JOURNAL OF LEGAL RESERCH
Volume 3, Issue 3 (2021), pp 365-382
P-ISSN: 2715-7172 E-ISSN: 2715-7164
http://journal.uinjkt.ac.id/index.php/jlr

Transfer of Party in The Agreement May Void the Agreement as A New Today of Law in Indonesia*

Ahmad Yulianto, Athari Farhani
[1]Faculty of Law University of Muhammadiyah Surabaya
[2]Law Institute Peoples' Friendship University of Russia
10.15408/jlr.v3i3.20930

Abstract
The ratification of Law No.7 of 1989 concerning the Religious Courts brought enormous changes to the position of the religious judiciary, not only in its position as a judicial institution as part of executing the same judicial power as other judicial institutions. However, the ratification of the granting of full authority which is the main task of the religious court to resolve cases of Muslims in Indonesia relating to family law. With the birth of the religious court law, the religious judiciary has become independent in Indonesia in enforcing laws based on Islamic law for those seeking justice who are Muslim in relation to civil matters in the fields of marriage, inheritance, wills, grants and endowments. Therefore, Muslims in Indonesia are required to submit their cases to the religious court which is the authority of the religious court. Jurisprudence is a fundamental need to complement various laws and regulations in the application of law because in the national legal system it plays a role as a source of law. Without jurisprudence, the function and authority of the judiciary as the executor of judicial power will cause sterility and stagnation. Jurisprudence aims to keep laws up to date and apply effectively, and can even increase the authority of the judiciary because they are able to maintain legal certainty, social justice and protection. Legal certainty will be realized if in the application of law there is a common perception. The existence of legal certainty will prevent or avoid disparities and inconsistencies in decisions because judges have applied the same legal standards to cases or cases that are the same or similar to cases that have been terminated or tried by a previous judge, so that the verdict on his case can be predicted by justice seekers. With this consistent decision, a sense of justice and legal certainty can be realized.
Key Word: *Religious Courts, Islam, Jurisproduction, Legal Certainty*

* Received: 20 May 2021, Revision: 06 June 2021, Publish: 08 June 2021.

A. INTRODUCTION

As a country with a majority Muslim population, of course Islamic law is one of the living laws and part of the three legal systems (Islamic law, Western law and customary law) in Indonesia. Religious values or norms will coincide with the presence of that religion. Recent developments show the increasing number of Muslim problems that require solutions based on Islamic law, especially in terms of civilization. Sometimes this problem has no legal basis or in other words there is a legal vacuum. Meanwhile, judges cannot reject cases because there is no law.

Meanwhile, one of the cases related to sharia economics has no legal source and requires a decision to create legal certainty. This happened in decision number: 1047 / Pdt.G / 2006 / PA.Pbg. For this case, the Religious Court appointed Drs.Ma'muri SH as the chief judge, as well as a member judge, namely Drs. Bajuri Musthopa, SH and Drs. H. Nangim, MH .

Where the judge has tried and decided the decision in the first level in the case of Al Musyarakah Financing Agreement Obligations, among others:

1. H. Aman Waliyudin, SE as the President Director of PT BPR Syariah Buana Mitra Perwira Purbalingga
2. Muhamad Rosyid S.Ag bin H. Dasi Sunaryo as Operations Director of PT BPR Syariah Buana Mitra Perwira Purbalingga

   As Plaintiff

   Against

1. Herman Rasno Wibowo Bin Sodirin
2. Harni binti H. Ahmad Sudarmo

   As the defendant

In their lawsuit, the plaintiff generally stated

1. The Defendant received capital for the brown sugar and grocery business based on the al Musyarakah agreement number: 123 / MSA / VII / 05 dated 20 July 2005 amounting to Rp. 30,000,000, -
2. The Defendant used the capital for other activities that were not agreed upon in the al Musharaka contract and did not perform his obligations. The Defendant has been in default

3. As a result of default, the defendant, the plaintiff, suffered material losses. Therefore, the defendant is sentenced to pay / return the financing received to the plaintiff, the details of which are as of October 31

   - Funding principal : Rp. 29,080,000, -
   - Takwid fine : IDR 7,729,569.-
   - APHT fees : Rp. 262,000, -
   - Total : Rp. 37,071,569, -

And this number continues to increase due to profit sharing and / or ta'widh fines and costs arising from it, until all obligations are paid in full.

