



Legal Facts in Legal Opinions Formulation on The Decisions of Islamic Civil Case

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Development of Islamic civil cases today, the problems that arise in society are increasingly complex and the public's need for services in the legal field is getting higher. This does not escape the need for legal opinions from experts such as lawyers, advocates, or legal advisors. This legal opinion is what we often call a legal opinion. In practice, the determination of a punishment must be fair. To realize this justice, the law enforcers should be impartial and consider many things before deciding on a sentence or giving a legal opinion. The weighing of these decisions can be done by looking at the facts that happened and studying them, presenting witnesses, and so on. Legal facts are one of the processes that cannot be overlooked by persons investigating a case, because if this process is missed or not thorough enough, it can affect a decision. The method used in this study is a qualitative juridical normative method. This study aims to find out that legal facts will affect the decisions of Islamic civil law that will be taken and legal opinions that will be made by a legal expert. The result of the study is that Legal facts are important to note because the discovery and analysis of legal facts can support and complete the clauses that will be included in the legal opinion and the decisions that will be handed down by the judge on the defendant. Although in the civil law rules there is no information about the importance of legal facts in legal opinions, if viewed from the facts that occur, it can be identified as a legal risk that will be accepted by the client.

1. Introduction

Indonesia is a nation of law, this provision is stated in Article 1 paragraph 3 of the fourth amendment to the 1945 Constitution which states "Indonesia is a Nation of law". Therefore, all aspects of life are regulated by law and all problems that arise in people's lives must be resolved according to applicable law in Indonesia.¹ Indonesia attends to

¹ Muchladun, Wildan. (2015). "Tinjauan Yuridis Terhadap Tindak Pidana Pencemaran Nama Baik". *Jurnal Ilmu Hukum dan Legal Opinion*. 3(6). Hlm. 1.

the Civil Law (Continental Europe) legal system. The term legal opinion in Civil Law is known as legal critics, while in Common Law (Anglo Saxon) it is known as Legal Opinion. Legal opinion or legal opinion arises as a result of a problem or legal phenomenon faced by an advocate, lawyer, or legal consultant where this opinion can be used as a guide in making decisions if there are problems that are relevant or have more or less conformity with the previous cases.² Legal opinions can also arise as a result of the debate in the community regarding the decisions taken by a judge.

After the Proclamation of Indonesian Independence on August 17, 1945, the Indonesian government through the Ministry of Religion determined a concept for the application of Indonesian Islamic law through Circular Letter Number B/i/735 dated February 18, 1958, which was addressed to judges to examine, hear, and decide cases based on guidelines. to the 13 books of *fiqh*, including; *al Bajuri, fathul Mu'in, Syarqawi ala tahrir, qulyubi/muhalli, fathul Wahab, tuhfah , targhibul musytaq, qawaninynusy Syar'iyah lissayid Shadaqah Dahlan, Syamsuri lil Faraidf, Bughyatul murtasyidin, al fiqh alal madzahin al arba'ah, muughnil muhtaj*.³

The implementation of the 13 books of *fiqh* has become an applied legal basis in the realm of the Religious Courts, causing problems in its implementation, this is because in practice it raises a lot of controversial issues, there are many opportunities for disobedience and complaints when the losing party is in a litigation. This situation encourages Islamic law experts to carry out Islamic law reforms such as the field of civil law regarding the family to suit the conditions and situations that exist in Indonesian society. The Ulama succeeded in collective *ijtihad* that the Islamic law has changed were not *qath'I*, but *dzanni*. The initial step was to renew Law No. 22 of 1946, then Law No. 1 of 1974 concerning Marriage, then came the Compilation of Islamic Law (KHI) which contained the fields of Marriage Law, Inheritance Law, and Waqf Law, then the Sharia Economic Law Compilation (KHES) which discussed the law of Muamalah activities.

With the development of the times, the problems that arise in society are increasingly complex and the public's need for services in the legal field is getting higher. As well as legal opinion which is very much needed in the community from the experts such as lawyers, advocates, or legal advisors. As someone who is in the legal world, lawyers will face people who understand the law to those who don't understand the

² Retnowati, May Shinta. (2022). "The Dimensions of Legal Opinion's Role in Settlement of Civil Law Cases". *Legal Brief*. 11(2). Hlm. 9.

