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ABSOLUTE AUTHORITY OF HIGH COURT IN ADJUDICATING GRANT DISPUTE AMONG MOSLEM
A Study of the decision of the Sumenep State Court Number: / Pdt.G/2014/PN.Smp

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Article 49 of Law Number 3 Year 2006: The Religious Courts shall have the duty and authority to examine, decide and settle cases in the first instance between Muslim persons in the field of marriage, inheritance, will, grant, wakaf, zakat, infaq, shadaqah and economy shari'a. The provisions of article 49 are to distinguish and authorize absolute authority of the Religious Courts Against other judicial institutions, namely the General Courts or the District Court. Although the District Court is also authorized to hear such disputes, but especially the parties to the dispute by adopting non-Islamic religion. But the District Court of Sumenep as the General Court in the case Number 04 / Pdt.G / 2014 / PN.Smp has accepted, examined and adjudicated grant dispute among the Muslims. So that can be withdrawn formulation of the problem, is it right that the Sumenep State Court in accepting, examining and adjudicating grant dispute among the Muslims? After being examined using the normative juridical method by using secondary data in the form of primary legal materials, the Sumenep District Court has exceeded its authority. For good on the basis of the theories of authority to judge religious courts, the theories of authority to try public justice and *adagium iuscurianovit*, the nature of grant dispute resolution among persons by the Sumenep District Court has violated the law.

Keywords: Judiciary Authority, Judicial Institution and Absolute Competence

I. INTRODUCTION

Background

General Provisions of Law Number 4 of 2004 on Judicial Power affirms that judicial power is the power of an independent State to administer the judiciary to enforce law and justice pursuant to Pancasila for the sake of implementation of the State of the Republic of Indonesia. Based on Article 1 of Law Number 4 of 2004, judicial power is exercised by the Supreme Court and subordinate courts within the general judiciary, the religious court environment, the military court environment, the administrative court of the state, and by a Constitutional Court.

According to Law No. 2/1986 on General Courts, the First Level Courts or District Courts are established by the Minister of Justice with the approval of the

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Supreme Court which has the jurisdiction of the courts covering one district / city. With the amendment of Law Number 8 Year 2004, the formation of the General Court and its functions and authorities are in the Supreme Court.

As the title of this paper, the review will focus on the authority possessed by the General Courts or the District Court in civil disputes. In general, the authority possessed by the District Court can be traced from the Civil Procedure Code which is regulated in the *Hetherziene Indonesisch Reglement* (HIR) or the New Indonesia Regulation (RIB). The Civil Procedure Code is a set of rules that contain the ways in which people should act against others in front of the court must act to carry out the enactment of the rules of civil law. [1]

Civil Procedure Law is a legal regulation that regulates how to guarantee the obedience of civil material law by the judge's intercession[2]. Civil Law (material) to be upheld or defended by the procedural law includes legal regulations written in the form of legislation (eg BW, Marriage Law, Religious Court Law, etc.) and unwritten legal regulations in the form of a living custom law in society.

The function of the Civil Code of Formal is to maintain and enforce Civil Law, which means that the Civil Code is maintained by law enforcement devices based on this Civil Procedure Code. The civility field contains rules on the state of law and legal relationships concerning individual interests (eg Marriage, trading, leasing, accounts payable, property rights, inheritance, etc.).

In reality the law enforcement by the court today is mostly used RIB for all of Indonesia. If there are matters that are not regulated in the RIB, then the court uses the rules of the Civil Law Regulation (HIR). Along with the development of the era and the need for the emergence of various legal disputes in the civil field, there is a division of absolute authority between 2 (two) the judiciary, namely the District Court and the Religious Courts. Both institutions are equally authorized in the field of civil disputes. The Absolute Competence of the General Courts is to examine, hear, and decide civil cases, except for other defining legislation (Article 50 of Law Number 8 Year 2004 regarding judicial power).

The Absolute Competence Of Religious Courts is to examine, hear, and decide cases of people who are Muslims in the field of marriage, inheritance, will, grant, waqaf, and shadaqah (Article 49 of Law Number 50 Year 2009 about the Second Amendment to the Law Number 7 of 1989 on Religious Courts).

