



## The Role of the Substitute Registrar in Handling Appeal Case Files in Religious Court Makassar

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### ABSTRACT

After the birth of Law no. 7 of 1989 concerning Religious Courts, there is hope that an independent Religious Court and Religious High Court will be realized. This type of research is empirical legal research, namely legal research that focuses on legal realities in society or is low in action. The location of this research was the Makassar High Religious Court. The type of data in this research is primary data, namely judges and clerks at the Makassar Religious High Court through questionnaires and direct interviews. As well as secondary data are official documents, scientific journals, legislation and official data which are products of the Makassar High Religious Court. Data analysis in this research uses qualitative and quantitative data analysis techniques. Qualitative analysis is a means of analyzing data that cannot be quantified, namely that which is still interpretative. The results of the research show that the role of the Substitute Registrar in handling appeal case files at the Makassar Religious High Court has been carried out well, but in some cases it is less effective. This can be seen from the low level of understanding of administrators' responsibilities in carrying out and completing appeal case files and submitting a copy of the decision to the court of first instance. Factors that influence the implementation of the duties and functions of the Substitute Registrar are matters of legal structure, legal culture, and facilities and infrastructure.

**Keywords:** Role, Substitute Registrar, Religious High Court, Justice

### 1. Introduction

One of the characteristics of a legal state (the rule of law or *rechtsstaat*) is characterized by the limitation of power in the exercise of state power (Mp, 2020). And the consequence of understanding popular sovereignty and the rule of law is the division of power between the legislative, executive and judicial branches of power. In accordance with the understanding of popular sovereignty and the presidential system that was in effect after the amendment to the 1945 Constitution, the Indonesian state adheres to the division of power based on the teachings of Trias Politika which adheres to a strict separation between the legislature, executive and judiciary which aims to protect freedom. Trias Politika, which originates from the teachings of Baron Montesquieu (1689 – 1755) and applies in a presidential system, requires the separation of powers, both institutional, functional and personnel, so that there is a reciprocal check and balance mechanism between the three branches of government. Montesquieu's views are believed to have had a very broad influence on thinking about state power

The principle of the rule of law is confirmed in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution. In full, the article reads: "The Indonesian state is a state of law." This provision is an embodiment of the basic agreement among MPR members produced by the 1999 General Assembly which determined that explanations of the 1945 Constitution containing normative matters be included in the articles or body. *Ius constituendum* refers to future legislation or envisioned legal ideal (Firmanto, 2022).

As is known, before the amendment to the 1945 Constitution, the principle of the rule of law was not regulated in the articles or body of the 1945 Constitution but in the explanatory section of the 1945 Constitution with slightly different terms, namely "state based on law (*rechtsstaat*)". Thus, the inclusion in the articles of the 1945 Constitution is a mere confirmation of the constitutional principles that existed in the previous 1945 Constitution (Suhartono, 2023).

Based on these constitutional principles, it can be seen that independent and responsible judicial power is the embodiment of the principles of popular sovereignty, rule of law and separation of powers. However, there is a diametric difference between the concepts of 'independence' and 'responsibility' from judicial power. The meaning of 'independence' indicates the absence of ties and not being subject to anything, while the meaning of 'responsible' actually indicates the opposite.

Our country's constitution has mandated that this country be implemented based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution, that the State of Indonesia is a state of law. This means that the administration of the Indonesian government in all matters must be based on the law itself. As a manifestation of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the government has also acted by issuing various regulations as legal basis for national and state life, including in the field of judicial power, namely with the birth of legislation regarding the Supreme Court as exercise of judicial power (Achmad Ali, 2002) .

The Supreme Court of the Republic of Indonesia is a state institution that has the authority to exercise judicial power (other than the Constitutional Court), has the main task of receiving, examining, deciding and resolving every case submitted to it, as written in Article 10 paragraph (1) of Law Number 4 of 2004 concerning Judicial Power in conjunction with Law Number 48 of 2009 concerning Judicial Power.

