request for summons from another Religious Court is expected to immediately implement the request / request for a summons by ordering the Clerk or Bailiff to carry it out. The summoning fee is taken in two ways, namely: (1) sending it together with a letter of request for a summons to the intended Religious Court; (2) send it after the summoning is carried out by

the Religious Court implementing the summons. The amount of the fee can be seen from the summons sent by the Religious Courts that carry out the summons. (1) send it together with a letter of request for a summons to the intended Religious Court; (2) send it after the summoning is carried out by the Religious Court implementing the summons. The amount of the fee can be seen from the summons sent by the Religious Courts that carry out the summons. (1) send it together with a letter of request for a summons to the intended Religious Court; (2) send it after the summoning is carried out by the Religious Court implementing the summons. The amount of the fee can be seen from the summons sent by the Religious Courts that carry out the summons.

3. Overseas summons, if the parties in the case are abroad as mentioned in Article 28 of Government Regulation Number 9 of 1975 and Article 140 of the Compilation of Islamic Law, the summons shall be made through the Directorate General and Consular Affairs of the Ministry of Foreign Affairs. A copy of the request is submitted to the RI Representative / Indonesian Embassy in the country where the defendant resides, and also to the party summoned, attaching a lawsuit. The Religious Courts requesting summoning assistance through the Directorate General of Protocol and Consular Affairs of the Ministry of Foreign Affairs must calculate the distance to the destination country, so that the summoned party has the opportunity to prepare themselves to fulfill the summons. Do not set a trial day in a short period of time, because it will make it difficult for the summoned parties and the Panel of Judges themselves in examining the case. The ideal term is a minimum of three months and a maximum of six months. During this period, a further letter can be proposed, as a monitoring of the previous letter of request.

The letter from the Chief Justice of the Supreme Court of the Republic of Indonesia addressed to the Batam District Court Number 055/75/91/1 / UMTU / Pdt / 1991 dated May 11, 1991 stated that the application letter to summon the defendant who was abroad was sent through the Indonesian Ministry of Justice cq the Civil Directorate, then forwarded to the Directorate General of Protocol and Consular Affairs of the Ministry of Foreign Affairs, a copy of which is sent to the Indonesian Representative to the local Indonesian Ambassador by attaching a lawsuit.

4. Summons for a defendant who are invisible, in the event that the residence of the person summoned is unknown or does not have a clear residence in Indonesia, or where the defendant's residence is not known, then the summons can be carried out by observing the type of case, namely

    a. In cases related to marriage, the summons of the defendant were carried out by referring to Article 27 of Government Regulation Number 9 of 19975 and Article 139 of the Compilation of Islamic Law. Summons are carried out by announcing through one or several newspapers or other mass media as formally stipulated by the Head of the Religious Court in accordance with applicable regulations. Announcements through newspapers or mass media must be made twice with an interval of one month between the first and second announcements. The time limit between the last summons and the trial is set at least three months. In the event that the summons have been carried out as said and the defendant or his legal attorney is still absent, then the claim is accepted without the defendant's presence,

b. Cases relating to inheritance, namely summons in cases relating to inheritance are carried out through the Regent and Mayor of the Madya City within the jurisdiction of the local Religious Court. Summons are affixed to the announcement board of the Religious Court in front of the main door and also the announcement board for the Regent or Mayor as mentioned in Article 390 paragraph 3 HIR and Article 718 paragraph 3 RBg.

5. Summons of defendants in prodeo cases, the implementation of summons of parties who are litigating in prodeo cases (sue free of charge) are still carried out in ordinary cases. The summons can be carried out if the person concerned has submitted an application to the Religious Court which has the authority to examine the case both orally and in writing and the court has given permission to the person concerned to proceed on a prodeo basis. The summons were carried out by the Juru Bailiff at the full cost of the Religious Court.[6]

Sharpen the summons from practice in the Religious Courts, Law Number 7 of 1989 and Government Regulation Number 9 of 1989 in certain cases underline, as follows;

1. Summons to the petitioner (husband) and respondent (wife) in cases of divorce petition for divorce, cases of requests for husbands to have more than one wife, and summons to the plaintiff (wife) and defendant (husband) in divorce lawsuit cases, not later than the 27th day (twenty-seven) since the case has been registered at the Registrar's Office of the Religious Court, because the first trial

[6]See H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 136-144.

for these cases is no later than 30 (thirty) days before the trial, has been received by the summoned party.

2. A plaintiff or defendant in a divorce suit will be summoned to attend the hearing. The call is sent to the person concerned and if not found, the call is sent through the village head / lurah. The summons is properly made and has been received by the plaintiff or defendant or their attorney at the latest 3 (three) days before the trial is opened. The summons to the defendant are attached with a copy of the lawsuit, (a copy of the lawsuit does not need to be attached to the summons to the plaintiffs).

3. If the defendant in a divorce suit, has no explanation or place of residence or does not have a permanent place of residence, the summons shall be made by posting it on the official announcement board of the Religious Court plus an announcement through one or several newspapers or other mass media. The announcement through one or several newspapers or mass media shall be made twice with a grace period of one month between the first summons to the second summons, and between the second summons and the hearing is determined at least three months. If after that, the defendant or his legal attorney is also not present, the Religious Court may decide verstet.

4. Summons to the defendant in a divorce suit where the defendant is abroad, is made through the local Indonesian Consulate. However, as soon as possible the first trial is 6 (six) months after the case is registered.[7]

[7]See Roihan A. Rasyid, Procedure for Religious Courts, p. 85-86.

The provisions in Articles 121, 124, 125, 126, 127, 390 HIR and Articles 146, 148, 150, 151 and 718 RBg were adopted by the Religious Courts to complement the shortcomings of their Actions in the field of summons of parties. The way of calling is as follows;

1. If the first summons for the first trial to the plaintiff or the applicant has been properly made but he or his legal representative is not present, then before the case is terminated by dismissal, he can be summoned a second time.
2. If the first summons for the first trial to the defendant or the applicant (in a contingent case) have been properly carried out, he or his legal attorney is not present, then beforehand the case is terminated by verstek, he can be summoned a second time.
3. If the defendant or defendant is more than one person, while at the first summons for the first trial, some are present and some are not present, the trial must be postponed.
4. Summons to the defendant or respondent who are abroad are made through the local RI Representative, provided that:
    a. For cases of divorce petition for divorce, cases for applications for more than one wife and cases for divorce, the earliest trial is six months after the case is registered at the Registrar's Office of the Religious Court;
    b. For cases other than that, taking into account the summons have been received at the latest and taking into account the time to be summoned comes before the Religious Court concerned.

5. The defendant or the defendant who has been properly summoned for the first trial, he or his legal attorney is not present but he submits an exception (resistance), both relative and absolute exceptions, the Religious Court is obliged to judge the exception beforehand. If the exception is groundless, the Religious Court before deciding on verstek, can still make a second summons.

6. If the residence of the defendant or respondent is not known, while the case is not about a divorce suit, then the summons to the unknown place of residence shall be made by posting the announcement of the Religious Court, with a grace period of 30 days between the summons and the hearing.

7. If the party being summoned has passed away, the summons are conveyed to the heirs, but if the heirs are not known, it is conveyed to the Village Head / Lurah where the deceased last lived.[8]

B. PROTOCOLER OF THE TRIAL AND THE MINUTES OF THE TRIAL

1. Trial Protocol

Trial Protocol is a series of activities in regulating trial order starting before the trial begins until the completion of the trial is carried out by the Panel of Judges. The trial protocol before the trial is carried out by an officer who is specially appointed to carry out these tasks, such as preparing trial equipment, writing the trial schedule for the announcement board that has been provided in accordance with the sequence

[8]Roihan A. Rasyid, Procedure for Religious Courts, p. 87-89.

of case registrations, calling the parties and witnesses to enter the courtroom and so on. . Meanwhile, the trial protocol during the trial was carried out by the Panel of Judges themselves.[9]

In principle, the Religious Court shall meet with three judges who are a panel consisting of a Chief Judge of the Panel and two members as member judges as stated in Article 15 of Law Number 14 Year 1970 concerning Basic Provisions of Judicial Power. The composition of the Panel of Judges is determined by the senior judge who sits to the right of the Chairman of the Panel, while the junior member judge sits on the left of the Chief Justice. The duties of members of the Panel of Judges other than those stipulated by the prevailing laws and regulations, are also assigned tasks in connection with the implementation of the trial, namely senior members of the Panel of Judges are assigned the task of recording all matters and events for the purposes of drafting decisions. while junior member judges are assigned the task of recording all matters and events for the preparation of Trial Minutes (BAP). In the next preparation, the panel of judges in the trial of the Religious Court wore a black robe and cap for male judges, while for female judges also wore a black toga and a head scarf, while the clerks attending the trial wore black suits, for female clerks wore black suits and hijab.[10]

If the Chairperson of the Religious Court has determined the composition of the Panel of Judges, then one of them is absent, then another judge can be replaced by the appointment of the Head of the Religious Court without making a new PMH, the matter of changing the members of the Panel of Judges is recorded in the Trial

[9]H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, h. 144-145.
[10]H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, h. 145.

Minutes. If the Chairperson of the Panel of Judges is absent, the Chairperson of the Religious Court must make a new PMH with the consideration that the Chairperson of the Panel of Judges cannot continue the trial because there are permanent obstacles that take a long time, for example going to Hajj, attending education and training or other official needs. If the Chief Judge is not permanently absent, suddenly for some reason he cannot attend the trial while the time for the trial has been determined, then a senior member of the Panel of Judges shall hold a hearing with the task of only postponing the trial at another time. If all the Panel of Judges are unable to attend the hearing, the clerk of the court will write on the notice board of the Religious Court regarding the postponement and will be summoned again at a later stipulated time, or expected to be present on the specified date without being recalled.[11]

If the Panel of Judges is ready to enter the courtroom to carry out the trial, the protocol officer will first notify the audience in the courtroom with the words "trial of the Religious Court ……. On the day ……. The date …… .. is about to begin, the Panel of Judges enters the courtroom, begged to stand up. " After the panel of judges entered the courtroom, and sat in accordance with the predetermined position, the court clerk (substitute clerk) sat on the right side of the chairman of the panel slightly behind, the court protocol officer notified him again to sit down again. Furthermore, after the Panel of Judges read the prayer, then opened the trial with the words "today …… date ……. Coinciding with the date …… .. H., Religious Court ……. Those who examined our civil cases stated that they were opened and open to the public. Before that, let us read Basmalah, and was followed by the hammering three times. The hammer knock at the opening of the trial is the same as

[11]H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, h. 145-146.

the knock of the hammer when it comes to closing the trial. In contrast to hammer tapping for adjournment and suspension of trial, pronouncing verdict, warning in case of commotion in trial, in this case hammer knock for adjournment, trial and final suspension is one knock, whereas hammer knock for warning is twice.[12]

2. Trial Minutes (BAP)

Trial Minutes are an official deed (authentic) drawn up and signed by the Judge / Chairperson together with the Court Clerk, which contains information about everything that occurs in case examination at trial as contained in Articles 186, 187 HIR, Article 97 of Law Law Number 7 of 1989. BAP authentication includes all contents, all existing determinations, all existing dates and days, all recorded events, as well as all orders recorded therein. The court hearings are a source or basis for making legal considerations and drafting decisions. Considerations and decisions must be in line with the BAP. If it is not consistent, then it can be used as an excuse to cancel the decision at the appeal or cassation level hearing.[13]

Trial Minutes (BAP) are prepared by containing matters and according to the following conditions;

a. The place and time of the trial, as well as the trial court

- Written in the BAP (place and time of trial).
- The level of the court that hears (first, appeal).
- On-site examination (outside the Court Office) is written in full in the BAP, where the trial takes place.

[12]H. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, h. 146-147.
[13]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 99.

b. Position of the parties

- As a plaintiff, defendant, petitioner, respondent, resistance, defendant, also defendant and so on.
- Written in accordance with the position, with complete identity.
- In a follow-up hearing, it is sufficient to write the names and positions of the parties.

c. Composition of the Assembly

- Written complete with the PP (name of judge and clerk and position in the panel).
- In a follow-up session, it is sufficient for the composition of the panel to be written as "the same as in the past," unless there is a change in members / court clerks.

d. The presence of the parties

- Hadith written or not for each party.
- Present personally or represented by a lawyer or accompanied by a proxy.
- If not present, is there a reason, and willingly the summons are read out in the trial. Which should be written in the BAP.

e. The trial is open to the public

- Written in the BAP as a formal requirement for the trial (Article 59 of Law Number 7 of 1989)
- If it is not written, it can be canceled by law.

- Judges' deliberations are confidential and are closed to the public.

f. Peace efforts (Article 130 HIR)

- Should be written so that the reconciliation by the judge, especially at the first trial before starting the examination.
- In a peace trial for divorce, husband and wife must attend in person (Article 82 of Law Number 7 of 1989)
- If a party is abroad, it must be represented by a proxy specifically empowered for this.
- If both parties are abroad, the plaintiff must personally attend the peace session.
- As long as it has not been decided, peace efforts can continue.
- Can be asked for help from other people / agencies deemed necessary.
- In voluntary cases there is no peaceful effort.

g. Read the lawsuit / application and examination

- It must be written in the BAP that the Judge / Chairperson of the suit, may be read by the plaintiff / petitioner himself or his proxy (Article 131 HIR)
- The examination is recorded in the form of question and answer, unless it is done in writing then it is included in the BAP.
- Question and answer is not indexical and the meaning must be clear so that it does not need to be interpreted by the judge.
- Recorded exactly what they say and what they mean.