Regarding this matter, the judge decided that the al Musharakah agreement number: 123 / MSA / VII / 05 dated 20 July 2005 was canceled, and ordered the defendant to pay the defendant Rp. 37,071,569, -. However, the judge rejected the plaintiff's petition regarding the increasing amount due to profit sharing and / or ta'widh fines and costs arising from it, until all obligations were paid in full.

B. METHODS

The research method used in this research is normative legal research, so primary legal materials are needed, namely legislation, official records or treatises in the making of legislation and haim decisions related to problem formulation. In addition to primary legal materials, secondary legal materials are also needed from secondary sources, namely all publications on law that are not official documents, publications on law which include text books, legal dictionaries, legal journals and ministerial comments on court decisions, namely legal literature books and other legal writings related to the formulation of problems. Meanwhile, the legal research is in the form of a comprehensive study of primary and secondary legal materials, then the results of the study are presented in a complete and systematic manner.

C. RESULS AND DISCUSSION

1. Extension of the Religious Court

The ratification of Law No.7 of 1989 concerning the Religious Courts brought enormous changes to the position of the religious judiciary, not only in its position as a judicial institution as part of executing the same judicial power

as other judicial institutions. However, the ratification of the granting of full authority which is the main task of the religious court to resolve cases of Muslims in Indonesia relating to family law. With the issuance of the religious court law, the religious court has become independent in Indonesia in enforcing laws based on Islamic law for those seeking justice who are Muslim in relation to civil matters in the fields of marriage, inheritance, wills, grants, and endowments.

Therefore, after two years of the enactment of Law No.7 of 1989 concerning the Religious Courts, Presidential Instruction No.1 of 1991 concerning Compilation of Islamic Laws (KHI) was stipulated to support the implementation of religious courts. KHI is not born suddenly, but undergoes a study and a process that is not short. Even in the realm of politics. This is done so that the religious courts in carrying out their duties and authorities have definite areas and routes. Because Law No.1 of 1974 concerning Marriage does not yet contain other Islamic civil matters which should be the authority of the religious court, not only that, the marriage issues contained in the marriage law have not yet detailed marriage matters.

In Law No.4 of 2004 concerning Judicial Power, as an amendment to Law No.35 of 1999 concerning amendments to No. 14 of 1970 concerning Judicial Power, it is explained that judicial power is exercised by courts in a) general court, b) religious court, c) military court, and d) state administrative court.

According to Yahya Harahap, there are five duties and authorities contained in the religious judiciary, namely: 1) The function of the authority to judge, 2) Providing information, considerations, and advice on Islamic law to government agencies, 3) Other authorities by or based on laws law, 4) The authority of the high religious court to adjudicate cases at the appellate level and adjudicate relative competency disputes, 5) In charge of overseeing the running of the judiciary[1i].

In principle, the power and authority of the religious courts and other courts, be it general courts, state administrative courts, and military courts are the same. However, the difference lies in the power to judge or the case which is the authority of each court (absolute authority).

We can exemplify that the absolute authority possessed by the religious judiciary is the case of Muslim justice seekers with respect to civil cases such as marriage and inheritance, so this case becomes the absolute authority of the religious court

[1]M.Yahya Harahap, Position, Authority and Procedure of the Religious Court Law No.7 of 1989 (Jakarta: Pustaka Kartini, 1993), p. 101.

to accept, examine and decide these cases. Meanwhile, for those who are not Muslim, their case must be submitted to the state court to be resolved.

However, if the cases of the Muslim justice seeker have been decided by the religious court, then the justice seeker does not accept the religious court's decision, then he can file an appeal to a higher institution, namely the High Religious Court.

Apart from the absolute authority possessed by the religious court, it also has relative competence that is guided by the provisions of the Law on Civil Procedure. Article 54 of Law No.7 of 1989 concerning Religious Courts explains that the procedure for which it applies to the religious court is the procedural law that applies to the general court. Therefore, the basis for determining the relative authority of the religious court refers to the provisions of article 118 HIR or article 142 RB.g in conjunction with article 73 of Law No.7 of 1989[2]. The determination of this relative competence is based on the rules that stipulate the Religious Courts where this challenge will be submitted in order to fulfill the formal requirements.