³ Manan, Abdul. (2017). *Aneka Masalah Hukum Perdata Islam di Indonesia*. Jakarta: Prenada Media. Hlm. 35.

law.⁴ The more complex the problems, the more needed legal personnel or legal consultants to answer people's questions about their lack of understanding of the law and explain as clearly as possible but can be easily understood by ordinary people. The answer is written in what can be called a legal opinion.

Legal Opinion is a legal scholar's answer to a client question that is facing a legal problem. If the legal opinion of a legal scholar is used by the judge as the determination of law, then the legal opinion can already be said to be a doctrine. This legal opinion is very important in making law, without a legal opinion, a problem to be solved in society will not be known how to solve it.

A legal expert who gives a legal opinion, such as an advocate, lawyer, or legal consultant can only provide a legal opinion without deciding on a sentence. In deciding the sentence of a case, the judge has the authority. The decision on a sentence has a process that is not easy and does not take a moment, it requires careful and detailed consideration and observation. As in the procedural law Article 197 paragraph 1 letter d of the Criminal Code, it is stated that a sentencing decision must contain a brief summary of the facts and circumstances, along with the evidence obtained by the examination at the trial which is the basis for determining the guilt of the accused. So it should be clear that the legal facts and the reality of the situation that happened to the defendant must be one of the considerations in deciding the sentence in a case. However, the task of the judge is also to examine whether the facts stated can be trusted and do not contain lies.

The judges there are differences of opinion regarding the preparation of legal facts and an Islamic civil case decision. The first opinion states that the preparation of legal facts after all the witness statements and the defendant's statements to facilitate the discussion of the elements of the article to be indicted. The second opinion states that writing legal facts is not important, they want to write directly to the discussion or consideration of whether a defendant is proven or not by pointing or presenting evidence, witness statements or the defendant's testimony.⁵ with two opinions regarding the preparation of legal facts that must be carried out by judges when issuing a decision, from these two perceptions they do not heed the role and function of legal facts, but when legal advisors will give their opinions to clients on Islamic civil cases they are a bit different in terms of legal facts that are carried out because the legal sources used are not only positive law, namely the Constitution but also primary legal sources of Islam, namely the Qur'an and Sunnah.

⁴ Retnowati, May Shinta et al. (2022). "Eksistensi Peran dan Fungsi Legal Opinion Dalam Menyelesaikan Masalah Hukum". *Ijtihad : Jurnal Hukum dan Ekonomi Islam*. 16(1). Hlm. 14.

⁵ Harahap, M Yhaya. (2003). *Pembahasan Permasalahan dan Penerapan KUH: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*. Jakarta: Sinar Garfika. Hlm. 317.

2. Method

The method used in this research is qualitative method. Qualitative research is a research procedure that produces descriptive data from individuals or observable behavior. This type of research is qualitative research. Qualitative research is a type of research that aims to accurately describe the characteristics of a particular individual, condition, symptom or group, or to determine the spread of a symptom, or to determine whether there is a relationship between a symptom and other symptoms in society. This study also uses an normative juridical approach that describes legal. Legal research is a legal research that has the function of finding a rule or a principle by searching for, analyzing and finding a study material for the law.

3. Results & Analysis

3.1 Legal Opinion

The term legal opinion comes from the Latin "*ius opinio*". *Ius* means law and *opinio* means view or opinion. In the Continental European legal system (Civil Law) it is better known as Legal Critics. Legal opinion or Legal Opinion is one of the non-litigation services formed or made by an advocate for the benefit of his client. In the world of legal practitioners, a legal opinion is a complete written document made by an advocate or legal consultant that contains an opinion on a legal problem faced by his client.⁶

Legal opinion aims to explain a legal problem if various juridical contradictions, both implicit and explicit, are found which result in protests from the public against the application of a law. Legal opinion has the function of providing input to parties who receive legal opinions to be used as guidelines in responding to and finding solutions or solving problems with the best path.

