IMPLEMENTATION OF THE PRINCIPLE OF SIMPLE JUSTICE FAST AND LOW COST IN INDONESIA'S RELIGIOUS COURTS
(STUDY OF MEDAN RELIGIOUS COURT DECISION NO. 252/Pdt.G/2017/PA.Mdn)

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Abstract

Religious courts in Indonesia must conduct the trial process on the principle of simple, fast and low cost. In implementing this principle, judges will only assist justice seekers and try to overcome all obstacles in order to achieve a simple, fast and low cost trial. This condition is considered as an active role of judges.

Keywords: *Religious Courts, Simple, Fast and Low Cost.*

1. INTRODUCTION

Indonesia is state of law. Efforts for law enforcement in Indonesia are carried out by establishing law enforcement agencies. These institutions include the Police, the Attorney General's Office and the Judiciary. Among the three institutions, the judiciary is highest institution of law enforcement in Indonesia. Indonesia divides judicial institutions into 2 (two) types, namely:

a. Supreme Court,

b. Constitutional Court

The Supreme Court and its subordinate judicial bodies are within the general courts, religious courts, military courts and state administrative courts while the Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final examine laws against the Constitution, decide on disputes over the authority is granted by the Constitution, decide on the dissolution of political parties and decide on disputes over election results.

The judicial institutions mentioned above must conduct the trial process on the principle of simplicity, speed and low cost. In implementing this principle, judges will only assist justice seekers and try to overcome all obstacles in order to achieve a simple, fast, and low-cost trial where this condition is considered as an active judge's role. One of the courts that tried this was the Medan Religious Court where the court in the decision no.252/Pdt.G/2017/PA Mdn ends the parties by making a decision before proving the claim or answer submitted by each party. The decision handed down by the panel of judges in case no.252/Pdt.G/2017/PA Mdn, as follows:

1. Granting an exception to Respondent;
2. To state that a Medan Religious Court cannot be authorized to examine and adjudicate a case Number 252/Pdt.G/2017/PA Mdn.

In main case:

- Stating the Petitioner's application cannot be accepted and so on.

The imposition of the above the evidentiary process in the main case shows the panel of judges wants to carry out the principles of a simple fast and low cost trial. Based on the description above, a study will be carried out related to "Application of the Principles of Simple, Fast and Low Cost Justice in the Indonesian Religious Courts (Study of the Medan Religious Court Decision No. 252/Pdt.G/2017/PA Mdn).

2. LITERATURE REVIEW

Definition of Justice.

In the Indonesian dictionary, justice is everything cases. Judiciary can also be interpreted as a process of providing justice in an institution. In the Arabic dictionary it is called the term qadha which means to determine, decide, resolve, reconcile.

Qadha according to the term is the settlement of disputes between two disputing persons, where the settlement is resolved according to the provisions (laws) of Allah and the messenger. While the court is an agency or organization established by the state to manage or adjudicate legal disputes. The General Court is a judicial environment under the Supreme Court which exercises judicial power for the people seeking justice in general.

General courts include:

1. High Court, domiciled in the provincial capital, with jurisdiction covering the province.

2. District Court, domiciled in the capital city of the by district, with the jurisdiction covering the territory of the district/city. Other special courts specialize, for example: Industrial Relations Court (PHI), Corruption Court (Tipikor). Economic Court, Tax Court, Road Traffic Court and Juvenile Court.

The High Court is also the Court of the first and final level regarding disputes over jurisdiction to adjudicate between District Courts in their jurisdiction. The composition of the High Court is established by law with the jurisdiction covering the province. The High Court consists of the Chair (a Chair of the High Court and a Deputy Chair of the High Court), the High Judge, the Registrar, the Secretary and Staff, Law of the Republic of Indonesia No.2 of 1986 concerning General Courts, state that one of the implementers of Judicial Power is for people seeking justice in general. In achieving justice, the essence and existence of the General Court itself must be able to realized legal certainly as a value that is actually contained in the relevant legal regulations themselves. But in addition to legal certainly, in order to achieve justice, there is also a need for legal equality, which is basically also contained in the relevant legal regulations and in this case must also be able to be realized by the judiciary. The element of legal certainly concerned is the same for everyone, without exception, while the element of comparability or legal equality is essentially an element that characterizes the state of enforcement of the law for each party concerned, comparable or equivalent to the case/condition of their respective cases.

