

Coherence of Divorce Registration Authority Regulation on Laws Religion Court by Using Principle of Proper Law Establishment

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Abstrak

The establishment of Law No. 7 of 1989 on Religion Court is the order of Law No. 14 of 1970 on Basic Provisions of Judicial Power in regulating the formation, authority, and the legal process which are applicable in the area of religion court. However, on Article 84 clause (4) Law No. 7 of 1989 on Religion Court it finds the normative fact of authority regulation of divorce registration by giving this authority to clerk of the religion court to publish divorce certificate as the evidence of the divorce status. This Law has been revised by Law No. 3 of 2006 and Law No. 50 of 2009, but this regulation is not included of the alteration article. Law No.12 of 2011 on Establishment of Laws and Regulation has decided that in forming the Laws regulation must be based on the principles of proper law establishment. It means that the situation has to create balance among the kinds, hierarchy, and its substance. Furthermore, the substance of laws regulation should reflect the principles of legal order and certainty. This research was done to obtain the coherent truth in order to get some values or ordinance as reference to be analyzed. This research used statue, comparative, and historical approach to solve the coherence of authority regulation of divorce registration on Laws of Religion Court based on principles of proper law establishment, these are the principles of suitability among the kinds, hierarchy, and its substance and legal order and certainty principles. This research finds that the authority regulation of divorce registration on Laws Religion Court is not coherent with the principles of suitability among the kinds, hierarchy, and its substance, and it does not reflect the ordinance and law certainty principle.

Keywords: coherence, divorce registration, law of religion court, and principles of proper law establishment.

1. Introduction

The Constitution of the Republic Indonesia 1945 which is the basic principle of regulation in Indonesia states Article 22A that “the further regulation on procedure of Laws formation is arranged by laws”. The regulation on laws formation is arranged by Law No.12 of 2011 on Establishment of Laws and Regulation.

The improvement of proper Laws regulation principles on laws regulation in Indonesia is stated clearly for the first time in Law No.10 of 2004 on Establishment of Laws and Regulation, which has been revised by Law No.12 of 2011 on Establishment of Laws and Regulation. According to I. C. Van der Vlies, the formation principle of proper Laws regulation can be differed into two categories. The formal principle and material principle. Formal principle relates to the formation, nature, organization, institution that play role, formulation technical, etc. While the material principle relates to the substance that is contained in Law Regulation (Maria Farida Indrati S., 1996: 196-197, and Jimly Asshiddiqie, 2007: 269).

Law No.12 of 2011 on Establishment of Laws and Regulation arranges the formal principle of the proper Law Regulation establishment on Article 5 in the term of “formation principles of proper law regulation”, while the material principle that is contained in Article 6 in the term of “the material of Law regulation has to reflect the proper principle”. On Article 10 clause (1) has been determined the material that has to be arranged by Laws contains (a) the further regulation on determination of Constitutional of Republic Indonesia 1945, (b) order of Laws that has to be arranged by Laws, (c) legalization of certain international agreement, (d) the further action of Court Constitutional’s decision, and/or (e) the fulfill of legal need in the society.

The establishment of Law No.7 of 1989 on Religion Court is the order of Law No.14 of 1970 on the Basic Regulations of Judicial Power to arrange the formation, authority, and procedural law which are applicable in the area of Religion Court or included in the classification of Article 10 clause (1) letter b Law No.12 of 2011 on Establishment of Laws and Regulation. However, in Article 84 clause (4) Law No.7 of 1989 on Religion Court has been found the normative fact of regulation on divorce registration authority by giving the authority to the clerk of the religion court as the judicial official in issuing the divorce certificate as the divorce evidence.

This Law has been revised by Law No. 3 of 2006 and Law No. 50 of 2009, but this determination is not included the changed article.

Regulation of divorce registration authority is also arranged in Law No.23 of 2006 on Population Administration that has been revised by Law No. 24 of 2013, it stated that this authority is the authority of registration official in District religious affairs office (KUAKe.), this situation emerges conflict of norm. The existence of legal norms as the legal product that contradicts each other and emerges issues in its law application that cannot be separated by the process of law making. Therefore, this research analyses the coherence of legal norm on Article 84 (4) Law No. 7 of 1989 on Religion Court that was revised by Law No. 3 of s 2006 and Law No. 50 of 2009 (or defined as Law of Religion Court) by the establishment principles of proper laws regulation (algemene beginselen van behoorlijke regelgeving). It means there is suitability among the kinds, hierarchy, and the substance and the implementation of legal order and certainty principle of substance on laws regulation.

The selection of formal principle on the formation of proper laws regulation such as the suitability of kinds, hierarchy, and the substance as explained on Article 5 and one of the material principles on laws regulation formation is legal order and certainty as explained on Article 6 Law No.12 of 2011 on Establishment of Laws and Regulation, it does mean that other laws are not important. The selection of those articles is done because the researcher think that those principles are in which the most relevant to be analyzed in its relation to the substance that regulates the authority of divorce registration as the part of judicial function. The selection of those principles is also done to limit the area of the research in order to be focused and can give the effective result.

Based on the explanation above, the issues can be formulated as: (1) is the authority regulation of the divorce registration on Article 84 clause (4) Law of Religion Court coherent with the principles of proper laws regulation that is based on the suitability of the kinds, hierarchy, and the substance? (2) does the substance regulation of divorce registration authority reflect the legal order dan certainty principle?

