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**Competence Interpretations of Religious Court For Islamic Family Law in Indonesia**

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**ABSTRACT**

Limitation study area in this article is the starting point of three scholarly foundations, the foundation of ontology related to the object of study, epistemological ground with regard to the method used in the study and axiology related to foundation with the purpose or significance of the study. The object of study in this article is the competence of the Religious Court in the interpretation of Islamic family law in Indonesia, covering permasalahan Interpretation of Family Law Islamic Religious Courts Indonesia, procedures Interpretation of Family Law Islamic Religious Courts Indonesia, judgment of Religious Courts in Indonesia there Interpretation Law and competent in the interpretation of Islamic Family Law in Indonesia Religious Courts. The method used, the study included a kind of normative legal studies approach to the blade, then the method of analysis, there are three, namely: (1) political approach, (2) statue approach, (3) analytical approach. The data source materials normative, ie competence Religious Courts of Indonesia and all sources of Islamic family law that is set in the regulations and legislation arranged in hierarchical. Techniques are Data collections to study for the document. This study, including qualitative assessment of normative, the analytical descriptive analysis (explanatory). Theoretical framework used, ie at the level of grand theory using the theory of ijtihad, the middle level of theory using the theory of law and society and on the plains applied theory using the theory of Islamic Sharia Judicial system. While the significance of this study is to find the source of the law, the legal function and purpose of law. The results in the study which were to find the nature of legal interpretation procedures, problems that are interpreted in the Religious and who are competent to interpret the Islamic family law in Indonesia Religious Courts.

**Keywords:** interpretation; Islamic family law; justice religion**INTRODUCTION**

Religious court in Indonesia states as Justice Officials providing certain details and distinctions because it obeys supervised two different cores of laws. As observed from its derivation, the purposes are existence and administration of duties, Religious court is Islamic syari'ah court, and therefore, it is controlled under Islamic Syari'ah in Ideology. Meanwhile if analysed as position in a state constitution created and committed by Nation. Religious court is included under nation, so constitutionally; Religious court is demanded under way of Nation Laws.<sup>(1)</sup>

Both system distinctions have created Indonesian Syari'ah civil system for nation court then named Court for Religion. Religious court in Indonesia related ideologically, philosophically, sociologically, in politic, and juridically has increased for distinguished progress time to time. Meanwhile, It is adequately functioned to solve any Islamic family issues for Muslims of Indonesia, The problems will be actually focused for the discussion because it is necessary for real practice for court service in Law requests in Development for Islamic Society in Indonesia.

Gunaryo<sup>(2)</sup> stated that religious court in Indonesia is not merely for presence of availability but it is always supervised and developed to be stronger. Religious court is one of others legalized by nation, Islamic law is one former for national justice development.

Islam in study Islamic Syari'ah, position and functions of judge or qadli are completion for committing Syari'ah Islam.<sup>(3)</sup> Therefore, Court of Syari'ah Islam has been growth since era of Syari'ah Islam in prophet Muhammad SAW as Prophet Muhammad was first judge in Islam.<sup>(4)</sup>

In Indonesia, Islamic Syari'ah court has been presence since Islam took feet in land of Indonesia. It has growth and developed at once with Islamic society in that era, It was then inaugurated thorough civic among Islamic empires like Demak, Banten and etc.<sup>(3)</sup> where court of Syari'ah sytem has growth and increased as civic national system for it.

Reformation wave in 1997 began crushing in any life aspects of Indonesian civic systems. Hartono Marjono stated that reformation is a kind of necessity.<sup>(5)</sup> Reformation is about position law as commander, in life for personal, society, nation, and constitution. Based on Satjipto Rahardjo, in this law commander era, law is a total control for civic justice, social, politic, economy and etc.<sup>(6)</sup> But in fact, in society Law supremacy commander,

law as a current rock to commit it has had critical trust and performance due that unfortunate past civic systems and corruptions in general.

Therefore, Election of Religious Court in law interpretation for Islamic family in Indonesia as legal issue in this discussion based on few considerations, from demands of Islamic people. Religious court in pragmatic system is actually requested by society of Islam because: (1) Islam recommends necessity to perform Islamic Syari'ah for daily life, neighbourhood, and nationhood. (2) Islamic people in Indonesia are majority. (3) in Islam teaching for Syari'ah completion has no another option for any laws to complete requests of people.<sup>(1)</sup>

Religious court, ideologically and philosophically in history, born and growth as a teaching of Islam (ideologically), this is not an authority of political will and President. The Islamic teaching is only determination for creating and developing Syari'ah court as formed as Nation court Indonesia with Pancasila as philosophy. There happens simultantly and with harmony between Islamic Ideology and Pancasila Philosophy.

