

ABSTRACT

Kurniawati, Kumala. 07210026. 2011. *“THE PRINCIPLE OF RETROACTIVITY LIMITED APPLICATION VIS À VIS ARTICLE 56 PARAGRAPH (1) LAW NO. 7 YEAR 1989 ON TRIAL IN RELIGIOUS DISPUTE SETTLEMENT INHERITANCE” (CASE STUDY ON DECISION NUMBER: 0883/Pdt.G/2010/PA.TA)*. Thesis. Department of Al-Ahwal Al-Syakhshiyah. Faculty of Shari'ah. State Islamic University (UIN) Maulana Malik Ibrahim Malang.

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Keywords: principle of retroactivity is limited, teleological interpretation, systematic interpretation, the interpretation or application of the law in a rational way.

Limited understanding of the retroactive principle in Islamic Law Compilation Compilation of Islamic Law is not retroactive if the estate has been divided in real terms (not just the division on paper) before KHI enforced, then the family has blood ties as a substitute heirs can not sue inheritance. If the estate has not shared in real terms, then the heir to the case of the heir dies before birth Compilation of Islamic Law, Islamic Law Compilation automatically retroactive. Next article 56 paragraph (1) Act No.7 of 1989 states that “The court may not refuse to examine and rule on cases filed under the pretext that the law does not or is less clear, but obliged to examine and cut them off”. Of the two terms appeared some question of how the application and methods of legal discovery of what the judges used in solving the case.

The research method used in this study is the method of approach to the case (case approach), the approach of legislation (the Statute approach), and conceptual approaches (conceptual approach). This study is a normative legal research with primary legal materials are court decisions and legislation that are relevant to the legal issues that were discussed but it also uses a secondary legal materials such as text books (literature) relevant to the discussion of legal issues in the lift in this study.

Literature review in this study on the general principles of law, principles of legislation, the principles of religious courts, the Act No.7 of 1989 and KHI, methods of discovery of the law and inheritance law of Islam.

The results of this study indicate that the panel of judges in handling cases No: 0883/Pdt.G/2010/PA.TA. the judges apply the retroactive principle and Article 56 of the Act No.7 of 1989 on religious courts alongside and also refers to the principle of *lex superior derogat legi inferiori* so the matter remains acceptable. Legal discovery method used by the panel of judges is a legal invention is a method of teleological interpretation, the method of systematic interpretation, and other legal discovery method that is the interpretation of the Act rationally.