

ABSTRACT

Devani, Sixma. 2014. *Analysis On Dissenting Opinion In The Case Of Divorce Cumulation Hadhanah Discretion Article 105 Compilation of Islamic Law Letter (a)* (Case Study Number 0791/Pdt.G/2014/PA.Kab.Mlg), Thesis. Al-Ahwal Al-Syakhshiyah Department. Sharia Faculty. The State Islamic University Maulana Malik Ibrahim Malang. Supervisor: Faridatus Suhadak, M.HI

Key words: *Hadhanah*, Dissenting Opinion and Discretion

Actually, if relationship between husband and wife is broken because of divorce, there are law being effect after that. Such as maintenance of child or *hadhanah*. Indonesian Islamic Law, in formal-judicially, Instruction of President Number 1 of 1991 about Compilation of Islamic Law in Article 105 Letter (a) mentions that maintenance of child who is immature or under 12 years old is mother right. But in deliberation of judges on case number 0791/ Pdt.G/ 2014/ PA.Kab.Mlg, there was dissenting opinion which was done by judge member II that the right of maintenance of immature child should give to his/her father. The focus of research is to know the deliberation of judges on dissenting opinion and discretion with dissenting opinion that was done by judge member II in adjudication of *hadhanah*.

The kind of research is normative research or book research. And approach that used in this research is case approach. Appropriate with normative research, the main study of research is done with primary legal materials such as adjudication and Compilation of Islamic Law, secondary legal materials are literatures which relevant with the title of thesis, and tertiary legal materials are encyclopedia and dictionary of law. Data collection that used in this research is book study, so the method which used in data analysis is editing, classifying, verifying, analysing, and concluding steps.

Based on analysis result to the existing legal materials, writer obtains the conclusion that basically the legal consideration which causes dissenting opinion is laid on suggestion of additional dictum in adjudication of *hadhanah*. That means adjudication has to give legal security for justice seeker. While the discretion occurs because of denial to Article 105 Letter (a) Compilation of Islamic Law. The judge leaves this article because for creating the adjudication that fulfills justice, wisdom, and legal security view. Judge interprets historically and teleological to article 105 Compilation of Islamic Law Letter (a) in order to regulation can be applied appropriate with the condition and the need for justice seeker. While in suggesting the adjudication, judge uses *ratio decidendi* theory. So, discretion with dissenting opinion that was done by judge member II in suggesting the adjudication of *hadhanah* is assessed appropriate with progressive legal characteristics.