

Dualism of Authority on Divorce Registration

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Abstract

The religion court is one of judiciary power to carry out of judicial process to establish justice. In the legal reforms era that uphold the principles of the rule of law according to the Constitution of the Republic Indonesia 1945, there was still issue of the authority of the religion court in conducting the divorce registration with the authority issued divorce certificates based on Article 84 (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009. On the other hand, Law No. 23 of 2006 on Population Administrative which was revised by Law No. 24 of 2013 envisaged that the authority to conduct the divorce registration with the authority issued divorce certificates is included within population administrative. It is the authority of the government (executive). This way, it is submitted that Law No.7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 is unconformity with Law No. 23 of 2006 that emerges the uncertainty law happens. This reasearch uses statute, comparative, and historical approach, and finds that the religion court as judiciary power doesn't have authority to conduct the divorce registration, but it belongs to the government (executive function or administrative function).

Keywords: dualism, authority, and divorce registration.

1. Introduction

The Constitution of the Republic Indonesia 1945 is the basic law in laws regulation in Indonesia which consists of regulation and the state authority limitation and it function is to protect the human rights (Miriam Budiarjo, 1991: 101). The regulation principle and the authority limitation of state are stated on Article 1 (2) of the Constitution of the Republic Indonesia 1945. It stated that the authority is in the hand of people and the application is distributed functionally to the institution of states which have been included into the Constitution of the Republic Indonesia 1945 (constitutional organs). The state intitutions largely can be differred into three functions. The legislative function, the executive or administrative function, and the judicial function (Jimly Asshiddiqie, 2014: 1).

One of the human right protections is the right to build a family and preserve the heredity through the legal marriage as it has been stated on Article 28B clause (1) of the Constitution of the Republic Indonesia 1945. In order to give right protection in relation of marriage, laws in Indonesia has been made Law No. 1 of 1974 on Marriage juncto Government Regulation No. 9 of 1975 on Implementation Regulation of Law No. 1 of 1974 on Marriage. The regulation also contains of the regulation of the division and limitation of institution in the marriage, both the authority between the judicial institutions and the authority between the judicial institutions and executive institutions or administrative institutions.

The regulation of authority between the judiciary institutions in the marriage case is devided into religion court and district court. The religion court has an authority to carry out judicial process the case of Moslems' marriage. While the district court has an authority to carry out judicial process other cases (Article 63 (1) of Law No. 1 of 1974 on Marriage). The devision of authority regulation between judiciary institution and executive institution or administration institution is same as the devision above. The authority of religion court and district court on the marriage case is to carry out judicial process and its product in the form of decision. Moreover, the further authority related to the registration of divorce marriage inhaerent is the authority of registry official, while the registry official is part of executive institution and administrative institution.

The divorce registration is the registration of divorce case into register divorce sertificate and issuance of divorce certificates. The authority of divorce regristration is an authority to conduct a sequence of legal actions, those actions are to register the divorce and issuing divorce certificate in order to be given to the related people. On the Law No. 7 of 1989 on Religion Court has been found the normative fact in Articlce 84 clause (4) as below: "Clerk of the court has an obligation the divorce certificate as the divorce license evidence to the related sides the latest days are seven days started from the decision day is stated to the related sides."

Based on Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 on Article 84 (4) stated that the authority of divorce registration belongs to the clerk of religion court that is as official court. The authority is strengthened by the Practice Note from Supreme Court No. 4 Year 1990 on the Instruction in Making the Divorce Certificate Registration on Religion Court, so the authority of clerk of the court in registering the divorce is a sequence of legal actions that consists of the responsibility to register the divorce on divorce certificate registration, to issue the divorce license, and to give the divorce license to related sides.

The legal norms in Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2013 regulates that the divorce registration authority is the obligation of government or executive. Article 5 clarified that the government through the ministry has an authority to conduct the population administration nationally. The population administration means the sequence of arrangement activities and the publication into residence document and residence data through the resident registration, civil registration, the management of residence administration information, the implementation of its result to serve public, and other development sectors. The divorce registration is part of civil registration which its implementation done by official of civil registration. While, for Moslem it is done by official registration of religious affairs office in district as clarified in Article 1 number 23 that District Religious Affairs Office (KUAKe.) is a unit that conduct marriage registration, divorce, and reconciliation in the level of district for Moslem residents. This regulation is also clarified in Article 8 clause (2). It stated that the authority of marriage registration, divorce, and reconciliation in the district area is done by registration official in District Religious Affairs Office (KUAKe.).

Law No. 23 of 2006 on Population Administration which was revised by the Law No. 24 of 2013 does not take the regulation of Article 84 (4) of Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009, therefore the basic authority of the divorce registration is still applicable now. On the other hand, the norm in Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2013 is not applicable because the authority of divorce registration is done by religion clerk of the religion court.

There are two norms in different laws regulate same authority of two institution or different position. Thus, dualism of divorce registration authority occurred to divorce case based on the decision or religion court order, and finally conflict of norm emerges. Based on Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009, the side that regulates the authority is clerk of the religion court. While, Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2013 regulates that the authority belongs to District Religion Affairs Office (KUAKe.). The aim of law is to create a regular situation in society (Sudikno Mertokusumo, 2011: 44). Norm is the standard of behaviour in order to build regularity in society live. Issue will emerge when there are two norms against each other. It will confuse the law implementation. Therefore, it is necessary to do the research (Johnny Ibrahim, 2007: 120) to clear the applicable norm between those two different norms.