Islamic court sociologically formed and developed in Islamic people will tomplete their demands for religious , society, nation and constitution life as match to policy from head (of nation) and his or her people with sovereignty and belief for supreme God.

In political considerations Religious court has been politically created in reasons: first, this is a consequence for the people who are covered with law of Pancasila to complete demands for its Islamic believers. Second, Religius court can grow and increase when advancing of law demands in society. Religious court is juridically required management and special institution due that specific existense.

In necessity of equivalent to national law system in civil society as ruled in acts Number 48 year 2009 about power of Judge and act number 50 year 2009 about both transformations for act number 7 year 1989 about religious court which is in other side contradict ambiguity of Religious Court Competence.

Religious court is one of Indonesian Courts which has functions to stabilize law, therefore in stabilizing law, there are three aspects to concern for creating functions and purpose of laws as follow: certainty (rechtssicherheit), beneficial (zweckmassigkeit) dan justice (gerechtigkei) of law.<sup>(6)</sup>

In real situation, this is not easy to have an existence for the three aspects proportionally. But if one component is left by, it follows that another form is suspended. For example, it if justice be merely concerned so the law quarantee is then missed lost as there occurs as follow.

Without certainty of law people do not know what to do and it would make anxiety. But if only stressing for certainty of law, it would remain strict ahead system and be possible to provide unfairness because acts are felt cruel if done in strict condition.

Satjipto<sup>(6)</sup> stated that in real situation reacts how perplexes problems and working in law officials. Law is not always virtual, simple and easy as people imagine as law is absolutely certain. Even though law is obvious, law is an open document to invite perceptions.

Act designers are sometimes arranging issues with any words with open interpretations. It is consequently interpreted to simialirity words meant with distinguished meaning even contradicted to by two different courts.<sup>(7)</sup>

Meanwhile when there is a ban for law, Law supervisor (judge) should commit and supervise law. Judge can not and is not able to delay or refuse or conclude issuance by any means or reject issuance due that incompleation of reasons. Why, because law supervisor (judge) should find, search, review and declare act by way of law interperatations.

Based on act Number 48 year 2009 about law supervisor authority in act 10 stated "court is not permitted to refuse to investigate, proceed, and sentence proposed case as reasons for the law reference is not presence or less obvious, as the judge is necessary to investigate and proceed". Meanwhile in act 5 (1) states: "Judge and constitution judge is necessary to search, obey, and comprehend values of law and injustice in civil society.

The both acts are foundations for judge in interpreting law. The activity of finding a law proceeded by well competent institution to perform it, result of law are sentenced of authoritative court issuance.

Based on the explanations, I would like to observe Judge in Religious court with title "Competence Interperatation Islamic Family Law of Religious Court in Indonesia", with this issuance, it discusses, the meaning of Competence Interperatation Islamic Family Law of Religious Court in Indonesia, procedures of law Interperatation for Islam family in Indonesia, case declared in Religious court in Indonesia, and competent figures for Islamic law about Islam family in Indonesian court of religion.

## METHODS

Law research method is an observation scientificly based on methods, arrangements and few thoughts referred to study single or some law phenomenons and analyse them. Besides, it can be an intensive study for the factors and proposed to find solving for problems for Islam Family in Indonesia.

The research applied normative law method that is procedural scientific method which can conclude truth in logical pattern for law science in normative side, particularly related to Interpretation of Islamic law. Approach methods for this research are historical approach and conceptual approach. Historical approach is used to analyse background appeared disputed for law Islamic family law Interpretation in Indonesia. Then conceptual approach is used for study about any point of views or doctrines developing in law sciences to build argumentation in breaking problems for Interpretation for Islamic Family law in.

Law sources are applied in this research as follow Primary, secondary, and tertiary sources. The Method of data findings are applied for references are with studying books, acts related to law interpretation for Islamic family if disputed, then the data findings either primary or secondary analysed with descriptive analysis which is observed by describing data of laws at first time then analyse them all by analyse technique.