The object of legal opinion arises from the existence of a phenomenon or polemic caused by the application of the law itself, and has very wide access in society. So it is necessary to form a concrete, actual and factual form of elaboration to eliminate the topic of problems that are the subject of discussion in society. Generally, an advocate spends his time being a legal advisor and making legal opinions both written and oral to help his clients. One form of legal advice given by an advocate to his client can be referred to as a legal opinion or legal opinion. The legal opinion made by the appointed advocate, lawyer, or legal consultant is not binding on the client or parties requesting a legal opinion to implement part or all of the contents of the legal opinion.

⁶ Sitorus, Syahrul. (2008). "Pendapat Hukum (Legal Opinion) Dan Uji Kepatutan Dari Segi Hukum (Legal Due Siligence)". *Jurnal Hikmah*. 15(2). Hlm. 167.

There are guidelines in making legal opinions, including:⁷

- a. Legal opinion is made based on Indonesian law.
- b. Legal opinions are conveyed clearly and unequivocally with correct and systematic grammar.
- c. Legal opinion does not guarantee the occurrence of a situation.
- d. Legal opinion must be given honestly and completely.
- e. Legal opinion is not binding for advocates and for clients.
- f. Advocates or lawyers or legal consultants are responsible for the content and correctness of legal opinions.

Basically, the preparation of legal opinions does not yet have a standard that can be used as a reference, this is because each lawyer has their own model and provisions that they use. As for how to obtain a concept for the preparation of a legal opinion, there are several stages that can be carried out, such as 1). Identify the disputed area or legal domain. 2). Provide legal education or direction to clients, so that it raises the issue of what legal opinion will be asked for. 3). Model rules to be used by judges. 4) Description of chronological facts.⁸

In the preparation of a legal opinion there are five basic rules that must be adhered to, these rules are:⁹

- a. Main issues
- b. Facts
- c. Rules
- d. Application
- e. Conclusion

3.2. Legal Opinion Position as a Legal Source

Legal opinion or legal opinion or when viewed from legal sources enter into doctrine. The source of law is essentially a place where we can find or explore the law. The doctrine itself is a source of law where judges can find or explore the law. Furthermore, sources of law are good things that can influence the authorities in determining the law. Examples are theories, opinions, teachings, and legal science.¹⁰

In addition to legal opinions, doctrines are also opinions from experts which are summarized to be used as a new reference for legal

⁷ Dermawan, Marchellino, (Skripsi). (2020). *Perlindungan Hukum Terhadap Profesi Advocate Dalam Memberikan Jasa Hukum Pendapat Hukum (Legal Opinion) Dihubungkan Dengan Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian*. Bandung: Universitas Komputer Indonesia. Hlm. 16-17.

⁸ Retnowati et al. *Eksistensi Peran dan Fungsi Legal Opinion Dalam Menyelesaikan Masalah Hukum,...* Hlm. 9-10.

⁹ Badriyah, Siti Malikhatun. (2011). "Penemuan Hukum (Rechtvinding) dan Penciptaan Hukum (Rechtsschepping) Oleh Hakim Untuk Mewujudkan Keadilan". *Masalah-Masalah Hukum*. 4(3). Hlm. 392.

¹⁰ Priyono, Ery Agus, and Kornelius Benuf. (2020). "Kedudukan Legal Opinion Sebagai Sumber Hukum". *Jurnal Suara Hukum*. 2(1). Hlm. 66.

developments. For example, in the nineteenth century with its classical contract law theory as a reaction and criticism of the medieval tradition of substantive justice, the criticism put forward by scholars and jurists is a legal opinion. Furthermore, Friedman's opinion on freedom of contract is still considered an essential aspect of individual freedom. This opinion is a legal opinion on a problem that arises due to changes in the rules regarding freedom of contract.¹¹

In order for a legal opinion to have a binding law, it must meet certain requirements, namely that the legal opinion has become a judge's decision, thus legal opinion plays an important role in the development of law not only in the aspect of the agreement but can be broader than that. Legal opinion can be used as a criticism of a policy which of course can be a positive input to encourage changes in legal policy for the better.