Some issues can be formulated based on explanation above: (1) is authority of divorce registration included into the authority of religion court? (2) is the basic of divorce registration authority in Article 84 clause (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 still applicable after the Law No. 23 Year 2006 on Population Administration which was revised by Law No. 24 of 2013 is applied?

2. Research Method

This research used the legal research. Legal research analyses the norms, therefore this legal research is normative. The aim of norm is to guide people in doing regular behaviour. When something blurred happens in its implementation, weather caused by vacuum of norm, obscur norm, or even conflict of norm, so the legal research is needed to explain norms. Legal problem in this dissertation in conflict of norm, it means there are more than one law norm that regulate the same area but they contradict each other. The legal norm means that the legal norm regulates the authority in divorce registration for Moslem residents or the divorce registration of divorce case that have gotten decision or order from religion court.

This research used three kinds of approaches. Those are statute approach, comparative approach, and historical approach (Bambang Sunggono, 2000: 76). Statue approach is done by understanding the hierarchy and foundation in Law. Statue approach is approach that uses legislation and regulation. While comparative approach is approach that uses law comparison study to consider the value of the law regulations and court decisions that exist in other law system. Comparative approach in this research is internal comparison. Those are the law comparison between the authorities of district court with religion court in which they have same authority in judging divorce case. Historical approach was used to explore the history of law institution of divorce

registration, in order to understand the philosophy foundation of the rules or law norms that regulate the divorce registration authority from time by the time. History approach in this research is the approach of legislative history (wethistorie, legislative history) (Bagir Manan, 2012: 9).

The law sources that were used in this research is primary sources or authorities and secondary sources. The primary sources is law source that is authoritative. It means that it has an authority, it is based on the law regulation, legal registration or report in making law regulation, or court decision. Secondary sources are all law publication that are not legal documents, such as teks books, legal dictionary, law journals (Peter Mahmud Marzuki, 2013: 141-181), the opinion of juris, law cases, seminary results, symposium including the law source that is published in the internet that related to the material of dissertation research.

Collecting the data was done by investigation in order to get law material related to the issues that are going to be solved in this research. The law materials that have been collected are listed, edited, learned, and taken the summary. Next, those law materials are collected, arranged, grouped, and analyzed based on the formulation of the problems. The primary law material and secondary law material were analyzed to conduct prescription on what that has to be the essence in legal research that hold tight the legal characteristics as the practical study. The result of this research will solve the legal issues that have to be answered.

3. Research Results and Discussion

3.1. The Authority Area of Religion Court

The Constitution of the Republic Indonesia 1945 regulates the judiciary authority in Article 24 clause (1) stated "Judiciary power is independent power to carry out of judicial process to establish law and justice." Article 24 clause (2) clarified the authority implementation of judiciary that "The judiciary authority is done by supreme court and justice institution that is under the area of public justice, the area of general court, religion court, military court, administration court, and by a Constitutional Court."

Judiciary power is arranged further by Law No. 48 of 2009 on Judiciary Power and clarified that Article 1 number 1 that "Judiciary Power is a state power that has independent to carry out of judicial process to establish law and justice based on Pancasila and the Constitution of the Republic Indonesia 1945 for the sake of Legal State of Republic Indonesia." Furthermore, Article 18 clarified the implementation of judicial power that "Judiciary power that is done by Supreme Court and judiciary institution under its control in environment of public justice, the area of general court, religion court, military court, administration court, and by a Constitutional Court. The judicial power that is done by the judiciary institution under the Supreme Court is arranged furthermore about its authority in Article 25. The authority of religion court is clarified in Article 25 (3) that the religion court has an authority to examine, judge, decide, and solve the issues between Moslems as the regulation of law.

The certainty of religion court is arranged by Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009. Article 49 of the Law determines the court authority that "Religion Court has to conduct and has an authority to examine, decide, and solve the issues in the first level between Moslems in fields of: a. marriage; b. heritage; c. last testament; d. grants; e. endowments; f. zakat; g. infaq; h. shadaqah; and i. Islamic economics."

Based on those norms, the implementation of court authority is done by religion court among others. The authority of religion court is an authority to carry out of judicial proces. Authority to examine, decide, and solve the issues in the first level between Moslems. Authority of religion court in the fields of marriage, heritage, last testament, grants, endowments, zakat, infaq, shadaqah, and Islamic economics is the authority in conducting judiciary. The certainty of Article 24 (1) of the Constitution of the Republic Indonesia 1945 which is the basic foundation has stated that "Judiciary power is independent power to carry out of judicial process to establish law and justice." The phrase of "to carry out of judicial process" in the sentence means that the judiciary power is an authority to to carry out of judicial process or judicial function. Bagir Manan concluded the formulation that independent judiciary power is an authority in conducting judiciary or judicial function that consists of an authority to examine and decide the legal case or legal dispute, and also an authority to create law certainty (Bagir Manan, 2007: 29-30).

One of authorities of religion court is in the marriage area. Marriage in Indonesia is regulated in Law No. 1 of 1974 on Marriage. The implementation of authority decision theory can be devided into three functions. Those are the legislative function, the executive or administrative function, and the judicial function. Legislative function is a function to form Laws in the area of marriage, executive function or administration function is to implementer laws, while judicial function is a functon to judge or apply the laws.