- Note important matters that are relevant to the case in question.
- The attitudes and behavior of the parties that are important and relevant to the case (such as silence, not answering, angry, sad, crying and so on) are recorded in the BAP. Likewise for witnesses.

h. Closed to the public

- In cases of divorce and marriage annulment, the trial is closed to the public (Article 68 paragraph 2 and 80 paragraph 2 of Law Number 7 of 1989).
- The closed session statement must be written in the BAP, then the examination begins with reconciliation efforts.
- If unsuccessful, the examination is continued with reading the lawsuit or petition.

i. Postponement of trial (Articles 126, 159 HIR)

- The adjournment was pronounced in a trial open to the public.
- If the trial was closed at first, the trial must first be declared open to the public, then the Chair will announce the postponement of the trial.
- The postponement of the trial must be clear for what / what reason, when the trial will be continued accompanied by an order for the parties to attend the next trial.
- It is better not to delay reading the verdict, but to study the case file and something that will be determined later, or for the Assembly's deliberations. If a follow-up trial cannot be determined, the trial will be postponed for a later date.

j. Examination / response of the parties

- Describe clearly the stages of examination in a trial:

  1. Read the lawsuit
  2. Defendant's answer
  3. Replik
  4. Duplicate
  5. Proof
  6. Conclusions from the parties
  7. Judge's decision (reading of the decision)

- Here, it is described in detail how the judge conducts the constitution.

k. Evidence documents are examined according to Article 137-138 HIR

- Proof of evidence must be sealed by postal officials (Law Number 13 of 1985)
- Legalized by the committee (i.e. in the form of a copy / photocopy).
- The contents were read at trial and matched with the original.
- Given a code and proof number by the Chairperson of the trial.
- The opposing party has the right to evaluate or respond to the evidence.
- Whether there is a response written in the BAP.
- Assessment of documentary evidence is carried out by the judge according to Articles 165, 167 HIR.

l. Examination of witness and oath evidence

- Witnesses were summoned in one by one (the same was true for expert witnesses).
- The full identity of the witness is written.
- Note whether there is a family relationship or marriage or work relationship of the parties.
- It is recorded whether the witness is sworn in or not, if the oath is written down the sound of the oath according to his religious procedure.
- Record all information (questions and answers with witnesses)
- The parties' responses to witness testimony were also recorded.
- Proof of oath (supletoir, decition, or li'an) is written in full, who orders or asks as well as the sound of the oath.

m. Deliberation and reading of the Judge's decision

- The verdict was pronounced in a session open to the public (Article 60 of Law Number 7 of 1989).
- There is a Judge deliberation written in the BAP.
- Because the Judges deliberation is confidential, the opinion of each Judge may not be written in the BAP (Article 161 HIR).
- Judges' deliberations should not be attended by the clerk.
- If there is a judge who has a different opinion and does not agree with the contents of the verdict, then this is recorded in a special book held by the Chairman of the Court for examination purposes.

- If the trial was closed at first, it must be declared open to the public and then the Chair will pronounce the verdict.

n. The verdict in the BAP

- Written in full the same as the verdict in the decision letter that has been made by the judge

o. Scope consistency

- The BAP is written in a question and answer form.
- Consistency with the scope of the case.

p. BAP neatness

- Typed clearly, neatly and in a question and answer form.
- The left side of the question and the right part of the answer.
- Type on HVS paper, in one page a maximum of 30 lines and in one line a maximum of 15 words.
- Made into groups (e.g. lawsuit, answers, replicas, duplicates, plaintiff's evidence, defendant's evidence, plaintiff's conclusions, defendant's conclusions, also given confirmation of a question: to the plaintiff, to the respondent, to the plaintiff's witnesses, to the defendant's witnesses , etc).
- Typical errors in the BAP must be corrected by renvoi.
- Is given a page number on a unit basis at each trial.
- If the trial is conducted in writing, then:

1. The clerk can copy all material answers, replicates and duplicates into the BAP or
2. Inserting the response letter, the copy and the duplicate into the BAP in its entirety (without being copied) by crossing out the sentence on the letterhead and the end of the letter which is not the subject of the answer, is a replica and a duplicate.

q. Signing of BAP (minutering)

- By the Chairperson and the Clerk of the trial (Article 23 paragraph 3 Law Number 14 Year 1970, Article 186 paragraph 2 HIR).
- BAP is made by the Registrar (Article 97 of Law Number 7 of 1989, 186 HIR).
- The chairman of the trial is responsible for the accuracy of the BAP.
- If the Chair is unable to sign the BAP, it will be carried out by a member participating in the examination whose position level is directly below the Chairman (Article 187 paragraph 1 HIR)
- If the Registrar is unable to sign, then this is explained in the BAP (Article 187 paragraph 2 HIR).
- The BAP must have been signed before the next trial, or one week after the trial.

r. BAP Pledge of Divorce

- Made the same as regular BAP.

- Written whether the parties were present or not.
- If not present, the Chairperson should record the readings voluntarily.
- Note the state of the wife when the talak vow was pronounced (menstruation, holiness, pregnancy, monopause, qabladdukhul, never had menstruation, and others.
- Written by the editorial pledge of divorce.
- Written the warning for the determination of the judge (Article 71 paragraph 2 of Law Number 7 of 1989).
- The divorce vow testimony hearing is open to the public.[14]

[14]See Mardani, Civil Procedure Code of Religious Courts and Sharia Courts, p. 99-104.

CHAPTER 6

EXAMINATION OF PROCEDURES IN THE TRIAL

A. GENERAL REVIEW OF THE EXAMINATION

After the plaintiff has filed his suit in the register at the court clerk and has paid the court fee, he then waits for notification of the first trial day. The lawsuit will not be registered if the court fee has not been paid. Then after the lawsuit is registered and distributed with a letter of appointment by the Chairman of the Court to the judge who will examine it, the judge concerned with the decision letter determines the day of the trial of the case and at the same time orders to summon both parties to appear before the Court on the determined trial day by bringing the witnesses and evidence required.[1]

Case examination in court is carried out by a team of judges in the form of a panel. The panel of judges consists of three judges, one acting as the presiding judge, and the other as member judges (Article 15 of Law Number 14 of 1970, as amended in Article 17 paragraph 1 of Law Number 4 of 2004). The trial of the panel of judges examining the case is assisted by a clerk or a person assigned to do the registrar, which is commonly called a substitute clerk (Article 16 of Law Number 14 of 1970, as amended in Article 17 paragraph 3 of Law Number 4 of 2004) . The clerk or substitute clerk is assigned to attend all hearings and deliberations of the panel of judges and to record carefully all matters discussed in the trial.[2]

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[1]Bambang Sugeng and Sujayadi, Introduction to Civil Procedural Law and Examples of Letigation Documents (Cet.III; Jakarta: Kencana Prenada Media, 2015), p. 41.

[2]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 41.

It has been argued that the trial is open to the public. In such a case the chairman can state that the investigation of the case is carried out in closed doors. What is closed is only through examination, while the verdict must be pronounced in an open court to the public. According to the provisions of Article 17 of Law No. 14/1970, case examination sessions are open to the public, unless the law stipulates otherwise. So done with closed doors, these are things that have been regulated by law. Thus, there are two reasons for a matter to be examined in closed doors, namely:

1. The reasons stated in the law, meaning that the law has stipulated cases that must be examined in closed doors, for example in divorce cases (Article 33 of Government Regulation Number 9 of 1975).
2. The reason is based on the judge's consideration, if the case examination is not carried out in private, the party concerned will feel ashamed to reveal the real facts in public, for example in cases concerning matters of decency.[3]

It is emphasized that if no peace is achieved in a divorce case, the lawsuit will be examined in a closed session. Elucidation of Article 33 33 of Government Regulation Number 9 of 1975, closed examination in divorce cases includes all investigations, including examination of witnesses. Provisions for divorce cases carried out in closed sessions are an exception to the general principle stipulated in Article 17 of Law Number 14 of 1970 jo. Article 59 paragraph 1 of Law Number 7 Year 1989. According to the general principle, all examination of a case must be

[3]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 43-44.

carried out in a trial hearing which is open to the public, however this principle may not be applied if the law stipulates otherwise. Since Article 68 paragraph 2 of Law Number 7 of 1989 stipulates otherwise, specifically in divorce case examinations, must be done in a closed session. If the examination is violated and the decision is canceled, a re-examination must be held in a closed session. Apart from that, one thing that must be remembered is the provisions of Article 18 of Law Number 14 Year 1970 jo. Article 81 of Law Number 7 of 1989 and Article 146 paragraph 1 of the KHI, which confirms that even if the examination is carried out in a closed session, the decision must be pronounced in a session open to the public.[4]

B. THE PROCESS OF THE FIRST TRIAL

The first trial for the court has a very important and decisive meaning in several things, for example as follows;

1. If the defendant or the defendant (in the contentiosa case) has been properly summoned, he and his legal attorney do not appear before the first trial, he will be terminated verstek.

2. If the plaintiff or applicant has been properly summoned, he and his legal representative do not appear before the first trial, he will be terminated by dropping his case.

3. Relative objections (exceptions) may only be submitted at the first trial. If it is submitted after that time, it will not be given more attention.

[4]M. Yahya Harahap, Position of Authority and Procedures for Religious Courts Law no. 7 of 1989 (Cet.I; Jakarta: Sinar Grafika, 2001), p. 222-223.

4. A counterclaim (reconventie) may only be filed at the first trial.[5]

Therefore, the first trial must be clear about what it means or what it means, so that there is no mistake, for example in 4 (four) things mentioned above. The first session is a trial that is appointed or determined according to what is stated in the Stipulation of the Day of Session (PHS) which is determined by the Chair of the Assembly, or it can also be interpreted as a trial which will begin the first time according to a summons sent to the plaintiffs and defendants. That way, according to the provisions of Article 127 HIR that if the defendant is present and there are others who are not at the first summons, the trial must be postponed to another time. Supreme Court Circular (SEMA) Number 9 of 1964 concerning Verstek Decisions. The words "ten dage dienende" in Article 125 HIR do not only mean "the day of the first trial according to summons" but can also mean "ten dage datzaak dient" or "the day of the first trial according to the fact." So being absent from the hearing according to the second summons still includes the definition of "the first trial."[6]

Understanding in the fact that the plaintiff is not present at the trial, it is still given leeway or opportunity to be summoned once again, but if it turns out that after the second summons he is also not present at the trial, while the defendant is always present, then the plaintiff's lawsuit will be declared invalid and punished to pay court fee. Likewise, if the defendant does not appear at trial 2 (two) times consecutively after being summoned properly and does not represent his legal representative, the judge will give a verstek decision (a decision outside the presence

[5]Roihan A. Rasyid, Procedure for Religious Courts (Cet.XIII; Jakarta: PT. RajaGrafindo Persada, 2007), p. 93.

[6]Roihan A. Rasyid, Procedure for Religious Courts (Cet.XIII; Jakarta: PT. RajaGrafindo Persada, 2007), p. 93.

of the defendant), unless the lawsuit filed by the plaintiff is against rights or groundless. In a verdict if the lawsuit is granted, then the decision is notified to the defendant and it is explained that the defendant has the right to file a verzet against the verstek decision to the judge examining the case as mentioned in Article 125 paragraph 1 and 3, Article 128 paragraph 1 and Article 129 HIR jo. Article 149 and Article 152 paragraph 1 RBg.[7]

C. ADMINISTRATION FOR PEACE OF THE PARTIES TO RIDE

Judges in examining civil cases submitted by the plaintiff to the defendant must first seek a way of reconciliation as stated in:

1. Article 130 HIR stipulates that:
   (1) If on that appointed day, both parties arrive, the court with the help of the chairman tries to reconcile the two parties.
   (2) If such peace can be achieved, then during the session a letter or deed can be drawn up concerning it in which both parties are punished for keeping the agreement made, which letter will be effective and carried out as an ordinary decision.
   (3) Such a decision is not permitted to be compared.

[7]In principle, resistance to verstek can be submitted within a period of 14 (fourteen) days after notification of the verstek verdict to the defendant directly. If the verstek decision is not conveyed directly to the defendant, then the resistance can be submitted until the eighth day from the warning to implement the verstek decision or if the defendant does not appear to be informed even though he has been properly summoned, then the Chairman of the Court due to his position can issue a warrant to confiscate the property of the defendant. On the other hand, if the defendant is not present at the trial given a verdict of verstek filing a resistance, it turns out that the defendant did not appear at the trial 2 (two) times in a row without valid reasons and or did not represent his legal representative, then for the second time the defendant was decided verstek and if the defendant filed a challenge (verzet) again, it would not be accepted (Article 127 and Article 129 paragraph 5 HIR and Article 153 paragraph 6 RBg). Sarwono, Civil Procedure Law, Theory and Practice (Cet.III; Jakarta: Sinar Grafika, 2012), p. 157-158.

(4) If when trying to reconcile the two parties, an interpreter is needed, then the following article rules are followed for that.

2. Article 131 HIR stipulates that:

   (1) If both parties appear, but cannot be reconciled (this must be stated in the report on the investigation), then the letter entered by the parties is read and if one of the parties does not understand the language used in the letter is translated by an interpreter appointed by the chairman. in the language of both parties.

   (2) After that, the plaintiff and defendant were heard if necessary by using an interpreter.

   (3) The interpreter, if he is not an interpreter at the district court who has been sworn in, must swear in the presence of the chairman that he will translate with sincerity and sincerity what must be translated from one language into another.