## **RESULTS AND DISCUSSION**

### **Interpretation of Islamic Law Family in Indonesian Religious Court**

Law Interpretation is a development of law by judges or its officials in proceeding general act for real act situation and result for law is a foundation to gain decision. An Application of law interpretation is always related to its value. Every law provides two sides, personal or interpersonal, law or spirit of law.<sup>(8)</sup> Interpretation is a written function of law arranging few acts. Arranging laws and law interpretations are both similar. The law texts are design and concept occurred in the universe.<sup>(6)</sup> Arranging laws and creating concept are human duties, in the works, it will interfere value or its subjectivity. Therefore there is Independent space in law, meanwhile there are many options in human doing and subjectivities also. As the fact goes it has born a thought of law interpretation and act existences. Interpretation is kind of creativity, innovation and progress, even can be jumping rock. It means is not rule bound anymore but it is out from logical rule.<sup>(6)</sup> The demands as law must be designed into texts; law takes involved linguistics, so that law commits style for language. In the other hand, law is a must for written concepts, so law does for acts so it develops concepts. Meanwhile concept is mental revolution, unoriginal, but it is unnatural due that construction by reducing presence facts.<sup>(6)</sup> Meanwhile, society requires well managed and peace life by any means. Law is one way to satisfy needs of society. So that, derived law act is an inevitable condition by interpreting texts for law, law science can not design interpretation as a small ignorance thing. It is preceded without interpretation. Law inquires further interpretation as it can be more equalized and believed. Designing law (legislation) is a need, meanwhile interpreting the created one is a further obligation.<sup>(6)</sup> As my opinion, law interpretation for Islamic family in religious court can be seen in theory of ijtihad. Ijtihad is a concept which describes an effort of mujtahid totally in logic; therefore, it reflects true personality.<sup>(9)</sup>

### **Interpretation Procedures of Law in Islamic Family in Indonesian Religious Court**

Procedures of Law Interpretation for Islamic family in Indonesia based on religious court in sentencing cases generally passed on six levels: first is interview, it is used as judge understands real disputed problems between claimers. Second is to analyze facts to be covered in law terms. Third is to search and select (rules of) laws from the sources. Fourth is to analyze and interpret (rules of) the laws. Fifth is to apply the act of laws with silogism. Sixth is to evaluate and consider responded argumentation. The six phases are not way for fixed rules, they are flexible. But the very important things are materials or applications in ever step of law interpretation, It is a must to realize that the problem of laws are based on two point of views, "If subjects of law protected enough by act, Whether there is equivalence or not Good management of civil society".<sup>(10)</sup>

In general there are 13 interpretations of law as follow: 1) Method Interpretation of Grammar (linguistics), it interprets acts with study of linguistics (terms) applied in acts used in common terminologies in daily life. 2) Historical Interpretation Method is an interpretation of acty with assuming act background history. The historical interpretation is based on two approaches: [a] Interpretation by historical law (Rechts historische interpretatie) is an interpretation by searching and studying historical connected law about entire growth for it. [b] Interpretation based on Conclusion of historical way of law (Wethistoorsche interpretatie) is an interpretation acts by searching growth first made design, controversies of legislatives, purpose of the conclusions, or explanations as it was created. 3) Systematical Interpretation Method that interprets acts as a part from entire systems. It means that there is no single dependency for interpreting rules and acts, but connected to another equal act. 4) Sosicological Interpretation Methods or teleological is sentenced for society purpose, stating that rules and acts equalized to another new situation. 5) Comparative Interpretation Method is an interpretation to compare variety of law systems. 6) Futuristic Interpretation Method resembles for anticipation, explanation for

fixed acts based on lawless one. As design being discussed in People Concensus Assembly (PCA), but head is sure that the design will be sentenced (Political Perception). 7) Restrictical Interpretation Method is Interpretation which limits and burdens purpose of verse in act. 8) Extentife Interpretation Method is an interpretation to expand descriptions on acts, as any events can inserted to its text. 9) Authentic Interpretation Method or legal when judge is not allowed to commit his or her interpretation with another way instead of fixed one for which they are quoted to the acts. 10) Intrastudies Interpretation Method is an interpretation for analyzing problems for various law studies. 11) Multistudies Interpretation Method when judge is necessary few studies outside science of law. 12) Analogy Interpretation Method is an interpretation which states connotative statements for act of laws as conditions beyond it are equal to stated one, and 13) Interpretation of *argumentus a contrario* defines as Interpretation by limiting act of law in referse of analogy and extensive.<sup>(11)</sup>