Law No. 1 of 1974 on Marriage is a legislative product. Hans Kelsen stated that executive function and judicial function are related strongly each other. Executive is the doer of law norms that are made by legislative authority. The doer of the law is also as the form of judicial function or judiciary. Those have same function as the performer of law norms. The different is in the performer of law norms, one is performed by court, while the other is performed by executive or administrative organ (Hans Kelsen, 2013: 360-361).

Law No. 1 of 1974 on Marriage juncto Government Regulation No. 9 of 1975 on Implementation Regulation of Law No. 1 of 1974 on Marriage has determined the marriage registration and divorce registration are performed by registration official in Religion Affairs Office for people who do the marriage as moslem as stated in Law No. 32 of 1954 on Marriage Registrar, Divorce, and Reconciliation. While the divorce registration for people as other Islamic religion is done by the registrar official in Civil Registration Office. The function of judicial is clarified in Article 63 clause (1) Law No. 1 of 1974 on Marriage. It stated that the judicial authority in the marriage area is divided into two courts that religion court for Moslem and district court for people who are not Moslem.

Before, Law No. 7 of 1989 on Religion Court was legalized, the authority of divorce registration belonged to marriage registrar official (PPN) Religion Affairs Office (KUA). The existence of Religion Affairs Office (KUA) as the government institution that conducts the marriage registration, divorce inherent and religion court that conduct judicial function in this time was under the establishing of Religion Ministry. For the fluency of Government Regulation No. 9 of 1975 on Implimentation of Law No. 1 of 1974 on Marriage, the Religion Minister stated the Religion Ministry Regulation No. 3 Year 1975 on the Responsibility of Marriage Registrar Official and Religion Court Administration in Conducting the Marriage Laws Regulation for Moslem. This religion minister's regulation also regulates the divorce procedure including the divorce registration. The divorce registration means to record the divorce case into divorce (talak) register or where the divorce case that is purposed by a wife in the divorce register, make quotation of divorce registration and give it to the related husband and wife. The procedure of divorce is differed by the divorce because of repudiation (talak) and divorce with the court decision based on the divorce lawsuit. The authority of religion court is to decide or give resolution on divorce as the basic of District Religion Affairs Office, to publish the quote of the repudiation registration note or the quote of divorce registration note.

After the legalization of Law No. 7 of 1989 on Religion Court, there was a change in establishing the religion court which was before under the Religion Ministry. The establishment of religion court is differed between the technical establishing of the court that is done by Supreme Court, and organization establishment, administration establishment, and financial affair that is conducted by Religion Minister (Article 5). The religion court authority as one of judiciary power is arranged on Article 49. It stated that "Religion Court has duty and authority to examine, decide, and solve the case in the first stage among moslem..." one of them is marriage area. The marriage area consists of the divorce case, those are the sub area of the divorce by repudiation and sub area of the divorce by divorce lawsuit.

Divorce that happens because of repudiation which is called as talak divorce is a divorce that is purposed by the husband. It means that husband permits to give repudiation to his wife. The authority of religion court is to examine, decide, and solve the case or to conduct the judicative function and its product as form of decision in giving permission to husband in giving repudiation to his wife in front of religion court assembly. After that decision has the certainty power of law (inkracht van gewijsde), the religion court conducts the assembly of repudiation statement. The judge makes decision of that repudiation statement by clarified that marriage has been ended because of repudiation divorce. The divorce has been legalized since the repudiation statement is said and the decision cannot be purposed to get an appeal or cassation (Article 71).

Lawsuit divorce or contested divorce is a divorce case that is purposed by the wife. The law product of this lawsuit divorce is decision. The divorce between a husband and a wife that has been decided by religion court because of the lawsuit is regarded as legal with all its law risks counted since the decision from the legal court (Article 81).

The regulation of registration divorce authority on Law No.7 of 1989 on Religion Court is not followed by the revocation of applicable regulation of divorce registration that has been 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, therefore the regulation that is in those Laws are still applicable. After the legalization of Law No. 7 of 1989 on Religion Court, the basic authority in divorce registration of Moslem divorce case is not used anymore. However, it still uses the basic of Article 84 (4) of Law No. 7 of 1989 on Religion Court that gives authority to the clerk of religion court.

The religion court is one of judiciary power to carry out judicial process to establish. It is an authority to examine, decide, and solve the Moslem cases in the first stage. The authority of religion court in conducting

justice is an authority to examine and decide a case or dispute and its product in a form of decision or determination. The authority of religion court is to examine, decide, and solve cases of marriage. To conduct that authority, in religion court there are apparatus (ambtsdrager) or court official. They are judge, clerk of the court, secretary, and bailiff. Article 45 Law No. 48 of 1948 on Judicial Power stated the court official. It clarified that "Besides of judge, in Supreme Court and lower courts level can be appointed clerk of the court, secretary, and/or bailiff."

In the court organization, judge is the state official that conducts the state authority to apply judiciary. Judge is available to examine, accept, and solve the case. The existence of clerk of the court cannot be separated from the basic responsibility of court to accept, examine, bring to justice, and solve the case (Wildan Suyuthi, 2002: 17-18). Clerk of the court is official who leads court registry to conduct the case administration service and other judiciary administration based on the applicable legislation (Musthofa Sy., 2005: 33-46). Clerk of the court as the functional official in case administration field that obey and has responsibility to chairman of the court or presiding judge. In constitutional law and state administration law, the clerk of the court position is differed by the administration position of government obligation performer (bestuurvoering) (M. Nata Saputra, 1998: 4). Clerk of the court is not civil servant that conduct the executive function, but it is an official court that conduct the function of judicial administration.