The Civil Procedure Code, for example, emphasizes the importance of the efficient resolution of cases. The first rule is that "must be managed, interpreted, and used by the courts and clients to resolve cases fairly, quickly, and cheaply from every action and process. "Rule 16(a) re-emphasizes the importance of efficient dispute resolution in the list of five goals of the conference in Pre-Trial: "(1) accelerated disposition of action; (2) the establishment of continuous supervision so that the case does not drag on due to lack of management as early as possible; (3) prevent futile pretrial activities; (4) improving the quality of the trial through more thorough preparation; and (5) facilitate settlement."¹²

Meanwhile, Islamic Civil law, such as KHI (Compilation of Islamic Law) and KHES (Compilation of Sharia Economic Law) serve as guidelines for judges to be able to examine, decide and hear cases in Indonesian society. KHI and KHES can be said to be a unification of Islamic law, which is sometimes unfortunate for judges in deciding Islamic civil cases instantly, this can be due to the preparation or legal drafter of KHI or KHES whose articles can be said to be ancient with various kinds of community problems that are increasingly complex, but KHI and KHES have been practiced in Indonesia for decades and are products of the *Ijtihad* of ulama and the *fiqh* treasures of Muslims in Indonesia.

3.3. Legal Facts

Tables Fact comes from the Latin "factum" which means something that exists or is real, reality, or phenomenon. Facts play an important role in every decision and facts related to the case are used as minor

¹¹Dermawan, *Perlindungan Hukum Terhadap...*, Hlm. 14.

¹²Retnowati et al. *Eksistensi Peran dan Fungsi Legal Opinion Dalam Menyelesaikan Masalah Hukum...* Hlm. 9-10.

premises.¹³ Therefore, a judge's decision must be based on clear facts. A judge's decision will be fair if it is based on true facts. Legal opinion and facts are two things that cannot be separated. Legal regulations cannot be applied as a means of assessing the truth of a fact.

In the process of preparing a legal opinion (legal opinion), legal advisors or advocates or lawyers must obtain all information regarding the important facts of a case, this is needed to be able to support and complete the clauses that will be included in the legal opinion. A legal opinion requires a strong basis in terms of facts and related legal regulations. As smart as a legal advisor, he will not be able to issue a legal opinion without the facts in a case he is handling.¹⁴

If a legal advisor cannot find the required facts from the case being handled, then the legal advisor can assume that a fact is true. In general, this assumption is used when obtaining facts beyond the reach of legal advisors. Facts can be assumed to be true if they cannot be investigated in a short time. Although it is useful in replacing legal facts, assumptions cannot completely replace the role of legal facts, because in front of a court the truth will be more trusted for its accuracy is legal facts.

In general, a legal opinion contains a description that describes the results of research on facts in the field. The description of the facts contains a brief description accompanied by conclusions or outlining the documents and other records obtained when the legal advisor conducts research and this can be used as the basis of the legal opinion that will be made. Although the list of facts cited is quite long, it usually ends with a conclusion.¹⁵

In Islamic civil law, such as in the field of marriage and inheritance, big problems arise in the Compilation of Islamic Law in Indonesia, which in general, these issues exist and are not accommodated properly. This problem exists because of injustice and discrimination.¹⁶ In the field of marriage in the KHI there are several problematic articles from the point of view of the level of justice between men and women such as problems that are less supportive such as the age limit for marriage, in article 15 paragraph 1 which sets the minimum age for women to marry is lower than the age for men, This article gives rise to discrimination,

¹³Manggalatung, A. Salman. (2014). "Hubungan Antara Fakta, Norma, Moral, dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim". *Jurnal Cita Hukum*. 2(2). Hlm. 189.

¹⁴Suraputra, D. Sidik. (2005). "Pendapat Hukum Dalam Transaksi Komersial". *Jurnal Hukum dan Pembangunan*. 35(2). Hlm. 157.

¹⁵Muqorobin, Ahmad, and Usamah Abdurrahman. (2022). "The Internalization of Anti-Corruption Values as Hidden Curriculum in Gontor Educational System". *Nadwa: Jurnal Pendidikan Islam*. 15(2). Hlm. 198.