   (4) The third paragraph of Article 154 applies to interpreters.

3. Article 154 RBg stipulates that:

   (1) If on the appointed day the parties appear beforehand, the court, mediated by the chairman, tries to reconcile it.

   (2) If peace can be reached, then in that session a deed is drawn up and the parties are punished for obeying the agreement that has been made and the deed has the power and is carried out as an ordinary decree.

   (3) Against such a permanent decision cannot be appealed.

   (4) If an interpreter is required to intervene in an attempt to reconcile the parties, then the following provisions are used.

4. Article 155 RBg stipulates that:

   (1) If the parties appear beforehand, but an amicable settlement cannot be reached (this is recorded in the trial minutes), then the letters submitted by the parties are read and if one of the parties cannot understand the

language used in the letter, copied by an interpreter who has been appointed by the chairman of the session.

(2) Then, to the extent necessary, with the assistance of the interpreter, it is continued by hearing the statements of the plaintiffs and defendants.

(3) Unless the interpreter is already an official court interpreter, he is sworn in by the chairman that he is carefully copying one language into another.

(4) Article 191 paragraph 4 also applies to interpreters that the chairman is authorized for the sake of smooth examination to provide explanations to the parties and remind them of legal measures and what evidence means they can use.

5. Article 31 Rv. determined that:

"The judge in all matters and at every stage of examination, if he thinks there is a possibility to achieve peace, either at the request of the parties or one of them, or because of his position, can order them to appear before him by coming alone or represented by his lawyer or together. -same with his lawyer so that peace can be sought.

If the peace and the parties want it, then an official report is signed by the parties or by their proxies specifically appointed for that, in which minutes the agreements agreed upon by the parties are made. Minutes are made in a form that is ready to be implemented.

If peace is not achieved, the judge determines the day the case will be tried again. "

6. Article 33 Rv. determined that:

"If along the course of the examination an interpreter is needed, then by the parties or if there is a choice, an interpreter is chosen by the chairman. If the chosen person is not a person who has been appointed as an interpreter who has been sworn in before the chairman, that he is an interpreter who will carry out his duties.which is obliged to him carefully and according to his

conscience. If an interpreter is required in an act that must be carried out by a commissioner judge or by an authorized official, the authority of the chairman is transferred to the commissioner judge or that official. "[8]

Advice for peace can actually be made at any time as long as the case has not been decided, but peace advice at the beginning of the first trial is absolute or compulsory and is included in the Trial Minutes, because there is a state that states that, although it may be logical, but most of these do not occur in first trial.[9]

D. STAGES OF THE PROCEED EXAMINATION

After the case is registered at the registrar's office, the clerk conducts an examination of the completeness of the case file, that is, an examination of the form and content of the lawsuit or application has been carried out before the case is registered and it is a prerequisite for allowing the case to be registered. The clerk's investigation is accompanied by making a complete case file, then the case file and resume are submitted to the Chairman of the Court accompanied by "suggestions for action", for example, reading "sufficient conditions and ready for trial."[10]

Based on the resume and suggestion of such action, the Head of the Religious Court issues a Judge Board Appointment (PMH) which appoints the Chief Judge and Members of the Assembly who will examine the case in question, possibly at the same time appointing a court clerk. If the clerk of this trial is not yet appointed by the Chairman of the Religious Courts in PMH, later he can be appointed by the Chairman of the Council. Furthermore, the case file and the PMH determination are submitted to the appointed Chief Judge (preferably with a local expedition book as

[8]Sarwono, Civil Procedure Law, Theory and Practice, h. 159-161.
[99]Roihan A. Rasyid, Procedure for Religious Courts, p. 100.
[10]Roihan A. Rasyid, Procedure for Religious Courts, p. 133.

well) for study. Based on the PMH, the Chairperson of the Assembly issues a Session Day Stipulation which determines the day, date, and hour the first session will start.[11]

At the first trial, the plaintiff will read out his lawsuit, so that answers (duplication) between the parties will begin. In the first trial there are several important things that may occur and affect the course of the case (such as exceptions (deterrence), reconventions, interventions and so on). As previously explained, before the defendant answers, after the plaintiff has read out his claim, the judge is obliged to recommend peace. After completing the duplicates, the parties begin to examine the evidence (proof) and following the preparation of conclusions (conclusions) of each party and the conclusions are submitted to the assembly. The panel then conducts deliberation by the panel of judges and finally the decision will be pronounced in a trial open to the public.[12]

The stages or phases of examining a case before a trial can be described in an orderly and orderly manner, as follows;

1. The first trial until peace advice

   At this stage, it consists of: (1) the judge opens the trial, (2) the judge asks the identity of the parties (3) reads the lawsuit or petition, (4) peace recommendation. The things that need emphasis in the first trial include;

[11]Roihan A. Rasyid, Procedure for Religious Courts, p. 134.
[12]Roihan A. Rasyid, Procedure for Religious Courts, p. 134.

a. Even though according to HIR, the peace recommendation takes precedence over reading the lawsuit or petition, it is better if you read the lawsuit or petition instead of the peace recommendation.

b. Peace advice even if it is good to do it at any time in the trial, but peace recommendation at this stage is mandatory and absolutely needs to be included in the Trial Minutes (BAP), regardless of whether peace is achieved or not.

c. At the first trial, there are important things that may occur and greatly affect the case process, such as exceptions, reconventions and interventions, even if the defendant or defendant is not present without reason.

At the first trial, if the plaintiff or applicant and the defendant or respondent are present, there will be three possibilities;

a. The parties reconciled and the trial was not held,

b. The plaintiff or applicant is not willing to make a settlement while the respondent is currently the defendant or the respondent agrees to settle,

c. The plaintiff or the applicant is willing to reconcile but the defendant or defendant is not willing to reconcile. In this case the judge may postpone the trial and suggest that the two parties reconcile, in memory of each other's kindness.[13]

[13]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia (Cet. III; Jakarta: Kencana Prenada Media, 2008), p. 125.

If the plaintiff or applicant persists in his original wishes and refuses to settle, the trial will continue and the possibilities that will occur at the first trial are as follows;

a. The plaintiff or the applicant is present while the respondent is not present, the trial is postponed to recall the defendant or defendant.

b. The plaintiff or applicant is not present and does not send their legal attorney, it is possible that the plaintiff or applicant does not submit their application or the trial is postponed again to summon the plaintiff or applicant. If the plaintiff or applicant has been summoned once again, still being present at the trial the judge can determine that the claim is declared null and void. Or the trial will be postponed again to summon the plaintiff or applicant with the consent of the defendant or respondent. This is regulated in Article 124 HIR and Article 148 RBg. If the plaintiff or applicant wants to file a lawsuit or another petition, it is obligatory to register or file a lawsuit or new application. If the plaintiff or applicant is present and the defendant or applicant is not present,

If the plaintiff or applicant and the defendant or respondent are present in front of the trial, the panel of judges may give the defendant or respondent the opportunity to submit their answers.

2. Answer Stage

In the answer of the defendant or defendant, namely in the case of divorce and divorce, the wife defends her rights. On this occasion the respondent or his attorney can also file a counterclaim (reconvention). Answers or reconventions

can be submitted in writing or verbally (Article 121 paragraph 2 HIR and Article 145 paragraph 2 RBg jo. Article 132 paragraph 1 HIR and Article 158 RBg. If the defendant or respondent is similarly the attorney is not present at the hearing even though he sends a response letter, still deemed absent and the answer is not considered, except for the answer in the form of an exception that the court concerned is not authorized to hear the case.

In addition to reconventions and exceptions, there are several things that the defendant or defendant can raise, namely confessing unanimously, denying absolutely, confessing with a clause, referte (convoluted answers).

Regarding oral answers, it is the duty of the clerk to record it in the Proceedings of the Trial (BAP).

3. Replik Stage

Replication hearing is an opportunity given by the judge to the plaintiff or applicant to respond to the respondent's answer in accordance with his opinion, or to keep his claim or petition, repeat the lawsuit or petition, confirm and complete or add information deemed necessary to clarify his arguments in the lawsuit or his plea. Or it can also change attitudes by confirming the answer or rebuttal of the defendant or defendant.

For example, the applicant in his lawsuit or petition argues that the defendant or respondent often neglects his obligations, is unwilling to serve or likes to be rude to the plaintiff or applicant. So that the plaintiff or applicant wants to divorce, the defendant or the respondent in the reconstruction sues back so that the plaintiff or applicant is kind to his wife, providing physical and mental

support according to the ability of the plaintiff or applicant. During the reconstruction, the defendant or defendant requests that the child remain under the care and care of the plaintiff or petitioner.

4. Duplicate Stage

   The duplicate trial is an answer or response from the replica. The defendant or the defendant filed a duplicate which basically repeated and reaffirmed the answer and the lawsuit on his investigation.

   This replication and duplication (answer-answer) program can be repeated until there is a meeting point between the plaintiff or applicant and the defendant or defendant and / or the judge deems sufficient.

   If the answer-to-answer program is deemed sufficient but there are still things that have been agreed upon by the plaintiff or petitioner and the defendant or respondent so that it needs to be proven, then the event continues to the proving stage.

5. The Evidence Stage

   At this stage, either the plaintiff or applicant or defendant or respondent is given the same opportunity to present evidence in the form of witnesses, documentary evidence or other evidence which is alternately arranged by the judge.

Evidence that shows a relationship between husband and wife is the marriage certificate, other documents, confessions, and witnesses who know that the marriage occurred and then the husband and wife dispute occurred.[14]

In this way, the things that need to be emphasized in the proof are as follows;

a. Each party submits evidence, the judge needs to ask the opposing party whether he objected or not. If the witness's evidence is presented, the judge will also give the opposing party an opportunity if there is something the opposing party wants to ask the witness.

b. All evidence presented by the party must be submitted to the chairman of the panel and then the chairman of the panel shows it to the judges and the opposing party who submitted the evidence.

c. Actively looking for and presenting evidence before the trial is the party's own duty and the judge only helps when asked for help by the party, such as summoning witnesses.[15]

6. Conclusion Stage

After the evidentiary stage ends, before deliberation by the panel of judges, the parties may submit conclusions (conclusions from the hearings according to the party concerned). Because this conclusion is intended to assist the assembly, in general, conclusions are not needed for simple cases, so judges may omit them.

[14]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 125-126.

[15]Roihan A. Rasyid, Procedure for Religious Courts, p. 137.

Judges are human beings with limited memory capacity, besides there may be cases in which the judges have changed members and that is the need for a conclusion. Parties who are accustomed to litigation usually always make important notes every time a trial ends, and these will be submitted as a written conclusion.[16]

It is important to emphasize that at the conclusion stage, each party (plaintiff or petitioner and defendant and respondent) is given the same opportunity to submit a final opinion regarding the results of the examination during the trial.[17]

7. The panel of judges deliberation stage.

At the deliberation stage, the panel of judges is carried out in secret.[18]If there are 2 (two) judges who are members of the panel of judges have the same opinion, then the judge who is less voting must accept the same opinion, then the judges of each member of the judge differ from one another, then the problem can be resolved alternatively (1) the matter was brought to the Plenary Session of the Panel of Judges. (2) Due to his position, the chairman of a panel of judges can exercise his veto in resolving the case, provided that the opinion

[16]Roihan A. Rasyid, Procedure for Religious Courts, p. 137.

[17]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 127.

[18]Secret according to law, the deliberations of the panel of judges are closed to the public. All parties as well as those present were ordered to leave the courtroom. The clerk himself, his presence in the panel of judges deliberation is with the permission of the panel. It is said to be secret, meaning that, both at the time of the deliberation and afterwards, when and wherever, the results of the assembly's deliberation may not be disclosed, conveyed in a decision open to the public. The code for expelling parties and attendees from the courtroom can be seen from the statement of the chairman of the assembly, “the trial is suspended for deliberation by the panel of rights and is declared closed to the public. Audience is asked to leave the room, ”then the hammer was knocked once. The results of the deliberation decisions of the panel of judges are signed by all the judges without a court clerk and are an attachment to the Trial Minutes and this will later be poured into the decision dictum. Roihan A. Rasyid, Procedure for Religious Courts, p. 138.

of the judge who disagrees is recorded in the judge's notebook that has been provided. After that, a trial to read the verdict is scheduled. After the verdict is read out, the panel of judges will ask the parties whether they accept the verdict or not. Those who do not receive have the right to appeal.[19]

If the deliberation by the panel of judges is at the same time the closing of the trial for that time, then the sentence of the head judge at the panel will read "the trial is suspended for deliberation, the trial will be declared closed by reading the hamdalah together," then the hammer is tapped three times.[20]

8. The pronunciation stage or decision making.

The pronouncement of decisions is always carried out in open sessions to the public, although perhaps beforehand, for some reason the sessions are closed and the results are neatly conceptualized and signed by the judge and the court clerk (of course, more so if it is computer typed and printed). It is known that what is said, period or comma, if it is a word or sentence, it must not be anything other than what is spoken and written, therefore it is only possible to pronounce the decision at least with a neat concept.

After the decision was pronounced, the chief judge of the panel asked the parties, both plaintiffs and defendants, whether to accept the decision or not. For those present who have stated that they accept the decision for granted, the legal remedy for appeal is closed, on the other hand, for those who do not accept or are still thinking about it, it is still open to them. Therefore, it is better if the

[19]Mardani, Civil Procedure Law of the Religious Courts and the Constitutional Court (Cet. I; Jakarta: Sinar Grafika, 2009), p. 87.