Judicial administration cannot be separated by the basic duty of religion court as the performer of judiciary power that are to accept, examine, bring to justice, and solve the case. The sequence of registrar's duties in the administration field are the action of case acceptance, action in conducting the court preparation, action in examination and judging the case, an also an action in decision implementation.

In the divorce case, clerk of religion court has responsibility in sending the copy of divorce decision or the divorce statement or the determination of repudiation statement to the marriage registration official which its area is in the area of the related side and the official of marriage registration where the marriage did. If the marriage of the applicant did abroad, so the copy of the determination is also given to the official of marriage registrar in the place of applicant's marriage registered in Indonesia. The sending of the copy intends to be done the divorce registration by the official of marriage registrar in religion affairs office. This regulation can be found in Article 72 and Article 84 clause (1), clause (2), and clause (3) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009.

The area of religion court authority and district court in the case of divorce is guided by the construction of marriage is conducted. If the construction of marriage is built based on Islam, so it is included into the authority of religion court. In other hand, if the construction of the marriage is not build by Islam, so it is the authority of district court. Therefore, divorce in district court does not regulation of divorce because of talak. Divorce case in district court only has regulation of lawsuit case, both the divorce is purposed by husband or even divorce is purposed by wife. Law product of lawsuit divorce is decision.

Divorce case that has been decided by state court becomes legal with all its law consequence counted since the first registration in registration office which is done by the registrar. (Article 34 clause (2) Government Regulation No. 9 of 1975). This regulation is different with the divorce case that is decided by religion court. This difference happened because the difference of marriage concept in civil law (Burgerlijk Wetboek) and Islamic law. Based on the west civil law (Burgerlijk Wetboek), a marriage is only civil relation between two people. While, according to Islamic law, marriage is a vow that is called as "mitsaqan ghalidhan" (Alquran Surah Annisa [4]: 21). It means that this is a strong bond, a strong vow that has to be done by specific steps that have been arranged (Alquran Surah Annisa [4]: 1). This marriage has to be done by ceremony, and it is arranged in the pillars of faith iman in Islam and other certain conditions. The marriage becomes legal when in the process of ceremony the agreement and qabul that is stated by the parent of the bride and the groom and it is testified by two people (Amak F.Z., 1976: 30). Thus, the same process has to be done in the process of the divorce and its law effects have been regulated in Islamic law, while the divorce registration is an administrative process.

The branch of executive authority is a part of an authority that hold the authority of the highest government state administration (Jimly Asshiddiqie, 2009: 59-64). President hold the executive authority. The intensity of government intervention is different for each affair. While the intervention of the government in marriage affair is only in the part of its administration. Ridwan stated that there are three characteristics to decide an affair, including the government affair. Those are:

- a. The issue is related to public affair or on with public interest (algemeen belang).
- b. There is a government involvement directly or indirectly in that issue.
- c. Law regulation gives authority to government to take care (besturen) and regulate (regelen) the issue (Ridwan, 2008, 40).

According to Bagir Manan, government as the organ of state can be understood in the broad sense or even in the (ruimezin) narrow sense. Government in the broad sense means that all organs of state that consist of executive power, legislative power, and judicial power, or other organ of state that acts in the name of state. While government in the narrow sense means that the organ of executive authority (law applying organ, uitvoering orgaan). The organ of executive authority in its relation with the state is different with other authority organ. The legislative organ and judiciary organ are merely as the state comprehensiveness. The legislative organ and judicial organ will always act for state and act as the state representation. Executive organ represents or consists of two characteristics, it is as the state comprehensiveness and as the administration institution of the state (Bagir Manan, 2008: hlm. 5).

S. Prajudi Atmosudirdjo differed those two conditions into different terms. The terms are the political power (staatsrechtelijke macht) and administrative power or governmental powers (administratiefrechtelijke macht) (S. Prajudi Atmosudirdjo, 1994: 77). Ridwan concluded authority of public law into two kinds. First, the constitutional authority (staatsrechtelijk bevoegdheid) and administrative authority (administratief bevoegdheid) (Ridwan, 2008: 82). Constitutional authority is an authority that is given to and done by state institution. It can be seen from constitution that gives legitimation to public institutions in doing their duty (Tatiek Sri Djatmiati, 2004: 60), while administrative authority is given to and done by administration organ or government organ. Judicial power is state organ that acts for the state and it acts as the representation of state not as the representation of administration organ. Every nation gives legitimation to its public organ in order to conduct its function.

As the mandate of the Constitution of the Republic Indonesia 1945, Law No. 23 of 2014 on Regional Government which was revised by Law No. 2 of 2015 differs the government affairs consists of affairs of the absolute government, affairs of the concurrent government, and affairs of public government. Affairs of absolute government is government affairs that are under the authority of central government. Affairs of concurrent government is government affairs that are divided into central government and province region and district region. Affairs of public government is government affairs that become the authority of President as the chief of government (Article 9).