¹⁶Aris, and Muhammad Sabir. (2020). "Hukum Islam Dan Problematika Sosial; Telaah Terhadap Beberapa Hukum Perdata Islam Dalam Kompilasi Hukum Islam Di Indonesia". *Diktum: Jurnal Syariah Dan Hukum*. 18(2). Hlm. 289.

which is solely based on the needs and interests of men (patriarchal ideology), then such as if there is *nusyuz* or disharmony in the household in Article 84 paragraph 1 in this section it still seems gender biased, the problem is the problem of *nusyuz* in KHI only applies to women, while men or husbands who neglect their responsibilities are not mentioned in KHI and may not be called *nusyuz*, besides that KHI has not regulated contemporary concepts on marriage problems through digital media such as telephone or internet. In addition, there are legal facts about unique marriages that have been carried out by the people of Indonesia, such as the case of the marriage of actresses Asmirandah and Jonas who had a marriage that was originally married in an Islamic manner in which the groom also converted to Islam, then after the wedding the groom did apostatized from Islam and returned to his previous religion and was followed by his bride also committed her apostasy. If viewed from the doctrinal reference in this case, there are no legal rules, if viewed from Law No.1 of 1974 concerning Marriage, this can be the domain of state administrative law that can provide solutions to the problem of lawsuits for annulment of marriages.¹⁷

In addition, the problem of inheritance in the legal provisions in KHI only takes into account the inheritance portion of children who have been born, even though children who are in the womb also have a heavier burden both from psychological and financial aspects, so that KHI should formulate the concept of part of the inheritance. Inheritance for unborn children. In addition, in 186 KHI, clearly explains that children born out of wedlock only have an inheritance relationship with the mother, while the status of children born from unregistered marriages is legal according to religion but is not regulated in inheritance relationships.

Social problems regarding *waqf* also cannot be said to be ideal. This is because there are still many important things that have not been coordinated, such as the provision of *waqf* for non-Muslims who need it which is not explained in KHI, this should not be separated from the KHI discussion which confirms that non-Muslims can receive or donate their assets or not, in addition to The concept of cash *waqf* is also understood at KHI, due to rapid financial developments so that the public's perspective on investing their assets uses an easy and practical method.¹⁸

3.4 The Urgency of Legal Facts in Formulating Legal Opinions on Islamic Civil Case Decisions

Legal facts can be obtained from the evidence collected and has been listed in Article 184 paragraph 1 of the Criminal Code, evidence outside

¹⁷ *Ibid*, Hlm. 289.

¹⁸ *Ibid*, Hlm. 289.

the Article is not justified in front of the court. It is also stated in Article 1 paragraph 2 and paragraph 4 of the 2014 Law explaining that the perpetrator's witness and the reporter are parties involved in a legal fact. The two people are referred to as justice collaborators.

Evidence is everything that has to do with a case, which can be used as evidence in order to convince the judge of the guilt or innocence of a defendant. The evidence in the Criminal Code includes:¹⁹

1. Witness testimony.
2. Expert testimony.
3. Letters.
4. Hints.
5. Defendant's statement

There is no different in civil law Evidence is explained in law civil events are contained in Article 164 HIR, Article 284 RBg, and Article 1866 Civil Code, namely evidence letter (written), witness evidence, suspicion (allegation), confession and swear.²⁰ This evidence can be one way to reach the truth that is useful for optimizing justice. With the existence of this evidence can also be one of the facts rather than the truth of legal facts.

In the existence of legal facts that can be used in legal drafting assumptions, the first thing the judges strive for is the fairest level of justice. The level of justice in Islam as described in QS. Ar Rahman verse 7:

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ

"And Allah has raised the heavens and He has laid down the balance"

The verse above means that everything related to the state of nature is created in a balanced way. Fair is meant as an effort to maintain equality. Maintaining the rights of each individual to everyone who has the right to receive it, so in this case it is also often called the right of social justice. Or according to Qadri in the concept of justice that everything that is done by humans must be in the name of Allah SWT, which is considered as the existing motivation and action, so that the implementation of justice in Islam comes from the Qur'an and Hadith and the sovereignty of the people.

Legal facts are made after knowing the position of the case, the chronology of events, then legal facts are established and the last is case analysis. Legal facts are included in the procedure for making legal opinions, in making legal opinions there is actually no systematic standard for preparation because each lawyer or advocate has its own

¹⁹Sasangka, Hari, and Lily Rosita. (2003). *Hukum Pembuktian Dalam Perkara Pidana*. (Bandung: Mandar Maju. Hlm. 11.