[20]Roihan A. Rasyid, Procedure for Religious Courts, p. 138.

parties do not recklessly claim to accept the decision, it is better for the parties to just say "for the time being I will think about it first," which is used as a backup if in the future you want to file an appeal.[21]

The parties have announced the decision that has been pronounced as well as the judge's decision, the appeal has a period of 14 days (= 14 working days). Within 2 (two) weeks the defendant or respondent can file an appeal. If within 14 days of not filing an appeal, the judge's decision has permanent legal force.

Furthermore, the law provides an opportunity or grace period for the plaintiff or applicant to pronounce the pledge of divorce (if the case is a divorce divorce case) within six months. If within that time the husband as the plaintiff or the applicant does not come to make a pledge of divorce, then the lawsuit or application to pronounce the divorce pledge can be declared null and void by the judge (Article 70 paragraph 6 of Law Number 7 of 1989.[22]

[21]Roihan A. Rasyid, Procedure for Religious Courts, p. 138.

[22]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia, p. 128.

CHAPTER 7

THINGS THAT MAY HAPPEN IN THE TRIAL

A. THE PARTIES DO NOT ATTEND THE TRIAL

In a civil case, the position of the judge is as a mediator between the parties in the case, he needs to examine (listen) carefully to the disputing parties. That is why the parties in principle must all be present before the trial. Based on this principle, HIR is allowed to summon a second time (in the first trial), before he decides on verstek or is aborted. Because there may be parties who are not present with their various and circumstances or there may even be disobedient, for the sake of legal certainty, the methods for summons of trial are set in a concrete manner so that if there is a deviation from principle, the case can still be resolved.[1]

B. PLAINTIFF DOESN'T ATTEND (APPROXIMATE DOWN)

On the predetermined day of trial, the plaintiff or his legal attorney will be summoned, if the summons do not appear before him, even though he has been properly summoned, then the lawsuit will be deemed null and void (by virtue of a court decision, not a ruling). The plaintiff or applicant who is not present is referred to in the fiqh book by the term al-mudda'y al-gaib while the aborted decision is called al-qada'u al-masqut. Thus, the Religious Court before deciding, can summon the plaintiff a second time. The practice is that the Religious Courts open the trial according to the day and date in the summons, then the defendants who are present

[1]Roihan A. Rasyid, Procedure for Religious Courts (Cet.XIII; Jakarta: PT. RajaGrafindo Persada, 2007), p. 102.

are immediately told when the next trial will be and the plaintiffs are ordered to be summoned again with a summons, then the trial is closed.[2]

If it has been decided by being aborted, then according to the principle, the cost of the case that has been paid by the plaintiff, which has not been used up to that time, must be returned to the plaintiff and because the case has not been examined materially, the plaintiff may still file the case again as if filing a new case is normal. . However, if the plaintiff is more than one person (the plaintiff's subjective cumulation), some are present and some are not at the first summons, there is no stipulation. According to Roihan A. Rasyid, all plaintiffs were considered present, meaning that the case could not be dismissed again, the trial continued, there was no obligation to postpone the trial, as in some defendants were present and some were not.[3]

C. DEFENDANT DOES NOT ATTEND (VERSTEK VERDICT)

The defendant who has been properly summoned, he and his proxies do not appear before him, then the case will be decided verstek, namely the plaintiff is deemed to have won and the defendant is deemed to have lost. Therefore, before the court ruled with verstek, the court could call the defendant once again. If you also do not come to the front, you can cut off the verstek. The practice is for the Religious Courts to open a trial according to the day and date in the first summons. The plaintiffs who were present were immediately told when the next trial would be held

[2]Roihan A. Rasyid, Procedure for Religious Courts, p. 102.
[3]Roihan Rasyid, Procedure for Religious Courts, p. 103-104.

and to the defendants who were not ordered to be called again for the second time by summons, then the trial was closed.[4]

The case decided by Verstek, is considered formally and the material has been completed in full trial. So the losing defendant may no longer submit the case again (as in a case that was decided by being dropped), unless he submits a challenge which is referred to as "verzet." After using the verzet remedy, if necessary, the defendant can use the appeal remedy. Because the Religious Courts are more concerned with material truth, moreover the first summons may be incorrect or not arrived, for example delivered through the lurah or village heads forgetting and so on, the writer is more likely to keep making the second summons before deciding the verstek, be more careful. heart.[5]

D. THE ACCUSED ARE PARTICULAR AND PARTICULAR NOT ATTENDED

Defendants who consist of more than one person (the subjective cumulation of the defendants) may be partially present at the first summons and some are absent. If this happens, Article 127 of the HIR stipulates that the trial must be postponed until another time. Plaintiffs and defendants who were present were immediately notified when the next trial would be, while defendants who were not yet present were ordered to be recalled by summons.[6]

At the trial according to the second summons, regardless of whether the defendant was not all present or not or whether all were absent, the trial continued according to the normal program. The case cannot be decided verstek, because at the

[4]Roihan Rasyid, Procedure for Religious Courts, p. 105.
[5]Roihan Rasyid, Procedure for Religious Courts, p. 105.
[6]Roihan Rasyid, Procedure for Religious Courts, p. 107.

first summons there was already a defendant present. Examination of a case where the defendant is absent and takes place without the assistance of the defendant is called a "contradiktoir" or "op tegenspraak" examination. However, if the verzet decision applies (before the appeal) and the contradictory decision does not apply, it can be immediately appealed. So, in terms of the defendant's interests, the defendant has already lost a set of games.[7]

E. EXCEPTIE

Exceptie (Netherlands), Exception (UK) generally means exception. However, in the context of procedural law, it means an objection. It can also mean the defense (plea) filed by the defendant against the main material of the plaintiff's claim. However, an objection or rebuttal that is filed in the form of an exception is addressed to matters relating to the requirements or formality of the lawsuit, namely if the lawsuit that is filed contains defects or formal violations resulting in an invalid lawsuit and therefore the lawsuit cannot be accepted (inadmissible). Thus, objections submitted are in the form of exceptions, are not addressed and do not touch on rebuttals to the subject matter (verweer ten principle). Denial or objection to the subject matter of the case, submitted as a separate part following the exception.[8]

Compare this with Roihan A. Rasyid's view that the exception is a refutation or objection from the defendant who is brought to court because the defendant was sued by the plaintiff, whose purpose is so that the court does not accept the case

[7]Roihan Rasyid, Procedure for Religious Courts, p. 107.

[8]M. Yahya Harahap, Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence, and Court Decisions (Cet. XIV; Jakarta: Sinar Grafika, 2014), p. 418.

filed by the plaintiff for certain reasons. This exception institution is very formal and the Religious Courts use it because it is based on the Civil Procedure Law.[9]He added that the main objective of filing an exception is for the court to end the investigation process without further examining the subject matter of the case. The termination requested through an exception is intended for the court to issue a negative decision stating that the lawsuit is unacceptable (niet ontvankelijk) and based on this negative decision, the case examination is terminated without mentioning the settlement of the subject matter of the case.[10]

HIR only recognizes one type of exception, namely the exception regarding the inability of the court to examine the case submitted by the plaintiff. The non-power of the court may be related to its jurisdiction, for example it does not include the jurisdiction of the Parepare Religious Court but belongs to the jurisdiction of the Pinrang Religious Court. That exception is called the "relative exeptie" or "distribute exeptie." It is also possible that in connection with the type of case filed by the plaintiff, it does not include the powers of the Religious Courts, but includes the powers of the General Courts. That exception is called the "absolute exceptie" or "attribute exeptie."[11]

The filing of an exception or objection regarding the Religious Courts is not authorized to adjudicate a case because according to the relative competence the case submitted by the plaintiff falls under the jurisdiction of another Religious Court. Submission of an exception by the defendant or his attorney does not have to

[9]Roihan Rasyid, Procedure for Religious Courts, p. 109.

[10]M. Yahya Harahap, Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence, and Court Decisions, h. 418-419.

[11]Roihan Rasyid, Procedure for Religious Courts, p. 109.

attend the trial, so there will be no sanctions if the answer is submitted by the defendant or his attorney by letter (Article 125 paragraph 2 HIR jo. Article 159 RBg. If the defendant is in trial and only submits an exception to the lawsuit plaintiff by mail, then the judge after receiving the exception submission is obliged to answer the exception filed by the defendant after hearing the statement from the plaintiff and then gives a verdict on the lawsuit stating that the court is not authorized to hear the case because it is included in the jurisdiction of another religious court, unless the defendant's exception is not accepted. by the judge on the grounds that one of the objects or the plaintiff of the dispute is in his jurisdiction or on the grounds that the residence of the defendant is unclear. So if the defendant who filed an exception by letter after being summoned for the second time properly does not appear in the trial, the judge because of his position has the authority to issue a verdict. unless the defendant's submission of exception is not accepted by the judge on the grounds that one of the objects or the plaintiff of the dispute is in his jurisdiction or on the grounds that the defendant's residence is unclear. So if the defendant who filed an exception by letter after being summoned for the second time properly does not attend the trial, the judge because of his position has the authority to issue a verdict. unless the defendant's submission of exception is not accepted by the judge on the grounds that one of the objects or the plaintiff of the dispute is in his jurisdiction or on the grounds that the defendant's residence is unclear. So if the defendant who filed an exception by letter after being summoned for the second time properly does not attend the trial, the judge because of his position has the authority to issue a verdict.[12]

[12]Sarwono, Civil Procedural Law Theory and Practice (Cet. III; Jakarta: Sinar Grafika, 2012),

The Defendant in filing an exception to the court regarding the authority of the Religious Court is not authorized to try a case which is attempted at the first trial and is accompanied by an answer to the lawsuit submitted by the plaintiff. This is very important, because if it turns out that the defendant only filed an exception and was not accompanied by an answer to the lawsuit addressed to him, then legally the defendant would lose the time given by the court to provide an answer to the lawsuit addressed to him. If the submission of an exception is not accompanied by an answer to the lawsuit, then if the exception is not accepted by the judge, the time given to answer the claim has passed, so the plaintiff has no more opportunity to submit an answer to the plaintiff's claim.[13]

Absolute and relative exceptions include exceptions relating to procedural law, which in civil procedural law are called procedural exceptions, which means an attempt by the defendant with the intention that the claims filed by the plaintiff are not accepted by the judge or court. The efforts of the defendant by basing the reasons and / or arguments in accordance with the laws and regulations, the exception is outside the subject matter of the case and has nothing to do with the subject matter filed by the plaintiff, because the exception only concerns the court's authority to handle a case.[14]

In addition to procedural exceptions, there are also exceptions that directly concern the material of the case or in other words, the defendant's exception which is commonly referred to as an objection to the lawsuit filed by the plaintiff regarding

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p. 168.

[13]Sarwono, Civil Procedure Law Theory and Practice, h. 168.

[14]Sarwono, Civil Procedure Law Theory and Practice, h. 171.

the court's authority to handle a civil case according to material law, there are 2 (two) types of exceptions, namely ;

1. The expressed exception is an objection from the defendant stating that the plaintiff's claim cannot be accepted because it is not yet due.
2. Peremptoir exception is a direct objection from the defendant regarding the subject matter of the case which aims to prevent the grant of a claim submitted by the plaintiff.[15]

As it is understood that if the defendant submits an exception, both absolute and relative exceptions, even though the defendant does not appear before the first trial, the Religious Court is obliged to decide whether the exception is accepted or rejected, before the Religious Court continues the examination of the material of the case. So even if an absolute exception is filed at the first trial, it will be tried separately before the subject matter of the case is examined.[16]

F. SUBSCRIBE (RECONVENTIE)

The original lawsuit is called a lawsuit in the conventie. The defendant in the conventie (original defendant) sometimes uses at the same time in the occasion of the litigation to reclaim the original plaintiff (the plaintiff in the conventie), so that the original defendant (in the conventie) also acts as a reconventie plaintiff (counter-plaintiff). Later in the conventie case and in the reconventie case, it will be

[15]Sarwono, Civil Procedure Law Theory and Practice, h. 171-172.
[16]Roihan Rasyid, Procedure for Religious Courts, p. 111.

examined and decided at once in that case as well, maybe with only one decision or it could be in two decisions.[17]

If in a decision, it means that the decision has a dictum in the conventie and there is a dictum in the reconventie. If with two decisions, it means that the first decision is in the conventie and the second decision is in the reconventie. In one decision or two decisions, it is not a problem, the important thing is that the case is examined or tried simultaneously in one process. Furthermore, this counterclaim (reconventie) can only be found in the Civil Procedure Code of General Courts as contained in Articles 132 a and b of the HIR. However, in the General Courts it has been used since 1927, based on the analogy to Article 244-247 Reglement Rechtvordering (Rsv), namely the Civil Procedure Law that applies to European groups in Indonesia in the past.[18]

In essence, a reconventie lawsuit is a compilation, a combination or a claim which aims to save costs, simplify procedures and avoid decisions that neutralize the conventie demands. Especially for the defendant, this conventie lawsuit means saving costs, because they are not required to pay court fees. If both claims, conventie and reconventie, are granted and both contain demands for payment of a sum of money, then the defendant in the conventie does not need to first pay the plaintiff to fulfill the verdict in the conventie and then demand implementation of the verdict in the reconventie to the plaintiff, but at the same time can calculate the amount. the money that must be paid by him in the conventie decision with the

[17]Roihan Rasyid, Procedure for Religious Courts, p. 74.
[18]Roihan Rasyid, Procedure for Religious Courts, p. 74.

amount of money that must be received from the plaintiff in the reconventie decision.[19]

The conditions for allowing a reconventie lawsuit can be stated as follows;