Several things that are always the main topic in connection with the law enforcement process are the problem of unsatisfactory or even poor performance of the justice system and services carried out by law enforcement officers, which is caused by a lack of knowledge and ability, or even a lack of sincerity on the part of those involved. involved in the justice system, whether judges, Substitute Registrars, lawyers or people seeking justice, apart from of course due to corruption, collusion and nepotism in the process of proceedings in judicial institutions. All of these things ultimately give rise to people's pessimism about continuing to resolve disputes through judicial institutions, so that what happens is they take the law into their own hands.

After Enactment Law no. 7 of 1989 concerning Religious Courts, there is hope that an independent Religious Court and Religious High Court will be realized in accordance with statutory regulations. The existence and authority of Religious Court institutions is clearly visible in Law Number 7 of 1989. This hope has skyrocketed after the ratification of Law Number 3 of 2006 concerning amendments to Law Number 7 of 50 of 2009 concerning the Second Amendment to Law Number 7 1989 concerning Religious Courts. This is because the law in question, among other things, confirms the independence of the Religious Courts in the management of Judicial Administration and non-judicial Administration (Hasbi Hasan, 2010) . The Religious Courts are tasked with carrying out judicial powers for people seeking justice who are Muslim regarding certain cases as intended in article 2 of Law Number 3 of 2006. The birth of this regulation which perfects the previous regulations has provided major changes to the existence of the Religious Courts institution today ( Imron Rizki A, Safrin Salam, Andi Marlina, 2021)

Article 49 of Law Number 7 of 1989 concerning Religious Courts is amended by Law Number 3 of 2006 and the second amendment to Law Number 3 of 2006 and the second amendment to Law Number 50 of 2009, states that the Religious Courts have the duty and authority to examine decide and resolve cases at the first level between people who are Muslim in the fields of Marriage, Inheritance, Wills, Grants, Waqf, Zakat, Infaq and Sharia Economics. Some people may view the professional duties of a Substitute Registrar in Court as merely accompanying the judge in trials and recording the progress of the trial process (Khairuni Fatma Siahaan, 2019) . In fact, if you look further, the duties of a Substitute Registrar are certainly quite decisive in the trial process to require a quality decision to fulfill a sense of justice for the parties. And it is impossible for a judge to produce a good decision without the full support of the Substitute Registrar. Therefore, a Substitute Registrar at all levels of the court is required to be careful, thorough and have a strong grasping power when assisting the judge in deciding cases, especially in compiling the Minutes of the Session. The minutes of this trial set out the facts presented by the defendant/plaintiff and witnesses, then signed by the Substitute Registrar and the chairman of the panel of judges.

The role of a Substitute Registrar in the process and completion of each trial really helps the judge in preparing good decision considerations and technically compiling comprehensive systematic files/decisions (Abdul Halim, 2000) . The main duties and functions of substitute clerks as Religious Court officials, apart from being based on the provisions of Article 96 – 102 of Law Number 3 of 2006 above, are also based on the Decree of the Chairman of the Supreme Court of Republic of Indonesia Number KMA/004/SK/II/1992. In connection with the substance of

these regulations and decrees, the Substitute Registrar is required to be able to provide a sense of satisfaction for those seeking justice, where the legal rights of the community can be upheld.

The judicial apparatus has structurally placed the existence of the clerk's office as the main thing and cannot be separated from a judicial process. The Registrar's Office as part of the judicial process is of course required to work effectively and professionally so that it is believed to be able to assist judges in receiving, examining, deciding and resolving a case, especially resolving the minutes of case files. Even the Registrar and Substitute Registrar have been given a job description as a job description. based on Standard Operating Procedures ( SOP) in carrying out the main tasks with the hope that the Registrar and Substitute Registrar will not encounter any obstacles in carrying out their duties

## 2. Method Research

This type of research is empirical legal research, namely legal research that focuses on legal realities in society or is low in action. Empirical research is used to analyze law which is seen as patterned social behavior in people's lives that always interact and relate to social aspects (Rais et al., 2022). For this reason, the author determined the Makassar High Religious Court as the research location. The type of data in this research is primary data, which is data obtained directly from respondents consisting of judges and clerks at the Makassar Religious High Court through questionnaires and direct interviews. And secondary data is data obtained through literature study that is relevant to the problem being studied, including official documents, scientific journals, legislation and official data which is a product of the Makassar Religious High Court. The population in this study were judges and clerks of the Makassar High Religious Court. Meanwhile, the sample in this study was 18 (eighteen) people as respondents, with details consisting of 8 (eight) high judges and 10 (ten) clerks, using purposive sampling technique . Data collection techniques with the following variables: Interviews, literature studies, and questionnaires. Data analysis in this research uses qualitative and quantitative data analysis techniques. Qualitative analysis is a means of analyzing data that cannot be quantified, namely that which is still interpretative.