Article 118 paragraph (1) of the HIR, adheres to the principle that it is the court where the defendant resides. However, there are exceptions contained in article 118, paragraph (2), paragraph (3) and paragraph (4), namely:

a. If there are more than one defendant, then the lawsuit is filed in a court whose jurisdiction covers the residence of one of the defendants;

b. If the residence of the defendant is not known, then the lawsuit is submitted to the court where the plaintiff resides;

c. If the lawsuit concerns immovable objects, then the lawsuit is filed by the court in the jurisdiction where the goods are located;

d. If there is a place of residence selected by means of a contract, then a lawsuit can be submitted to the court of residence selected in the deed.[3]

Regarding the authority or competence of religious courts as stipulated in article 49 to article 53 of Law No.3 of 2006 as an amendment to Law No.7 of 1989 concerning the Religious Courts, this authority consists of absolute authority and relative authority. The relative authority of the religious court

[2] M. Fauzan, Principles of Civil Procedure for Religious Courts and Sharia Courts in Indonesia (Cet. 1; Jakarta: Kencana, 2007), p. 33.

[3] Sulaikin Lubis, Civil Procedure Code of Religious Courts in Indonesia (Cet. 1; Jakarta: Kencana, 2005), p. 102.

refers to article 118 HIR, or article 142 RBg in conjunction with article 66 and article 73 of Law No.7 of 1989, while absolute authority is based on article 49 of Law No.7 of 1989, which is the authority to adjudicate civil cases in field a) marriage, b) inheritance, c) wills, d) grants, e) waqf, f) zakat, g) donations, h) alms; and i) sharia economy.

2. Islamic Law Reform

Islamic law in Indonesia has developed over a dozen centuries with the social processes that occur, but it does not rule out methods that pay great attention to local interests (local culture of Indonesian society). It is not surprising that Indonesian Muslim intellectuals (intellectuals) from ancient times to the present have continued to fight for Islamic law which is always in accordance with the socio-culture of the Indonesian nation. Therefore, Islamic law is a part of functional social institutions that relate and influence each other with other social institutions. The relationship between social structure and law provides a deeper understanding of the socio-cultural environment in which the law applies in society.[4]

Islamic law is a living law in Indonesia, so the dynamics of Islamic law in Indonesia will certainly affect the process of development and social interaction. Likewise, with social status, because the norms that are absorbed as a result of the interaction between religion and society have implications for the social processes that occur in Indonesia. Therefore, the application of Islamic law in Indonesia is strongly influenced by the social conditions of the community in which the law will be applied.

The dynamics of reforming Islamic law in Indonesia have colored the history of Muslims in Indonesia. The idea of reform in Islamic law emerged due to a gap between legal material, especially Islamic law related to fiqh and the current social conditions of Indonesian society. Efforts to realize these reforms are carried out in the form of modifications, codifications, and compilations, especially those related to family law.

Meanwhile, in the Big Indonesian Dictionary it is also stated that updating means improving so that it becomes new, repeating again, starting again, replacing with a new one, and modernizing. Meanwhile, renewal means the process, actions and methods of updating (*Ministry of Education and Culture, Big Indonesian Dictionary).*

Other terms that are considered equivalent or often used in the context of reform are "tajdîd[5] and reform[6]. According to Harun Nasution, reforms in Islam are needed to adapt Islamic religious understandings to new developments brought about by advances in modern science and technology.[7]

According to Yusuf al-Qardhawi quoted by Abdul Manan, what is meant by tajdid is trying to return it to its original state so that it appears as if it is new.[8]This is by strengthening something that is weak, repairing the worn out and patching up cracked activities so that it comes back closer to the first form. In other words, tajdid is not changing the form of the first one or replacing it with a new one. Concretely, if we want to renew (renew) an old building, it means that we allow the substance, characteristics, form and characteristics of the building.