Regarding the formulation of justice. There are 2 (two) basic opinions that need to be considered, namely:

a. The view of the laity (lay opinion) which basically formulates that what is meant by justice is the harmony between the use of rights and the implementation of obligations, in line with "balance of law" proposition, namely "the measure of rights is an obligation".
b. The views of legal experts Prof. Purnadi Purbacaraka, S.H who basically formulated that justice is harmony between legal certainly and legal comparability.

In relation to the above, R.Subekti explained that the Indonesian Judicial system is classified in the "Continental system" which is characterized by the existence of ancassation institution by the highest court body. The cassation is held solely to oversee the aspect of the application of the law in every decision of the court body. The cassation board comes from France. Whereas in the other system, namely the Anglo – Saxon system, all institution that are higher than the first level of examination are appeals or repetitions. On appeal all examination of facts (evidence) and law is repeated in its entirety.

Basic Definition

Understanding Legal Principles: Understanding the principles in the legal science approach is the main basis that becomes the basis or reference for the birth of a rule. An understanding of legal principles is necessary as an ethical requirement in exploring the applicable laws and regulations.

Legal principles contain ethical demands. It can be said, through the principle of law, the rule of law changes its nature to become part of an ethical order.

The principle of law is an important and basic element of the rule of law. The formation of practical law as far as possible is oriented to legal principles. Legal principles are the basics or directions in the formation of positive law.

In the view of some experts, the principle has different meanings. The principles is something that becomes the foundation of thinking or opinion. The principle can also mean a basic law, that the basic concept can be interpreted as an abstract basic framework of thought, because it has not provided a specific or concrete method in its implementation. The principle is explicitly closely related to law, the word principle and law can be interpreted as a normative symptom that requires a concrete legal form such as a law.

In limiting the concept of legal principles, it is necessary to classify different types of concepts to sort out the concepts of legal principles that apply in a regulation. The classification of legal principle is divide into two different types, namely general legal principles and special legal principles.

1) General law principles are legal principles that relate to all fields of law, such as the principles of restitution in integrin, the principle of lex posteriori derogate legi priori, the principle that what appears to be true, must temporarily be considered that way until it is decided (other) by the court.

2) Specific legal principles function in narrower fields such as in the field of civil law, criminal law, and so on, which are often the elaboration of general legal principle, such as

the principle of pacta sunt servanda, the principle of consesualism, the principle contained in Article 1977 BW, the principle of presumption of innocence guilty.

3. RESEARCH METHODS

According to Soerjono Soekanto, what is meant by legal research is scientific activity based on certain methods, systematics, and thoughts aimed at studying a certain legal phenomenon by clearly analyzing it. To get maximum results. I use normative legal research.

Normative legal research is a research procedure to find the truth based on the truth based on the logic of legal scholarship from the normative side. Normative research always takes the issues of law as a system of norms used to justify the perspective of a legal event. This research was conducted with the intention of providing legal arguments as the basis for determining whether an event was right or wrong and how the event was otherwise according to law. This normative legal research is carried out using a statutory approach.

The statutory approach (Statue Approach) is a review of all laws and regulations related to the legal issues being handled, in this case the religious courts in Indonesia.

4. RESULTS AND DISCUSSION

A. The Meaning of Simple, Fast and Low Cost Judicial Principles in the Religious Courts System in Indonesia.

The procedural law that applies to courts within the scope of religious courts is civil procedural law that applies to courts within the scope of general courts, except those specifically regulated in the regulations of the religious court, the civil procedural law of the general court shall also apply, including the principles contained in the civil procedural law of the general court, which also applies in the religious court. These principles are as follows:

1. Judge is waiting.

   This principles implies that the initiative in filling a claim for rights is left entirely to the interested parties. Because it is up to them to defend the interest of the parties themselves, whether they want to go to court or not. This leads to the judge cannot refuse every case that is brought to him even though there is no legal regulation that regulates it.

   This is stated in Article 10 paragraph (1) of Law no.48 of 2009 concerning Judicial Power, which reads : “The court is prohibited from refusing to examine, try, and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it”. So if there is no written arrangement in a case, the judge must explore the values that live in society. This is stated in Article 5 paragraph (1) of Law no.48 of 2009 concerning Judicial Power, with reads: “Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society”.

2. Judges are Passive.

   The meaning of the sentence that the judge is passive is that the judge will only carry out cases submitted by interested parties in accordance with the scope and extent of the dispute, in other words the judge will only assist justice seekers and try to overcome all obstacles and obstacles in order to achieve a simple, fast trial, and low cost.