2. Research Method

This research is a legal research. Legal research means that it analyses norm, thus the research's characteristic is normative. The function of this legal research is to get the coherent truth, it means to find the coherence or the harmony between the points that are going to be analyzed and the regulation or principle that is being the reference. The theory of coherent truth is based on what is believed in mind. A statement is included into right or wrong if the statement is suitable or is not suitable with other proposition system. The function of the research of coherence truth is to get something that actiological in which it is as a value or regulation as the reference that is to be analyzed (Peter Mahmud Marzuki, 2013: 47).

The logical of scientific knowledge in legal research is built based on scientific dicipline and the procedure of legal research in which its object is the law or law regulation (Jhonny Ibrahim, 2006: 57). The referred law regulation is the written regulation that contains the legal norm that bind regularly and it is formed or defined by the institution or official that has authority through procedure which is determined by Law regulation, especially related to norm that regulates the authority of divorce registration for Moslem residents.

This research used three approaches. Statue approach, comparative approach, and historical approach (Bambang Sunggono, 2000: 76). The statue approach was done by understanding the hierarchy and principles in law regulation. Comparative approach was done by doing study of law comparison to consider and to value the exististing legal regulations and the court decisions with other legal systems. The comparative approach in this research is the internal comparison, it is the legal comparison between district court authority and religion court authority have similar authority in judging divorce cases. While history approach was done in order to investigate the history of legal institutions of divorce registration. It is necessary to understand the principle of legal rules or legal norm philosophy that regulates the divorce registration authority from time by the time. History approach in this research is the the approach of legislation history (wethistorie, legislation history) (Bagir Manan, 2012: 9).

The legal resource that was used in this research is the primary sources or authorities and secondary sources or authorities. The primary sources is the legal sources that is authoritative. It means it has authority that consists of laws regulation, the legal registration or report in the establishment of laws regulation or court decision. Secondary sources are all publications of legal which are not legal documents, such as text book, legal dictionary, legal journal (Peter Mahmud Marzuki, 2013: 141-181), the opinion of juris, including the legal source in the form of publication through the internet that relates to the research material.

The collection the sources was done by investigation in order to get legal sources relate to the current issues in this research. The obtained legal sources were quoted, edite, learned, and taken its point. Next, those legal sources were gathered, arranged, grouped, and analyzed as the formulation of the problems. Primary

sources and secondary sources were analyzed in order to obtain prescription on what it should become the essential in this legal research in which based on the characters of legal knowledge as the applied knowledge. The result of the analysis will conduct the conclusion as the solution of laws issues that has to be solved.

3. Research Results dan Discussion

3.1. Coherence of Divorce Registration Regulation on Laws of Religion Court by the Principle of Suitability among Kinds, Hierarchy, and Substance.

To discuss the coherence of divorce registration regulation on Article 84 clause (4) Law No. 7 of 1989 on Religion Court that has been revised by Law No. 3 of 2006 and Law No. 50 of 2009 by the principle of the suitability between kinds, hierarchy, and substance, it is necessary to discuss first the research result and to discuss the meaning of kinds, hierarchy, and the substance, ontologist basic of law formation, and ratio legis the regulation of divorce registration authority, thus this authority becomes the authority of religion court.

3.1.1. The Principle of the Suitability among Kinds, Hierarchy, and Substance

Law No. 12 of 2011 on Establishment of Laws and Regulation on Article 5 regulates:

“In forming the laws and regulation, it must be done based on the formation principles of proper law regulation, such as:

- a. the clearness of aim;
- b. institution or the exact former official;
- c. suitability among the kinds, hierarch, and substance;
- d. can be conducted;
- e. efficiency and productivity;
- f. the clear formulation;
- g. transparency.”

The formation of law regulation have to be based on the formation principles of of proper law regulation, such as the suitability among kinds, hierarchy, and substance. The contents of law regulation have to be proper. On the explanation of Article 5 letter c, it is explained that the meaning of suitability among the kinds, hierarchy, and the substance is “in the formation of law regulation, the proper material should be really noticed in which it is suitable with the kinds and hierarchy of the law regulation.”

The principle of suitability among the kinds, hierarchy, and substance as the consequence of the existance of kinds and hierarch of laws and regulation as has been determined on Article 7 Law No. 12 of 2011 on Establishment of Laws and Regulation as below:

- (1) “Kinds and hierarchy of legislation regulation consist of:
 - a. Constitutional of Republic Indonesia 1945;
 - b. Determination of the People's Consultative Assembly Decree;
 - c. Government Regulation in Lieu of Law;
 - d. Government Regulations;
 - e. Presidential Regulations;
 - f. Provincial Regulation; and
 - g. Regulation Regency/City.

- (2) The legal power of legislation regulation based on hierarchy as explained in clause (1)”.

The explanation of Article 7 clause (2) explained further that hierarchy means “the content of every laws and regulation based on the principle that regulates the rule that the lower law regulation should not be contradict with the higher law regulation.”

Besides the kinds of law regulation on Article 7 clause (1), admitted the existance of law regulation kinds as has been stated on Article 8 clause (1) Law No. 12 of 2011 on Establishment of Laws and Regulation and it has legal power which bound as long as it is ordered by higher law regulation or it is built based on its authority. Authority built law regulation can be in the form of atributive authority or delegative or derivative authority. Atributove authority is the real authority that is given by Constitutional of Republic Indonesia 1945 or Laws to the institution or certain official, while delegative or derivative authority is the authority that is given by the holder of atributive authority to the official of certain institution under its power in order to regulate further legeslative regulation that has been made by the holder of atributive authorirty (Turiman Fachturahman Nur, 2004: 11).