With the enactment of Law Number 50 Year 2009 on the Second Amendment to Law Number 7 Year 1989, the District Court cannot accept, examine and adjudicate civil disputes among Muslims, as affirmed in article 49 of Law Number 50 Year 2009 on the Second Amendment to Law Number 7 Year 1989.

Sumenep District Court in civil disputes case No. 04 / Pdt.G / 2014 / PN. Smp has received a dispute about the cancellation of a grant filed by the Plaintiffs in

charge of Islam addressed to his Muslim brothers as well as the Defendants. In the trial of the lawsuit, the Defendant has submitted an exception of absolute competence, but in the interlocutory decision of the Sumenep District Court rejected the Defendant's exception and ordered the examination of case Number 04 / Pdt.G / 2014 / PN. Smp continues.

Problem Formulation

Based on the background explanation above problem, the problems can be drawn problem formulation, as follows:

1. How does absolute competence be applied in receiving, examining and adjudicating disputes over granting of grants among Muslims by the District Court?
2. How is *adagium iuscurianovit* applied to judges in accepting, examining and adjudicating grant disputes among Muslims in the District Court?

Purpose and Significance of the Research

The purpose of this paper is to explain the application of absolute competence for the judiciary in accepting, examining and adjudicating civil disputes in particular the dispute over grant disputes among Muslims. In addition, this paper aims to explain the application of *adagium iuscurianovitter* to the District Court in accepting, examining and adjudicating disputes over grant claims among Muslims.

Usefulness is expected in this paper is to contribute knowledge in the field of application of the law of absolute competence for the community of justice seekers as well as legal practitioners and students of law faculty.

Library Studies

Absolute Authority Theory of Judicial Institutions

Originally the authority of the District Court pursuant to Law Number 2 Year 1986 concerning the General Court, in article 50 it was determined that the District Court was in charge and authorized to examine, decide and settle civil cases at the first instance. Then Law Number 2 Year 1986 regarding General Court, based on the development is amended by Law Number 8 Year 2004 regarding the Amendment of Law Number 2 Year 1986 regarding General Court. However, in Law Number 8 of 2004, there is no change in the authority of the District Court in receiving, examining and adjudicating civil disputes.

The absence of amendments to the authority to adjudicate civil disputes to the District Court does not mean that judges who receive, examine and adjudicate civil cases among Muslims must be transfixed by Law No. 8 of 2004 on Amendment to Law No. 2 of 1986 The General Courts do not provide an explanation for

changes in the authority to hear against civil disputes among Muslims. This is also the result of the function of law, as in the theory of law as a tool of socializing by roscoepound, in which law becomes the driving force for social change.[3]

The judge cannot be justified in understanding only the provisions of legislation applied to the District Court alone, while the judge knows that judicial power exists and is divided into 4 (four) courts, namely:

1. General Courts;
2. Religious Courts;
3. Military Justice;
4. State Administrative Court.[4]

Religious Courts are justice for people who are Muslims (see article 1 point 1 of Law Number 50 Year 2009 on the Second Amendment to Law Number 7 Year 1989 on Religious Courts). Religious Courts exercise judicial powers for the people of Islam concerning certain matters. According to Article 49 of Law Number 3 Year 2006 concerning the Amendment of Law Number 7 Year 1989 on Religious Courts, which is the authority of the religious court is the first case among Moslems in the field of:

a) marriage;
b) inheritance;
c) testament;
d) grants;
e) waqf;
f) zakat;
g) infaq;

Adagium Ius Curia Novit

Adagium iuscurianovit is to give a position to a judge who is considered to know all laws. Judges as court organs are given predicates:

> It is considered to understand the law, therefore must provide services to any justice seeker applying for justice to him, if the judge in dispensing service dispenses, finds no written law, the judge shall dig the unwritten law to decide the case according to the law as a wise and fully responsible person to God Almighty, self, society, nation and country. [5]

