

The Basis of Thinking Dispute Settlement Alternative in Religious Court Through Small Claim Court Model Based on Simple, Quick, and Low-Cost Principle

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Abstract

The purpose of this research was to find the urgency of *Small Claim Court* mechanism as the mechanism for dispute settlement to solve cases with low values in Religious Court. This research was normative legal research used statute approach, case approach, conceptual approach, theoretical approach, and philosophical approach. *It was studying about law that written in Law Act.* The implementation of the *Small Claim Court* as a renewal in civil law procedure of religious court is intended to realize simple, quick, and low-cost principle. This *Small Claim Court* mechanism will process the case as quickly as possible with a very simple model, so that the accumulation of cases in the Religious Court will gradually unravel. *Small Claim Court* is an alternative of dispute settlement with simple mechanism that is valuable and brings many benefits without negating justice.

Keywords: Dispute Settlement Alternative, *Small Claim Court*, Religious Court

1. Introduction

The Religious Courts in performing their duty to uphold law and justice should realize the expectation of justice seekers who are always willing to have simple, quick, and low-cost judicial proceeding. It can be realized if it is supported by the judiciary itself and by the community who are seek justice in every judicial procedure. Religious court is used as the last place for justice seekers in the case of certain matters in accordance with prevailing regulations.

Based on the provisions of Article 2 paragraph (4) of Law Number 48 Year 2009 on Judicial Power, it is stated that the Judiciary is done with simple, quick, and low-cost principle. The explanation of Article 2 paragraph (4), what is meant by "simple" is the examination and the settlement of the dispute is done efficiently and effectively. What is meant by "low-cost" is the cost of the cases that can be reached by the community. It has also been regulated in Article 57 paragraph (3) of Law Number 07 Year 1989 on Religious Court which states that "Judicial proceeding is simple, quick, and it cost is affordable".

The mechanism of dispute settlement in Religious Court is the case received should be classified based on type and level of difficulty of settlement process. The legal regulation governing the proceedings in the Religious Court, both HIR and RBg, have not been supportive and inconsistent with quick, simple and low-cost principle of court. It can be seen from the type and level of difficulty of cases coming to the Religious Court is not distinguished, so that resulting in the accumulation of cases in Religious Court.

For example, in the Religious Court of Malang Regency (Religious Court of Malang Regency, 2015), in 2016 there were still 1.401 remaining cases and it became a burden to be completed in year 2017. Even, in November 2017, there were still remaining unspecified cases of 1.655 cases, consisting of 1535 lawsuits and 120 permissions. In fact, the general principle of the judiciary is quick, simple, and low-cost.

The model of procedure that will be offered in dispute settlement with a simple mechanism in the Religious Court is by using the *Small Claims Court*. According to the Black Law Dictionary, *Small Claims Court* means "a court that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, us claims to collect small accounts or debts also termed small debts court; conciliation court." (Gardner, 2004) From this definition, it can be understood that the *Small Claims Court* has several traits such as: (a) Informal which can mean a mechanism outside of the judicial mechanism in general; (b) it is done quickly and efficiently (*expeditiously*); and (c) demands for compensation by specific calculation (*specific monetary amount*) (Arizona, 2010: 1).

Small Claims Court has been long developing both in countries that have *Common Law* system and countries with the *Civil Law* system. Even, it is not only growing and proliferating rapidly in developed countries such as America, England, Canada, Germany, Netherlands, but also in developing countries such as in Latin America, Africa and Asia. It is because business dispute settlement forum is done through efficient, quick, and low-cost court principle for cases where small amount values of cases are required (Fakhriah :1)

The simplification of dispute settlement in Religious Court seems to be in line with Supreme Court Regulation Number 2 Year 2015 on Procedures for Settlement of Simple Claims (hereinafter referred to as *Perma* (Supreme Court Regulation) Number 2 year 2015) and Supreme Court Regulation Number 14 year 2016

Concerning the Procedure of Settling the Case of Sharia Economics (hereinafter referred to as *Perma* (Supreme Court Regulation) Number 14 year 2016), but *Perma* (Supreme Court Regulation) Number 2 year 2015 shall only be the authority of the general courts, not the jurisdiction of religious courts as regulated in Article 2 stating that simple lawsuits are examined by the courts within the scope of the jurisdiction of general Court. The Regulation of the Supreme Court also clarifies that those who examine and adjudicate this simple lawsuit are with a single judge, as set out in Article 1 point 4, while *Perma* (Supreme Court Regulation) Number 14 year 2016 is only limited to the problem of sharia economy.