1. File the reconventie lawsuit at the latest together with the first answer from the conventie defendant. A conventie lawsuit is the same as a conventie lawsuit, it may also be verbal for those who are illiterate.
2. If the court of first instance does not file a reconventie, then at the appeal and cassation level it is not allowed to file a reconventie suit.
3. If the plaintiff in the conventie acts for a quality while the reconventie involves the plaintiff's own person, the reconventie is not allowed.
4. The lawsuit reconventie must also be the type of case which is the power of the court in the conventie.
5. Although the lawsuit between the conventie and the reconventie does not necessarily have an interdependent relationship (samenhang), the lawsuit in the conventie and the reconventie must be about a series that is directly related. For example, if the original defendant sues the original defendant in the field of inheritance owned by the original defendant, then the original defendant states that the property was obtained through a will from the deceased to him and therefore the defendant pleads to the court so that the property under his control is determined to be his property which he obtained through will of the deceased. In this example, the reconventie

[19]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 54.

plaintiff's claim (original defendant) is not allowed, because it has been separated from the direct connection with the original plaintiff's claim.[20]

The form and content of the reconventie lawsuit is similar to the form and content of the conventie lawsuit, except that the identities of the parties must be stated, which used to be a plaintiff in the conventie and now as a defendant in the reconventie or previously as a conventie defendant and now as a reconventie plaintiff. The words "Contrary to" which separated the identities of the plaintiff and the conventie defendant were changed to "Against" in the reconventie. The identity of the conventie defendant (now the plaintiff reconventie) was written first from the conventie plaintiff (now the defendant reconventie).[21]

G. CHANGE OF SUIT

According to the provisions referred to in Article 127 B.Rv, the plaintiff may change his claim during the investigation of the case, as long as it does not change or add to "het anderwerp van den eisch eisch." In judicial practice, the definition of het anderwerp van den eisch eisch includes all of what constitutes the basis of the lawsuit. So it is permissible to change the lawsuit as long as it remains based on the legal relationship that is the basis of the original claim, and it is not justified to change the material events on which the lawsuit is based. Article 127 B. Rv, according to Star Busman, must be interpreted that changes in lawsuit are prohibited if based on the same legal situation another thing is requested to implement, or if the

[20]Roihan Rasyid, Procedure for Religious Courts, p. 75-76.
[21]Roihan Rasyid, Procedure for Religious Courts, p. 76.

plaintiff presents a new situation so that accordingly, he requests a judge's decision regarding a legal relationship other than what was originally stated.[22]

Changes in lawsuits in judicial practice often take the form of; (1) completely amended, it means that the lawsuit has been completely changed both in terms of posita and petitumm. In this regard, the decision of the Supreme Court Number 1043 K / Sip / 1971 dated December 3, 1974 only allows changes to lawsuit against things that are not in principle, it is not justified to change the lawsuit resulting in a change in posita so that the defendant feels that his right to defend himself is denied. . (2) corrected means, an amendment to the lawsuit means that certain things of the lawsuit can be corrected. For example, there is a lack of words, sentences, typos or excess words that must be corrected. (3) reduced, a reduced claim means that certain parts of the claim or claim petitum are reduced. In judicial practice, reductions in claims are often granted by judges because statutory regulations allow it. (4) plus, a claim added means that the posita or petitum portion of the claim is added. This can happen because in the posita it has been stated but in the petitum it is not stated, thus it is necessary to add it in the posita or petitum section or both.[23]

If there is a change in the claim as mentioned above, then the defendant is given the opportunity to answer whether or not the lawsuit is true or not. Changes to a lawsuit can also be carried out orally in front of a panel of judges. Amendments to the lawsuit can be justified if the defendant has not stated his answer, if the defendant has already provided his answer, then the defendant's approval is required if the lawsuit is made. Amendments are not allowed if the case examination is

[22]Abdul Mannan, Application of Civil Procedure Law in Religious Courts (Cet.VI; Jakarta: Kencana Prenada Media Group, 2012), p. 44.

[23]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 45.

almost over, where counter arguments and defenses have been put forward and both parties have requested a decision.[24]

H. DISCLAIMER

Revocation of lawsuit according to Article 271 B.Rv in the first paragraph, especially in the sentence "before an answer is given." The meaning of the sentence which states that "before the answer is given" is in principle permissible provided that the withdrawal of the claim that has been submitted by the plaintiff can be carried out before the process in court proceedings and the court has not yet made a summons to the defendant. So that the juridical withdrawal of the lawsuit does not require the consent of the defendant, because the filing of the lawsuit application letter is not known by the defendant.[25]

The withdrawal of the lawsuit according to Article 271 B.Rv in the second paragraph and Article 272 in the first paragraph is allowed provided that the withdrawal of the lawsuit must obtain the approval of the defendant or his attorney because the defendant has answered the lawsuit submitted by the plaintiff. The withdrawal of the lawsuit which was carried out when the trial was opened and attended by the parties, either the plaintiff or the defendant or the parties through their proxies and the defendant had answered the lawsuit submitted by the plaintiff, so the one who could grant the withdrawal of the lawsuit was not the judge, but the defendant. If it turns out that the parties do not want to grant the lawsuit, the cause

[24]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 45.
[25]Sarwono, Civil Procedure Law Theory and Practice, h. 74.

is because the defendant feels that based on the existing evidence the lawsuit submitted by the plaintiff will be won by the defendant,[26]

So the withdrawal of a lawsuit whose case has been opened in court, the judge in such a position cannot give a decision whether the request for withdrawal of the lawsuit is granted, because the party who has the right to answer whether or not the request for withdrawal of the lawsuit is the defendant, not the judge. So that if the defendant does not wish to grant the request to withdraw the lawsuit, the judge also cannot do much and the trial will continue until there is a final decision on who loses and who wins in a case that is being challenged by the parties.[27]

If it turns out that the request to withdraw the lawsuit was granted by the defendant, then such revocation will bring legal consequences that; (1) both parties, both the plaintiff and the defendant, are returned to the same condition as before the lawsuit. (2) the plaintiff is obliged to pay in full all costs of the trial case.

[26]Sarwono, Civil Procedure Law Theory and Practice, h. 74.
[27]Sarwono, Civil Procedure Law Theory and Practice, h. 75.

CHAPTER 8

EFFORTS TO GUARANTEE THE RIGHTS

A. THE DEFINITION AND MEANING OF CONFUSION

Efforts in the interests of the plaintiffs to guarantee their rights should their lawsuit be granted later, the law provides an effort to guarantee these rights, namely by confiscation or confiscation.[1]According to Dr. Mardani said that confiscation or confiscation is when a legal action by a judge of an exceptional nature, at the request of one party in court, to secure the object of the dispute becomes a guarantee from the possibility of being transferred, is burdened accordingly as collateral, is damaged or destroyed by the holder or the party controlling the goods, to guarantee a civil decisions can be enforced.[2]

In this way, what is meant by collateral seizure is the confiscation of collateral which is the object of the dispute, both movable and immovable property belonging to the party defeated in a court case. It was also stated that the petition for confiscation was an effort to guarantee the rights of the plaintiff or applicant if he won the case, so that a court decision recognizing all his rights could be implemented.[3] He emphasized that the definition of confiscation is to provide a guarantee that the judge's decision can be implemented.

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[1]See Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Examples of Letigation Documents (Cet. III; Jakarta, Prenadamedia, 2015), p. 75.

[2]Mardani, Civil Procedure Code of Religious Courts and Sharia Courts (Cet.I; Jakarta: Sinar Grafika, 2009), p. 124.

[3]Sarwono, Civil Procedural Law Theory and Practice (Cet. III; Jakarta: Sinar Grafika, 2012), p. 141.

In essence, the confiscation was an act of preparation to ensure that the judge's decision could be implemented. A decision in which the plaintiff has won, but when the verdict is implemented it turns out that the object in dispute is not in the hands of the defeated party, or in the case of a payment of an amount of debt, it turns out that the party who was defeated when the implementation was carried out did not have any property. again at his house, things like that are of no use to the plaintiff.[4]

Confiscation of guarantee means that in order to guarantee the implementation of a decision at a later date, the property of the defendant, whether movable or immovable during the trial process, is confiscated first or in other words that the said goods cannot be transferred, traded or otherwise transferred. to others. Not only the defendant's property that can be confiscated, but also the plaintiff's own movable property which is under the control of the defendant can be confiscated. Subsequently, the confiscation is carried out by the court clerk who is obliged to prepare an official report of the confiscation and notify the confiscator if he is present. In carrying out this work, the clerk was assisted by two witnesses who participated in signing the minutes.[5]

B. KIND OF SITA IN THE RELIGIOUS JUDICIAL ENVIRONMENT

Several types of seizure are known in the Umun Court, which are subsequently applied within the Religious Court, as follows:

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[4]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 75.

[5]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 76.

1. Confiscation of Guarantee (Conservatoir Beslaag)

   This guarantee confiscation is done to guarantee the rights of the party that is won in a case so that the lawsuit is not in vain (illusoir).[6]Regarding sita conservatoir is regulated in Article 227 jo. 197 HIR, Article 261 jo. Article 208 RBg., Which is the essence of the regulation, namely:

   a. There must be a reasoned suspicion that the defendant before the verdict was passed or implemented looking for a reason would embezzle or run away the items.

   b. The confiscated property belongs to the person who was confiscated;

   c. Applications are submitted to the Chairman of the Court examining the case in question;

   d. Applications must be submitted by written letter;

   e. Conservatoir confiscation can be carried or placed against moving and immovable objects.

      Therefore, in practice, applications for guarantee seizure are always filed together with the lawsuit contained in the lawsuit. If only later, namely after the investigation of the case has started, for example, after two or three hearings the urgency for a request for bail is felt, the application is filed with an ordinary letter addressed to the Chairman of the Court who is examining the case, and the Chief Justice will continue this letter to the Judge or the Panel of Judges examines the case.[7]

2. Revindication Sita (Revindicatoir Beslaag)

[6]Mardani, Civil Procedure Code of Religious Courts and Sharia Courts, 124.

[7]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, pp. 76-77.

What is meant by revindication confiscation is the confiscation of the plaintiff's property which is in the hands of the defendant.[8]Regarding the revindication confiscation regulated in Article 226 HIR, Article 260 RBg. the word revindication (revindicatoir) comes from the word revindiceer, which means to get. The words revindicatoir beslaag contain the meaning of confiscation to get the right back. The purpose of this confiscation is so that the object being sued is not removed during the process. Based on the provisions of Article 226 HIR, it can be seen that the revindication Sita can be known, among others:

a. Must be movable property;

b. The movable property is the property of the plaintiff which is in the hands of the defendant;

c. The request must be submitted to the Chief Justice examining the case;

d. Which request can be made verbally or in writing;

e. The item must be explained carefully, in detail.[9]

3. Confiscated Treasure Together (Marital Beslaag)

Sita Harta Bersama (Marital Beslaag) is known in the Civil Procedure Code and is regulated in Articles 823-823a Rv. In other words, confiscation of joint assets is confiscation placed on gonogynous assets that are with the husband or wife in a case for divorce, divorce, or joint property lawsuit.[10]

In practice, whether the joint property acquired during the marriage is controlled by the wife, a husband can file a lawsuit in court? The juridical

[8]Mardani, Civil Procedure Code of Religious Courts and Sharia Courts, 124.

[9]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 77-78.

[10]Mardani, Civil Procedure Code of Religious Courts and Sharia Courts, 124.

answer is of course yes, even though there is no statutory regulation that stipulates that the husband can file a lawsuit regarding joint property acquired during the marriage that is controlled by the wife, the husband can file a lawsuit in court so that the joint assets are controlled by the wife during the process. a divorce application can be confiscated while awaiting a decision regarding the divorce application being granted and a court decision in kracht gewijsde, on the grounds that the joint property held by the wife is suspected to be removed or embezzled to prevent the distribution of joint assets.[11]

Applications for sharing of joint assets, whether submitted by the wife or husband, if it turns out that the husband or wife applying for the distribution of joint assets is not present at the hearing and does not represent their legal counsel or if the husband and wife come before the court, but cannot be brought together or either After being summoned for 2 (two) times consecutively not attending the trial, parties, both wife and husband, will be declared null and void.[12]

4. Sita Execution (Executorial Beslaag).

As for what is meant by execution seizure, namely seizure carried out as part of the implementation of a decision, namely confiscation made after a decision has permanent legal force.[13]

[11]Sarwono, Civil Procedure Law Theory and Practice, h. 151.
[12]Sarwono, Civil Procedural Law Theory and Practice, pp. 151-152.
[13]Mardani, Civil Procedure Code of Religious Courts and Sharia Courts, 124.

C. PROCEDURE OF IMPLEMENTATION OF FORMATION

Regarding the procedure or procedure for the implementation of confiscation, in outline it can be stated as follows;

1. Confiscation can only be carried out on the basis of a court order. This means that confiscation can only be carried out when a Religious Court ruling has been issued. The determination must contain criteria, among others;
    a. There is a petitum containing an order to the clerk or bailiff to carry out confiscation of the object mentioned in the letter of determination. 2 (two) witnesses are also ordered to carry out the confiscation.
    b. There is an explanation in the determination letter regarding the object to be confiscated.
2. Confiscation is carried out by the bailiff or the clerk based on the assignment letter appointed in the letter of determination.
3. A formal confiscation notification must be notified to the respondent for seizure or the defendant. The notification letter contains the time, day and date of execution of the confiscation, states the object of confiscation and presents the bailiff.
4. The implementation of confiscation is stated in an official report of confiscation. The Minutes of Confiscation include, among other things, the day and date of the confiscation, the determination of the confiscation, the parties in the case, the object of the confiscation, the life of the person confiscated at the time of the confiscation, the clear name of the bailiff, and 2 (two) witnesses.
5. Confiscated registration. Minutes of Confiscation are registered and announced at the authorized registration office. For example, confiscated

assets in the form of certified land are registered with the National Land Agency. Meanwhile, uncertified land is registered at the village office or lurah.

