

EXTENSION OF AUTHORITY OF RELIGIOUS COURTS IN TERMS OF HANDLING A MINOR CASE OF DOMESTIC VIOLENCE BETWEEN SPOUSES

ABSTRACT

This dissertation research entitled “Extension of Authority of Religious Courts in terms of Handling A Minor Case of Domestic Violence between Spouses’ presents the following research questions: 1. What is the principle (*ratio legis*) behind the Law Number 3 Year 2006 Article 49 on the amendment to Law Number 7 Year 1989 on Religious Courts? 2. Is the authority of Religious Courts extendable in terms of handling a minor case of domestic violence between spouses?

This is a normative research which employed interpretative-descriptive method with historical, philosophical, statute, and religious text approaches. The data used in this research comprised primary and secondary materials obtained by conducting library research.

Based on the result of the research, it was obtained that: First, the *ratio legis* of Law Number 3 Year 2006 Article 49 on the amendment to Law Number 7 Year 1989 on Religious Courts is closely related to development condition of law and public necessity for law in recent days. Two changes were made in Law of Religious Courts Number 49 Year 1989: 1) the omission of ‘done according to Islamic law’ in Paragraph (2) point b. this change was made to strengthen the position of Islamic law and the authority of Religious Courts; 2) the addition of sharia economy in Law of Religious Courts Year 2006 Article 49 to support the public necessity for law in Indonesia to be in line with the growing numbers of sharia-based banks.

Secondly, the authority of Religious Courts could be extended in terms of handling a minor case of domestic violence due to some considerations: 1) Religious Courts are able to actualize the principle “the courts are to be held in a simple, efficient, and affordable way” in handling domestic violence by examining divorce petition due to minor domestic violence as the domestic violence is settled. 2) From the perspective of *maslahah*, the extended authority of Religious Courts concerning minor domestic violence between spouses will still benefit the family in dispute, especially the spouses’ children.

Keywords: Authority of Religious Courts, Minor Domestic Violence

SUMMARY

This research entitled “Extension of Authority of Religious Courts in Handling a Minor Case of Domestic Violence between Spouses” is promoted by Prof. Dr. Thohir Luth, MA, Prof. Masruchin Ruba’i, MS [co-promotor (1), and Dr. Ismail Navianto, SH., M.H [co-promotor (2)].

Referring to the stipulation of Law Number 3 Year 2006, Article 49 on amendment to Law Number 7 Year 1989 on Religious Courts, apart from the nine cases, religious courts are not authorized to examine, meaning that the authority to examine, decide, and settle other cases, despite the cases of Moslems, is for other courts. This restricted authority has caused Moslems to miss a chance to handle litigation not implied in the Article.

It will be more efficient for other cases such as family dispute as a part of domestic violence to be handled by Religious Courts. Restricted authority of Religious courts has reduced the courts’ capacity to settle domestic violence which, as a consequence, is under the authority of district courts for the litigation. So far, religious courts are only authorized for divorce-related cases. Cases related to domestic violence, including minor domestic violence between spouses is out of the religious courts’ competence. In other words, Religious Courts are only authorized to handle the results, not the litigation.

According to Law Year 2009, Article 2 Paragraph (1) on Judicial Power, legal implementation in Indonesia should be done to bring justice based on *Ketuhanan yang Maha Esa* (belief in one supreme God). This implies that the proportion of the justice of God is rather doubted since the litigation of domestic violence between spouses has been the responsibility of district courts, not Religious Courts. This is considered important recalling that the majority of people in Indonesia are Moslems who have rights of Law based on the justice of Allah.

This research was conducted to answer the following questions: 1) what is the principle (*ratio legis*) behind the Law Number 3 Year 2006 on amendment to Law Number 7 year 1989 on Religious Courts? 2) Is the authority of Religious Courts extendable in terms of handling a minor case of domestic violence between spouses?

This is an interpretative-descriptive normative research which employed several approaches of history, philosophy, statute, and religious texts. Primary and secondary materials were involved in the research by conducting library research.

Theories used to analyze and answer research problems involved legal politics, State of Law of *Pancasila*, authority, legal intention, and *maslahah mursalah*. The theory of authority was used to answer the first research problem, while the others were for the second research problem.

Based on the research results, it was obtained that: *Firstly, ratio legis* of Law Number 3 Year 2006, Article 49 on amendment to Law Number 7 Year 1989 on Religious Courts is closely related to development condition of law and public necessity for law in recent days. Two major changes were made in Law Year 1989 Article 49: 1) the omission “done according to Islamic law” in Paragraph (2) point b. This change was made to strengthen the position of Islamic law and the authority of Religious Courts; 2) the addition of sharia economy in Law of Religious Courts Year 2006 Article 49 to support the public necessity for law in Indonesia to be in line with the growing numbers of sharia-based banks.

Secondly, the authority of Religious Courts could be extended in terms of handling a minor case of domestic violence due to some considerations: 1) Religious Courts are able to actualize the principle “the courts are to be held in a simple, efficient, and affordable way” in handling domestic violence by examining divorce petition due to minor domestic violence as the domestic violence is settled; 2) From the perspective of authority, intention to extend the authority of Religious Courts in Indonesia in terms of handling a minor case of domestic violence between spouses should be in line with the effort to protect the religion as implied in the 1945 Constitution of the Republic of Indonesia; 3) From the perspective of *maslahah*, the extended authority of Religious Courts concerning minor domestic violence between spouses will still benefit the family in dispute, especially the spouses’ children; 4) from the perspective of Sociology, with the majority of Moslems (close to 90%) living in Indonesia and their complex problems, it is common that rights of litigation in Religious Courts are not restricted to certain cases as those mentioned in Law Number 49 Year 2006, Article 49; 5) From the perspective of legal intention, it is intended to create justice, certainty, and merit. The extension of authority of Religious Courts in terms of handling a minor case of domestic violence between spouses will be perceived to be able to realize justice, legal certainty, and merit for those involved in the dispute of domestic violence and the spouses’ children.

The extension of absolute competence of Religious Courts in handling the case of domestic violence between spouses is likely to be realized, as the amendment of stipulation regarding the position of Religious Courts has been done.

The Law Year 1989 Article 2 regarding Religious Courts states that Religious Courts are one of authorized institutions established for people who seek for justice based on Islamic law concerning 'particular civil cases' as regulated in the Law. However, in the Law concerning Religious Courts Year 2006, it is stipulated that Religious Courts are authorized to execute judicial power for those who seek for justice based on Islamic law regarding 'particular cases'.

Amendment of stipulation from 'several civil cases' to 'several cases' implies that Religious Courts have a chance to investigate and give verdicts for cases in a wider scope especially those related to minor domestic violence between spouses.