If it is seen from the contents of the provisions of *Perma* (Supreme Court Regulation) Number 2 of 2015, this *Perma* (Supreme Court Regulation) is **uncomplete norm** because it is devoted to general Court, while the Religious Court also requires a simple law mechanism, especially for the case of Petition and Case of Small Claims (except the case of Sharia economy because it is regulated in *Perma* (Supreme Court Regulation) Number 4 year 2016. This type of case shall have a simple law mechanism.

2. Research Methodology

This research focused on alternative dispute resolution in Religious Court with small claim court procedure based on simple, quick, and low-cost principle. Concept of Small Claim Court will dug the basic of thinking form philosophical, sociological, and juridical examination, so that researcher will find the new form, and model that are appropriate to be applied in Religious Court as renewal model of civil law procedure. This new model of civil law procedure will have implication in civil law procedure in Religious Court. This research used normative legal research with statute approach, case approach, comparative approach, theoretical approach and philosophical approach. Normative legal research is process to find law regulation, law principle, or law doctrine to answer law issues, so that researcher can get new argumentation, new theory or new concept as a prescription in solving law problem (Marzuki, 2005: 35). Legal material is collected from library research. Data collected from books, papers, articles, magazines, journals, etc

3. Discussion

3.1. The Basis of Philosophical, Sociological, and Juridical of Contentious Dispute Settlement Alternative in Religious Court through *Small Claim Court* Model Based on Simple, Quick, and Low-Cost Principle

3.1.1. Philosophical Basis

In order to realize a simple, quick, and low-cost judiciary as mandated by the Judicial Authority Law, it is necessary to have a fundamental overhaul of all laws and regulations governing the Religious Court above and in accordance with the Law on the Principal Provisions of Judicial Power which is the main and the general framework and it is the basis and guidance for all judicial environments.

The court shall not refuse to examine, hear, and decide upon a case submitted to it with the argument that the law is absent or less clear, but it is obligatory to examine and hear it. It is the philosophical reason that naturally the court should not reject any cases even if there is no law governing on it. In the field of civil law procedure, especially religious court civil procedure, judges must search, follow, and comprehend the values of living law and a sense of justice that does not deviate from the Islamic Sharia (Mujahidin, 2008:37).

The majority Muslim community of Indonesia is one of the factors supported the development of Islamic law in Indonesia, especially with regard to *Muamalah*. Sharia economic institutions grow from sharia banking institutions, sharia insurance, sharia capital markets, and sharia pawnshops. This development undeniably also has an impact on the development of cases or disputes in its implementation (Muslih, 2008: 4). Recognizing on this matter, so that Law Number 3 year 2006 on the amendment of Law Number 7 year 1989 on Religious Court, the scope of the Religious Court is expanded on the scope of duties and authorities of the Religious Court.

The Religious Court shall be in accordance with the scope of their jurisdiction in charge of and in having responsibilities to examine, decide, and resolve cases in the first level between Muslim Community in certain field in accordance with Article 49 of Law Number 3 year 2006 namely in the field of marriage, inheritance, will, grant, endowment; tithes, *infaq*, *shadaqah*; and Sharia Economy.

Small Claim Court as a mechanism of renewal in religious civil procedure law is an alternative to realize simple, quick, and low-cost principle. This simplification of mechanism will be able to reduce the burden of hoarding cases in religious court, reduce complex legal processes and make it easier for people to achieve justice.

From the epistemology side, the *Small Claim Court* is considered as an alternative way to reduce the length of litigation time in religious court. During this time, the process of litigation in the Religious Court takes months starting from the registration of the lawsuit to the verdict. For that reason, *Small Claim Court* mechanism is present to overcome the problem, so that the quick principle on the court that the case is processed can be realized as soon as possible, therefore the accumulation of the case will gradually unravel.

On the ontology aspect, the value that can be obtained from the implementation of *Small Claim Court* to the Religious Court is low-cost because the case examination process is executed quickly, and the cost incurred will

be less. Hence, the *Small Claim Court* is an alternative that is valuable and brings many benefits without negating justice.