6. Place the confiscated goods in their original place, with the following conditions;
    a. Seizure of movable or immovable objects is handed over to the defendant or the defendant for confiscation.
    b. May not hand over guard and control to the applicant for confiscation (the plaintiff) or to a third party or the village head.
    c. The Seized Respondent has the right to use, enjoy and carry out business activities attached to the confiscated goods, except when the confiscated goods can become used up in use.[14]

D. JOURNEY'S DUTY IN PROSECUTION IN THE RELIGIOUS COURT

The position of bailiffs at the Religious Courts is regulated in Law Number 7 of 1989 in Article 38, "In every Religious Court a bailiff and substitute bailiffs are determined. In article 103 jo. Articles 10, 13, 16 KMA / 004 / Sk / 11/92, state that the duties of bailiffs are as follows:

1. Bailiffs on duty:
    a. Carry out all orders given by the Chairperson of the Assembly;
    b. Delivering announcements, admonitions, and notification of court decisions or decisions according to methods based on statutory provisions;
    c. Confiscate by order of the Chairman of the Court;

[14]Mardani, Civil Procedure Code of Religious Courts and Sharia Courts, 126.

d. Prepare an official report of confiscation, the official copy of which is submitted to the parties concerned.

2. The bailiff has the authority to carry out his duties in the jurisdiction of the court concerned.[15]

[15]Mardani, Civil Procedure Code of Religious Courts and Sharia Courts, 126.

CHAPTER 9

EVIDENCE IN THE COURT

A. UNDERSTANDING OF EVIDENCE

The law of evidence in litigation is a very complex part of the litigation process. The state of complexity is getting more complicated, because evidence is related to the ability to reconstruct past events or events as truth. Even though the truth that is sought and embodied in the civil court process is not the absolute truth (ultimate truth), it is relative truth or not sufficiently probable, but finding such truth still faces difficulties. Difficulty finding and realizing the truth is mainly due to several reasons, among others;

1. Adversarial system (adversarial system), which requires giving equal rights to parties in a case to mutually propose their respective truths, and has the right to mutually dispute the truth submitted by the opposing party in accordance with adversarial proceedings.
2. The judge's position in the evidentiary process, according to the adversarial system, is weak and passive. Not actively seeking and finding the truth beyond what the parties submitted and conveyed in the trial. Civil judges, in carrying out their function of seeking truth, are blocked by a wall of restrictions.

3. Seeking and finding the truth is getting weaker and more difficult, because the facts and evidence submitted by the parties are not analyzed and assessed by experts (not analyzed and appraised by experts).[1]

The proof according to Arabic terms comes from the word "al-bayinah" which means something that explains. Etymologically, proof means to provide evidence until convincing. Several Indonesian legal experts provide various kinds of definitions regarding proof. Supomo in his book “Civil Procedure Law of the District Court explains that proof has a broad and limited meaning. In a broad sense, proof means strengthening a judge's conclusion with valid evidence requirements, whereas in a limited sense proof is only needed if what the plaintiff puts forward is denied by the defendant.[2]

According to M. Yahya Harahap's opinion as stated by Abdul Mannan in his book "Application of Civil Procedure Law in the Religious Courts," the definition of proof is the ability of the plaintiff or defendant to use the law of evidence to support and justify legal relationships and incidents argued or disputed. in legal relations being sued. Meanwhile R. Subekti stated that proof is an effort of the parties in a case to convince the judge about the truth of the arguments presented in a case that is being disputed before a court or being examined by a judge.[3]

[1]M. Yahya Harahap, Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence and Court Decisions (Cet. XIV; Jakarta: Sinar Grafika, 2015), p. 496-497.

[2]Hj. Sulaikin Lubis, Hj. Wismar 'Ain Marzuki and Gemala Dewi, Civil Procedure Code of Religious Courts in Indonesia (Cet. III; Jakarta: Kencana Prenada Media, 2008), p. 139-140.

[3]Abdul Mannan, Application of Civil Procedural Law in the Religious Courts (Cet. VI; Jakarta: Kencana Prenada Media Group, 2012), p. 227.

B. PREVENTION PRINCIPLE

The principle of proof in the Civil Procedural Law is found in Article 1865 Burgerlijke Wetboek, Article 163 Het Herziene Inlandsche Reglement, Article 283 of the Buitengewesten Rechts Reglement, which the clauses say the same, namely: "Whoever has something or to deny the rights of others, or points to an event, he is obliged to prove the existence of that right or the existence of that event. "[4]

It seems that the formulation of the article clearly determines "who" is to prove in a case. Judges should not literally carry out the principle of proof, but judges must be wise and proper, that is, the judge should place the obligation to prove to the party who is most afraid to prove it, and not burden the party who is most difficult to prove.[5]

In several cases, material law has put a burden of proof, for example:

1. The existence of a "forceful situation" in an engagement (legal relationship) must be indicated by the debtor (Article 1244 BW).
2. Whoever controls movable property is considered the owner (Article 1977 paragraph 1 BW).
3. Notary events (which are commonly known) do not need to be proven, for example:
    a. Natural disaster events that have been widely reported.
    b. The events that occurred during the trial.
4. What is recognized in full or unanimously in the trial.[6]

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[4]Roihan A. Rasyid, Procedure for Religious Courts (Cet.XIII; Jakarta: PT. RajaGrafindo Persada, 2007), p. 144-145.

[5]Bambang Sugeng and Sujayadi, Introduction to Civil Procedural Law and Examples of Letigation Documents (Cet.III; Jakarta: Kencana Prenada Media, 2015), p. 64.

[6]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 65.

The illustration of the principle of proof can be described as follows: A (plaintiff) sues B (defendant) so that B pays debts to A, then A is charged by the judge to prove that B owes A to A, because at that time A said that he had the right in the form of receivables from B. Furthermore, in court B denied, according to B that the debt on the receipt was not because B had a debt to A but was because A was forced to make it, then B was charged to prove the truth of his rebuttal, because B at that time denied other people's rights to it. It is also possible that B in front of the court said that it actually exists but he has already paid it, it's just that he does not use a payment receipt or receipt and the receipts were not previously charged, not asked to return from A.[7]

Based on Abdullah bin Abbas, Rasulullah saw. has said:

Meaning:

> "If someone's lawsuit is granted just like that, surely there will be many people who sue their rights or assets against other people but (there is a way of proof) those who demand rights (including those who deny the rights of others and point to certain events) are charged to prove and (for them who has no other evidence) can deny it with an oath. HR. Bukhari and Muslim. "[8]

The illustration of the principle of proof in the hadith can be described in the case as follows: C (wife = plaintiff) sues D (husband = defendant) so that D pays the dowry debt of 50 grams of gold that was previously going to get married, dowry on debt. The judge charged C to prove that D owed a dowry of 50 grams of gold and D had not paid it to C. If D said he had paid it, the judge would charge D to prove that he had paid it. If C is unable to prove, then C's lawsuit is rejected, but if C makes an oath (negatie) that he has never received the dowry from D and D there is no proof of dowry payment to C then C's claim can still be granted. However, if D also

[7]Roihan A. Rasyid, Procedure for Religious Courts, p. 145.
[8]Roihan A. Rasyid, Procedure for Religious Courts, p. 146.

swears that he has paid it to C then the negatie oath C has no meaning because in this last state C has no evidence (the only proof is that his oath and oath have been destroyed by D's oath). If D takes an oath to have paid it to C while C does not have evidence and does not take an oath, of course there will be a stronger basis for rejecting C.[9]

Thus, the burden of proof is not borne by the judge, but on the parties in the litigation, either the plaintiff or defendant. The parties are obliged to prove all the disputed events, incidents, or facts by submitting evidence which is legally valid. Regarding who is the judge who hears the case, whether the event, incident or fact is proven or not. In essence, the risk of proof is none other than to fulfill the requirements of justice, so that the risk of the burden of proof is not one-sided, the judge must be careful in determining the burden of proof with evidence in a balanced and proper and impartial manner.[10]

C. SYSTEMS, VALUES AND THEORIES OF PROOF

The system in English is called a system, which means a series of procedures that are unanimous (unity) to carry out a function. So there is a completely different understanding of the system in Dutch, namely sisteem which means way. That way, as it is understood that the Procedural Law System according to HIR and RBg. is based on formal correctness, meaning that the judge will examine and adjudicate a civil case that is absolutely bound by certain methods adopted in the HIR and RBg. Therefore, the proof system is also based on formal truth. This system has long been

[9]Roihan A. Rasyid, Procedure for Religious Courts, p. 146.
[10]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 232.

abandoned due to legal requirements and the practice of judicial administration, so the Civil Procedure Code is used which is not only found in the HIR and RBg. but also what is obtained from BW.[11]

Therefore, the formal flow of truth has also shifted to material truth, meaning that even if formal evidence is sufficient, the judge may not decide if he is not sure that it has been proven materially correct. This school of thought was formerly adhered to in the Criminal Procedure Code only. In this regard, before the Religious Courts, there is one thing that needs to be remembered, even though formally according to HIR and RBg. etc. it is considered sufficient formally proven, the judge may not decide if he is not sure that it is materially correct according to Islamic law.[12]

According to Rapaun Rambe and A. Mukri Agafi as quoted by Mardani in his book "Civil Procedure Law of the Religious Courts and the Sharia Court" that in assessing the evidence submitted by litigants in the Civil Procedural Law, including the Religious Courts, two judgments apply, among others: ;

1. Evidence has a binding truth value, this is the judge as a reference to find the truth of the material based on evidence submitted by the litigant. Evidence in the form of an Authentic Deed, for example, is complete and binding evidence as long as the authentic deed is not proven incorrect by the party who denies it. Likewise, the confession before a trial is binding evidence against who has done it as explained in Article 174 of the HIR which states that the confession spoken is that the confession made before a

[11]Roihan A. Rasyid, Procedure for Religious Courts, p. 147.
[12]Roihan A. Rasyid, Procedure for Religious Courts, p. 148.

judge is sufficient evidence to incriminate the person confessing it, whether it is spoken. alone and with the help of others, the special ones are strengthened for it.

2. Evidence that has an independent value, this is the evidence submitted by the litigant not all of which has binding value. This evidence, it may happen that the judge is not required to consider the evidence as something that binds him in finding the material truth. The evidence which does not have binding value includes, among others, witness evidence, the information provided by the witnesses does not require the judge to take over the testimony as truth, the judge has the freedom to judge the testimony.[13]

In principle, the judge is free to judge the evidence. Since the judge in assessing the evidence can act freely or be bound by law, three theories arise on this matter, as follows;

1. The theory of proof is independent, that is, it does not want any provisions that bind the judge so that the judicial assessment is left to him.
2. The theory of proof is negative, that is, there must be negative binding provisions. So judges are prohibited from judging other terms with exceptions, as found in Article 169 HIR, 306 RBg., And Article 1905 BW.
3. The theory of positive evidence, namely the existence of binding provisions, is none other than according to these provisions absolutely, as found in Article 165 of the HIR, 285 RBg., And 1870 BW.

[13]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts (Cet. I; Jakarta: Sinar Grafika, 2009), p. 108-109.

Sudikno Mertokusumo put forward several theories about proof that can be used as guidelines for judges in examining cases submitted to him, namely:

1. The theory of proof that is purely corroborating (bloat affimatief). According to this theory, whoever proposes a thing must prove it, not to those who deny or deny the argument put forward by the person who proposes a thing. The legal basis for this theory is the opinion which states that everything that is negative cannot possibly be proven (negative non sunt probanda). This theory also says that negative events cannot be the basis of a right, even though the proof may be possible, therefore it cannot be imposed on someone. This theory has been abandoned by many legal practitioners, because it is considered less effective.
2. Subjective legal theory. This theory aims to maintain subjective law and is always the executor of subjective law. The principle of proof is as stated in Article 163 HIR and Article 283 RBg. that is, whoever declares or claims to have a right, then he must prove it about the existence of that right, it must be upheld firmly. This theory can only provide an answer if the plaintiff's claim is based on subjective law. This theory has too many abstract conclusions and does not provide answers to problems of evidence in processional disputes. Theory also cannot provide a solution to the things that arise in the problem of proof, and this theory often creates injustice because it gives too much leeway to the judge to transfer the burden of proof.

3. Objective legal theory. Submitting a lawsuit or claim of rights to the court means asking the judge to apply objective legal provisions to the event being referred to. Therefore, the plaintiff must prove the truth of the proposed event and then the objective law is applied by the existing objective law. This theory has also been abandoned by many legal practitioners because in many ways it cannot answer legal issues that are not regulated by law. After all this theory is very formality.

4. Public legal theory. According to this theory, seeking the truth of an event against the lawsuit filed by the plaintiff is carried out based on the public interest. Therefore, judges must be given great authority to seek the truth in terms of proving a case. Likewise, the parties in a litigation, in terms of proving that there is an obligation under public law, use general evidence.