The using of term “substance” was introduced by Abdul Hamid Saleh Attamimi as the replaced term in Dutch *het onderwerp* in the series of words *het eigenaardig onderwerp der wet* which was used by Thorbecke in *Aantekening op de Grondwet* that is translated as below:

“Grondwet borrow the understanding of *wet* is only from people/ legal institution that built it. Grondwet lets the opened question on something in our state that has to be established by *wet* and something else that can be determined by other way. As the other Grondwet-grondwet, this Grondwet also stay to formulate the specific substance for *wet* (*het eigenaardig onderwerp der wet*) (A. Hamid S. Attamimi, 1990: 205).

The word series of *het eigenaardig onderwerp der wet* are translated as “the specific substance for laws” that is the specific regulation that is only or merely regulated in Laws and it is because it becomes the law substance (Maria Farida Indrati Soeprapto, 1996: 123).

The understanding of substance in Law No. 12 of 2011 on Establishment of Laws and Regulation was stated in Article 1 number 13 that “the substance of legislation regulation is the point that is included into legislative regulation based on its kind, function, and hierarchy of law regulation”. The legislation substance is determined in Article 10:

- (1) “The substance of which should be regulated by legislation contains:
 - a. further guidance on the provisions of the Constitution of the Republic of Indonesia 1945;
 - b. command a law to be regulated by law;
 - c. ratification of certain international agreements;
 - d. further action on the decision of the Constitutional Court; and/or
 - e. fulfillment of legal needs in the community.”
- (2) “Further action on the decision of the Constitutional Court referred to clause (1) letter d made by Parliament or the President.”

The substance provisions of the law in Article 10 Law No. 12 of 2011 on Establishment of Laws and Regulation will be the basis of the substance coherence test of Law No. 7 of 1989 on Religion Courts as amended by Law No. 3 of 2006 and Law No. 50 of 2009 regarding the regulation of divorce registration authority in Article 84 clause (4) which gives such authority to the clerk of the religion court.

The establishment of regulation should be based on the principles of proper law establishment. Affirmation of the word “must” in the formulation of Article 5 Law No. 12 of 2011 on Establishment of Laws and Regulation that indicates the existence of norm in the law commands. Command is an obligation to do something, thus the forming obligatory of legislation regulation in the formation of regulation based on that principle.

3.1.2. The Ontologist Basic Laws on Religion Court

To discuss the coherence of divorce registration authority on Article 84 clause (4) Law No. 7 of 1989 on Religion Court using the principle of suitability among kinds, hierarchy, and substance that are necessary to be analyzed about ontologist basic or the philosophy principle of this law establishment. The ontologist basic of its law establishment can be investigated in its consideration, legal principle, and general explanation. Consideration is the part of introduction that is started by the word “considering”. The legal principle is the introduction that is started by the word “In view of”. The general explanation is the part of law explanation that consists of general explanation and explanation of each Article.

The basic establishment of Law No. 7 of 1989 on Religion Court in its consideration “considering” on letter e founded that explanation as below:

“In its connection with those considerations, and in order to conduct Law No. 14 of 1970 on the Basic Provisions of Judicial Power, it is necessary to determine Laws that regulate the formation, authority, and procedural law in the area of Religion Court.”

In the general explanation number 1 paragraph 5, it is also found explanation below:

“Therefore, Laws that regulate the formation, authority, and the procedural law in the area of Religion Court is the implementation form of the provisions and the principles which are stated in Laws on Basic Provisions of Judicial Power (Law No. 14 of 1970, State Gazette 1970 No. 74, Supplementary State Gazette No. 2951).”

Based on above explanation, it can be known that the establishment of Law No. 7 of 1989 is as the implementation form of Law No. 14 of 1970 as the laws that regulate the applicable judicial power in that time in order to regulate the formation, authority, and the procedural law in the area of religion court. The view of basic ontologist Law No. 7 of 1989 on Religion Court as explained in the table below.

Table 1. Ontologist Basic of Law No. 7 of 1989 on Religion Court

Law No. 14 of 1970 on Basic Provisions of Judicial Power	
Article 10 clause (1)	“Judicial Power is done by Court in the area of: a. General Court; b. Religion Court; c. Military Court; d. Administrative Court;
Article 12	“Formation, Authority, and Judiciary Institutions such as in Article 10 clause (1) arranged in this Law itself.”
Law No. 7 of 1989 on Religion Court	
Consideration “Considering” letter e	“stated that in its relation with those considerations, and in order to conduct the Law No. 14 of 1970 on Basic Provisions of Judicial Power is regarded it need to determine Laws that regulate the formulation, authority, and procedural law in the area of religion court.”
Basic law “In view of”	1. Article 5 clause (1), Article 20 clause (1), Article 24, and Article 25 Constitution of Republic Indonesia 1945. 2. Law No. 14 of 1970 on Basic Provisions of Judicial Power (State Gazette 1970 No. 74, Supplementary State Gazette No. 2951). 3. Law 1985 Number 14 on the Supreme Court (State Gazette of 1985 No. 73, Supplementary State Gazette No. 3316).”
Chapter IV Process Law Article 84 clause (4)	“The Clerk of the Religion Court is obliged to give a divorce certificate as divorce evidence to the parties at the latest time is 7 (seven) days after that decision of legal certainty is notified to the parties.”
General explanation number 1 paragraph 5	“Thus, legislation governing the structure, powers, and Process Law in the area of Religion Courts is the implementation of the provisions and principles contained in the Law on Basic Provisions on Judicial Power (Law No. 14 of 1970, State Gazette 1970 No. 74, Supplementary State Gazette No. 2951).”
General Explanation number 5	“These laws not only regulate the composition and authority but also arrange Process Law.”