3. Open Session.

   In principle, the trial must be conducted openly unless otherwise provided for by law, for example in civil divorce cases. The examination was carried out in a closed manner, but in the reading of the court decision it was again open to the public. If a trial is not held openly to the public then the trial is considered invalid. Article 13 paragraphs (1), (2), and (3) of Law no.48 of 2009 concerning Judicial Power, reads:

(1) All court hearings are open to the public, unless the law provides otherwise.
(2) A Court decision is only valid and has legal force if it is pronounced in a trial open to the public.
(3) The non – fulfillment of the provisions as referred to in paragraph (1) and paragraph (2) will result in the decision being null and void.

The purpose of the principle is that in the trial there is community or social control so that the trial can run objectively.

4. Listening to Both Parties.

Article 4 paragraph (1) of Law no.48 of 2009 concerning Judicial Power, reads :

"The court judges according to the law by not discriminating between people".

Article 156 R.Bg/132 H.I.R, reads:

"If according to the chairman's consideration, so that the case goes well and in an orderly manner, the chairman is authorized at the time of examining the case to give advice to both parties and show them the legal remedies and evidence that can be used by them".

The two regulations above contain the understanding that each litigating party must be heard or treated equally and given the same opportunity to defend their interest. This means that the submission of evidence in the form of letters, witnesses, suspicions, confessions and oaths must be made before a court which is attended by both parties to the dispute. This principle in foreign languages is called audi et alteram partem or eines mannes rede ist keines mannes rede.

5. Decisions must be accompanied by reasons.

This principle aims to make the judge's decision not act arbitrarily so that the decision has authority. In making judgments, judges often use doctrine or jurisprudence as a basis in their considerations.

This principle is stated in Article 14 paragraph (2) of Law no.48 of 2009 concerning Judicial Power, which reads: "In a deliberation session, every judge is obliged to convey written considerations or opinions on the case being examined and become an inseparable part of the decision".

6. Events are Charged

Courts costs in civil proceedings incurred include clerkship fees, costs for summons, notification of the parties, stamp duty fees and attorney's fees if the parties use a lawyer. This is not absolute, if the parties are unable to pay the court fees, they can file a lawsuit free of charge (prodeo).

7. No Representation Required.

H.I.R does not require the parties to represent others, so that the examination in court takes place directly on the interested parties. However, if the parties wish to be represented by a proxy or attorney in civil procedural law, it is permissible. Article 147 R.Bg/123 H.I.R, reads:

"Both parties, if they wish, can ask for assistance or represent to a proxy which for that purpose must be carried out with a special power of attorney unless the body giving the power of attorney is present itself".

L.J.Apedoorn has another opinion that "in civil proceedings the parties are required to be accompanied by an attorney or lawyer". This is because the parties are considered unable to take actions that are eventful in nature.

8. Proabatio Plena

This principle focuses on proving evidence that has full and perfect proof power (Probatio Plena). In the Indonesia civil procedural law evidentiary system which adheres to positive wettelijk bewijs theorie, evidence that fulfills the full and perfect elements (Probatio Plena) is written or letter evidence in the form of an authentic deed.

9. Ultra Ne Petita

This principle limits judges. This means that the judge may only grant what is demanded, may not grant more than what the plaintiff demands and only be bound by valid evidence or preponderance of evidence.

10. Unus Testis Nullus Testis.

Literally the meaning of the word unus testis nullus testis means a witness is not a witness. Article 1905 of the Civil Code, reads:

"The testimony of a witness alone, without any other evidence, cannot be trusted before a court".

Article 306 R.Bg/169 H.I.R, reads:

"The testimony of a witness alone, with no other evidence cannot be trusted in law". The two regulations above and related to Unus Testis Nullus Testis principle contain the understanding, in civil procedural law it is not allowed to witness only 1 (one) person but a minimum of 2 (two) people.

11. Simple, Fast and Low Cost Judiciary.

The development of procedural law has now brought the principle of procedure to be subject to lighter fees because the judiciary is now required to carry out the legal process in a simple, fast, and low cost manner.

Referring to the eleven principles in civil procedure law above (also applicable in religious courts), the principle of simple, fast and low – cost justice continues to be developed in the justice system in Indonesia. In the legislation, namely the explanation of Article 2 paragraph (4) of Law no.48 of 2009 concerning Judicial Power, the principle is defined as follows:

a. Simple means that the examination and settlement of cases is carried out in an efficient and effective manner;
b. Low costs are court fees that can be reached by the community;
c. Quick, no explanation or sound of article by article found meaning or purpose in law no, 48 of 2009 concerning Judicial Power.