For that reason the ability of a judge to comprehend is so vast with such enormous powers, but the powers granted by the law cannot be misused. Moreover, judges are given the authority to conduct legal discovery, which is often done by interpretation[6]. The widespread judicial authority in accepting, examining and adjudicating cases must be wisely, both required to be professional, ie the judge

must avoid making mistakes or ignoring facts that may ensnare the parties or intentionally make legal considerations in favor of the parties in a the case in hand. In the Code of Conduct and Judicial Conduct, the latter requires that judges be professional.[7]

A judge who is fixated on the law around his or her environment with no regard for other values of justice, or even ignoring the existence of relevant laws is still within the old legal paradigm of judges adjudicating by law. The ability of such a judge as has been echoed in the judge as a la bouchede la loi, as the the mouth piece of the law put forward by Montesquieu ie the judge is merely a mouthpiece of the law. [8]

II. METHOD

The method used in this study was the normative juridical or literature study by referring to the Sumenep District Court Decision Number 04 / Pdt.G / 2014 / PN.Smp regarding the lawsuit disputes grant disqualification that occurred among people who are Muslims. The grant has been in the form of an authentic deed made before the Camat by August 8, 2002 Number: 20/2002.

Data used in analyzing Sumenep District Court Decision Number 04 / Pdt.G / 2014 / PN.Smp was secondary data with primary legal material in the form of books, statutory regulations, and court decision.

III. RESULTS AND DISCUSSION

The Function of Absolute Authority of the Judicial Institution

The State of Indonesia pursuant to the 1945 Constitution has 2 (two) sources of power as regulated in Article 1 paragraph (2) which determines that sovereignty is in the hands of the people and Article 1 Paragraph (3) The State of Indonesia is a state of law. The characteristics of a state law based on the 1945 Constitution have elements: (1) Pancasila, (2) MPR, (3) Constitution system, (4) Equation, and (5) Free judiciary.[9]

The elements of the legal state that have correlation with the judicial authority are the fifth element of free trial. Free judiciary is the authority inherent in every judge to freely and independently in bringing judgment and court proceedings to the judiciary. Judges should freely without interference or intervention from other powers.[10]

Judicial Power is regulated in Chapter IX of the 1945 Constitution of articles 24 and 25. In the explanation of the 1945 Constitution stated that the state of the Republic of Indonesia is a state of law and the consequence thereof is according to the Constitution determined the existence of an independent judiciary authority regardless of the influence of governmental power and in connection therewith a

guarantee must be made in the law on the position of the judges. The existence of a judicial power or independent Judiciary Body in carrying out its duties signifies that the Republic of Indonesia is a state law.

The function of judicial power is regulated in article 1 (one) of Law number 48 year 2009 on Judicial Power which determines that "Judicial power is the power of an independent state to organize the judiciary to enforce law and justice pursuant to Pancasila, for the implementation of the State Law of the Republic of Indonesia. "Therefore a judge in accepting, examining, adjudicating and deciding have full authority without being interfered by any party, including the president.

Article 10 of the Law of the Republic of Indonesia Number 48 of 2009 on Judicial Power states "The court is prohibited from refusing to examine, hear, and decide upon a case filed under the pretext that the law is absent or unclear, but obligatory to examine and prosecute it." Article 5 Paragraph (1) of Law Number 48 Year 2009 is mentioned "Judges and Constitutional Justices are obliged to explore, follow and understand the legal values and sense of justice living in the community."

Based on the aforementioned Law, the judge in adjudicating the cases he faces, the judge shall act as follows: [11]

a) In the case of a law or a law it is clear to just apply the law.
b) In cases where the law is unclear or unclear, the judge shall interpret the law or the Law through the usual method of interpretation in law.
c) In cases where there is no written law / regulation governing it, the judge must find the law by digging and following the legal values living in the community.

Ultimately the judge must decide the case of justice based on law, truth and justice by not discriminating against the risks it faces. Therefore, in order that the decision of the judge be taken fairly and objectively based on law, truth and justice, in addition to the examination must be conducted in a session open to the public (except the law to determine otherwise), also the judge must make legal considerations used to decide the case. In order to prevent the subjectivity of a judge, Article 5 of Law Number 48 of 2009 stipulates that judges are obliged to explore, follow and understand the legal values living in the community. But of course digging and finding good and right legal values that correspond to justice that is practiced as the value of local wisdom. [12]

The judge breaks up under national law, he still has to apply the legal values practiced in that society, that is by digging the legal values in society, for hearing in this way will bring about justice incarnate in the local wisdom of society.