- Based on the research result, the ontologist basic of Laws on Religion Court can be explained as below:
- The establishment of Law No. 7 of 1989 on Religion Court in order to conduct Law No. 14 of 1970 on Basic Provisions of Judicial Power to regulate the formation, authority, and process law in the area of Religion Court.
 - The establishment of Law No. 3 of 2006 on Amandment of Law No. 7 of 1989 on Religion Court in order to adapt with the life of national government based on Constitutional of Republic Indonesia 1945 and the Amandment of Law No. 14 of 1970 on Basic Provisions of Judicial Power as the Amandment of Law No. 35 of 1999 and replaced by Law No. 4 of 2004 on Judicial Power. The important alteration of Law No. 14 of 1970 on Basic Provisions of Judicial Power is organization diverting, administration, and the financial of judiciary institutions which were under the authority of each related department, it becomes controlled by Supreme Court.
 - The establishment of Law No. 50 of 2009 on the second alteration of Law No. 7 of 1989 on Religion Court as the adaptation or synchronization of Law No. 3 of 2009 on the second amandment of Law No. 14 of 1985 on Supreme Court and the amendment of Law No. 22 of 2004 on Judicial Commission.

The regulation of divorce registration authority that gives that authority to the clerk of religion court to publish the divorce certfcate was legalized when the establishment of Law No. 7 of 1989 on Religion Court. This authority is arranged in Chapter IV Process Law Second Part Investigating Divorce Lawsuit Article 84 clause (4). The regulation of divorce registration authority is included into the part of Chapter Process Law law especially in the part of investigation of divorce lawsuit. Therefore, it is necessary to be observed in its own sub

discussion relates to area of civil law in religion court in order to solve the issue if this regulation is included in the part of process law.

3.1.3. The area of Process Law in Religion Court

Process law or procedural law is a law that regulates how to defense the material civil law which is started from the lawsuit, the case examination, the decision, and the implementation of Court decision. In another explanation, the area of process law is a law that regulates the procedures of lawsuit, the action of the judge before the examination and in the process of examination, the procedure of the judge in deciding the lawsuit case that is purposed by the accusing, and the way in doing the decision implementation based on the applicable regulation, in order to conduct the balance situation between right and responsibility (Abdul Manan, 2005: 2).

Procedural law generally can be divided into three stages. The first stage is preliminary, second stage is defined stage, and the third is implementation stage. Preliminary stage is the preparation stage before the examination process in the court, such as purposing the lawsuit. The defined stage is the examination stage in the court that is started from answering session, the authentication incident, until the process of decision. The implementation stage covers the decision implementation until done (Sudikno Mertokusumo, 1988: 4).

Law No.7 of 1989 on Religion Court regulates the applicable procedural law in Court in the area of Religion Court in Chapter IV Procedural Law started from Article 54 until Article 91. Chapter IV Procedural Law is started by the affirming in the Provision of Article 54:

“The applicable Procedural Law in the Court in the area of Religion Court is the applicable process law in the Court in the area of District Court except for regulation that has been arranged specifically in these Laws.”

The procedural law that is arranged in Law No.7 of 1989 on Religion Court is *lex specialis* process law. The government information of the Laws Draft on Religion Court in the Plenary Session of the Parliament on January 1989, 28 relates to the civil law stated that things that have to be arranged specifically is the unknown issues or issue that its regulation is different from the applicable rules in general court, such as (a) the examination of divorce case regulates the lawsuit divorce and repudiation divorce, (b) *li'an*, and (c) the case expense (Government Information, 28 January 1989: 11-13).

Based on the explanation above, the regulation of the applicable process law material in the area of religion court is *lex specialis* the applicable process law in the area of general court that consists of divorce case examination, *li'an*, and the case expense. However, the law establishment also encloses the divorce registration regulation by having authority to publish the divorce certificate in the part of procedural law, such as the examination of marriage case. Therefore, it is necessary to be investigated further in order to know *ratio legis* of the regulation on Authority of publishing the divorce certificate in Law No. 7 of 1989 on Religion Court.

3.1.4. Ratio Legis of Regulation of Divorce Registration Authority

The ontologist basic and philosophy foundation that has been discussed before which relates with the whole laws, while the the *ratio legis* that is meant is related with one of the laws that is being the focus of this research. Based on Paul Scholten that as quoted by A. Hamid S. Attamimi, stated that in the legal area (especially the civil law or the private law), it is important for the law principle (*rechtsbeginsel*) in judging the “red line” of the positive law principle of thing that is analyzed and investigated. From this law principle, *ratio legis* or the general aim of its regulation can be found (Paul Scholten, 1954: 84). *Ratio legis* can be described as the reason why some law provision exists. *Ratio legis* is the law regulation that cannot be separated from the ontologist principle and philosophy foundation of laws that contain the regulation (Peter Mahmud, 2013: 145).