Therefore, to find out the meaning of the word speedy in the principle of simple, fast, and low – cost justice, we will refer to several journals, as follows:

1. Fast in the judicial process means that the settlement of cases does not take too long, this fast trial does not aim to order judges to examine and decide cases, for example within an hour or half an hour, what is aspired is an examination process that is relatively time consuming the old to many years according to the simplicity of the judiciary itself.
2. Fast means not long – winded and not convoluted.
3. Fast means that the inspection process does not take a long time.
4. Fast means that there are not too many formalities which are obstacles to the passage of the judiciary.

5. Fast is not found in the explanation, for that it would be possible to measure it based on the prevalence that can be felt by the community on the basis of fair and proper treatment from law enforcement officials.
6. Substantially, the regulation of the principle of fast justice is focused on efforts to uphold law and justice. Fast in this sense, still refers to accuracy, because judges are also responsible for the court decisions they make. The word quickly points to the running of the judiciary, too much formality is an obstacle to the running of the judiciary.
7. Quick must be interpreted as a strategic effort to make the justice system an institution that can guarantee the realization/achievement quickly by justice seekers. It is not only as long as it is quickly resolved that is applied, but juridical considerations, thoroughness, accuracy and sociological considerations that guarantee the community's sense of justice are also taken into account. This principle includes being fast in the process, fast in results and fast in evaluating the performance and level of productivity of the judiciary.
8. Quickly it can be interpreted that this is related to the settlement time of the disputed case by the litigants in court.
9. Fast is a universal principle related to the completion time which is not protracted?

Based on the description above, the word fast contained in the principle of simple, fast and low cost justice has the following meanings:

"Fast is a judicial process carried out at a trial where the settlement is in accordance with the applicable laws and regulations and it takes place in a time that does not drag on and in the decision contains juridical consideration, thoroughness, accuracy and sociological consideration that guarantee a sense of community justice.

The reference to some of the meanings above is made because Law no.48 of 2009 concerning Judicial Power does not contain the meaning of the word fast. This means that the law only provides a simple understanding and low cost. Of course, when viewed from the perspective of legal positivism, it will be disturbing. This is because in the view of positivism every legal issue must be regulated in legislation so as not to cause multiple interpretations. If there are expert views or opinions for the meaning of the word "quick", after being regulated in laws and regulations, it is nothing but to enrich the understanding of the speedy principle of the trial process.

Religious courts in general and other courts in particular make efforts to carry out justice in a simple, fast and low- cost manner. This can be seen, as follows:

1. Implementation of the E-Court System where the system is based on Supreme Court Regulation (PERMA) No, 3 of 2018 concerning Electronic Court Case Administration, The process includes acceptance of claims/applications, answers, replicas, duplicates, conclusions and management of the submission and storage of disputed documents. In addition, in the e-court there are also administrative services, as follows :
   a. Online registration of disputes/applications is called e-filling;
   b. Payment of down payment cases online is called e-SKUM;
   c. Calling the parties online is called e-summons;
   d. Online submission of court documents.
2. Settlement of civil issues is emphasized in mediation so that if peace is reached in the process, it is no longer necessary to take the next stage of the trial. This is in accordance with the Circular Letter of the Supreme Court (SEMA) No.1 of 2002 concerning the Empowerment of Courts of the First Level to Empower Peaceful Institutions and PERMA No. 1 of 2016 concerning Mediation in Court.

3. SEMA No.2 of 2014 concerning the Settlement of Cases in the Courts of First Level and Appeals in 4 (four) court environments where the first level is a maximum of 5 (five) months and the high court is a maximum of 3 (three) months.
4. Dispute for free. This cannot be said to interfere with one of the principles of civil justice where the trial is subject to fees. The financing did not disappear, instead, this financing shifted to the state that financed it, where the financing was only given to poor people who wanted to have a dispute in court. This is based on PERMA No.1 of 2014 concerning Guidelines for Providing Legal Aid Services for Underprivileged Communications in Courts.

Referring to the above description, the principle of a simple, fast and low cost trial is that the judiciary is carried out effectively and efficiently, the process is easy to understand, does not take a long time and the cost incurred specifically include clerkship fees, costs for summons, notification of the parties, stamp duty fees are not too expensive and reasonable as well as attorney's fees if the parties use a lawyer (in the case if it's free, the attorney's fee is free).

B. The Relation of the Principles of Simple, Fast and Low Cost Judiciary With the Medan Courts Decision No. 252/Pdt. G/2017/PA. Mdn.