Taking into consideration the good legal values in the community to be filtered according to their own sense of justice and legal awareness, then the judge means

to have decided the case based on the law and the sense of justice in the case it faces. So by way of judgment so will be closer to justice of society seeking justice through judicial institution.

In fact the judge in examining and deciding cases often face a situation, that the written law is not always able to solve the problems faced. In fact, judges often have to find the law itself or create to supplement the existing law, in deciding a case the judge must have his or her own initiative in finding the law, because the judge should not refuse the case for no legal reason, incomplete or vague law.

For this reason the judge must equip himself with the science of law, legal theory, legal philosophy and legal sociology. The judge should not read the law only normatively (visible) only. He is required to see the law deeper, wider and farther in the future. He must be able to see things that lie behind a written provision, what thoughts are there and how the sense of justice and the truth of society will be. The judge must apply the law in accordance with laws and regulations covering two aspects of the law, first the judge must use the written law first, but if the written law is not enough or not fit, then both judges seek and find the law itself from source - other legal sources. These legal sources are jurisprudence, doctrine, tractate, custom or unwritten law.

In the case of finding the law to decide a case in which a judge shall judge, follow and understand the values of law and justice living in society, as it is also mandated in the Law on Judicial Power. Furthermore, it is understood that this provision is intended for the judge's decision in accordance with the law and sense of justice that lives within the community.

The judge in the Judicial Power Law is required to examine the case, the judge in judgment must follow and understand the sense of justice living in the community. Patterns of justice by following and understanding the sense of justice that lives in society, then the acquisition of justice received by society will always be renewable and definitely in accordance with the will of the litigants. So that will give birth to a wide range of breakup over the same case, but the verdict will give a sense of justice that is closer to the justice of society at that time.

Basically the judge must enforce the existing laws in the legislation. The existence of the law written in the form of legislation as a form of the principle of legality is more guarantee the existence of legal certainty. But the law as a political product is not easy to change quickly following the change of society. On the other hand in modern and complex and dynamic life as it is today, the legal problems facing a growing and diverse society are demanding its immediate solution.

Textually as already mentioned the law does require judges to explore the values that live in society, which philosophically means demanding a judge to make the discovery of the law and the creation of the law. However, whether

under the pretext of freedom of the judge or on the pretext of a judge must decide upon the reason of his conviction, then the judge may at his or her intention to make a deviation from the law or to give interpretation or interpretation of the law. This will lead to confusion and legal uncertainty.

The discovery and creation of the law by judges in the judicial process must be conducted on certain principles and principles which serve as the basis for the judges in exercising their freedom in finding and creating law. In the effort of the discovery and creation of the law, a judge must know the principles of the existing judiciary in legislation relating to the world of justice.

The authority of judges through the judiciary based on the above description is not absolute. The judge in accepting, examining and adjudicating and deciding a case is required to adapt to the law and sense of justice living within the community. Thus the judge should always be able to absorb the customs that become the values of local wisdom to the community in dispute as the basis of the decision.

As noted above, in addition to the judge in accepting, examining and deciding a case must be based on the legal value living in that society, the judge is also obliged to comply with legal provisions. The formal legal provisions for the General Courts as the District Court have been regulated in Law Number 2 of 1986 concerning the General Courts as amended by Law Number 8 Year 2004 regarding Amendment to the General Courts Act and as amended by Law Number 49 of 2009 on the Second Amendment to Law Number 2 Year 1986.

A grant deed with a common format means that no special provisions apply among Muslims, as if suggesting that the deed of grant is a grant deed in general. So that when a dispute arises the root of the problem is the rejection of one of the heirs, then the deed of grant is an ordinary grant certificate, not a deed of grant made under the provisions of Islamic Shari'a.