We just repair the damaged, decorate it again, patch the missing, beautify the crushed parts. So, updating a building is not destroying it and then replacing it with a new, different building. Likewise, tajdiddud din does not mean changing deen, but returning it to be like in the era of the Prophet Muhammad, the companions, and tabi'in (*Abdul Manan, Islamic Law Reform in Indonesia).*

According to Abdul Manan, reforming Islamic law is an effort and action through a certain process with full sincerity carried out by those who have the competence and authority in the development of Islamic law (mujtahid) in ways that have been determined based on justified legal istinbath principles so as to make Islamic law can appear fresher and modern, not out of date, this is what in ushul fiqh is known as "ijtihad" (*Abdul Manan, Islamic Law Reform in Indonesia*). Therefore, reform of Islamic law is carried out by those who do not have the authority and competence in the development of Islamic law (do not have the requirements as a mujtahid), or are not carried out based on the correct system

[5]Tajdîd is a masdar form of the word jaddadayujaddidu-tajdîdan. Jaddada-yujaddidu means to renew

[6]Reformasi comes from the English "reformation" which means forming or rearranging. Jhon Echols and Hasan Shadily, Indonesian English Dictionary (Cet.XX; Jakarta: PT. Gramedia, 1992), 437. Reform can also mean radical changes for improvement (social, political and religious fields) without violence. Ministry of Education and Culture, Big Indonesian Dictionary, p. 826

[7] Harun Nasution, Renewal in Islam: History of Thought and Movement (Cet. XII; Jakarta: Bulan Bintang, 1996), pp. 11-12

[8]Yusuf al-Qardhâwi, Min Ajli Shahwatin Râsyidah Tujaddidud-din, Translation of Nabhani Idris, Fiqh Tajdîd and Shahwah Islamîyah (Jakarta: Islamuna Pers, 1997), p. 28-29

and principles in determining law, then it is not can be said to be a reform of Islamic law.

Basically, the process of reforming Islamic law has been going on for a long time, the process takes place with the conditions and situations and based on the guidance of the times. This is because according to some experts that the norms contained in classical fiqh books are no longer able to provide answers and solutions to various new problems that have occurred, where at the time the fiqh books were written these problems had not yet occurred.

We can give an example, for example, marriage using the telephone, granting inheritance to adopted children through wills, management of zakat, waqf in cash, and various other new problems. Therefore, the state must make regulations that regulate these new things into regulations in the form of legislation that can provide solutions so that there is no confusion in their implementation in society.

According to Islamic law experts in Indonesia, the current reform of Islamic law is caused by several factors, including: first, to fill the legal vacuum because the norms contained in fiqh books do not regulate it, while the community's need for legal issues just happened it was urgent to implement. Second, the influence of economic globalization and science and technology so that there needs to be a rule of law to regulate it, especially issues where there is no legal rule. Third, the influence of reform in various fields which provides opportunities for Islamic law to become reference material in making national law. Fourth, the influence of the renewal of Islamic legal thought carried out by the mujtahid both at the national and international levels.[9].

[9]Abdul Manan, Islamic Law Reform, p. 154. Meanwhile, according to Zaenuddin Nasution, reform of Islamic law is caused by changes in conditions, situations, places and times as a result of these factors. Change is in line with the theory of qaul qadim and qaul jadid put forward by Imam Syafi'i. Zaenuddin Nasution, Islamic Law Reform in Mzahab Syafi'i (Bandung: PT. Remaja Rosdakarya, 2001), p. 243-246. See also Ahmad Nakhrowi Abdul Salam, Imam Syafi'i School of Qadim Wal Jadid, Dissertation at A-Azhar University, Cairo, unpublished, 1994, p. 30-32. Laws can change due to changes in the legal arguments used in establishing new law events to carry out maqasid. Because the results of ijtihad are relative, Therefore, changing the law must be a concern because it is possible that events in different places may have different laws. So that the truth needs to be as close as possible. Therefore, ijtihad as a method of legal discovery must continue because every new case must immediately determine a new law. According to some experts, ijtihad will never be closed because new events will always emerge that require immediate legal stipulation so as not to be out of date.

Noel J. Coulson, as quoted by Amir Mu'alim and Yusdani in the book Configuration of Islamic Legal Thought, states that Islamic legal reform manifests itself in four forms, namely:

1. Codification (namely the grouping of similar laws into statutes) Islamic law into state statutory law, which is referred to as the siyasa doctrine;
2. Muslims are not bound by only one particular school of law, which is known as the takhayyur (selection) doctrine, which is to have the most dominant name in society;
3. Legal development in anticipating the development of new legal events, which is known as the tatbiq doctrine (application of law to new events);
4. Changing the law from the old to the new is called the tajdid doctrine (reinterpretation)[10].