Interpretation Procedures of Islamic Family in Religious Court can be seen in “law and society”. In the middle range theory, there are two theories in this discussions, as follow “pragmatism legal realm” from Roscoe Pound<sup>(12)</sup> stated that law as a tool of social engineering. The Theory is based on assumption that: (1) There are functional relationships between law and society (2) Law is a controlled and insisted management (coersif) functioned to create equality for any purposes (3) law is social institution created as a plan (by design) as product of Systematic Completable Intelects as functioned to social engineering, and (4) social relationships can be influenced by law if their purposes are quaranteed.<sup>(13)</sup>

Based on Roscoe Pound<sup>(12)</sup>, in proceeding law as social engineering, we have to create laws are able to: (1) create interest balancing, (2) managing to better life, (3) Create good society motivating reaching their wishes, and (4) motivate social change and insist people obey new fixed norms if necessary. Therefore law is not anymore assumed as a guardian of quo status, but as a control to reach specific purposes as planned.<sup>(13)</sup> The theory then developed by Mochtar Kusumaatmadja as theory of Development of law.<sup>(14,15)</sup> Good law must contain 4 conditions as follow, first, based on and concerned for law society awareness. Second, it may not decrease modernization. Third, can be a media of reformation of society. And fourth, have a legalization power from nation.

Mochtar states that “Law without power is only dream and power without law is tyranny”. Second, In regard of law Interpretation procedures for Muslim Families in Religious Court can consider about theory of *maslahah* from Syatibi<sup>(16)</sup> in his book *al-Muwafaqat* (t,th:7) *mashlahah* as a purpose of *syari’ah* must be principal of power either legislative, eksekutive, or judicative. The theory explains that: 1) Law is made for beneficence towards mankind, that to protect wealth of religion, personal, mind, offspring and their treasures, in which they can avoid anything from destruction. 2) When in a creation of beneficence intended for law change, so that law should transform in adopted to the beneficence although crossed or banned from to the law context. 3) If as for beneficence must be reformed new order of law eventhough out context from *syari’ah* 4) If there are clashes or distinguishes tendencies one another, consequently taken higher beneficence or stronger as *syari’ah* conditions, so that the beneficences *dlaluriyat* as secondary benefits and this as *hajiyat* must be priority as tertiary good things for beneficences. 5) The creation of new laws by *mashlahah* by human thought (*mursalah*) can not be out from condition of *nash* (*syari’ah*) named *’ubudiyah* as the authority of Allah.<sup>(1)</sup>

The theory of *mashlahah* can be applied for law of *ini istimbat* or interpretation law in Islamic Family in Religious Court if completed four conditions as follow: (1) The level is reached up to *dharuriyat* where the good functions are essential and primary (2) the beneficences are *qath’iyyah*, means obvious and strict; (3) the beneficences are *kuliyah* (universal); and (4) the beneficences are based on principals called *dalil-dalil* (supports) which is *mu’tabarah* (universal one) and entire *qarinah*, stated by al syatibi quoted oleh Hamka Haq.<sup>(28)</sup> In my opinion, the theory of the *mashlahah* can be preceded and applied to Religious Court for Islamic Family law problems proportionally. Procedures for judge for Islamic Law Interpretations are: 1) In relation to laws of *wadlla* (is a law functioned to cover authorities of God supremacy, publics, public harmony, values of truth), therefore law certainty must be main point. 2) Materials related to *takliyfiy* (is a law managing rights or duties as subjects of law or *mukallaf*), therefore it must be justice for main thing. 3) If there are contradictions (clashes) between law certainty and justice then theory of *mashlahah* must be applied, the broader beneficences. 4) However, if there are beneficences one another, there should elect higher for it as purpose of *syari’ah*.

### Interpreted Problems applied to Religious court of Indonesia

Problems interpreted to religious court are related to Job descriptions and authorities Religious Courtin Indonesia. Religious Court is authorized and worked to analyse, decide, conclude and complete among cases for Islamic People for sectors: 1) Marriage. 2) Inheritance. 3) Exhortation. 4) Present. 5) Contribution. 6) Obligation Alm. 7) Recommended Donation. 8) Necessary Donation and 9) *Syari’ah* Economy.<sup>(17)</sup>