5. Procedural law theory. This theory is based on the principle of the same processual position of the parties who litigate before the Panel of Judges or what is called the principle of audi et alteram partem. The burden of proof of this model is the same between the parties, so that the possibility of a case to win is the same, because the opportunities are equal, and appropriate. In the realm of Islamic justice it is known as the principle of "Ahsin nasa li majlisa wa qadhaika" the judge must share the burden of proof based on equality the position of the parties. Therefore, the judge must burden proof equally on the parties in a case. This theory is widely

used by legal practitioners today, because it is considered closer to the principle of justice.[14]

Furthermore, the evidentiary theories can be implemented in Civil Procedural Law which refers to the Islamic legal conception of which is more appropriate between formal truth and material truth in evidentiary research. For example, regarding the li'an oath as mentioned in the Koran Surah al-Nur (29): verses 6-9. The illustrations are as follows; The husband is a pious, religious person, he believes and has seen alone (without anyone other than himself) that his wife is adultery with someone else, but the husband is unable to prove other than that he takes the li'an oath. However, according to the Koran, the wife can also deny it by saying a li'an rebuttal oath, even though the wife is a true Muslim, but abangan Islam, the wife does not know and does not care what an oath is. Because the wife swore an oath of rebuttal to Li'an, adultery was not proven, the wife was spared from being subjected to stoning, the husband was punished by the had accused of adultery, the second marriage was broken. The wife, in front of the court, admitted that she had not intervened for 4 (four) months (meaning that she did not have intercourse) with her

[14]If the theoretical formulation is related to the practice of the Religious Courts, then the burden of proof will be found, namely: (1) the obligatory burden of evidence is borne by the plaintiff. This provision is based on Article 163 HIR, Article 283 RBg. and Article 1685 of the Civil Code, which can be concluded that whoever argues or presents an event or incident, or also a right, then he is first charged with the obligation to prove it. In essence, the defendant is a person who is drawn by the plaintiff to litigate before a court session. In this case, the defendant was deemed not to know and did not understand what events the plaintiff raised and wanted. So the burden of proof is obliged to the plaintiff. Only disputed matters are required. (2) The burden of proof is shared in certain matters. In current judicial practice, the general principle of imposition of proof is expanded by applying the sharing of compulsory burden of evidence to each party. The plaintiff is burdened with evidence to prove his argument, while the defendant is also burdened with the burden of proof by proving his rebuttal grounds.Sudikno Mertokusumo, Indonesian Civil Procedure Law (Yokyakarta: Liberty, 1988), p. Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, pp. 232-234.

husband even though she was now 5 (five) months pregnant, which means that logically, the fetus in her stomach was clearly not from sperm her husband.[15]

Is the Religious Court in it the judge of the case still holding on to the fact that adultery is not proven because it is tied to the system with the Li'an, or what?

D. EVIDENCE TOOLS AND THE POWER OF PROOF

Evidence recognized by the applicable laws and regulations is regulated in Article 164 HIR, Article 284 RBg., And Article 1866 of the Civil Code, as follows:

1. Letter evidence (writing).
2. Witness evidence.
3. Prejudice (guesswork).
4. Recognition.
5. Oath.[16]

It must be distinguished between evidence in general and evidence according to law. This means that although the evidence submitted is in one of the prescribed forms as mentioned, it is not automatically valid as evidence. In order for the evidence to be valid as evidence according to law, the evidence submitted must meet the formal and material requirements. In addition, not every legally valid evidence has the power of proof to support the evidence of an event. Even though the evidence submitted has fulfilled the formal and material requirements, it does not necessarily have the power of proof value, the valid evidence has the power of proof, the evidence concerned must reach the minimum limit of proof.[17]

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[15]See Roihan A. Rasyid, Procedure for Religious Courts, p. 149-150.
[16]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 239.
[17]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 239.

Evidence that has the power of proof can be described simply as follows:

1. Letter or written evidence.

Letter evidence is anything that contains reading marks that are intended to pour out one's heart or to convey someone's thoughts and are used as proof. Letters as written evidence can be divided into authentic deeds and underhand deeds. So, in the law of proof there are at least three types of letters, namely; (1) authentic deed, (2) underhand deed, (3) non-deed letter known as unilateral documentary evidence. In evidentiary law, written evidence or letters are the preferred means of evidence or the number one evidence when compared to other evidence.

a. Authentic deeds, which are contained in Article 165 HIR, Article 285 RBg., And Article 1868 BW., It is stated that the deed made by or before the official who is authorized to do so is complete evidence between the parties and their heirs and them. who get the right thereof regarding what is contained in, and even about what is listed therein as mere notification, but the latter is only to the extent that what is being told is closely related to the principal of the authentic deed whether or not a deed is not sufficiently seen from the deed, from the way of making it whether it is in accordance with the provisions of law.

   A deed made by an official who is not authorized or does not meet the requirements as stipulated by law, then the deed is not an authentic deed, but has the power as an underhand deed if the deed is signed by the parties concerned. Officials authorized as authentic deeds are Judges, Notaries, Registrars, Bailiffs, Civil Registry Officers, Marriage Registrars and so on.

So, the formal requirements for an authentic deed must meet the following elements: (1) made by or in the presence of official officials / authorized, (2) deliberately made the deed as evidence, (3) is of a party nature, (4) at the request of the party, (5) has perfect and binding evidentiary power. Other than that.

Thus, authentic deeds have three kinds of evidentiary powers, namely: (1) formal evidence is evidence between parties that they have implemented what is written in the deed, (2) material evidence is evidence between parties that the events written in the deed has occurred, (3) binding evidence is evidence between parties, that on the date and time mentioned in the deed concerned has appeared to the employee and explained what has been written in the deed.[18]

b. Underhanded deed, found in Stb. 1867 Number 29 for Java and Madura, while those outside Java and Madura are regulated in Articles 289-305 RBg., And are also regulated in Articles 1874-1880 BW. Underhanded deed is deed made without the mediation of Public Employees. The signature on the deed under the hand plays an important role. Anyone against whom the proof of deed is filed under hand, must expressly acknowledge or deny his signature.[19]

What is meant by underhand deed are letters, registers or registers, records regarding household, and other documents made without assistance from

[18]See Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 240-243.
[19]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 68.

the authorized official. The way of making deeds under the hands of the process is not done by and or in front of public employees, but only by interested parties. The under-hand deed is entirely written by the signatory's own hand, or at least other than the signature, what must be written in the signer's hand is a mention that contains the amount or amount of goods or money owed.[20]

Underhanded deeds have the same powers as authentic deeds, namely:

1. Underhand legalized deed (see Article 1874 BW).
2. Unilateral debt acknowledgment letter which is entirely written in the debtor's own hand (see Article 1878 BW), at least with the amount of money with numbers and letters must be in the debtor's own handwriting.
3. A record made by a creditor on a right, even though it is undated and not initialed, must be considered as favorable to the debtor.[21]

c. The letter unilaterally is found in Article 1875 of the Civil Code and Article 291 RBg. The form of this letter is in the form of an acknowledgment letter containing a statement of the unilateral obligation of the person making the letter that he will pay a certain amount of money or will hand over something or will do something to a certain person. The formal requirements for a unilateral deed, namely: (1) it is written entirely by the person making or signing it. (2) or at least the signatories themselves write

[20]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 244.
[21]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 68-69.

in letters (not numbers) about the amount or about something that is given, submitted or done. (3) dated and signed by the author. Meanwhile, the material requirements of the unilateral deed are: (1) the contents of the unilateral deed are directly related to the subject matter of the disputed case. (2) the contents of the deed do not conflict with law, morals, religion, and public order. (3) intentionally done as evidence.[22]

2. Witness evidence.

Testimony is certainty given to the judge at trial regarding the disputed incident by means of verbal and personal notification by a person who is not a party to the case summoned at the trial. The information given by the witness must be about events or incidents he has personally experienced, while the opinion or conjecture that is obtained by reason is not a testimony. The witness's testimony must be given orally and personally at trial, so it must be notified in person, not represented and cannot be made in writing.[23]

In principle, everyone is obliged to be a witness, but not everyone can be a witness. The requirements for people to be witnesses in Article 145 HIR are as follows:

a. Age 15 years and over.
b. Healthy in mind and not put under forgiveness.
c. Not a blood family or family according to a straight line with one of the disputing parties.
d. The husband is not on the wrong side, even though he is divorced.

[22]Abdul Mannan, Application of Civil Procedure Law in the Religious Courts, p. 247.
[23]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 111.

e. Does not have a working relationship with either party by receiving wages.[24]

Even though the witness has given his testimony before the judge, the judge cannot be forced to believe the witness, because it may be a false witness. Therefore, the judge must be careful and pay close attention to whether there is a correspondence between the testimony of a witness and other witnesses or is there a correspondence between the testimony of a witness and the content of the disputed case, what are the characteristics of the witness' customs and customs, is there a relationship between witnesses by being witnessed. There is a principle that has an "unus testis nullus testis", meaning that one piece of evidence is not evidence, so a witness is not a witness, unless it is corroborated by other evidence, for example supplemented by a defendant's confession or oath. That is,[25]

3. Prejudice (guesswork).
4. Recognition.
5. Oath

[24]Bambang Sugeng and Sujayadi, Introduction to Civil Procedure Law and Sample Letigation Documents, p. 70.

[25]Mardani, Civil Procedure Law of Religious Courts and Sharia Courts, h. 111.

CHAPTER 10

LEGAL FINDINGS AND JUDGMENTS

A. LEGAL FINDINGS

1. History of legal finding

The Indonesian legal system originated from the Netherlands as a country that once controlled Indonesia, so that the Dutch legal system was implemented in Indonesia based on the concordance principle.[1]

2. Definition of legal finding

Activities in human life are very broad and are countless in number and types, so that it is impossible to be completely and clearly covered by a statutory regulation. Therefore, there is no statutory regulation that can cover the whole of human life, so there is no statutory regulation that is as complete and clear as it is.

Law can be interpreted as a ruling decision, and in a more limited sense, law is defined as a legal decision (court), the main problem is the duty and obligation of the judge in finding out what constitutes law, the judge can be considered as one of the law-forming factors.[2]

Paul Scholten stated that what is meant by legal discovery is something other than just the application of regulations to events. The discovery of law (rechtssvinding law) is "a theory that provides direction on how to find the appropriate rules for a particular legal event, by means of a systematic investigation of the rules with other rules". The discovery of this law is actually a process of concreting and individualizing general legal regulations by remembering concrete events.

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[1]Rifai Ahmad, Legal Discovery by Judges in a Progressive Legal Perspective (Jakarta: Sinar Grafika, 2011), p. 17.

[2]Rifai Ahmad, Legal Discovery by Judges in a Progressive Legal Perspective, p. 21

3. Reasons for legal discovery by judges

Legislation as a rule in general, has the function of protecting human rights and interests, so it must be implemented or enforced. Therefore, statutory regulations are always complemented by those contained in an additional State Gazette.[3]

4. The school of thought relating to legal discovery by judges

The existence of the law can only be felt when there is a dispute and and the last means of resolving a legal dispute is through court institutions that are in the form of a judge's decision. The law begins and ends with a verdict handed down by a judge.

The main duties of a judge are to try, examine and decide a case before him, so that there is no reason for a judge not to accept or reject a case on the grounds that the law is unclear or does not exist. the judge decides that every case submitted to him is an obligation, while the main task of the judge is to link the abstract rules in the law with the concrete facts of the case he is examining.

According to Soedikno Mertokusomo, legal discovery is usually defined as the process of forming a law by a judge or other legal officer who is assigned the task of implementing the law on concrete legal events. This is a general process of concretization and individualization of legal regulations by keeping in mind concrete events.[4]

5. The source of legal discovery

The main sources of legal discovery by judges are statutory regulations, customary law, jurisprudence, international treaties, then doctrine. In the teaching of legal discovery, the law is prioritized from other sources of law. If you want to look for the law, the meaning of a word, you must first look it up in a law which is authentic, in written form, and guarantees legal certainty.[5]

[3]Rifai Ahmad, Legal Discovery by Judges in a Progressive Legal Perspective, p. 24
[4]Rifai Ahmad, Legal Discovery by Judges in a Progressive Legal Perspective, p. 31.
[5]Rifai Ahmad, Legal Discovery by Judges in a Progressive Legal Perspective, p. 49

6. Stages of duties of judges and when the law is found by the judge

The main task of the judge is to receive, examine and decide and settle every case submitted to him based on the principles of freedom, honesty and impartiality in a court, by issuing an outusan, which is called a judge's decision. So, tonight the judge is passive or just waiting for a case to be submitted to him, and not actively seeking or pursuing cases.

7. Legal finding theory

As stated that the statutory regulations are unclear, incomplete, static in nature, and cannot keep up with the development of society, and this creates an empty space, which must be filled by judges by finding the law which is carried out by explaining, interpreting, or completing the statutory regulations. The finding of law by judges is not only about the application of statutory regulations to concrete events, but also the creation of laws and the formation of laws at once.[6]

B. THE JUDGE'S VERDICT

1. Definition of Verdict

The decision is a statement by the judge as a state official who is authorized to do so and is pronounced in a trial open to the public with the aim of resolving a case or dispute between the parties in the case.[7]

2. Kinds of court decisions

a. In terms of nature

- Declaratoir verdict is a court decision which states a condition in which the condition is declared valid according to law. This decision states that certain legal

[6]Rifai Ahmad, Legal Discovery by Judges in a Progressive Legal Perspective, p. 57.

[7]Manan Abdul, Application of Civil Procedure Law in the Religious Courts Environment (Jakarta: kencana 2005), p. 291.

conditions petitioned include recognition of a certain right to achievement and generally this model decision occurs in the field of personal law, for example concerning adoption of children, regarding birth, regarding the assertion of rights over an object.