The District Court is basically in addition to being given full authority to receive, examine and adjudicate and adjudicate the dispute, there is also a prohibition of the judge to reject the case, as set forth in article 22 AB (*Algemene Bepalingen Van Wetgevingvoor Indonesie*) which provides that: "Whenever a judge refuses settle a case on the ground that the relevant law does not call it, is unclear, or incomplete, it can be prosecuted for refusing to hear ". This is also reinforced by the provisions of Law Number 48 Year 2009 regarding Judicial Power in Article 10 paragraph (1) to determine "that the Court is prohibited from refusing to examine, hear, decide a case filed with legal argument is absent or less clear, to examine and prosecute him. "

The provisions stipulated in the Law of the General Courts, namely article 50 on the Courts of Justice have granted full right to their judges to accept and try and decide civil cases. The provisions of Article 50 of Law Number 2 Year 1986

regarding General Court, neither amendment nor addition of either in Law Number 8 Year 2004 concerns Amendment to the Law of General Courts as well as in Law Number 49 Year 2009 regarding the Second Amendment to Law -The Number 2 Year 1986. Thus adds to the principle of the Court of Appeal to continue to receive, examine, hear and decide cases of disputes grant deed.

Nevertheless, the judge should have to accept, examine and adjudicate and decide a case must learn and understand the provisions of the legislation comprehensively. This is because in the provisions of Law Number 8 Year 2004 regarding Judicial Power, Article 50 provides that the General Courts have the absolute competence to examine, hear, and decide civil cases, except for other legislative ordinances.

The civil case is no other than a civil dispute, where after the coming into effect of Law No. 3 of 2006 on Religious Courts, Article 49 (1) determines, "The Religious Courts shall have the duty and authority to examine, decide and settle cases at the first instance between people who are Muslims in the field of: a. marriage, b. inheritance, wills, grants made under Islamic law, wakaf, and shadaqah."as amended by Law Number 50 of 2009 on the Second Amendment to Law Number 7 of 1989 on Religious Courts.

Article 50 of Law Number 8 Year 2004 regarding Judicial Power which determines that the General Court has the absolute competence to examine, hear and adjudicate the civil case, is to use an additional sentence that is "except a set of other rules of procedure". The judge of the District Court referred to in an interlocutory decision, whether exposed or not, declares himself exofficio not authorized to examine and adjudicate and decide on grant dispute cases among Muslims. [13]

The formulation of the deed of grant to date has not been specific to the Muslims, meaning that in general, grants relating to land issues have not been formulated by a deed under the provisions of Islamic Shari'a. So definitely the deed of grant made by PPAT (Land Deed Officer), still using the general grants deed. Hence with the power of this deed it cannot be concluded that the deed of grant has been made not according to Islamic Law, with consideration in all parts of Indonesia until now the making of the deed of grant always use the certificate of grant which has been printed and can be purchased at local Post Office.

The District Court can not declare itself authorized to adjudicate and adjudicate general grant deed disputes, since the deed of grant has been made on forms or blanks already provided at the Post Offices and to date there has not been a special grant in accordance with the provisions of Islamic Sharia or for the Muslims. Therefore, this general grant deed cannot be used as a reference to state that grant dispute is the authority of the District Court.

The grant deed beside the general formulation also cannot be used as a guideline for consideration in the Inauguration Verdict, since the Intermediate Court Decision has no juridical correlation with the verification process. At the time of the execution of the exception event filed by the Defendant in the hearing, it is not related to evidence, whether written evidence, evidence of witnesses or other evidence. So the judge can only consider from the process of the event that has been going on.

The process of hearing in the event concluded with the Interlocutor Judgment, it relates only to the identity of the parties to the dispute. This is because the court-related events before the Interim Verdict are only the reading of the lawsuit, exceptions and answers, *repliek* and *dupliek*. The judge can only read and consider the disputed object, if the dispute is concerned with absolute competence, then the District Court must ex-officio impose an Inter-Conference stating that the District Court is not authorized to hear and decide the case.