In this matter can be seen with theory of “Law Transformation of Syari’ah Islam” as stated by Mohammad Hatta: “In Indonesia as has been then using motto of Bhineka Tunggal Ika, every rule of Syari’ah Islam Fundament is only for Islamic people, It can be designed as acts for People Board Assembly, as accepted by the institution can be boundend and accepted by Islamic people. As this method there are slowly but sure a system of well managed Syari’ah Islam Fundament on acts based on Quran and Hadits, as relevant to purpose of nowadays Islamic Society”. The Mohammad Hatta statement has been finally Political issues for Indonesian governments for nowadays toward Islamic Syari’ah Law, this is a political transformation Syari’ah Law to be rule of acts as created Islamic Law which: (1) Based on on Oness Principle, (2) Sourced from Al-Qur’an and Hadits, (3) Agreed in Transparancy by people in Assembly Board, (4) Transformed to form General Changed Acts which manages Indonesian Islamic People in Indonesia, and (5) Adopted from growth Law of Islamic Indonesian needs. According to Anwar Haryono, Law of Islam is derived on revelations and human thoughts.<sup>(18)</sup> Based on Musa Asy’ari It is quoted as terms of thinking for logics transcendences as having principles for holy book and learning value, and these are thoughts in Islam. So that, an efficient law for Muslims society is syari’ah Islam without ignoring value of Islamic people to regard other believers to gain worship based on Fundament act of 1945.

Then in consequence in my opinion there are principles of syari’ah as follow: 1) every Muslim dan its companions on Islam are necessary to commit syari’ah Islam in *kaffah* (totaliy). 2) In every dispute or ban for it are legalized for them law of syari’ah Islam. 3) Every Muslim is a must to obey to Institution of syari’ah, as mediator and or Court of syari’ah Islam. 4) As every Muslim is necessary to obey in sentence from syari’ah Islam court. 5) In completing case of syar’ah there are not optional laws and court except court of syari’ah Islam.

In sociological aspects, law is a reflection of value believed by society as a norm for living neighbourhood, in nation and state. It means, law essences should accept growth and developed people aspiration, not only progressed one, but also principal to anticipate social, economy and politic future advance. Based on Djazuli<sup>(20)</sup> that law is not merely statical assurance and discipline norm but also norms which can dynimize ideas and stimulate people attitudes to gain their results for law as tool of social engineering.

In Islamic Theological Terms, Islamic Law is law which defines as Godness and transcendences. But if scoped in sociological aspect, it is a civilization, Cultures, social reality phenomenon in human life. In a level of social condition is not only universal doctrine but also delievering for entire situations and dynamization periods.<sup>(21)</sup> Centered and universal Islamic position is not only direction for life and attitudes for its believer, but also as compass to them.<sup>(22)</sup> Therefore Islamic law contains universality values in social level and is inevitable to reality as transformation to fundament character for social life.

As respons from Islamic law to period development is stressed to provide adequate flexibility as it will avoid way of losing its essence, either functions of social control or certain limitation for it.<sup>(23)</sup> The Transformation of Islamic Law related to historical needs as Islamic Community as not losing it primary role in attempting directions and guidances for Islamic.

In general Islamic law defines two views, as first is Islamic law related to rule containing *nash* which is *qath* universally applicable and can be principle of united dan formed “main way” of Islamic people in universe. Second, Islamic Law derived from *Nash zahanni* which has scope of *ijtihad*, as a result of *ijtihad* named *fiqh*.<sup>(24)</sup>

Law of family (*ahwal al-syakhsiyah*) is a part of fiqh, as law related to family issuance and development of family affairness and creation of relationship management between husband and wife and family one another<sup>(23)</sup> religious court authority issues procedures as follow, issues for 1) Marriage. 2) Inheritance. 3) Exhortation. 4) Present. 5) Contribution. 6) Obligation Alm. 7) Recomendend Donation. 8) Necessary Donation and 9) Syari’ah Economy.

The previous ones are family law in sentence of Religious Court in Indonesia. But if there are no admissions, so new interpretations are created by religious court to solve the problems

### **The competences to commit Law Interperations to Islamic Family in Indonesian Religious Court**

Competencers are related to duty and authority in Religious Court in Indonesia. In Complete Dictionary of Indonesia, the definition of duty is something necessary to commit or do, as ask or command for doing something and function or position. Menwhile authority is a right and power owned to do something.<sup>(25)</sup>

Religious court in Indonesia provides absolute competence as an agent of law authority, having drastic strategy as respon of law development and law society condition as presence of acts number 3 year 2006 about transformation number 7 year 1989 about authority of Religious Court. The absolute urgent competences that I explain is a rule of act 49 verse 1 stated that Religious Court proceeds and is authorized to audit, sentence and

complete issues in first level and Islamic people for 1) Marriage. 2) Inheritance. 3) Exhortation. 4) Present. 5) Contribution. 6) Obligation Alm. 7) Recommended Donation. 8) Necessary Donation and 9) Syari'ah Economy.