3. Jurisproduction as a Source of Law

In the book Principles of Legal Philosophy (Darji Darmodiharjo 2006), the understanding of legal sources will vary among experts. According to historians, sources of law are laws or other documents of the same value as laws. Meanwhile, sociologists and anthropologists say the source of law comes from the community. In contrast to economists, the source of law is what is seen on the ground. Meanwhile, religious experts think that the source of law is holy books. For philosophers, the source of law is all the measures used to determine that a law is fair, why people obey the law, and so on.

The Big Indonesian Dictionary explains that the source of law is everything in the form of writings, documents, texts, etc. which is used by a nation as a guide for life at a certain time. So that the source of the law can be interpreted as the material or material that contains the law made and formed, the process for the formation of the law, and the form of the law so that it can be seen, felt, or known.

According to the book Introduction to Indonesian Law (2019) by Rahman Amin, the source of law is anything that can do, raises legal rules and places where legal rules are found. This source of law creates binding and compelling

[10]Amiur Mu'alim and Yusdani, *Configuration of Islamic Legal Thought* (Yogyakarta: UII Press, 2005), p. 15

rules. If the rules are violated, there will be firm and real sanctions for the violators.

The source of law itself is divided into two, namely

1. Source of material law

Material source of law is the source from which legal material is taken. This source of law is a factor that helps determine the content or material of the law. For example, material sources of law such as religion, morality, God's will, reason, social relations, and so on.

2. Source of formal law

The source of formal law is the source of a regulation obtaining legal force. Formal legal sources shape legal views into legal and binding rules.

The sources of formal law include several things, such as:

1. Constitution; Law includes all forms of statutory regulations (in a material sense, not just in a formal sense).
2. Habit; Human or institutional actions that are carried out repeatedly regarding the same thing. If a habit is accepted by the public and feels obligatory, then that habit is seen as unwritten law.
3. Judge's decision (jurisprudence); A previous judge's decision on a case that is not regulated by law and is used as a guide by other judges.
4. Treaty; Agreements between two or more countries regarding certain issues of interest to the countries concerned. The treaty will bind everyone in the countries that made the treaty. The agreement between the two countries is called bilateral. A treaty of more than two countries is called a multilateral treaty.
5. Doctrine or expert opinion; Opinion of prominent legal scholars who chose influence in decision making for judges. Doctrine is often used in the process of jurispudence.

There is a legendary doctrine in the world of law, namely: "Ius Curia Novit" which means: Only the judge (most) knows (what) the law (for any settlement of any legal problem). The principle of Ius Curia Novit constructs a comprehensive foundation of the new doctrine that judges, especially philosopher judges, are "the expert in wisdom" in applying law to their events.

All parties, whether it be police officers, prosecutors, KPK investigators, lawyers / advocates, members / heads of the Judicial Commission, lecturers /

professors of Legal Studies, ministers, members / chairmen of the DPR, TNI commander, and even the president if leaning on the principles of Ius Curia Novit it is assumed that they know nothing about the application of the law to a case.

Based on Article 32 of Law no. 3 of 2009 concerning the Second Amendment to Law no. 14 of 1985 concerning the Supreme Court, the Supreme Court is tasked with exercising the highest oversight of the administration of all judicial bodies under it in exercising judicial power. As the Supreme State Court, the Supreme Court is a cassation court whose task is to foster uniformity in the application of law through cassation decisions and reconsiderations to ensure that all laws and regulations throughout the territory of the Republic of Indonesia are applied fairly, appropriately and correctly.

Jurisprudence is the decisions of previous judges which have permanent legal force regarding a case that is new and interesting from a legal point of view, or a new legal interpretation or reasoning of a legal norm that is followed by judges or other judicial bodies in deciding cases or cases that same[11]. Jurisprudence is divided into two types, namely[12]:

1. Permanent jurisprudence is the decision of a judge repeatedly used in the same cases, which decision is Standaardaaresten, namely the Supreme Court's decision which forms the basis for the court to make decisions.
2. Variable Jurisprudence This means jurisprudence that has not become permanent jurisprudence, because it is not always followed by judges.