The grant case submitted by its cancellation, in the Plaintiff's claim has contained the name of the Plaintiff using the title of Hajj. In addition, the Defendant confirmed that between the Plaintiff and the Defendant are the persons who are Muslims. Thus the case for the cancellation of the deed occurs among the Muslims, where according to the provisions of Law No. 3 of 2006 on Religious Courts, Article 49 (1) determines, "The Religious Courts are in charge and authorized to examine, decide and settle cases -the first level among Moslems in the field of: a. marriage, b. inheritance, wills, grants made under Islamic law, waqf, and shadaqah. "So the dispute over the cancellation cannot be examined and decided by the District Court.

Article 49 paragraph (1) of Law Number 3 Year 2006 concerning Religious Courts affirming to sub "b. inheritance, wills, grants made under Islamic law, wakaf, and shadaqah "are to be proven. While the Insertion is not related to the submission of proof, therefore article 49 paragraph (1) sub "b" must be set aside. Therefore, the judge shall base his Decision on Article 49 Paragraph (1) itself, namely "the Religious Courts shall have the duty and authority to examine, decide and settle cases in the first instance between persons of the Islamic faith".

The mention of Hajj identity in the name of the Plaintiff and affirmed in the Defendant's reply that the litigants are Muslims, the data of the parties has fulfilled the element as the matter between the Muslims. Because the jurisdiction of the District Court does not have the authority to examine and adjudicate and decide cases of disputes over the cancellation of grant deeds among the Muslims.

The judge cannot postulate because of Law Number 8 Year 2004 regarding the Amendment to the General Courts Act as well as in Law Number 49 Year 2009 regarding the Second Amendment to Law Number 2 Year 1986 does not stipulate prohibition to receive and inspect as well as resolved the dispute over the

grant deed. In view of Law Number 8 Year 2004 regarding Judicial Power, Article 50 provides that the General Courts have absolute competence to examine, hear, and adjudicate civil cases, except for other defining legislation.

Law Number 8 Year 2004 regarding Judicial Power is a basic provision which regulates the judicial power, whether the judicial power residing in the General Courts, Religious Courts, State Administrative Courts or Military Courts. Hence, the absolute authority of each judicial institution is regulated by the legislation of the judiciary. So that the existence of Law Number 8 Year 2004 regarding the Amendment to Law of the General Court as well as in Law Number 49 Year 2009 regarding the Second Amendment to Law Number 2 Year 1986 is general to Law Number 3 Year 2006 concerning Religious Courts .

Law Number 8 Year 2004 regarding the Amendment to the General Courts Act as well as in Law Number 49 Year 2009 regarding the Second Amendment to Law Number 2 Year 1986 regarding General Courts can not be a guideline when adjudicating grant disputes among persons, Moslem people. This is because the dispute among the Muslims has been specifically regulated in Law No. 3 of 2006 on Religious Courts, namely Article 49 paragraph (1) of Law No. 3 of 2006 on Religious Courts which is the second amendment to the Regulation on Religious Courts. Moreover, Law No. 8 of 2004 on Judicial Power, in article 50, provides that the General Courts have absolute competence to examine, hear, and decide civil cases, except for other defining legislation.

The meaning of the word except in article 50 again of Law Number 8 Year 2004 regarding Judicial Power which has given limitations on the authority to adjudicate and decide grant disputes among the Muslims, even though the case is a civil case. Therefore, in absolute terms the District Court does not have the authority to try and decide on civil disputes among Muslims, especially grant disputes.

Application of *IusCuriaNovit* Principle

The position of the judge has an important role both in applying the positive law and finding the law. This role is so important that the judge's decision can fill the legal void. The judge is not allowed to reject the case on the grounds "there is no legal basis governing it". This principle then known as *Adagium iuscurianovit*, the judge is considered to know the whole law.

The principle of *iuscurianovit* is a principle which states that judges are considered to know all laws[14]. A different opinion holds that the principle of *iuscurianovit* is the principle which obliges a judge to decide a case against him. Every case submitted to a judge, irrespective of whether or not the law governs. Therefore it takes a skilled judge to reconstruct the law. Construction is a tool for judges to create law (*Rechtschepping*), meaning that if there is a case brought to

the judge, but the judge does not find the legal rule concerned with a case, then the judge will use the construction to create a new rule of law.