Eventually, from the axiology side, not all cases that are under the jurisdiction of the Religious Court can be solved by the mechanism of the *Small Claim Court*, but there are categorizations of case types that can be solved by this model. The categorization is that all cases of petition (*voluntary*) can be settled with *Small Claim Court* and cases of complaint (*contentious*) that can be settled with *Small Claim Court* is a matter of which the nominal value of the small suit and proof is easy and simple.

3.1.2. Sociological Basis

The purpose of a trial process is to obtain the legal certainty of a case; in other words, it is about what the legal relationship between the two parties is true and should be, and in order that everything that is decided by the court is realized. Therefore, the rights and obligations granted by the material law established or decided by the court can be realized (Lubis, 2005:79).

Law is there to be enforceable; therefore law enforcement cannot be separated from the community as a basis for legal work. There is a theory stating that law is between two distinct values: the value that has been codified (in the form of articles) and values that live and thrive in the midst of society. Although some state that the value that has been codified is taken from the norms that live in the middle of society (Kelsen, 2006:235), but there are frequent contradictions in its implementation. To give response to this, it needs mending and renewal of the civil law procedure in the Religious Court.

From the previous researches, mostly the cases that come to religious court started from the registration of the case until the verdict is relatively long. The fact in the field shows that the petition case took an average of 27,8 days to complete every civil case of petition in all religious courts in East Java (Yaqin, 2014). Based on the assumption of an average time of 27,8 days to solve the case of the petition in the Religious Courts, it can be ascertained for a normal case or lawsuit will inevitably take longer.

To strengthen the argumentation above, as supporting data, the researcher conducted a study in Religious Court of Malang Regency. Based on the data obtained by a researcher in one of the best Religious Courts in Indonesia, namely the Religious Court of Malang Regency, it reveals that mostly the cases decided (since the registration of the case to the verdict) took almost 6 months for the lawsuit case, and it took 1 month for the case. Please have a notice in the following table:

Table 1
RECAPITULATION OF CASE DATA FROM
RELIGIOUS COURT OF MALANG DISTRICT
OF 2014

No	MONTH	CASE TOTAL						
		Case Solved Less than 6 Months	Case Solved More than 6 Months	Mediated Case	Successful Mediation	Unsuccessful Meditation	Free-cost Court	Out of Sessions Court Hearing
1	January	760	15	38	-	38	19	-
2	February	702	12	34	-	34	7	-
3	March	764	8	29	-	29	6	-
4	April	765	10	33	-	33	6	-
5	May	642	21	21	-	21	8	-
6	June	768	34	30	-	30	8	-
7	July	578	26	23	-	23	3	-
8	August	538	22	27	-	27	5	-
9	September	795	17	46	4	42	8	-
10	October	818	36	80	1	79	9	-
11	November	608	20	58	-	58	7	-
12	December	776	31	61	-	61	5	-
Total		8514	252	480	5	475	91	-

Source: Clerk of Religious Court of Malang Regency, April 2015

Based on information from Mr. Widodo (Widodo, 2016), lawsuit case is terminated almost 6 months, depending on the burden of proof of the parties to the case; while for the petition case, it takes 1 month with 3 times of trial. Furthermore, Mr. Widodo explained that it is done because it is in accordance with the procedures and mechanisms that are regulated in the legislation.

Religious Court of Malang Regency (Religious Court of Malang Regency, 2015), in 2014, had 1.457 remaining cases and it became a burden that shall be completed in year 2015. Whereas, the general principle of the judiciary is quick, simple, and low-cost. To clarify this statement, please notice the following table:

Table 2
TOTAL OF SOLVED CASES
IN THE RELIGIOUS COURT OF MALANG REGENCY OF 2014

Number	MONTH	THE REST OF THE LAST MONTH	ACCEPTED CASES	TOTAL CASE	REMOVED CASES	SOLVED CASES (END)	THE REST OF THE END MONTH
1	January	1536	834	2370	29	775	1595
2	February	1595	705	2300	23	714	1586
3	March	1586	742	2328	27	772	1556
4	April	1556	811	2367	30	775	1592
5	May	1592	745	2337	16	663	1674
6	June	1674	695	2369	37	802	1567
7	July	1567	339	1906	20	604	1302
8	August	1302	865	2167	25	560	1607
9	September	1607	911	2518	37	812	1706
10	October	1706	711	2477	20	854	1623
11	November	1623	639	2262	20	628	1634
12	December	1634	630	2264	21	807	1457
Total		-	8687	-	305	8766	-

Source: Clerk of Religious Court of Malang Regency, April 2015

Based on table 2 above, for example in the year of 2014 in the Religious Court of Malang Regency, it has been confirmed that in every month almost a thousand more remaining cases that have not been solved yet and it causes the accumulation of cases. In the year of 2014, the Religious Court of Malang Regency received award from the Supreme Court of the Republic of Indonesia as the best religious court in Indonesia with several innovations made. This is a benchmark that the best Religious Court in Indonesia is still cumulative cases, and how about the other Religious Courts.

