

ABSTRACT

MamluatulRohmah, Binti. 09210026.2013. *Obscuur Libel in inheritance claim (The case study number 1444/Pdt.G/2011/PA.Mlg)*. Thesis. Al-Ahwal Asy-Syakhshiyah Departement. Syariah Faculty. The State Islamic University Maulana Malik Ibrahim of Malang. Advisor: Dr. H.Saifullah, S.H., M.Hum.

Keyword: *Obscuur Libel*, claim, inheritance.

The inheritance claim is the absolute authority of the Religious court. Writing the claim letter at the religious court is written clearly, distinctly and explicitly. An article of 8 Rv explains about the requirement of claim formal, those are the *fundamentumpetendi* have to be clear and complete; and *petitum* have to be clear and definite. The inheritance claim letter which is submitted by the plaintiffs of the case number 1444/Pdt.G/2011/PA.Mlg is *obscur libel* because there is mistaken on the writing of second plaintiff identity and the first defendant address and the *posita* is unclear. However in exception, the defendant is written as one of the *obscur libel* factors because the properties case without the third party presence, so that is still include absolute authority of the religious court. In this case, the judges accept the exception of defendant which is still has mistaken on that exception. Those problems above made the researcher is interested to know the steps of finding law by the judges to the *obscur libel* inheritance case by the number 1444/Pdt.G/2011/PA.Mlg, then what are considerations of judges to accept exception of defendant.

The researcher uses the normative law type by case approached. The collecting data used documentation method and interview. The researcher uses the descriptive method in analyzing. Therefore, the researcher uses substances of primary law namely judge decision and the secondary law substances, it comes from literature or the book which is relevant with subject, then it was analyzed to get the conclusion.

This research finding prove the step of finding law to the *obscur libel*- inheritance case number 1444/Pdt.G/2011/PA.Mlg is only until qualification step, because the case investigation is only until the replic and dupli because occurred formal mistaken on the claim letter. Then the judge use judicial judgement. As the exception that is submitted by defendant, it explain unclear because of *obscur libel* cause of *error in persona* happening, because the second plaintiff is six years old still in custody of his mother and does not have a right to claim the case. The position of second plaintiff as subject of law must be describe textually by mentioning word "represented by his mother". Seeing that case, judge feel has enough reason to accept exception of defendants, still *obscur libel* because of mistaken on address writing of first defendant and *posita* is unclear not be judgment. This case consequently some parties are unsatisfied with judge decision and submit appeal to the High Religion Court of Surabaya.