The relationship between the principle of "*iuscurianovit*" and the construction is, if there is a case brought to the judge, but the judge does not find the legal rule relating to such a case, then, according to the principle of "*iuscurianovit*" the judge is obliged to continue to decide the case by creating law (*Rechtschepping*) with tools ie construction.

Iuscurianovit becomes the basis of a court or a judge is prohibited from refusing the case on the pretext that the law is not regulated or the law is incomplete. Article 22 AB (*Algemene Bepalingenvanwetgevingvoor Indonesie*) or General Regulations Regarding Indonesia, states that a judge who refuses to adjudicate a case may be convicted. "The judge who refuses to make a decision on a case, under the pretext of the law does not regulate it, there is darkness or incompleteness in the law, may be prosecuted for refusing to hear the case.

With this principle also, so the refusal of testimony because of expertise with respect to the application of law, because of the application of the law is to be the domain of judges. While the substance of the case may be the parties or the court to ask for a witness's testimony because of the expertise on the substance of the case being examined and the basis of the judge in deciding its decision. Let's say the case related to information technology, then the examination required expertise on the issues examined, although in deciding how the law becomes the competence of judges.

Article 10 Paragraph (1) of Law Number 48 of 2009 on Judicial Power, provides that, "The court is prohibited from refusing to examine, hear and adjudicate a case filed under the pretext that the law is absent or less obvious, "This chapter does not mention the possibility that the law or rule is incomplete, so the prohibition of the judge against the case is also enforced. However, the principle of *iuscurianovit* does not mean that all cases must be examined and sent to justice wherever they may be, because the judge is bound by the competence of the type of case in which he is judged.

The provisions on the judge may receive, examine, hear and decide, although on the basis of *iuscurianovit* principle it can be concluded that the judge may adjudicate a case, but the competence is limited by the provisions of article 50 of Law Number 8 Year 2004 regarding Judicial Power Judiciary which determines that the General Court has competence absolute to examine, adjudicate and adjudicate the civil case, is to use an additional sentence that is "except a set of other defining legislation."

The provisions of legislation that determine otherwise against absolute competence are the existence of Law No. 3 of 2006 on Religious Courts, namely

Article 49 paragraph (1) of Law No. 3 of 2006 on Religious Courts which is the second amendment to the Act Religious Courts.

Article 49 paragraph (1) of Law No. 3 of 2006 on Religious Courts affirming "the Religious Courts are on duty and authorized to examine, decide and resolve cases in the first instance between Muslims". So that all disputes involving civil cases among Muslim judges should be properly acknowledged on the basis of the *iuscurianovitte* principle, that the District Court is not authorized in absolute terms to accept, examine and adjudicate and resolve civil disputes among Muslims.

The principle of iuscurianovit strengthen the judge to receive, examine, hear and decide a civil case, not until because of Law No. 8 of 2004 on the Amendment to the Law of the General Court as well as in Law No. 49 of 2009 on the Second Amendment to the Law Number 2 of 1986 on General Courts does not stipulate the prohibition to try civil disputes among Muslims to become a tool for District Court judges to keep trial.

IV. CONCLUSIONS AND SUGGESTIONS

The Court of Appeal declaring himself authorized to examine, adjudicate and adjudicate grant disputes among Muslims is a verdict in violation of Article 50 of Law Number 8 Year 2004 concerning Judicial Power of the Judiciary. This is because the Judicial Power Law is the principal law for judges to know. Moreover, the judge is ius curi novit which in fact the judge should know about the laws and regulations that have regulated the existence and position and function of the judge.

The mistake of a judge in deciding a case is so much happening in a public dispute. The result of the verdict seriously injures law enforcement in Indonesia, which consequently society accepts injustice. This should be stopped immediately by way of the Supreme Court must have special organs in the field of personnel, because these organs are processing the judge's rank. So that every submission of appellate raise should be done research on the decision, whether or not the judge should be promoted or lowered or even dismissed.

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