The religious courts in this case the Medan Religious Courts carry out the same trial process as the District Courts specifically for civil courts. That is in the process of examination in court or after mediation, the Medan Religious Court performs several stages, as follows:

1. Reading the lawsuit/application. The stage of reading the lawsuit/application where the Plaintiff has the right to study all the material of the lawsuit. The Plaintiff/Application has the right to re-examine all the arguments that are true and complete. It is the things stated in the lawsuit that become the reference/object of examination and the examination may not go outside the scope of the lawsuit.
2. Response of the Defendant/Respondent. At this stage the defendant is given the opportunity to defend himself and submit all his interest to the plaintiff/application through the judge. Things that might be in the answer :
    a. An exception is a rebuttal to a lawsuit or resistance that does not address the subject matter of the case, a fight with the intention of avoiding a lawsuit by means of the judge determining that the lawsuit is not accepted or rejected.
    b. Acknowledging unanimously if the Defendant/Respondent fully acknowledges the entire lawsuit, it can be said that the reasons in the case have been proven and the lawsuit is fully granted.
    c. Absolute disclaimer, if the Defendant/Respondent denies absolutely all claims/applications so that the trial is continued to prove the arguments of the lawsuit.
    d. Admitting to the clause, the Defendant/Respondent admits on the condition that the judge must accept the lawsuit in it's entirely and cannot be separated and the trial will continue.
    e. Referte or convoluted answers, the examination continues as usual.
    f. Counterclaim or counterclaim, the position of the plaintiff becomes the defendant while the defendant becomes the plaintiff.
3. Plaintiff/Applicant's Replic. The Plaintiff/Applicant may reaffirm his claim which was denied by the Defendant/Respondent and also defend himself on the arguments of the Defendant/Respondent's answer.
4. Duplicate Defendant/Respondent. The Defendant/Respondent can re-explain the answer which was denied by the Plaintiff/Applicant.

5. Evidence by means of evidence, witness, suspicious, confessions, oaths). The plaintiff/Plaintiff submits all evidence to support the arguments of the lawsuits. Likewise, the Defendant/Respondent may submit appropriate evidence or to prove the answer, including confirmation of evidence. Examine documents or witness and other evidence.
6. Conclusion of the parties. Each party submits a final opinion on the results of the examination, especially the parties in the conclusion have the right to assess the evidence of each party.
7. Judge's decision. The judge conveys all his opinions on the case and concludes in the verdict. The judge's decision becomes the end point of the dispute/application.

Furthermore, the Medan Religious Court specially the panel of judges in dispute no. 252/Pdt.G/2017/PA.Mdn has also gone through the above process so as to render the decision, has follows:

In Exception:

1. Granted the Respondent's exception ;
2. To state that the Medan Religious Court cannot be authorized to examine and hear cases Number 252/Pdt.G/2017/PA.Mdn.

In Main Case:

1. Stating the Petitioner's application and so on.

Referring to the decision above where the trial process passes through the entire process of trial examination in the religious court. However, if it is related to the principle of simple, fast and low cost trial, it has been seen that the Panel of Judges has implemented this case. This is because at the proof stage it is only limited to proving the exception submitted by the Respondent without/has not touched the subject matter of the case. This is in line with the description of Hasan Basri Panjaitan who is the attorney for the Respondent in the case which states, as follows:

"Medan Religious Court Decision No.252/Pdt.G/2017/PA.Mdn has basically described the principle of a simple, fast and low – cost trial because the proof stage is only limited to the exception of relative competence which was proven first by the Respondent and the Petitioner also submitted evidence of his denial. However, because the Respondent was able to prove the argument and without having to prove the subject matter of the case, in accordance with Article 66 paragraph (1) of Law No.7 of 1989 concerning the Religious Courts in conjunction with Article 129 of the Compilation of Islamic Law, the respondent's exception is granted and for the cost of each litigation there is a remainder and is returned to the Petitioner".

CONCLUSION

1. The meaning of the principle of simple, fast and low cost justice in the religious justice system in Indonesia is that the judiciary is carried out effectively and efficiently, the process is easy to understand, does not take a long time and the cost incurred specifically include clerkship fees, fees are not too expensive and reasonable as well as attorney fees if the parties use a lawyer (in this case, if it is free, then there is no attorney's fee).
2. The relationship between the principles of simple, fast and low – cost justice with the decision of the Medan Religious Court No.252/Pdt.G/2017/PA.Mdn has been realized by the Panel of Judges where the stages of proof are only limited to proving the exception submitted by the without/has not touched the subject matter.

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D. Interview

Hasan Basri Panjaitan yang mengabdi di Lembaga Pos Hukum Sansekerta berubah nama menjadi Lembaga Bantuan Hukum Sansekerta dan kini menjadi Biro Pelayanan Hukum Sansekerta tanggal 11 November 2021.