The provision which is explained in Law No. 7 of 1989 on Religion Court that will be analyzed is the Article 84 clause (4). It clarified that “Clek of the Religion Court has an obligation in giving the divorce certificate as divorce evidence to the relates sides at least on 7 days counted since the decision gets defined legal power told to the related sides.” Based on this provision so the authority of divorce registration that was firstly arranged in Law No.22 of 1946 on Marriage Registration, Repudiation, and Reconciliation juncto Law No. 32 of 1954 and Law No.1 of 1974 on Marriage juncto Government Regulation No.9 of 1975 on the Implementation of Law No.1 of 1974 on Marriage which is the authority of registration official in District religious affairs office (KUAKec.) becomes the authority of the clerk of the religion court. Supreme Court has affirmed this regulation of divorce registration authority by publishing the handbill of Supreme Court No. 1 of 1990 to be the reference and example in the making of divorce certificate and the Handbill of Supreme Court No. 4 of 1990 as the reference in the making of divorce certificate registration in Religion Court.

In finding *ratio legis* of legal certainty, it is not enough by doing investigation to Law No. 7 of 1989 on Religion Court as legal product. Therefore, the research is continued by doing analysis on Law Draft (RUU) on Religion Court. On Law Draft of Religion Court on December 3, 1988 which was published by government to be discussed in the Council of Representatives. It explained more the provision of reeregulation on authority of

divorce registration on Article 84 clause (4) which its formulation is similar with the applicable legal product. The Government Information of Law Draft on Religion Court in Plenary Session of the Parliament of Republic Indonesia on January 28, 1989 about the material of procedural law stated:

“Moreover, to ensure the implementation of the provisions as has been defined in Article 39 paragraph (1) of Law 1974 No. 1 on marriage, that divorce can only be executed in front of the court, then the authority to provide proof of divorce in this bill is given to the Religious Courts, it is not longer to the authority of KUA subdistrict as stipulated in Government Ordinance 1975 No. 9” (Government Statement, January 28, 1989: 13).

Based on the formulation of the paragraph in the bill of Religious Court found the reason of law norm gives authority to provide divorce evidence to the religion courts that is to ensure the implementation of the provisions of Article 39 clause (1) Law No. 1 of 1974 on Marriage. This determines that the “Divorce can only be done in front of the Court after the relevant court has tried and it is unsuccessfully to reconcile the two sides.” The authority in publishing divorce evidence is not longer being KUA authority, but it becomes the authority of religion courts on the basis of guaranteeing the implementation of the provisions of Article 39 clause (1) Law No. 1 of 1974 on Marriage.

The provisions of Article 39 (1) of Law No. 1 of 1974 on Marriage regulates the divorce because repudiation can only be done in front of the religious court. Further regulation is arranged in Government Regulation No. 9 of 1975. It stated that the divorce took place starting from the divorce court stated in front of the court trial of Religion Court. Such provisions are also consistent with Article 71 clause (2) Law No. 7 of 1989 on Religion Court. It clarified that the marriage broke up since the pledge of talaq (repudiation) is pronounced and the court made a determination about the marriage status. The divorce evidence is the determination of Religion Court on the marriage status since the pledge of talaq (repudiation) is pronounced. That determination is the authentic evidence of the divorce on the relation between husband and wife.

Marriage broke up on a lawsuit divorce which is regulated in Article 81 Law No. 7 of 1989 on Religion Court. The divorce verdict was pronounced in the court trial of religion court. Divorce happens with all its legal consequences counted since this religious court decisions get definite legal force. Court decisions that have permanent legal force is an authentic proof of divorce between husband and wife.

Based on these norms, the government statement which authorizes the court to give the divorce evidence is a logical. However, the formulation of Article 84 clause (4) of Law No. 7 of 1989 on Religion Court as legal product gives authority to the clerk of religion court to publish the divorce evidence. These provisions have put divorce certificate as the end product of divorce case in religion court, so that the regulation of authority in publishing the divorce certificate to the clerk of religion court in Article 84 Clause (4) of Law No. 7 of 1989 on Religion Court have happened downgrade decision or determination of the religion courts in a divorce case as the divorce evidence.

The result of the provision differences between Religion Court and District Court, thus the divorce case that has been decided in District Court is regarded happening with all its legal consequences as from the time of registration on the list of registry office records by registrar official as the provisions of Article 34 Article (2) of Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage. This difference occurs because of different marriage concept between the civil law concept (Burgerlijk Wetboek) and Islamic law concept.

A study of primary legal materials have not been enough to give a logical answer regarding the ratio legis of basic regulation of divorce registration authority. To confirm the results of the primary legal materials, investigation on secondary law will be continued. Research on secondary law can be found in a legal article entitled "Law No. 7 of 1898 on the Religion Court and Divorce Issues in Indonesia" written by Ichtijanto SA in 1994. This secondary law Materials is very valuable to discover clarity of the ratio legis regulation of divorce registration authority as stated by Ichtijanto SA are as follows:

“About registration of marriages, divorces, and this reconciliation, Religion Courts Law (UUPA) does not provide any provision and does not pull out any provisions in Law Number 22 of 1946, it because UUPA is legislation containing formal law, not the laws which give provisions on registration of marriages (including divorce registration). Therefore it makes sense that the UUPA does not repeal the law material of obligations of people that decide repudiation or divorce to register the repudiation or the divorce case to the officiaol of marriage registrar (PPN). But in its practice, within the publication of the UUPA, thus for the Moeslim changed has been done to Religious Minister Affairs No. 3 of 1975 by the Provision of Religious Minister Affairs 1990 No. 2 which removes legal obligations of people who purpose repudiation and divorce case to register the case to the KUA. It seems that it is understandable that the side who has obligation to quote is PPN to KUA, which is considered, it is enough to get the material from a copy that was sent by the

concerned Religion Courts. Within its practice, the delivery of the decision by the Religion Court to KUA was not regulated as soon as possible. As the result, the registration of the divorce case in KUA is not conducted as soon as possible. The further result is there is no divorce statistic and repudiation statistic in KUA; while the executing of the marriage and reconciliation can be conducted fast. This situation gives some disadvantages. State cannot value the quality between the number of marriage, repudiation, divorce, and reconciliation that happen. It is very clear that in this situation, the evaluator of Moeslim family cannot value well the number of marriage and divorce case that happen in a year. The number of reconciliation case from the repudiation case cannot be known, besides, the number of repudiation that cannot reach reconciliation cannot be known, too. Those are the important parts and basic things for the evaluator of family analysis and sociology and also religion law. Before UUPA, the Religious Ministry Affairs (Directorate General of Islamic Guidance and Hajj Affairs Directorate of Islamic Affairs) can show to society decisively” (Ichtijanto SA, 1994: 67-68).

According to secondary material, it has been found that ratio legis of regulation on divorce registration authority is done for the importance of divorce statistic data in Indonesia, so it can be equal with the statistic data of marriage and reconciliation case. At that time the Religion Court still could not regularly make decision or determination and could not send the copy of decision and determination of Religious Office Affair in District soon. As the result the statistic data of divorce cases could not be known easily. In other sides, the statistic data of marriage and reconciliation cases could be known easily. Of course this situation gives disadvantage to Indonesia. The family quality relates to marriage comparison, repudiation comparison, reconciliation comparison and divorce reconciliation cannot be seen easily. While those points were very important for the family evaluator and sociology evaluator and religion law in that time. Therefore, the authority of divorce registration in publishing the divorce certificate as the divorce evidence is given to the clerk of religion court.

It shows that ratio legis of that regulation prioritizes the usefulness of divorce statistic (doelmatigheid) and puts aside the certainty law aspect (rechtmatigheid). According this situation, and relevant with the opinion of Bagir Manan that in the law regulation it seems that it is merely doelmatigheid or in other explanation that the benefit principle is put against rechtmatigheid. Doelmatigheid is a method that weakens the law provision, but the usefulness principle is used as the basic of this concept. The usefulness concept that is used adapts with the law. Thus the law implementation will be avoided from the end justifies the means (Bagir Manan, 2005: 73).

3.1.5. Coherence between Regulation of Divorce Registration Authority and the Agreement Principles among Kinds, Hierarchy, and the Substance.

The research result on ontologist basic of Law No.7 of 1989 on Religion Court shows that the substance which has to be arranged in Law No.7 of 1989 on Religion Court is the substance based on the order of Law No.14 of 1970 on the Basic Provisions of Judicial Power that was applicable at that time in order to arrange the formation, the authority, and the procedural law. To conduct the order of that Law, the substance if the formation, the authority, and the procedural law are arranged in the body of Law No.7 of 1989 on Religion Court. It contains of Chapter I General Provisions, Chapter II Court Formation, Chapter III Court Authority, and Chapter IV Procedural Law. The procedural law that is arranged in Chapter IV consists of three parts. First, General, the second part is Divorce case examination, and the third part is Legal costs. In the second part is Divorce case examination on Article 84 clause (4) arranged the clerk of the religion court authority in publishing the divorce certificate as the divorce evidence to the relevant sides. Below is the further explanation:

“The Clerk of the Religion Court has an obligation in publishing the divorce certificate as the divorce evidence to the relevant sides, at the latest time is seven days after the decision of divorce case gets the constant law force told to the relevant sides.”

The establishment of Law No.7 of 1989 on Religion Court regards that giving an authority to the clerk of the Religion Court to publish the divorce certificate as the divorce evidence is the part of civil law series in religion court. Clerk of the Religion Court gets an authority to publish the divorce certificate based on the divorce decision that has been already law force or the determination of repudiation statement said.

The process law is a law that regulates the way to defend the substance of civil law started from the divorce lawsuit, the case examination, the decision process, and the implementation of court decision. Procedural law that is applicable in court trial of religion court is the procedural law that is applicable in the area of general court. Except, regulation that has been arranged specifically on Law No.7 of 1989 on religion court (lex specialis).

The procedural law is a law that regulates the way in defending the material of civil law. It generally can be divided into three stages. Those are preliminary stage, decision stage, and implementation stage. (Sudikno Mertokusumo, 1988: 4). According to its relevant to procedural law of marriage case examination, those stages will be discussed as below. The preliminary stage is the stage where the preparation process is done before the examination case in the court, such as purposing the divorce lawsuit or purposing the repudiation. The

decision stage is a stage of examination process is started in the court. This process is started by the lawsuit recitation, answer, legal response, response, the case authentication, until the decision of the case. While the decision stage for the divorce case is not similar with the materiality case that can be done by execution.

The decision of divorce case does not contain of permission for husband in giving the divorce lawsuit to his wife. After that decision has definite law force, the court will start the court trial to apply its decision, the husband pronounces repudiation vow. The implementation of repudiation vow depends on the husband, this process can be defined as quasi execution. If husband does not state his repudiation vow in six days after the decision of repudiation vow, thus this lawsuit will be cancelled. Dictum of divorce decision on the divorce lawsuit is constitutive. If the decision has legal force so the marriage status will be broken along with all its legal effects. The decision of divorce lawsuit that has legal force ends the marriage bound of husband and wife without doing the decision implementation.