Affairs of concurrent government consists of the obligatory government affairs and other elected government affairs. Affairs of obligatory government consists of government affairs that relate to the basic service and other government affairs that do not relate to basic service. Basic service is public service in order to fulfill the basic need of citizens, such as education, health, general occupations and spatial planning, housing and residential areas, peace, public order and the protection of society, and social. The obligatory government affairs that do not relate to the basic services are population administration and civil registration (Article 12 (2) of Law No. 23 of 2014). Civil registration is the registration of important situation, important situation that happened to person such as birth, mortality, birth mortality, marriage, divorce, child recognition, child legalization, child adoption, changing of name, and changing of residential status (Article 1 number 15 and 17 of Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2013).

The government authority in conducting those registrations is done by Technical Performer Unit Service (UPTD) performer institution. The performer institution is Department of Population and Civil Registration District/City, while UPTD performer institution is implementing agencies which are UPTD Population and Civil Registration at the district level. For the marriage registration, divorce registration, and reconciliation registration for Moslem are conducted by registrar official in The District Office of Religious Affairs (KUAKec.)

3.2. Basic Enforceability of Divorce Registration Authority

To discuss the basic enforceability of divorce registration authority as has been regulated in Article 84 clause (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 after the legalization of Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2013 that emerged norm issues will be analyzed by principles of law preference and the theory of division power and theory of authority.

3.2.1. Based on Principles of Law Preference

Law system is consistent in solving the conflict and gives facilities in solving the issues, thus law system will not let the issues happen. Legal system is the organized unity, structured unity (a structured whole) that consists of elements or organs that interact each other and cooperate each other for reaching the same aim (Sudikno Mertokusumo, 2011: 51-55). If the conflict of law norms occur, the principles of law preference are used to solve the issue:

1. *Lex postereore derogat legi priore*, Laws that just negate or laws that are against the previous Laws. If conflict emerges among two Laws that have same materials, while the previous laws are still applicable so there will be two Laws that regulate the same area in the same time, but they are against each other. To solve that conflict the principle of the latest laws negate or beat the previous laws is applicable.
2. *Lex supreiore derogat legi infriore*, it means that higher Laws regulation negate or beat the lower regulation laws. If some issues emerge from two different laws that regulate same area and they are against each other, so to solve this conflict the principle of higher Laws regulation can negate or beat the lower laws regulation.
3. *Lex specialis derogat lex generalis*, it means that the specific laws negate or beat the general laws. If some issues emerge among two laws that regulate the same thing but they are against each other, so to solve the issue the specific laws are able to beat or to negate the general laws (Philipus M. Hadjon dan Tatiek Sri Djatmiati, 2011: 31-32).

This research was conducted to solve the issues that happened between the existence of Article 84 (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 and the norms in Law No. 23 of 2006 on Population Administration that was revised by Law No. 24 of 2013. Based on legal facts, there are two Laws that regulate the same thing. They regulate the authority of divorce registration based on the decision or religion court determination. Article 84 (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 regulate that divorce registration authority belongs to clerk of the religion court. While the norms in Law No. 23 of 2006 on Population Administration that was revised by Law No. 24 of 2013 regulate the authority in divorce registration belongs to registrar official in the District Office of Religious Affairs (KUAKe.).

Norms that regulate the authority of divorce registration is clerk of the religion court that is mentioned in Article 84 (4) Law No. 7 of 1989 on Religion Court that was legalized on December 1989, 29. At the time this laws were revised by Law No. 3 of 2006 on February 2006, 28, but the norms were not changed. This also happened to the second amendment of Law No. 50 of 2009 on October 2009, 29. Norms that regulate the authority of divorce registration is clerk of the religion court is not changed.

Norms that stated the authority of divorce registration belongs to registrar official in The District Office of Religious Affairs (KUAKe.) is mentioned in Article 1 Number 3, Article 8 (2), and Article 40 Law No. 23 of 2006 on Population Administration that was legalized on December 2006, 29. The laws were revised by Law No. 23 of 2013 on Amendment of Law No. 23 of 2006 on Population Administration on December 2013, 24.

In the transitional provisions Law No. 23 of 2006 on Population Administration, it is found the certainty that take over or state Article 84 (4) Law No. 7 of 1989 on Religion Court is not applicable anymore. Similar situation also happened to the Law No. 24 of 2013 on Amendment of Law No. 23 of 2006 on Population Administration. There is any certainty that fail the regulation of Article 84 (4) Law No.7 of 1989 on Religion Court. As the result, there are two norms that regulate authority of divorce registration of divorce case based on the decision of religion court in which those norms are against each other. This situation emerges norm issues, and to solve the issues preference will be used to analyse.

One of the legal preferences is the principle *lex postereore derogat legi priore*. It means that latest laws will negate or paralyze the previous laws. In this case, the latest laws are Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2014. The law is definition of mandate of the Constitutional of the Republic Indonesia 1945 in Article 26 clause (3) stated "Matters on citizens and residents are governed by Law." The regulation of the previous law in this norm conflict is Law No. 7 of 1989 on Religion Court that is made in order to conduct the regulation of Article 12 Law No. 14 of 1970 on Basic Certainty of Judicial Power clarified that the arrangement, authority, and other duty of judiciary institutions inside the general courts, religion courts, military courts, and administrative courts are regulated inside its Law itself. However, Law No. 7 of 1989 on Religion Court had been revised by Laws No. 3 of 2006 in reformation era. The second amendment was Law No. 50 of 2009, but the norms that regulate the authority of divorce registration in Article 84 (4) was not changed. Therefore, according to the foundation of *lex postereore derogat legi priore*, the norms that regulate the authority in divorce registration in Law No. 23 of 2006 on Administration Population which revised by Laws

No. 24 of 2013 negatiates the norms of Article 84 (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009.