To know who competence are in interpreting law in Islamic Family in Court of Religion it can be used Religious Court as theory of system in court of syari'ah Islam as applied theory as practicable one in developing and procedures of court in syari'ah islam. The theory of court in syari'ah Islam is about to provide concepts in establishing competent Religious Court and solve Issues of Islamic people in law of of Islam Family.

Religious court is defined competent if meant to civil life of Indonesia based on act 1945, created and proceeded based on principal of syari'ah islam<sup>(26)</sup>, can be trusted and is capable to do main descriptions and functions completely, and able to adapt growth of Islamic conditions and Justice for people of seeking fairness based on syari'ah islam.

Madkur<sup>(4)</sup> in his book *al-Qadla' fiy al Islam* stated that Religious Court of syari'ah Islam described as follow: (1) Equalizing justice is a must, (2) Managing court is an evidence of recommendation as a must application of Prophet Nabi Muhammad SAW, (3) Managing court is to solve issues among mandkind, (4) Managing court is to equalize law of religion and avoid missapplications, (5) There must be a supervisor to watch and manage court event, (6) Court provides powers and competencies to audit and sentences cases, (7) Court should have self – esteem, (8) Court must be able to recover rights for those are loss for case and recover discipline and safety in society, (9) Court is a part of state, (10) People must obey the court sentence , (11) Court must be independence and in certain position, (12) Court must not be in tendency and neutral, (13) Court is a Great part Of Institution, (14) Competence and completed conditions are necessary requirements to be judge, (15) Court should deliver mood of pride and satisfaction, (16) Court appears in self-esteem, trusted, appreciated and pacifying, (17) Court can deliver excellence service and (18) Court can quarantine law assurance and discipline by administrative court.

Completing theory of syari'ah islam by Salam Madkur<sup>(4)</sup>, so Hasbi Ash Shiddieqy<sup>(26)</sup> in his book *Sejarah peradilan Islam*, stated that Court of syari'ah Islam described as follow: (1) Court is a system created and proceeded by leader or *khalifah* (nation) as existed to complete Islamic teaching of Islam and or completing Islamic believers (2) Court is inevitable part for committing Islam and Civil society based on principal of syari'ah Islam (3) Court is a symbol of, (4) Court function is for law service and justice based on syari'ah Islam, declaring and developing law of syari'ah islam also completing disputed, (5) Court states for Islamic personality as *rahmatan lil 'alamin* and appreciation for human rights (6) court can manage law of syari'ah Islam based on Islamic personality entirely and thoroughly (7) Court is a main description and highly position, (8) This is necessary as head to inaugurate qadli (judge) to complete law cases which must be sentenced by judge sentence to welfare society, (9) To be judge is *fadhu kifayah* the rule, (10) Court of syari'ah Islam is necessary well managed Institution in every country.

Baqir Manan stated that state court established and proceeded by nation or under protection of nation. In my opinion as its duty to guide and manage court syari'ah Islam is accepted from syari'ah Islam itself and its wide scope to manage law and justice in situation and condition in society with principal of *rahmatan lil 'alamin*, is able to neutralize and recover social relationship again between disputed ones , and is also able to proceed its sentences, is able to solve any temptations and chalanges in providing service of law and justice, and is able to react as a court of complete, pledge syari'ah Islam and at once as the true state court. Abdul Karim Zaidan<sup>(27)</sup> and Abu bakar ibn Mas'ud stated that the rule of inaugurate qadli is fardu (necessary).

In my opinion based on two theories of Islamic Law of the syari'ah Islam as follow from the Salam Madkur<sup>(4)</sup> and Hasbi Ash Shiddieqy<sup>(26)</sup> then integrated and designed to be concepts of court syari'ah Islam as applied theory. Based on the theories, So that Competent Religious court to handle Islamic Family law if: First, It is appeared as a true court based on life and civil norm based on acts 1945, Second providing institution and civil system of Indonesia based on civic management of act 1945 and principal of complete syari'ah Islam.