Laws No.7 of 1989 on Religion Court has regulated the the provisions of broken marriage status that is caused by repudiation that has happened after the repudiation vow being said in front of the court trial of religion court and the religion court conducts the law product in the form of determination of the repudiation vow (Article 71).

Marriage broke up because of divorce lawsuit occurred since the divorce decision grants the divorce lawsuit to have legal force (Article 8 Clause (2)). The legal product existence of religious courts in the form of divorce judgment which has force of law or the determination of the occurrence of repudiation vow, thus the divorce is considered to occur between husband and wife with its all legal consequences. Divorce decision that has been legalized by law or the determination of the occurrence of repudiation vow is the form of authentic evidence of the divorce case has been ended.

To conduct the further action after the process of divorce decision or after the determination of the occurrence of repudiation vow, clerk of religion court has an obligation to send the copy to the official of religious ministry affair. It is done as the form of administration process relates to the divorce registration. The addition authority for clerk of religion court in publishing the divorce evidence Article 84 clause (4) Law No.7 of 1989 on Religion Court is the part of procedural law as the ontologist principle of the establishment of Law No.7 of 1989 on Religion Court. That authority is included to the administration area that is regulated in the regulation which relates to executive authority or in this area is the official of Marriage registrar (PPN) or registration official in District religious affairs office (KUAKec).

Based on explanation above, the regulation of divorce registration authority as the provision in Article 84 clause (4) Law No.7 of 1989 on Religion Court is not the part of procedural civil law of divorce cases, but it is included in the area of marriage administration which this regulation belongs to executive authority or in this area is the official of Marriage registrar (PPN) or registration official in District religious affairs office (KUAKec). Therefore, the regulation of divorce registration authority is not suitable as the agreement principles among kinds, hierarchy, and the substance as the provisions in Article 5 letter c Law No.12 of 2011 on Establishment of Laws and Regulation.

3.2. Realization of Ordinance and Law Certainty Principle in the Regulation of Divorce Registration in Laws of Religion Court

3.2.1. The Ordinance and Law Certainty Principle

Laws 2011 No.12 on Establishment of Laws and Regulation in Article 6 determines some rules of:

- (1) "The substance of laws and regulation has to reflect the principles of:
 - a. protection;
 - b. humanity;
 - c. nationality;
 - d. kinship;
 - e. archipelago;
 - f. Bhineka tunggal ika;
 - g. justice;
 - h. equality position in law and government;
 - i. order and legal certainty; and / or
 - j. balance, suitability, and harmony.
- (2) Besides reflecting the principles as explained in Clause (1), certain Law Regulation can be contained other principles that are suitable with related law of Law regulation."

The confirming the word of “have to” in Article 6 (1) shows that there is the existence of law principle order. Order is an obligation to something or negatively it means that it cannot to not be done. Thus this is the obligation of legislation regulation former to uses the principle of proper Legislation regulation. Those principles are the ordinance principle and the certainty of law. The meaning of ordinance principle and law certainty will be explained further in Article 6 (1) letter i. It stated that “the ordinance and law certainty principle meant are each substance of law regulation has to create ordinance in the society through the law guarantee.”

According to Mochtar Kusumaatmadja, if the basic aim of law is reduced there will be one point. That is “order”. Order is the basic aim of law. Need of order is one of fundamental requirement increasing the ordinance in society. In order to reach ordinance in society, certainty is needed (Mochtar Kusumatmadja, 2006: 3). Order and law certainty are the requirements for creating regular society and helping to grant better development implementation (www.bappenas.go.id/index.php/, 8 April 2015). Law certainty is the characteristic that cannot be separated from the written law norm, because without the existence of certainty value it will lose its meaning and it cannot be as behaviour guidance for society (Salim Hs, 1996: 95).

According to Utrecht, law has obligation in granting the existence of law certainty (rechtzekerheid) in the society association. Law certainty should grant the justice and the usefulness. Order is the character that cannot be seaparted from law, especially for the written law norm. Law without the certain value will lose its meaning because it cannot be used as the guidance of people’s behaviour. Law certainty is the part of law purpose theory. Those are law justice, law usefulness, and law certainty (Utrech, 1983: 86).

Based on Gustav Radbruch, there are three law basics. Those are justice, usefulness, and law certainty (Gustav Radbruch, 1950: 107, dan Achmad Ali, 1996: 95). Moreover, it was explained that law certainty is the certainty of law itself (sicherheit des rechts selbst) or regulation certainty (sicherheit des rechts). There are four basic things that relates to law certainty. Firstly, legal is positive, it means that this positive law is legislation (gesetzliches recht). Secondly, fact is the foundation law (tatsachen). Thirdly, fact must be formulated clearly in order to avoid the mistakes in understanding it and it is easily applied. Fourth, the positive law should not be easily changed (Satjipto Rahardjo, 2006: 135-136). The law certainty is a certainty that exists because of law and the certainty in law can be reached if there is legal in the form Laws, and in laws there are not regulations that against each other and there should not be understanding that can confused each other.

Law certainty covers two dimensions. Firstly, the law certainty inlaw. Secondly, the law certainty by law. The law certainty in law is law as the system. Law is implemented as the consistent norms. Its substance cannot be inconsistent (it should be harmony and synchronous), it should not be contradict each other, overlapping, and ambiguous. The law certainty by law relates to legal validity (authority that bind it).