## 3. Results and Discussion

### 3.1. The Role of Substitute Registrars in the Case File Completion Process

The study of legal effectiveness is an activity that shows a general problem formulation strategy, namely a comparison of legal reality with legal ideals. In particular, the level between law in action and law in theory can be seen. here is a means of measuring the law, perhaps a law whose purpose is somewhat more clearly discernible, or a court decision that clearly states a specific policy.

As mentioned in the descriptions above, one of the functions of a substitute clerk is to carry out case filings for cases that have been declared decided by the judge in accordance with applicable regulations.

In carrying out this function, the replacement clerk cannot be separated from the level of intense coordination with all Religious Court stakeholders, both judges and substitute clerks. Good and continuous coordination will result in accuracy and timeliness of the case file completion process. These issues as well as the description and explanation from table 3 above can be one of the benchmark instruments for the effectiveness of the function of substitute clerks in carrying out their main duties and functions, namely matters relating to Judicial administration (Abdul Manan, 2000 ) .

Based on the results of the author's research regarding the percentage of case decisions and completion of case file minutes at the Makassar Religious High Court in the last three years (2019, 2020 and 2021), as can be seen in table 1 as follows:

Table 1: Percentage of cases decided by the High Religious Court from 2019 to September 2021

No	Year	Accept	Separated	Minutation	Percentage %
1	2019	157	157	157	100%
2	2020	167	167	167	100%
3	2021	182	182	182	100%

Source: Primary Data from the Makassar High Religious Court

2019 to 2021

Showing table 1 above, provides an illustration that the process of carrying out minutes by the Substitute Registrar at the Makassar High Religious Court has been carried out in accordance with the provisions, at least achieving the basic meaning of proceedings, namely a fast and simple process in accordance with the meaning of expectations experienced at the high religious court

### 3.2. Analysis of Influential Factors

In studying the effectiveness of law, to measure whether the law succeeds or fails in achieving goals, it is usually measured in terms of the extent of its influence on changes in certain attitudes and behavior. This is also the case with the effectiveness of substitute clerks in carrying out the process of settling case files as part of the legal system (legal structure) in the Religious Courts (Ahmad Mujahidin, 2012) . Of course, this is not easy to do, because at this level of implementation there are several factors that influence each other.

According to Soerjono Soekanto, saying that measuring whether a law is effective or not is determined by five factors, First; its own legal factors (law). Second ; law enforcement factors, namely the parties who form and implement the law. Third ; facilities or facilities factors that support law enforcement. fourth ; Community factors, namely the environment in which the law applies or is applied. Fifth ; cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life.

The above is intended as an instrument to see/measure the level of effectiveness of a function on issues related to the matter in question. In connection with these matters, and in order to see the correlation with the substance of this thesis study, there are three factors that influence the effectiveness referred to above, namely:

#### 1. Legal Structure

One part of the legal structure in religious justice institutions is the religious justice apparatus itself, including substitute clerks in relation to the entity or case process at the high religious court. The position of substitute clerk in terms of work structure certainly has a significant influence on the achievements of the main tasks and functions of the high religious court. The court is a substitute clerk.