In addition, there are those who add 2 more types, namely

1. Semi-jurisprudence is all decisions from a court based on a person's request, and applies specifically.
2. Administrative jurisprudence is a circular letter of the Supreme Court or SEMA which only applies administratively and is internally binding within the scope of the court.

[11]Center for Law and Justice Research and Development, MA RI Kumdil Education and Training Agency, Position and Relevance of Jurisprudence to Reduce Disparities in Court Decisions, (Jakarta: Publisher of Balitbang Education and Training of Law and Judiciary MA RI, 2010), p. 5.

[12]Supreme Court, Academic Paper on Legal Formation through Jurisprudence, (Jakarta: Supreme Court, 2005), p. 39.

The National Legal Development Agency (BPHN) based on research in 1994/1995 formulated that a decision can be said to be jurisprudence if at least it has 5 (five) main elements, namely[13]:

1. Decision on an event whose statutory arrangement is not clear;
2. That decision is a permanent decision;
3. Has been repeatedly decided by the same decision and in the same case;
4. Have a sense of justice;
5. The decision was justified by the Supreme Court.

However, with regard to the main elements of the decision to be considered permanent jurisprudence, Paulus Effendi Lotulung did not agree that the decision had to be repeated. Lotulung said[14]:

> *"The measure used to determine whether jurisprudence is permanent or irregular jurisprudence is not based on mathematical calculations, namely the number of times the same case has been decided regarding the same case, but the measure is emphasized more on the content which is principally different."*

However, regarding the separation of permanent and non-permanent jurisprudence, as far as the author's investigation does not find the same thing in other countries, both countries that adhere to civil law and countries that adhere to common law.

As stipulated in Article 24 of the Fourth Amendment of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which states that judicial power is exercised independently in administering a fair trial. This means that judges are free and independent and cannot be influenced by other powers in adjudicating a case, even including fellow judges who have not decided on the case or judges who have handled similar cases before. So that judges apart from being independent as an institution are also independent personally.

It is true that judges cannot be intervened by a superior judge in deciding a case, in cases concerning jurisprudence this should not be interpreted as an intervention from a higher judge to a judge at a lower level. Shetreet, in the discussion regarding the sentencing guidelines provided by the chief judge provided an analogy, how when judges gather in a room and tell stories and

[13]Paulus Effendi Lotulung, The Role of Jurisprudence as a Legal Source, (Jakarta: National Law Development Agency, 1997), p. 5

[14] Ibid p. 8

consult with each other regarding their respective cases, can it be said that they violate individual judicial independence? one can argue that under these conditions the parties lose their right to argue. However, here it is tantamount to the judge going to the library and consulting other people regarding the case. Does it affect individual judicial independence? According to Shetreet this cannot be easily answered[15].

Regarding judges who accept other judges' decisions violating the principle of judge independence, Utrech expressed the opinion that regarding a judge making general rules when giving a decision which is then followed by another judge is a misunderstanding. A judge who obeys a decision of another judge does not mean that the first judge expressly received an order from the other judge to comply with his decision. Because according to Utrecht, according to Article 1917 of the Civil Code, the judge's decision only applies to both parties whose cases are settled by that decision. According to this provision, the judge's decision does not apply generally, but does not close to being followed[16].

As long as jurisprudence is not intended to influence the judge's decision and the judge becomes biased, in the sense that the judge takes sides, then it can be said that there is a violation of the judge's independence, as in the case of the tancho jurisprudence used in the Nike II case which emphasizes the need for an element of "good faith" in registration. brand. The tancho ruling by President Soeharto at that time was deliberately forced to be used as jurisprudence so that judges were not independent in making decisions.[17]Judges are bound by jurisprudence as long as it is in line with the legal ratios of a jurisprudence, with the intention that it must be considered. When it is not appropriate, the judge can still refuse to apply the norms in the jurisprudence, but is obliged to provide the reasons, in order to achieve justice. So still the concept of attachment is persuasive, but it must be considered.