- A constitutive decision is a decision that has the character of terminating or creating a new law. In this decision, a certain legal condition is terminated or a new legal condition results.
- Condemnatoir verdict is a decision which punishes the losing party to fulfill an achievement determined by the judge. This verdict of the plaintiff's civil rights which he claims against the defendant is recognized by the judge before the court session. The condemnatoir decision is a justification for the plaintiff's right to an achievement he is demanding or conversely there is no acknowledgment or no justification for the achievement he demands. A condemnatory decision, the verdict must contain the following sentence;
    1. Sentencing the defendant to do something;
    2. Punish the defendant for not doing something
    3. Sentencing the defendant to hand over something
    4. Punish the defendant for revealing something
    5. Sentencing the defendant to hand over an amount of money
    6. Sentencing the defendant to split
    7. Sentencing the defendant to vacating.

b. In terms of content.

- Niet onvankelijk verklaart (NO) means that the lawsuit cannot be accepted, that is, the court decision submitted by the plaintiff cannot be accepted, because there are reasons justified by law. As for the reasons for not accepting the plaintiff's claim, there are several possibilities that the claim is not based on law; the lawsuit filed by the plaintiff must really exist (not only fabricated), it must also have clear

legal basis for the plaintiff who claims his rights; the lawsuit has no direct legal interest attached to the plaintiff; escape suit (obscuur libel); the lawsuit is still premature.

- nebis in idem lawsuit is a lawsuit filed by the plaintiff that has been decided by the same court, with the same object of dispute and the parties to the dispute are also the same person.
- error in persona lawsuit is wrong address lawsuit. For example, a father filed a divorce suit in court for his daughter, he sued the child's husband with a demand that the court divorce his son from her husband. A lawsuit like this must be declared by the judge unacceptable or NO
- overdue lawsuit is a lawsuit filed by the plaintiff has exceeded the time determined by law.
- court is not authorized to hear is a lawsuit filed before a court that has no authority, both absolute authority and relative authority.
- If the claim is granted, it is the claim that is submitted to the court where the arguments of the lawsuit can be proven, so the claim is granted in its entirety. If only part of it is proven to be the truth of the argument of the lawsuit, then the claim is partially granted.
- rejected claim is a lawsuit submitted by the plaintiff to court and in front of the court hearing the plaintiff cannot present evidence regarding the truth of the argument of the claim, so the claim is rejected.
- the claim for reconciliation is article 130 paragraph (1) HIR and article 154 paragraph (1) R.Bg stated that the judge must try to reconcile the two parties to the dispute before being decided. If the judge is negligent in not implementing the

peace, then the legal consequence for the implementation of the trial is that the defendant / respondent can file an exception that the trial is null and void.

- The lawsuit is dismissed according to article 124 HIR and article 184 R.Bg, when the plaintiff does not appear before the court on the specified day, and does not order another person as his representative even though he has been properly summoned.
- If the claim is canceled, the plaintiff has been present in court proceedings, then never again at the next trial, so the clerk is obliged to notify the plaintiff to be present at the hearing and to pay additional court fees as applied
- a lawsuit is terminated (aan hanging) is the termination of a lawsuit due to a dispute over the authority to judge between the religious court and the district court.

c. Judging from the type

- Interlocutory decisions are decisions that are not yet final. Intermediate decisions are not binding on the judge.
- A preparatory decision is an interim decision in order to prepare a final decision, without any effect on the subject matter or the final decision.
- An interlucotoir decision is a decision whose contents order the evidence and can influence the final decision.
- An incidental decision is a decision on a dispute that does not really affect or relate to the subject matter of the case.
- Provincial decisions are decisions that respond to provisional demands, namely requests from the parties concerned so that preliminary measures are taken temporarily.

- The final decision is that after the judge has finished examining the case and there are no more matters that need to be resolved in the trial, the judge shall issue a verdict on the case he is examining. the verdict that is pronounced is the final verdict.[8]

d. The power of court decisions

- Binding force is a decision that has obtained permanent legal force (kracht van gewijsde, power in force) which cannot be contested. Decisions that have definite force are binding (bindende kracht, binding force).

- The strength of proof is that decisions must be made in writing. The purpose is to be used as evidence by the parties, which may be used for legal purposes, cassation or also for execution.

  A judge's decision that has legal force which can still be used as evidence (bewijs, evidence) by parties litigated, as long as the events that have been determined in that decision

- Executive power is a decision that has obtained permanent legal force or has a definite power, has the power to be implemented (executoriale kracht, executionary power). A court decision can only be implemented if there is an executorial title which reads "for the sake of justice based on one Godhead", if the words are not included then the decision handed down by the judge cannot be executed. Decisions that are condemnatory only require execution, while decisions that are declaratory and constitutive do not require execution.[9]

[8]Abdul Manan, Application of Civil Procedural Law in the Religious Courts (Jakarta: kencana 2005), p. 297-308.

[9]Abdul Manan, Application of Civil Procedure Law in the Religious Courts, p. 309-310

CHAPTER 11

LEGAL EFFORT

A. DEFINITION OF LEGAL EFFORT

Legal remedy is an effort provided by law for a person or legal entity in certain cases to oppose a judge's decision as a place for parties who are dissatisfied with a judge's decision deemed not fulfilling a sense of justice, not in accordance with what is desired, because The judge is also a human being who can accidentally make a mistake that can lead to the wrong decision or side with one party.[1]

B. HOW TO DO LEGAL EFFORT

In carrying out legal efforts, there are 2 ways that can be done, namely ordinary legal remedies and extraordinary legal remedies.

1. Ordinary legal effort

a. Resistance to the Verstek verdict (Verstek Tegen Verstek)

Regarding how to propose a resistance (verzet) against this verstek decision is regulated in article 129 HIR. According to paragraph 1 of article 129 of the HIR, those who can file a challenge are the defendant or the defendants who were convicted of being absent and not accepting the verdict. So only the defendant can file a challenge, moreover, the defendant is convicted, which means being defeated, whether the lawsuit is granted in whole or in part.

Opposition (verzet) to a verztek decision is filed like an ordinary lawsuit, which means that the letter of resistance (verzet) must be typed in several copies

[1]http://pustakahukum.blogspot.co.id (Accessed on June 10, 2016).

and does not have to be on paper with dimensions or with a sheet on it, but just plain paper. In case the person concerned is illiterate, he can also file a challenge based on article 120 HIR. What needs to be considered in submitting this verzet is regarding the grace period for submitting a verzet, as follows:

1. Within 14 days after the verdict Verstek is notified to the defeated party itself.
2. If the notification is not made to the defendant himself, then until the eighth day after the warning as meant in Article 196 HIR, if the reprimanded person comes before him.
3. If he doesn't come when being reprimanded, until the eighth day after the execution is confiscated (vide article 197HIR)

Examinations and decisions on cases of resistance (verzet) are like ordinary cases. This means that the verzet, which was originally the defendant, in the case of the defendant must still be treated as a defendant, meaning that the one who must start to prove is the defendant, all the plaintiffs. This resistance to suspend has been imposed under the provisions of article 180 (1) of the HIR, that is, provided that it can be implemented first[2].

b. Appeal

The Defendant has the right to appeal against the decision of the court of first instance, except for the acquittal, the acquittal of all lawsuits concerning the problem of inaccurate application of the law and judgments in rapid proceedings.

Thus what can be appealed is all the decisions of the public court, except for acquittal, apart from all lawsuits and court decisions in a quick examination procedure. The procedure for appeal, among others;

[2]Bambang Sugeng, Civil Procedure Law Documents on Civil Case Litigation .ter. R. Sujayadi, Civil Procedure Law Documents for Civil Case Litigation (Jakarta: Kencana, 2011), pp. 39-40.

a. A request for appeal by the defendant is submitted to the head of the high court through the district court clerk who decides the criminal case in question within seven days after the verdict is rendered or after the decision is notified to the absent defendant.

b. At the request for appeal, the clerk of the court is prepared a certificate which is signed by the clerk of the court and the applicant and a copy is given to the appeal applicant.

c. If the district court accepts the appeal, the clerk is obliged to notify the request of one party to the other.

d. At the latest within 14 days of the filing of the appeal request.

e. During the seven days prior to submission of the case file to the high court, the appeal request is given the opportunity to study the case file at the district court.

As long as the high court has not started examining the case at the appeal level, either the defendant or his attorney, either the public prosecutor, can submit a memorandum of appeal to the high court. So submitting an appeal memory or counter appeal memory is not an absolute necessity in an appeal hearing.

Examination at the appellate level is carried out by a high court of at least three judges on the basis of the case files received from the district court which consist of an examination report from the investigator, an examination report at a district court hearing, along with all letters that have appeared in trial relating to the case and the court's decision. country.

If the high court is of the opinion that the hearing of the first instance shows that there was negligence in the application of procedural law, or that there

was an error or something incomplete, the high court with a decision to order the district court to correct the matter or the high court to do so itself [3].

As long as the appeal has not been decided by the high court, the request for appeal can be withdrawn at any time and if it has been withdrawn it cannot be filed again. If the appeal case has started to be heard, but has not yet been decided by the high court, while the applicant withdraws his appeal request, the applicant will be burdened to pay the cost of the case that has been issued by the high court up to the time of its revocation. For a judge who decides a case in the first instance then becomes a judge at a high court, the judge is prohibited from examining the same case at the appeal level.

c. Cassation

Against the verdict of a criminal case given at the last level by a court other than the Supreme Court, the prosecutor or the public prosecutor can file an appeal against the Supreme Court except for an acquittal (Article 244 KUHAP). However, in reality, an acquittal can be submitted for cassation, this can be seen in the additional provisions of the KUHAP implementation guidelines (Decree of the Minister of Justice No. cannot be appealed but can be filed for cassation. Such provisions should be properly understood by legal practitioners so that their cassation filings must truly reflect justice based on the situation and conditions,

The cases that are examined by the Supreme Court at the cassation level are only the aspect of the application of the law, while the cases (the facts) are not checked again.

The procedure for cassation as stated in Article 54 of Law Number 5 of 2004 concerning the amendment of Law Number 14 of 1985 of the Supreme

[3] Anang Pryanto, Indonesian Criminal Procedure Law (Yogyakarta: Ombak. 2012), pp. 108-112.

Court is that for criminal case cassation examination, the Criminal Procedure Code is used. In KUHAP itself, cassation examination is regulated from article 244 to article 258.

The petitioner requests for cassation to the chairman of the Supreme Court through the clerk of the district court who decides the case at the first level. An application for cassation is accepted if it meets the following requirements:

a. The application for cassation is submitted through the district court which decides the case in the first instance not later than fourteen days after the high court decision has been submitted.

b. The applicant for cassation is required to submit a cassation memorandum containing the reasons for his cassation application no later than fourteen days after submitting the cassation application.

If the two conditions above are not fulfilled or are met late, then the right to cassation is void and the parties are deemed to have accepted the decision. The application for cassation by the district court clerk is written in a certificate signed by the clerk of the court and the applicant and recorded in the register attached to the case file. The clerk is obliged to notify the request for cassation from one party to the other party [4].

C. EXTRA ORDINARY LEGAL EFFORT

1. Judicial review

This herzeining is not regulated in the HIR and the old regulations are in Reglement op de strafvordering, and since the enactment of Law no. 14 of 1970 is

[4] Anang Pryanto, Indonesian Criminal Procedure Law (Yogyakarta: Ombak, 2012), pp. 113-130.

also known as this review is regulated in Article 263 to Article 269. Request for reconsideration is made on the basis of:

a. If there is a new situation that gives rise to a strong suspicion that if the situation is already known at the time it is still ongoing, the verdict of the case will be in the form of an acquittal or an acquittal of all lawsuits or the demands of the public prosecutor cannot be accepted or a lighter criminal provision will be stipulated.

b. If in a decision there is a statement that something has been proven, but the things or circumstances as the basis and reasons for the decision are in fact contradicting one another.

c. If the verdict clearly shows an error of the judge or an obvious mistake.

On the basis of the reasons above, if in a decision an act accused has been proven proven but not followed by an impeachment and the decision has obtained legal force, it can also be submitted a request for reconsideration.

Requests for reconsideration are not limited by a certain time, but can only be submitted once. A request for reconsideration is filed to the court clerk of the court of law concerned, stating clearly the reason. If the applicant is a convict who does not understand the law, the clerk must ask whether the reason he filed request for reconsideration. The head of the court immediately sent a letter requesting the review along with the case file to the Supreme Court, accompanied by an explanatory note.

The head of the district court immediately continues the request for reconsideration along with the case file to the Supreme Court with a copy

submitted to the applicant and the prosecutor and the high court if the case has been decided at the appeal level (Article 265 KUHAP).[5]

2. Third Party Resistance (Derden Verzet)

In principle, a decision only binds one party in a case and does not bind a third party (Article 1917 BW). However, if a third party's rights have been impaired by a decision, he can contest this decision (article 378 Rv). This resistance was put forward to the judge who passed the verdict being challenged by suing the parties concerned in the usual manner (article 379 Rv). It is not enough for a third party who wants to fight against a decision only to have an interest, but must be clearly harmed.[6]

[5] Anang Pryanto, Indonesian Criminal Procedure Law (Yogyakarta: Ombak, 2012), p. 119-121

[6] Bambang Sugeng, Civil Procedure Law Civil Case Litigation Documents; tar. R. Sujayadi, Civil Procedure Law Civil Case Litigation Documents (Jakarta: Kencana, 2011), p. 97.

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