The description above conveys the meaning that in the process of receiving, examining, deciding and finalizing a case file, the existence of a substitute clerk is an important legal structural framework, especially in terms of the process of receiving and completing case files related to the file settlement process (Ade Maman Suherman, nd )

In relation to the legal structure as one of the factors that influence the process of resolving case files, the results of research in the field show that the coordination/communication relationship between the substitute clerk and the judge who hears the case in question still often causes misunderstandings, as well as a low level of seriousness in the work of the two court officials. . This can be seen in the respondents' answers regarding the research statement that the legal structure is influenced by the communication/work system between substitute clerks and judges, as illustrated in table 4 below:

Table 2: Influence of the Legal Structure Work System

No	Answer	Frequency	Percentage %
1	Agree	13	72.22
2	Disagree	4	22.22
3	Don't agree	1	5.56
Amount		18	100

**Data source: results of questionnaires/interviews with respondents, 2022**

Table 2 above shows that 72.22% of respondents agreed that the legal structure was influenced by the communication relationship/work system between substitute clerks and judges, 22.22% of respondents said they disagreed, 5.56% disagreed. However, it is worth paying attention to the reasons for respondents who disagree, where they are of the opinion that legal structural factors are more influenced by the internal affairs of the clerk's office itself, where hierarchical monitoring and supervision of a clerk is important to improve.

The description above also shows that in relation to the legal structure, the communication relationship in the work system between clerks, substitute clerks and judges greatly influences the quality of education. Therefore,

this issue certainly deserves the attention of the clerk, substitute clerk, and all stakeholders of the Makassar Religious High Court in order to realize the correct resolution of case files.

The internal clerkship referred to above, is the intensity of monitoring and supervision hierarchically, from the clerk, junior law clerk and young appellate clerk as well as the substitute clerk himself. These four work systems should increase their role and function (Abdul Manan, 2000) . Registrars must carry out more monitoring at the substitute clerk level, while young law clerks and young appellate clerks must at all times update case files that have been decided but have not yet been entered into minutes, and substitute clerks in their responsibility for making and completing minutes should always motivate themselves to always complete them . each case file properly, effectively and on time.

## 2. Legal Culture

Talking about legal culture, it is not limited to the existence of the community's legal culture in understanding and responding to all statutory regulations, but no less important is all state legal actors at all levels of state institutions themselves. Likewise with religious justice institutions, which are one of the state institutions in the field of law, of course it is their obligation to understand and respond to all regulations properly and correctly.

Substitute clerks as an important part of the process of duties and responsibilities of religious justice institutions should be aware of the above issues, where in all their work interactions they must truly demonstrate a good and correct legal culture, at least always comply with various provisions as a basis for carrying out their duties and responsibilities. answer that.

In order to realize legal objectives, whether justice, expediency, or legal certainty related to resolving cases through minutes, the role of substitute clerks is very urgent.

From the research results, the author sees that cultural factors still influence a substitute clerk in carrying out and completing minutes, namely the lack of legal awareness and a serious attitude and responsibility towards completing minutes of cases that have been decided by the judge.

In connection with this, the author asked respondents regarding the dominant factors related to the legal culture of substitute clerks in completing minutes, as shown in table 3 as follows:

**Table 3: Influence of the Legal Culture Work System**

No	Answer	Frequency	Percentage %
1	Penalty	3	16.67
2	Level of education	5	27.78
3	Habit	10	55.56
		18	100

### **Data source: results of questionnaires/interviews with respondents, 2022**

From table 2 above, it shows that mastery of substance and skills with a percentage of 16.67% is the dominant factor influencing the level of legal culture of a substitute clerk in carrying out and completing the case file settlement process. 27.78% of respondents chose the level of education as an influencing factor . existing legal culture, and 55.56% chose sanctions as something that influences legal awareness.

The percentage comparison above clearly proves that apart from formal education, consistent and continuous technical/skill mastery is needed to support the implementation and smooth process of completing case files by each substitute clerk, which ultimately results in good and timely minutes.

## 3. Facilities and infrastructure

Facilities and infrastructure are an inseparable part of an organization's management in achieving its goals. These facilities and infrastructure are supporting instruments for carrying out the duties and responsibilities of each field, as is the case with facilities and infrastructure in the field of Religious Court institutions.