Legal certainty will be realized if in the application of the law there is a common perception. The existence of legal certainty will prevent or avoid disparities and inconsistencies in decisions because judges have applied the same legal standards to cases or cases that are the same or similar to cases that have been terminated or tried by a previous judge, so that the verdict on his case can

[15] Simon Shetreet, Judicial Independence, (Netherlands: Martinus Mijhoff Publisher, 1985), p. 643.

[16] Ernst Utrecht and Moh. Saleh Djindang, Introduction to Indonesian Law, (Jakarta: Ikhtiar, 1957), p. 125.

[17] Sebastiaan Pompe, The collapse of the Supreme Court Institution, (Jakarta: Institute for Studies and Advocacy for Judicial Independence, 2012), p. 646-651.

be predicted by justice seekers.[18] With these consistent decisions, a sense of justice and legal certainty can be realized[19].

Legal certainty will facilitate the process of law enforcement, because with a consistent application of the law, decisions will be easy to carry out. Consistency in the application of law can also foster jurisprudence as a source of law and legal development, because laws are not always complete and completely regulating everything. The role of judges in this case is to fill the legal vacuum when the law does not regulate by creating laws, both formal and material laws.[20].

In essence, jurisprudence has various functions, namely:[21]

1. By having the same decisions in similar cases, the same legal standards can be enforced
2. With the same legal standards, a sense of legal certainty can be created in the community
3. By creating a sense of legal certainty and legal equality for the same case, the judge's decision will be predictable and there will be transparency
4. With the existence of legal standards, the possibility of disparities in different judges' decisions in the same case can be prevented. If there arises a difference in the verdict between one judge and another in the same case, then it should not cause disparity but only be characterized as a casuistic variable (case by case).
5. With the existing guidelines or guidelines in jurisprudence, there will be consistency in judicial attitudes and avoiding controversial decisions, which in turn will guarantee legal certainty and trust in the judiciary and

[18] Paulus Effendi Lotulung, Improving the Quality of State Administration Court with the Same Perception in the Application of Law, Papers, https: //www.mahkamahagung.go.id/images/uploaded/15j. Increase_Kualitas_Peradilan_Tun_Dg_Persamaan_Persepsi.pdf accessed on 2 February 2021 p. 2.

[19] Takdir Rahmadi, Chamber System in the Supreme Court: Efforts to build Legal Unity, https://www.mahkamahagung.go.id/rbnews.asp?bid=4156 seen on February 4, 2021,

[20] ibid

[21] Ibid

its law enforcement, both at national forums and especially at the level. international.[22]

Decisions can be used as jurisproduction if they have fulfilled a number of elements, namely

1. A decision on a legal event whose regulation is not clear in law.
2. The decision must be a decision that has permanent legal force.
3. It has repeatedly been used as the basis for deciding on the same case.
4. The verdict has fulfilled a sense of justice.
5. This decision was justified by the Supreme Court.

The appropriateness of a jurisprudence can guarantee the existence of usefulness value is that decisions contain breakthrough values and decisions are followed by judges constantly so that they become permanent jurisprudence that maximizes legal certainty. If regarding a problem there is already a permanent jurisprudence, then it is considered that the jurisprudence has given birth to a legal regulation that complements the law. Firstly, the establishment of legal principles can be done in an effort to form national law through the process of legislation. But at the stage of their application, the principles are strengthened through jurisprudence.

Jurisprudence is a fundamental need to complement various laws and regulations in the application of law because in the national legal system it plays a role as a source of law. Without jurisprudence, the function and authority of the judiciary as the executor of judicial power will cause sterility and stagnation. Jurisprudence aims to keep laws up to date and apply effectively, and even increase the authority of the judiciary because they are able to maintain legal certainty, social justice, and protection.

D. CONCLUSION

Decision number: 1047/Pdt.G/2006/PA.Pbg has created a new rule that can be used as jurisprudence to decide similar cases in the future. The new rules are:

First; Agreements that are not implemented or their implementation transferred from one job to another, such as from the trade financing of brown

[22] Sebastiaan Pompe, The collapse of the Supreme Court Institution, (Jakarta: Institute for Studies and Advocacy for Judicial Independence, 2012), p. 646-651.

sugar and grocery are transferred to another, then the agreement can be canceled (Fasakh) so that by canceling the agreement, the agreement is terminated.