From some facts and data above, it can be concluded that the length of the trial process in the Religious Court is not solely because of practice in the field, but because the procedure is too complicated and difficult which leads to the accumulation of cases. It should be handled immediately by reforming the trial process in the Religious Court.

Based on explanation above, sociological problem happens because of the time length of the litigation process in the religious court and the cases are solved in a relatively long time, therefore, accumulation of cases occurs. It is also caused by the side of the effectiveness of the case handling, and the last, the mistrust notion of the community to the judiciary. The judiciary should be the mouthpiece of justice. Likewise its law procedure should be as simple as possible and is not complicated.

Based on the explanation above, the implementation of *Small Claim Court* from the sociological aspect is to facilitate the justice seekers of the community who need a solution of their problems. Thus, the *Small Claim Court* is taken as an alternative legal breakthrough in the form of simplification of the proceedings in the Religious Court and it will automatically increase public trust.

The public should not be afraid and hesitate to bring their problems to the Religious Court in order to get a fair decision, with the mechanism of *Small Claim Court* in the Religious Court, a complicated and difficult process will be made as simple as possible, so that the case can be quickly solved without negating justice community. Of course, it is very supporting the simple, quick, and low-cost court principle.

3.1.3. Juridical Basis

The State of the Republic of Indonesia, as a constitutional state based on *Pancasila* and the Constitution of the Republic of Indonesia year 1945, justice, truth, order and legal certainty in the system and the administration of the law are essentials in the effort to realize a safe, peaceful, and orderly life. For such things, it is necessary to have an institution in charge of administering judicial power to uphold law and justice properly.

The judiciary as one of law enforcement and justice institutions as mandated by Law Number 4 year 2009. Religious Court as the doer of the free justice judiciary to administer the judiciary to enforce the law and justice for the justice seekers in certain matters among Muslims in the field of marriage, inheritance, will, grant, *waqf*, *infaq*, and *shadaqah*. By affirming the authority of the Religious Court, it is intended to provide a legal basis to the Religious Court in solving certain cases.

According to Law Number 48 year 2009 on Judicial Power, in Article 2 paragraph (4) states that the judiciary is done simply, quickly, and with low cost. The principle of simple, quick, and low-cost is the most fundamental judicial principle of the implementation and judicial administration services that lead to the

principles of effectiveness and efficiency (Sunaryo, 2005: 4). This is a very important principle for the judiciary that will be implemented in every case that submitted to court.

According to the explanation of Article 2 paragraph (4) of Law Number 48 year 2009, simple is the examination and the settlement of the case which is done efficiently and effectively. Simple can also be interpreted as a process that is not complicated, clear, straight forward, non-interpretable, easy to understand, easy to do, easy to implement, systematic, concrete both in view of justice seeker, and also in law enforcement perspective having varying degrees of qualifications, both in the areas of educational potential, socio-economic conditions, culture and etc (Sunaryo, 2005:46).

In practice, simple principle is only interpreted as mere administrative matters without the understanding that simple principle should be the soul and spirit of law enforcement motivation that is implemented in every level and institution. The fact shows that simple principle is difficult to manifest in court, so that the court proceedings become complicated and take a long time.

The upgrading of the judicial system in the Religious Court ultimately cannot only rely on the literal understanding of law enforcement towards simple, quick and low-cost principle, but from it all, it is the conscience of law enforcers, justice seekers, rulers, legislators and systems framing the judiciary dominant factors. If All these factors can be maximized, it will create a clean, honest, objective, and fair judiciary.

Article 57 paragraph (3) of Law Number 7 year 1989 on Religious Court also states that "Justice is done in a simple, quick, and low-cost. The simple, quick, and low-cost principle of the Religious Court should realize the expectation of justice seekers who always demand a fast, fair rightly, and low-cost justice court. Moreover, it does not need complicated examinations and procedures that can bring the process for years.