²⁰Saepullah, Asep. (2018). "Peranan Alat Bukti Dalam Hukum Acara Peradilan". *Mahkamah : Jurnal Kajian Hukum Islam*. 3(1). Hlm. 146.

format. However, in practice, in general, the systematic legal opinion consists of an introduction, problems that require a legal opinion, materials related to existing problems, legal basis and laws relevant to the problem, description of facts and chronology, legal analysis, opinions law, and then conclusions and suggestions or legal solutions.²¹

As for the systematic preparation of legal opinions as follows:

- a. Introduction. The introduction section contains an explanation on what basis an advocate or lawyer or consultant makes a legal opinion (whether based on a written request or an oral request).
- b. Problems requested for a legal opinion. In this section the main problem faced by the client is requested to make a legal opinion. These issues include legal issues that are described or conveyed by the client in his letter when submitting a request for a legal opinion.
- c. Materials related to existing problems such as information, data and documents. This section contains a description of the documents, material information in written or oral form obtained from the client itself or from other third parties and also contains additional information related to the subject matter that can be added to the legal opinion to support the subject matter. This section also contains statements of advocates or lawyers or legal consultants regarding the sources of facts used in the preparation of legal opinions, namely that legal opinions can be made based on original documents or photocopies or oral statements from clients to advocates or lawyers or legal consultants from the time they are received until date of issuance of legal opinion.
- d. Legal basis and legislation related to the problem. This section describes the statutory provisions and other related regulations that are used as the basis for making legal opinions. This section also explains the limitations of the interpretation of legal opinions made by advocates or lawyers or legal consultants, namely that the legal opinion in question can only be interpreted according to the provisions of the law of the Republic of Indonesia.
- e. Description of chronological facts. This section contains a description of the facts relevant to the problem based on original documents or photocopies or based on oral statements from the client up to the date of issuance of the legal opinion and arranged chronologically with the intention that the reader understands the origin of the subject matter and its development.
- f. Legal analysis. This section describes the analysis and legal considerations of advocates or lawyers or legal consultants on the subject matter based on applicable legal provisions and documents related to the subject matter.
- g. Legal Opinion. Contains a description of the opinion of an advocate or lawyer or legal consultant on the subject matter based on analysis and legal considerations on facts, information, and documents

²¹ Sitorus. *Pendapat Hukum (Legal Opinion)*..., Hlm. 168.

related to the existing subject matter. Legal opinions are conveyed in a way that is always focused on the problem, and systematically.²²

- h. Conclusions and suggestions or solutions to problems. This section contains a description of the conclusions based on the results of the analysis after carrying out all the stages of making legal opinions that have been described. After getting a conclusion, the advocate or lawyer or legal consultant then provides suggestions or solutions in resolving the legal problems that have been discussed in the legal opinion. It is highly expected that advocates or lawyers or legal consultants provide more than one suggestion or solution to the problem requested for a legal opinion with the aim that the client or other interested party can choose one of the suggestions or the best solution in his opinion.

In the formulation of legal opinions, legal experts must be balanced, which means that they still uphold the values of justice. The concept of justice is a reference for the use of legal facts which become urgent in the preparation of legal opinions derived from the concept of legal opinion that can be used by judges when issuing a decision. This legal opinion is also one way of *ijtihad* judges to be able to issue their decisions. In chronological facts in the preparation of a legal draft, this is a series of events that are reviewed and reviewed by investigators or the authorities to collect a chronological sequence that is able to present a result that can affect a verdict. As can be said to avoid violating Articles of Law No. 1 of 1974 and KHI which regulates Marriage, Article 1 explains, "*As a country based on Pancasila, where the first principle is Belief in One Supreme God, marriage has a very close relationship. With religion/spirituality, so that marriage not only has an external/physical element, but an inner/spiritual element also has an important role. Forming a happy family, close relationships with descendants, which is the purpose of marriage, maintenance and education are the rights and obligations of parents*".²³ Article 2 paragraph 1 in conjunction with Article 8f explains that; "*marriage is legal, if it is carried out according to the law of each religion and belief, then there is no marriage outside the law of each religion and marriage*".²⁴ In the case of the marriage of Asmirandah and Jonas in 2013,²⁵ which was subject to Law Number 1 of 1974 concerning Marriage which could lead to a lawsuit for annulment of marriage because it is a chronological fact that shows that there was a deliberate act to carry out a marriage with Islamic procedures with the same not good of motive (will Back apostasy). In addition, there are also cases of fraud in marriage, such as what happened in Jambi, namely the existence of same-sex marriages that the woman/wife did not know

²²Retnowati et al.. *Eksistensi Peran dan Fungsi Legal Opinion Dalam Menyelesaikan Masalah Hukum*,... Hlm. 9-10.