The decision was based on consideration

1. Opinion Dr. Wahbah Az Zuhaili in his book AL Fiqhul Islamy Waadillatuh Juz IV page 277 which explains that if an agreement is not implemented or its implementation is transferred from one job to another, the agreement can be canceled (Fasakh).
2. Al Qur'an Surah Al Maidah verse 1 which means "O you who believe, fulfill the contracts that you have made".
3. Hadith of the history of Abu Dawud, Ahmad Tirmidzi and Daruqutmi which means "Muslims are bound by the covenants they make"
4. The opinion of Prof. Subekti SH that the debtor can be said to be default/negligent if he does not fulfill his obligations or is late in fulfilling them or fulfills them but not as promised

Second; Lawsuits to pay additional profit sharing and / or fines (ta'widh) as well as costs arising from the failure to pay the debtor's obligations until all debtors' obligations are paid off is not legally based, because the non-performing financing must be in the status quo since filed, both regarding the principal amount. financing, ratio, ta'widh / compensation. The decision was based on consideration The Supreme Court jurisproduction number: 2899K / Pdt / 1994 dated 15 February 1994.

REFERENCES

Buku

Amiur Mu'alim and Yusdani, *Configuration of Islamic Legal Thought*, Yogyakarta: UII Press, 2005.

Ernst Utrecht and Moh. Saleh Djindang, *Introduction to Indonesian Law*, Jakarta: Ikhtiar, 1957).

Harun Nasution, *Renewal in Islam: History of Thought and Movement* Cet. XII, Jakarta: Bulan Bintang, 1996.

Imam Syafi'i. Zaenuddin Nasution, *Islamic Law Reform in Mzahab Syafi'i*, Bandung: PT. Remaja Rosdakarya, 2001.

Jhon Echols and Hasan Shadily, *Indonesian English Dictionary* Cet.XX, Jakarta: PT. Gramedia, 1992.

M. Fauzan, *Principles of Civil Procedure for Religious Courts and Sharia Courts inIndonesia Cet. 1*, Jakarta: Kencana, 2007.

M. Yahya Harahap, *Position Authority and Procedure of the Religious Court Law No.7 of 1989,* Jakarta: Pustaka Kartini, 1993.

Sebastiaan Pompe, *The collapse of the Supreme Court Institution*, Jakarta: Institute for Studies and Advocacy for Judicial Independence, 2012.

Simon Shetreet, *Judicial Independence*, Netherlands: Martinus Mijhoff Publisher, 1985.

Sulaikin Lubis, *Civil Procedure Code of Religious Courts in Indonesia Cet.* 1; Jakarta: Kencana, 2005

Paulus Effendi Lotulung, *The Role of Jurisprudence as a Legal Source*, Jakarta: National Law Development Agency, 1997

Yusuf al-Qardhâwi, *Min Ajli Shahwatin Râsyidah Tujaddidud-din, Translation of Nabhani Idris, Fiqh Tajdîd and Shahwah Islamîyah*, Jakarta: Islamuna Pers, 1997.

E-Journal & Internet

Ahmad Nakhrowi Abdul Salam, Imam Syafi'i School of Qadim Wal Jadid, Dissertation at Al-Azhar University Cairo, unpublished, 1994.

Center for Law and Justice Research and Development, MA RI Kumdil Education and Training Agency, Position and Relevance of Jurisprudence to Reduce Disparities in Court Decisions, Jakarta: Publisher of Balitbang Education and Training of Law and Judiciary MA RI, 2010.

Supreme Court, *Academic Paper on Legal Formation through Jurisprudence*, Jakarta: Supreme Court, 2005.

Prof. Dr. Paulus Effendi Lotulung, Improving the Quality of State Administration Court with the Same Perception in the Application of Law, Papers, *https: //www.mahkamahagung.go.id/images/uploaded/15j.INCREASE_KUALITAS_*

PERADILAN_TUN_DG_PERSAMAAN_PERSEPSI.pdf accessed on 2 February 2021

Prof. Dr. Takdir Rahmadi, SH., LLM, Chamber System in the Supreme Court: Efforts to build Legal Unity, *https://www.mahkamahagung.go.id/rbnews.asp?bid=4156* seen on February 4, 2021.