Another principle of law preferences is the foundation of *lex supreiore derogat legi infiriore* and principle of *lex specialis derogat lex generalis*. The legal fact as form as norm issues in this research happened to two Laws that have the same position. The issues did not happen to the certain law and general law. The using of *lex supreiore derogat legi infiriore* foundation and *lex specialis derogat lex generalis* foundation has to be applied in the equal legal regim (Bagir Manan, 2010: 11-12). For instance, between two laws that regulate the law cases. More concrete example, Law that regulate religion court is *lex specialis*. While Laws that regulate the Islamic banking is *lex specialis* (laws that regulate banking term).

Those principles are purposed to the performers or to the side that will conduct the Laws. Those principles are not purposed to the Laws performer. The Laws performers have to determine the certain of the applicable certainty by arranging explicitly. It should be conducted if want to change the last certainty. If the omission in the process of Laws forming emerges as the issues in this research, thus the principle of laws preference will be aplicable. The latest law will negatiates the last law (Bagir Manan, 2010: 11-12).

Brouwer stated some of solution types related to law preference. Those are disavowal, reinterpretation, invalidation, and remedy. Disavowal means defending that norm conflict does not emerge, example the norm conflict happens in private law area and public law, but the argumentation is that those fields are applied separately so it will not create any norm conflicts. Reinterpretation that is aimed is explained into two understanding. First understanding is reinterpretation of preference norm using flexibel way. The second is reinterpretation of preference norm by applying that norm and ignore the other norm. Invalidation consists of two kinds, formally and practically. Formal invalidation is conducted by certain institution that has the authority. For example is Supreme Court and Constitutional Court. While the practical invalidation means that it does not apply the norm practically. Remedy, it means that using the remedial consideration cancelling the norm can be conducted. For example, in the overruled norm that relates to economy aspect, thus as the replacement of cancelling the norm that gets compensation (P.W. Brouwer, et.al., 1992: 217-223).

There are some solution that can be used to solve the issues of norm conflict between Article 84 (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 and Norms in the Law No. 23 of 2006 on Population Administration which revised by Law No. 24 of 2013, as:

1. Reinterpretation, it means the reinterpretation of the norms, both reinterpretation that follows the preference principle that interbrates the main norm flexibly and reinterpretation of preference norms that applies the norm and ignore the other norm.
2. Invalidation, both the formal invalidation and practical invalidation. The formal invalidation is conducted by certain institution that has an authority by proposing judicial review to Constitutional Court. While the practical invalidation is by not conducting the norms. For this type of invalidation, it can be conducted directly without waiting the abolition of norm Article 84 (4) Law No. 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009. It can be done directly although this norms have not been stated powerless by Constitutional Court.

This principle creates theory and research that is called as stage of vertical Laws synchronization. It is also known the synchronization stage or the suitability of the equal laws that arranges similar field or stage of horizontal Laws synchronization (Soerjono Soekanto dan Sri Mamudji, 1985: 91).

The result of the research shows that the authority principle of divorce registration in norm Article 84 (4) Law No.7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 do not only contradict with Law No. 23 of 2006 on Population Administration which revised by Law No. 24 of 2013, but also emerge unsynchronization vertically and horizontally. Vertically, there is contradiction between Article 24 clause (1) and clause (2) the Constitutional of the Republic Indonesia 1945 and Law No. 48 of 2009 on Judicial Power. While horizontally, there is contradiction among equal law regulations. Those are Law No. 22 of 1946 juncto Law No. 32 of 1954 on Marriage Registration, Repudiation, Reconciliation, Law No. 1 of 1974 on Marriage juncto Government Regulation No. 9 of 1975 on Implemetation of Law No. 1 of 1974 on Marriage, and Law No. 23 of 2014 on Regional Government which was revised by Law No. 2 of 2015.

Authority regulation of divorce registration in laws and regulations can be described in the table below.

Table 1. Authority of Divorce Registration on Decision of Religion Court

Laws and regulations	Authority of Divorce Registration	Legal Basis
1	2	3
Law 22/1946 juncto Law 32/1954	Authority of Marriage registrar official (PPN) in The District Office of Religious Affairs (KUAKEc.)	Art 1 and Art 2
Law 1/1974 juncto Government Regulation 9/1975	Authority of Marriage registrar official (PPN) in The District Office of Religious Affairs (KUAKEc.)	Art 39 (3), Art 40, Art 67 (2) Law 1/1974 jo. Art 17 and Art 34 Government Regulation 9/1975
Law 7/1989 junctis Law 3/2006 and Law 50/2009	Authority of clerk of the religion court	Art 84 (4)
Laws 23/2006 jo. Law 24/2013, and Presidential Regulation 25/2008	Authority of registrar official in The District Office of Religious Affairs (KUAKEc.).	Article 1 (3), 8, 40 Law 23/2006 juncto Law 24/2013
Law 23/2014 juncto Law 2/2015	Government	Art 12 (2)

Result of discussion of on applicable norm that the norm which regulates the authority of divorce registration on Article 84 (4) Law No.7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 will not be applicable anymore after the legalization of Law No. 23 of 2006 on Population Administration which revised by Law No. 24 of 2013. The applicableness of those norms are synchronous vertically and horizontally.