As the same to judges in court officials, they must be able to precede their decisions as social engineering for which it can realize beneficences justice for society as general. Because Judges of religious court officials are a part of Religious Court in Indonesia. So they who are competence interpreting Law of Islamic Family proceeded by, if the rule is less obvious because judge is an official submitted by head or government in sentencing disputes and claims, because government is not available or capable to handle all of public conditions. In act 48 year 2009 regarding authority of law, particularly in section 5 verse 1 explained that: Judge and Constitution Judge are necessary to observe, follow and comprehend the values of law and justice in social life.

Therefore, if accustion in every certain dispute is proper to sentence, so that Judge is necessary to conclude ahead without postponing. As doing job and the functions, Judge is a must cover an independence of justice. A Judge must have integrity and appreciated personality, honest, professional and experienced for law. In proceeding court procedures as managed in section 4 verse 1 act number 48 year 2009 stated that court considers based on law and without gaining any distinctions for humankind. And in section 56 verse 1 act

number 7 year 1989 stated strictly that court is not allowed to reject to proceed proposed cases in regard that law itself is less obvious in exception to observe and proceed it. Therefore Grand Judge is provided authority to analyze law interpretation.

## CONCLUSION

### Law Interpretation for Islamic Family in Religious Court in Indonesia

In ontology science that interpretation is defined as a process to change material from voidness to be obvious one. Meanwhile Law Interpretation is a procedure of creating law by judge or its officials in applying general rules towards real law events and result from the interpretation is a fundament to reach conclusion. Application of interpretation is always related to law. Every law has two sides, Personal or Interpersonal or Law contents or Law Motivations. Law Interpretation Interpretasi in Islamic Law in Religious Court can be seen in theory of *ijtihad*. *Ijtihad* is a concept describing effort of *mujtahid* optimally in logic, in a consequence gaining original personal. There are three objects of *ijtihad* as follow: *ijtihad* about giving explanation or interpretation to *Nash* or rules, *ijtihad* preceding *qiyas* about existed and agreed laws and *ijtihad* in applying *ra'yu*. About object of *ijtihad* like this, the way applied for Law Interpretation for Islamic Family in Indonesian Religious Court is to determine *al'am* (Decency) or *al-khash* (Specification), *Nash al-mutlaq* (Absolutism) or *al-muqayad* (Inabsolutism) *nash*. Second, the unobserved rules for same issues. For completing cases like these, effort of *In ijtihad* or law Interpretation Islamic Family in Religious Court that should be understood are *qiyas*, *istihsan*, terms and other law fundaments.

### Procedures of Law Interpretation for Islamic Family in Religious Court in Indonesia

Law Interpretation for Islamic Family in Religious Court in Indonesia in sentencing cases generally are stated in few phases as follow: First question and answer, the purpose is as judge can understand obvious disputed case from claimers. Second is to qualify real event and interpreted to law linguistic term. Third is to filter rules of law from sources of law. Fourth is to analyze or interpret the law rule itself. Fifth is to apply the rule of law towards law events in *silogism*. Fifth is to evaluate and consider responded argumentation. Sixth is to evaluate and consider responded argumentation.

### Interpreted Cases applied in Religious Court in Indonesia

Interpreted cases applied in Religious Court in Indonesia are related to descriptions and authorities Religious Court in Indonesia for: 1) Marriage. 2) Inheritance. 3) Exhortation. 4) Present. 5) Contribution. 6) Obligation *Alm*. 7) Recommended Donation. 8) Necessary Donation and 9) *Syari'ah* Economy.

### The Competences for Interpreting Family Law in Religious Court in Indonesia

To know who competences are to interpret law of Islamic Family in Religious Court, it can use Court of *syari'ah* Islam as applied theory. The theory of *syari'ah* Islam court provides concept how create Religious Court which is competent to handle problems of Islamic People in Islamic Family sector. Religious Court is stated to be competent if it be based on Fundamental Act 1945, created and proceeded based on principals of *syari'ah*, able to be trusted and capable to do its main descriptions and functions, also able to serve growth of law needs and justice for fairness seekers based on *syari'ah* Islam.

Religious Court is interpreted competent in handling Islamic cases of Muslim family if: First, appeared as true state court based on civil law based on Fundamental Acts 1945. Second, having Institution in civil administration based on Fundamental Acts 1945 and principal of *syari'ah* Islam, and third, appeared as true state court.

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