Bagir Manan explained that why legislation regulation can emerge the certainty of law:

- a. Regulations that have been left over, such as the regulation in colonial government or regulatios which are made on the foundation that are no applicable again.
- b. Contradict regulations, or overlapping regulation, both in its content or unclear competent
- c. Regulations “depend” without the implementation regulation, thus the basic regulation cannot be implemented. Although these regulations are applied, it is merely because of the basic “policy regulation” (beleidsregel) which is often wrong in implementing the understanding of doelmatigheid and negatiate the aspect of rechmatigheid. In sharing the legislation regulation, it seems that doelmatigheid or usefulness principle is placed in contravention with rechmatigheid. The usefulness principle or doelmatigheid is a method that can soften the law certainty, but the usefulness principle that can be used as the basic is the principle which is suitable with laws (Bagir Manan, 2005: 73-74).

Based on the explanation of law certainty, the existence of law certainty on law norm as legal product if it regulates clearly and based on thenorm system. Its meaning is clear, it does not emerge ambiguity in its law implementation, and while based on the norm system it means that it will not be contradict with other norms or should not emerge the norm conflict.

3.2.2. The Implementation of Ordinance and Law Certainty Principle

The substance of regulation must reflect the principle of order and law certainty as the provision on Article 6 clause (1) letter i Law No. 12 of 2011 on Establishment of Laws and Regulation. The substance of regulation should reflect the law certainty if it is made and legalized because it relates clearly and logically. The meaning should be clear and does not emerge the ambiguity and its meaning is logic so it will not create the norm conflict.

Regulation of divorce registration regulation as the provision of Article 84 clause (4) Article 84 clause (4) Law No. 7 of 1989 on Religion Court which has been revised by Law No. 3 of 2006 and the second revised was Law No. 50 of 2009 emerge the norm conflict with Law No. 23 of 2006 on Population Administration which has been revised by Law No. 24 of 2013 and the unsynchronize norm happened both vertically and horizontally. As vertically, the contradiction happened with Article 24 clause (1) and clause (2) Constitution of Republic Indonesia 1945 and Law No. 48 of 2009 on Judicial Power. As horizontally, the contradiction happened between parallel legislations that are Law No.22 of 1946 juncto Law No. 32 of 1954 on Marriage, Repudiation, and Reconciliation Registration, Law No. 1 of 1974 on Marriage juncto Government Regulation No. 9 of 1975 on Implementation of Law No. 1 of 1974 on Marriage, and Law No. 23 of 2014 on Regional Government that has been revised by Law No. 2 of 2015.

The basic authority of divorce registration Article 84 clause (4) Law No. 7 of 1989 on Religion Court which has been revised by Law No. 3 of 2006 and the second revised was Law No. 50 of 2009 emerges the law uncertainty in its implemation, thus it is contradict with Article 28 D clause (1) Constitution of Republic Indonesia 1945 which stated that “each individual has right on acknowledgment, protection, and balance law certainty in front of law”.

Based on the explanation of research result above, the regulation of divorce registration authority in Article 84 clause (4) Law No. 7 of 1989 on Religion Court which has been revised by Law No. 3 of 2006 and the second revised was Law No. 50 of 2009 does not reflect the order principle and law certainty as the provision of Article 6 clause (1) letter i Law No. 12 of 2011 on Establishment of Laws and Regulation.

4. Conclusion

The regulation of divorce registration authority in giving the authority to the clerk of the religion court in publishing the divorce certificate in Article 84 clause (4) Law No. 7 of 1989 on Religion Court which has been revised by Law No. 3 of 2006 and the second revised was Law No. 50 of 2009 is not coherent with the establishment principle of proper laws and regulation. The establishment of Law No. 7 of 1989 on Religion Court is the order of Law No.14 of 1970 on Basic Provisions of Judicial Power which is applicable in arranging the formation, authority and procedural law. The divorce registration is the further action of divorce case which is administrative and it is not part of examination procedural law series on marriage case. Other legislation has arranged that the divorce registration authority belongs to the registration official in District religious affairs office (KUA/Kec.) as the administration organizer in the field of marriage inhaerent divorce.

The regulation of divorce registration authority in Article 84 clause (4) Law No. 7 of 1989 on Religion Court which has been revised by Law No. 3 of 2006 and the second revised was Law No. 50 of 2009 does not reflect the order and law certainty principle because it emerges the norm conflict and norm unsynchronization has happened both vertically or horizontally.

5. Recommendation

Recommendation to House of Representatives and Government to change or repeal the authority basic of divorce registration in Article 84 clause (4) Law No. 7 of 1989 on Religion Court which has been revised by Law No. 3 of 2006 and the second revised was Law No. 50 of 2009. It should be changed or repealed from other Laws that regulate the divorce registration. Decision or determination of Religion Court on divorce is an authentic evidence of the divorce between husband and wife, thus the authority presentation to the clerk of the religion court in publishing the divorce certificate as the divorce evidence has been downgrade decision or Court decision on divorce case. Therefore, it is not necessary to regulation of divorce registration authority that give an authority in publishing the divorce certificate as the divorce evidence.

Recommendation to the law observer, it is necessary to conduct further research on regulation of divorce registration authority in Law No. 7 of 1989 on Religion Court which has been revised by Law No. 3 of 2006 and the second revised was Law No. 50 of 2009 in order to get comprehensive view on divorce registration that has law certainty.

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