Talking about the facilities and infrastructure at the High Religious Court institution, especially related to the implementation of the duties of substitute clerks in carrying out and completing case files, is something that must be fulfilled (Abdul Halim, 2000) . This is important because it is believed to really support effective and optimal work systems and mechanisms. In connection with this, there are several important facilities and infrastructure that must be known and fulfilled to achieve the above, namely:

### 1. Representative work space

It is a common understanding that a work space that is representative of adequate carrying capacity and tamping capacity will create a good, safe and comfortable working atmosphere, which in the end is able to produce significant performance in accordance with each individual's duties and responsibilities. Likewise, the facilities and infrastructure and/or work space for the substitute clerks at the Makassar High Religious Court ideally fulfill the elements mentioned above.

In general, the existence of these elements will have a direct impact on existing work processes and systems. Because it may be that the legal structure and culture are good but are not yet supported by the availability of adequate work space. In fact, the level of existence of these elements may have implications for the achievement of the objectives of the law itself, namely justice, usefulness and legal certainty in the future. In connection with the above, the results of the author's research show that the work space in the work environment of substitute clerks at the Makassar High Religious Court is not yet representative when viewed from the carrying capacity and capacity. This can be seen from the respondents' opinions regarding the effectiveness of the influence of the work space on the process of completing case files by substitute clerks, as shown in table 3 as follows:

**Table 4: The influence of work space facilities on the case minute process by substitute clerks**

No	ANSWER	FREQUENCY	PERCENTAGE %
1	Very influential	15	83.33
2	Influential	3	16.67
3	Less Influence	0	0
	Amount	18	100

**Data source: Results of questionnaires/interviews with respondents, 2022**

Table 3 above classifies that 83.33% of respondents stated that the existence of a representative work space greatly influences the effectiveness of the case resolution process by substitute clerks. The average argument is that a representative work space at least provides security and comfort in working, especially the case minute process, but what is interesting is that around 16.67% of respondents stated that it only affects basic data, arguing that everything goes back to the personality of the substitute clerk. effective and optimal use of existing work space, without completely depending on the workload of the case minute process on the level of representative availability of the room, at least being able to set a certain time for carrying out case minute work.

## 2. Information and Technology Facilities

Information technology has recently become a necessity for the governance of every organization to support and create a competitive, effective and efficient work system, so that it will be able to produce good and maximum performance achievements.

Makassar High Religious Court officials also understand this, especially substitute clerks in carrying out the process of completing case files, namely the extent to which the existence of a computerized system supports the performance of the substitute clerks in question (Ade Maman Suherman, nd) .

With regard to the computerized system in relation to the process of completing case files by substitute clerks, the majority of respondents did not say that this had a significant influence, as can be seen in table 7 as follows:

**Table 4: The influence of information technology facilities on the case minute process by substitute clerks**

No	ANSWER	FREQUENCY	PERCENTAGE %
1	Very influential	14	77.78
2	Influential	4	22.22
3	Less influential	0	0
	AMOUNT	18	100

**Data source: Results of questionnaires/interviews with respondents, 2022**

From the 4 tables, it is known that 77.78% of respondents stated that the existence of technological information facilities greatly influenced the process of resolving case files. The majority of respondents argued that the existence of information technology facilities could provide smoothness and/or timely implementation and completion of the case file settlement process. Meanwhile, 22.22% of respondents stated that they were only flat/influential on the grounds that the sophistication of technological information facilities returned to legal awareness in the form of intrigue values.

#### 4. Conclusion

The role of the Substitute Registrar in handling appeal case files at the Makassar Religious High Court has been carried out well, however in some cases it is less effective. This can be seen from the low level of understanding of administrators' responsibilities in carrying out and completing appeal case files and submitting a copy of the decision to the court of first instance. Factors that influence the implementation of the duties and functions of the Substitute Registrar in handling appeal case files at the Makassar Religious High Court are matters of legal structure, legal culture, and facilities and infrastructure. In order to improve the process of resolving case files at the Makassar Religious High Court, substitute clerks at the Makassar Religious High Court should always create a healthy, simultaneous and continuous communication relationship with the judges and need to increase their understanding of the nature and substance of their respective functional duties. Apart from that, it is necessary to provide regular legal education to the public regarding procedural law and the function of clerks/replacement clerks of the Religious Courts. The substitute clerk of the Religious Court should always think and try to position himself in his duties as a substitute clerk for the clerk or as a working partner for the panel of judges.

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