²³Presiden Republik Indonesia. (1974). *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan*. Jakarta: Istana Negara. Hlm. 2.

²⁴*Ibid*,

²⁵<https://www.liputan6.com/showbiz/read/755817/asmirandah-ajukan-batal-nikah-karena-jonas-rivanno-berbohong>, Retrived 15 Juny 2022 Pukul 20:00 WIB.

about. For 10 months after having a serial marriage, the wife just realized that the one who married him was a woman and this case is still in the trial process.²⁶

In Indonesia's civil law, it has set a minimum limit for a person to marry, namely in Article 15 paragraph 1 of Law Number 1 of 1974 concerning Marriage. The purpose of marriage is to form a happy, peaceful and prosperous family. However, there are also minors who will carry out underage marriages, because of the impact of social problems. There is a violation of the law on the age limit for marriage, but the provisions in that case have waivers contained in another article of this article, namely by applying for a marriage dispensation at the local Religious Court. To be able to accept In granting a marriage dispensation, the judge will explore the legal facts contained in the trial. So that the judge's decision can bring benefits to the community. Even though marriage dispensation is obtained, society should not necessarily become a culture of such a thing, because with such legal facts, legal advisors can express their legal opinion as a judge's decision and become a doctrine in the community to maintain and stabilize conditions in the community so that the benefits received by the community in obtaining justice and welfare can be achieved properly.²⁷

The existence of these cases could be laws that can be used regarding the Marriage Act, but the cases could be different, or the same or similar cases but there is a separate character from these cases, therefore the Legal Facts are very important. needed by judges to examine, decide and try the perpetrators as well as from a series of cases and chronology that resulted in the exposure of legal facts, such a marriage presents a new legal precedent and a solution must be found, and what direction the judge will be able to issue a decision that is later it will also have an impact on the perpetrator and the same or almost the same cases in the future. Thus, the existence of legal facts becomes an important matter for judges to make decisions and lawyers for their opinions in providing legal assistance to their clients. The target of Islamic civil law is the legal subject itself. The optimized portion of the expected legal facts is justice that is realized, namely by realizing the rights and obligations of legal subjects. As for the legal sources, they still have not explained about the rules in a gambling manner, but there are positive references such as KHI, KHES, and DSN Fatwa that can be used by judges or lawyers in providing legal information to clients.

²⁶<https://imcnews.id/read/2022/06/14/19876/10-bulan-nikah-siri-nur-aini-tak-sadar-dinikahi-sesama-perempuan/>, Retrived 30 Juny 2022 Pukul 20:00 WIB.

²⁷Muqorobin, Ahmad. (2021). "Interreligious Marriage and Its Validity In Indonesian Marriage Law Jurisprudence Analysis". *Al-Ahwal: Jurnal Hukum Keluarga Islam*. 14(2). Hlm. 188.

4. Conclusion

Legal opinions is opinions from experts which are summarized to be used as a new reference for legal developments. In order for a legal opinion to have a binding law, the legal opinion must be a judge's decision. Legal opinion plays an important role in the development of law, not only in the aspect agreement but also can be broader than that. Legal facts are included in the procedure for making legal opinions and determining the decision of a case. Legal facts are important because the discovery and analysis of legal facts can support and complete the clauses that will be included in the legal opinion and the decisions that will be handed down by the judge on the defendant. although in the civil law rules there is no information about the importance of legal facts in legal opinions, but if viewed from the facts that occur, it can be identified a legal risk that will be accepted by the client. Legal facts in the form of the reality that happened to the defendant and these legal facts can be obtained through witnesses who are presented at a judge decision.

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