The juridical provisions above are the basis of judicial institutions, especially religious court, to resolve cases with simple, quick, and low-cost, as well as the entrance to breakthrough law and innovate without leaving the rules above. Simple, quick, and low-cost principle is not supported by other components that make this principle difficult to realize.

One of the breakthroughs offered by the researcher is the use of the concept of *Small Claim Court* as an alternative to the process of trial in the Religious Court that will have a significant impact. The concept of *Small Claim Court* can be used to realize simple, quick, and low-cost principle.

3.2. Urgency of *Small Claim Court* as the Mechanism of Renewing the Law Procedure in Religious Court

In instrumental terms, many laws and regulations in Indonesia have adopted various Islamic legal materials in the sense of national law. Institutionally, the existence of religious court also continues to be established. Especially with the making of Law Number 7 year 1989 made the position of religious courts stronger. Moreover, it is more supported by the making of Law Number 3 year 2006 on the amendment of Law Number 7 year 1989 on Religious Courts, in terms of authority having expansions and one of them is the authority to solve the sharia economy cases.

The unification of civil law procedure of religious court will facilitate the realization of law and legal certainty that is related to justice within the religious court. The protection of women is further enhanced, by way of, among other things, giving equal rights to wives in proceedings and defending their interests in court. It is also to strengthen the effort to extract various legal principles and rules of Islamic law as one of the law materials in the preparation and fostering of national law through jurisprudence.

Religious Court has a long and tortuous history. The long history of religious court was perverted by the Islamic politics of the Dutch East Indies government as the colonial government as well as the political Islam of the government of Republic of Indonesia. Roihan A. Rashid argues that the Religious Courts are Islamic Courts in Indonesia, but they cannot be identified with the Islamic Judiciary universally; in addition, the Religious Courts are special. The specificity is first because the Religious Courts are not authorized in civil and criminal cases, but only civil cases. The Civil Code is also limited to a limited number of Islamic civilizations. Furthermore, it is seen from the seekers of justice that are also not covering all people but only certain people, namely those who belong to Muslim community (Rasyid, 2013: 54).

Religious Courts establish besides because of the complexity of the value of people's lives that touch directly or indirectly associated with Islamic law, moral and ethical values, as well as the needs of the people and nation of Indonesia who are Muslims. Therefore, there is a need for a balance in the implementation of Islamic law to Muslims in Indonesia, both in terms of legal substance and in terms of institutions that handle it. In relation to these two matters, the Religious Courts perform judicial duties by applying Islamic law in settling disputes filed towards it based on Islamic law values and the inner ideals of Muslims.

Religious Court is a constitutional order. Running the Religious Court is the responsibility and constitutional obligation in which the abolition of which is possible only if there is a change of the Constitution. In addition, this is something that is hard to imagine will happen. This is a significant change in the Religious Courts in the reformation era. Its status is very constitutionally strong and its position is equal to other judicial bodies, so its independence and institutional independence can increase as well as the trust of the justice seeker

community.

The existence of Religious Courts related to the existence of the accumulation of cases each year based on the sociological basis above shall be immediately parsed and solved. One of them is by applying the concept of *Small Claim Court* as an alternative of law procedure. *The Small Claim Court* is a simple justice mechanism with a simple law procedure concept that can solve problems as quickly as possible. Therefore, *Small Claim Court* is very urgent to be applied immediately in the Religious Courts.

Another reason for the adoption of the *Small Claim Court* in the Procedures of the Religious Courts is that there are several advantages: quick, low-cost, and very simple judicial mechanism, so that a simple, quick, and low-cost principle in the Religious Courts will be realized.

4. Conclusion

The presence of *Perma* (Supreme Court Regulation) Number 2 year 2015 on Procedures for Settlement of Simple Lawsuit and *Perma* (Supreme Court Regulation) Number 14 year 2016 Concerning the Procedures for the Settlement of Sharia Economic Case can be used as the entrance of *Small Claim Court* in the Religious Courts since the Religious Court is a forum for seeking a justice. Hence, it is necessary to encourage policy makers, so that the *Small Claim Court* can be applied in the Religious Courts as a dispute settlement mechanism to realize the quick, simple, and low-cost principle.

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