3.2.2. Coherent with the Theory of the Devision of Power and Theory of Authority

The authority principle that regulates the divorce registration on decision or determination of religion court is as the authority of registrar official in The District Office of Religious Affairs (KUAKEc.) is coherent with the theory of the devision of power and theory of authority.

Based on the authority, state power is differred as three functions. Legislative function, executive function or administrative function, and judicial function. The implementation of those function in the case of marriage can be classified into legeslative function as the laws former in the marriage area, executive function or administration function as the doer of Laws in conducting the administration in marriage area. While the judiciary function is to judge in the area of marriage inhaerent divorce.

According to power difference, between constitutional authority (staatsrechtelijk bevoegdheid) and administration authority (administratief bevoegdheid) the judiciary authority always acts for and as the representation of state, or it can said that the characteristic is constitutional. While for executive authority, it represents or consists of two characteristics. The constitutional authority and administration authority. The last is judiciary authority, the implementation of it is in judging the divorce cases.

Religion court is one of judiciary power to carry out of judicial process that has duties to examine, to judge, and to solve the cases among Moslem citizenz. That authority is authority in conducting justice or it can be concluded into judiciary authority. Its law product is in the form decision or determination. Judge is the state official that consucts the state authority in the field of judiciary. It is also conducted by clerk of the court and bailiff.

Judge is one of state official that conducts the state authority in doing the justice, such as to exam, judge and decide. The duty of clerk of the court cannot be separated from the main court duty inexamining, judging and solving the cases. Clerk of the court is the court official that conducts the administration cases in which the secretary will obey and give responsible to the chief of the court of panel of judge. In this explanation, the cases consist of the stage of case registration, the court preparation, the court and the decision. Clerk of the court is the official that leads the clerk's to do the administration technical service and other court administration based on the applicable law regulation (Musthofa Sy., 2005: 33-46). Clerk of the court is official court that conducts the case administration. While bailiff (staatsrechtelijk bevoegdheid) is an official who conducts the beckoning, notification, and all of the letter related to bailiff affair and to perform the result of decision (Yan Pramadya Puspa, 1977: 306).

Based on explanation above, the area of court officials' authorities (the judge, clerk of the court, and bailiff) are to conduct justice and judicial function. Conceptually, the duty of divorce registration is included into

the part of civil registration. In the laws regulation, it has been clarified that the divorce registration is similar as other civil registration such as marriage registration, the cancellation of marriage, divorce registration, reconciliation registration, adoption registration, and the registration of legalization child. That civil registration is the authority of institution that functions administratively. The authority addition for clerk of the religion court to publish the divorce certificate contradict with the theory of the devision of power and authority theory and also clerk of the court concept and the concept of divorce registration.

After the solution is found in this research, then it can be formulated the boundaries (*scheidingslijn*) of divorce registration authority between the religion court and registrar official in The District Office of Religious Affairs (KUA_{Kec.}) normatively in which the divorce case can be classified in to divorce in the reason of repudiation (*talak*) and divorce lawsuit.

The Law product as a result of divorce case examination is in the form of decision that states the permission for husband in giving repudiation. After, the decision get the definite legal power (*inkracht van gewijsde*), court will choose the time of divorce vow. The religion court publishes the determination product of divorce vow in which its copy will be delivered by registrar official in The District Office of Religious Affairs (KUA_{Kec.}) the place of marriage and the address of the purposer to be conducted the divorce registration. Based on Article 84 (4) Law No 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009, based on the divorce law determination, the registrar official has given authority to publish the divorce certificate that will be given to the related sides. While the registrar official in The District Office of Religious Affairs (KUA_{Kec.}) only get the copy of that determination.

For the case of divorce lawsuit, the product is in a form of decision. Based on Article 84 (4) Law No 7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009, after the divorce determination has the definite power, clerk of the religion court get an authority in publishing the divorce certificate that will be given to the related sides (purposer), while registrar official in The District Office of Religious Affairs (KUA_{Kec.}) only gets the copy.

According to this research, it is necessary to formulate the further authority boundaries between the religion court and registrar official in The District Office of Religious Affairs (KUA_{Kec.}) in the divorce case that is caused by repudiation and divorce lawsuit. The result of the research shows that authority of the divorce registration does not belong to religion court. The authority in the divorce registration is not included in to the authority of clerk of the religion court, but it is included to the authority of registrar official in The District Office of Religious Affairs (KUA_{Kec.}). If this authority is still conducted by clerk of the religion court, thus it will emerge the overlapping authority and it will erase the authority of registrar official in The District Office of Religious Affairs (KUA_{Kec.}) and will emerge uncertainty law. Therefore, clerk of the religion court does not need to publish the divorce certificate. The obligation of clerk of the religion court in the divorce case is to send the copy of divorce vow to registrar official in The District Office of Religious Affairs (KUA_{Kec.}) to be processed furthermore (Supreme Court of Republic Indonesia, 2013: 18)

The authority boundary between religion court and District Office of religious Affairs (KUA_{Kec.}) can be explained as Table 2 below.

Table 2. Line Boundary (Scheidingslijn) of Authority between Religion Court and Registrar Official in the District Office of Religious Affairs (KUAKec.).

Divorce Institution	Repudiation Divorce (Talak)	Lawsuit Divorce
1	2	3
Religion Court	<ol style="list-style-type: none"> 1. Conducting the justice by law product in the form of decision; 2. Performing the court of divorce vow by law product in the form of divorce vow determination; 3. Clerk of the court sends the copy of divorce vow determination to registrar official in The District Office of Religious Affairs (KUAKec.). 	<ol style="list-style-type: none"> 1. Conducting justice by law product in the form of decision; 2. After the decision is legalized as definite law force (inkracht van gewijsde), clerk of the court quotes assertion inside it footnote and send the copy of decision to registrar official in The District Office of Religious Affairs (KUAKec.).
Registrar official in The District Office of Religious Affairs (KUAKec.).	<ol style="list-style-type: none"> 1. Based on the determination of divorce vow registers to the registration of divorce certificate; 2. Publishing the quotation of divorce certificate and giving it to the related sides. 	<ol style="list-style-type: none"> 1. Based on decision that has been legalized as definite law force, registering to registration of divorce certificate; 2. Publishing the quotation of divorce certificate and giving it to the related sides.

According to table 2 above, the authority boundary (scheidingslijn) between religion court and registrar official in The District Office of Religious Affairs (KUAKec.) in divorce sub area caused by repudiation is explained furthermore:

- The authority of religion court is started at the time divorce petition that is registrated in the clerk's of religion court.
- Religion court conducts the examination and judging the case with the form of its law product that clarify the permission the purposer (husband) to give repudiation first talak to the requested (wife) an order clerk of the religion send the copy of divorce vow.
- After the determination possess the definite law power, religion court will invite the related sides to do the repudiation court and its law product is as the repudiation vow determination.
- Authority of religion court is ended, clerk of the religion court process the divorce case by doing its obligation to send the copy of determination repudiation statement to the registrar official in The District Office of Religious Affairs (KUAKec.).
- Authority of registrar official in The District Office of Religious Affairs (KUAKec.) is started when the determination of divorce statement published by religion court.
- Based on that determination, registrar official in The District Office of Religious Affairs (KUAKec.) conducts the divorce registration, such as to register into divorce certificate, to publish the quotation of divorce certificate, and to give the quotation of divorce certificate to the related sides.

The boundary line of authority between religion court and registrar official in The District Office of Religious Affairs (KUAKec.) in subarea of divorce lawsuit can be explained as:

- Authority of religion court is started as the case of divorce lawsuit registered in the clerk's of the religion court.
- Religion court conducts the justice, such as examination and judging the case and its law product is in a form of determination which states the divorce of the marriage or states the divorce lawsuit of husband for his wife. Then religion court orders clerk of the religion court to send the copy of that decision where the decision already legally has definite law power.

- After, the determination gets definite law power, religion court will add some footnote that states “This decision has legally possessed definite law force on ...” and it is signed by clerk of the religion court.
- Authority of religion court is ended, the clerk of the religion court process furthermore the divorce case by doing its obligation in sending the determination copy to registrar official in The District Office of Religious Affairs (KUAKeC.)
- Authority of registrar official in The District Office of Religious Affairs (KUAKeC.) is started after the statement of divorce decision that has been legalized by religion court.
- Based on that decision, registrar official in The District Office of Religious Affairs (KUAKeC.) conducts the divorce registration, such as registering the divorce case into divorce license registration, publishing the divorce license, and giving quotation of divorce license to related sides.

4. Conclusion

Religion court is one of judiciary power or the judicial function. The divorce registration is part of administrative function, it is not the part of judicial function. The authority nature of divorce registration is not included into the authority of clerk of the court, in other hand it is included into the authority of registrar official in The District Office of Religious Affairs (KUAKeC.). If this function is compelled to be done by clerk of the court, it will emerge the overlapping authority and dispelling the authority of registrar official in The District Office of Religious Affairs (KUAKeC.) and emerge the uncertainty law. Authority of religion court in the case of divorce is to carry out of judicial process with a product in the form decision/determination of the divorce. Therefore, divorce registration is not included to the authority of religion court as the institution that conducts judicial function, but it is part of the government authority.

Based on the principle of *lex postereore derogat legi priore*, the theory of deviation power, and the theory of authority, authority legal basis of divorce registration Article 84 Clause (4) Law No.7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 that gives authority of divorce registration to clerk of the religion court is not applicable anymore after the legalization of Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2013. The Applicable basic authority of divorce registration is norms that are in Law No. 23 of 2006 on Population Administration which was revised by Law No. 24 of 2013, it states that the divorce registration is the authority of registrar official in The District Office of Religious Affairs (KUAKeC.).

5. Recommendation

Recommendation to Parliament and Government, the basic authority of divorce registration in Article 84 Clause (4) Law No.7 of 1989 on Religion Court which was revised by Law No. 3 of 2006 and Law No. 50 of 2009 and the second alteration or it should be abolished from the laws that regulate the divorce registration.

Recommendation to Supreme Court of Republic Indonesia, Religion Ministry, and the Ministry of Domestic Affairs to solve the norm issues by formally invalidation, that is by purposing judicial review to the Constitutional Court, or invalidation as practically, that is by repealing this norm without waiting the alteration of its change of the next Laws, it is done by conducting coordination.

Recommendation to law academic, it is necessary to be done further research on authority dualisme on divorce registration. It is necessary to be conducted in getting the comprehensive view of basic of divorce registration that has certainty law.

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