

# ANALYSIS OF THE REMAINING VALUE OF CASE COSTS POSITIVE LEGAL PERSPECTIVE AND SHARIA ECONOMIC LAW (CASE STUDY OF KENDAL RELIGIOUS COURT)

Nadila Fitriya Shoffa,<sup>1</sup> Lina Kushidayati<sup>2</sup>

Kudus State Institute of Islamic Religion<sup>12</sup>

[nadilanshoffa@gmail.com](mailto:nadilanshoffa@gmail.com); <sup>1</sup> [linakushidayati@iainkudus.ac.id](mailto:linakushidayati@iainkudus.ac.id)<sup>2</sup>

## Abstract

*This article discusses about the remaining down payment on case fees at the Kendal Religious Court. The primary data sources used direct interviews with the Kendal Religious Court, including: judges, cashiers and the bank. While secondary data sources are from various scientific journals, books, photos, videos and other documents. The results shows that the causal factor for the remaining down payment on case fees at the Kendal Religious Court is none other than the temporary nature of the initial estimate managed by the cashier. Where the estimate is taken from the *relaas* or call report that has been estimated beforehand.*

*The factors that cause the expiration of the remaining down payment at the Kendal Religious Court are first, there is an emotional attitude shown by the reporting party who feels he is very happy or very hit by the decision of the chief judge which can result in him being reluctant to deal with it and take the rest to the cashier. Second, there is an element of distance, effort, time and cost from the reporting party which turns out to have a small down payment. Third, the absence of the reporting party or attorney at the final hearing.*

**Keywords:** *Expiration, Down Payment of Case Fees, Positive Law and Sharia Economic Law*

## Abstract

This article discusses the expiry of the remaining terms and conditions for cases at the Kendal Religious Court. The data source used was direct interviews with the Kendal Religious Court, including: judges, cashiers and the bank. Meanwhile, secondary data sources come from various scientific journals, books, photos, videos and other documents.

Based on the results of this research, it shows that the causal factor for the remaining case fee deposit at the Kendal Religious Court is none other than the temporary nature of the initial estimate managed by the cashier which is taken from the *report* or summons report that was previously estimated. The factors causing the expiration of the remaining balance at the Kendal Religious Court are *first*, the emotional attitude shown by the reporting party who feels that he is very happy or very devastated by the decision of the chief judge, which can result in him being reluctant to deal with it and taking the rest to the cashier. . *Second*, there are elements of distance, energy, time and costs on the part of the reporting party which is evident

The penjar has a little remaining. *Third*, the absence of the reporting party or legal representative at the final trial.

**Keywords:** Expiration, Court Costs Reduction, Positive Law and Sharia Economic Law

## INTRODUCTION

In the judiciary we are familiar with the term "**no fee, no case**" which means that for cases that have been submitted to the Religious Courts, especially Kendal, a fee is charged which is called a retainer, except for prodeo or free cases.

This is stated in Article 121 paragraph (4) Herzien Inlandsch Reglement (HIR) which states that,

*"Entering into the list as in the first paragraph is not carried out if it has not been paid in advance to the clerk an amount of money which will be calculated later, the amount of which is temporarily estimated by the head of the court according to the circumstances for the clerk's office fees and costs for making all calls and notifications required to both parties and the price of the stamp duty that will be used."*

A court fee deposit is money or fees entrusted to an agency as collateral for payment of a registered case.

The fine is still in the estimation stage, the final calculation will be made after the decision of the judge on duty. Filing fees are regulated in Supreme Court Circular (SEMA) No. 04 of 2008 concerning Collection of Filing Fees, Republic of Indonesia Supreme Court Regulation (PERMA) Number 03 of 2012 concerning Settlement and Management Process Fees at the Supreme Court and Subordinate Bodies, Government Regulation (PP) Number 05 of 2019 concerning Types and Levels of State Revenue Not a Tax that Applies to the Supreme Court and Subordinate Bodies, Article 2 paragraph (4) of Law Number 48 of 2009, Articles 192-194 RBg, and Articles 182-183 HIR where *Rechtreglement voor de Buitengewesten (RBg)* is procedural law civil and criminal law which applies in courts outside Java and Madura, while the *Herzien Inlandsch Reglement (HIR)* is civil and criminal procedural law which applies in courts in Java and Madura.

In general, it is the person who sues or the reporting party who bears all the legal costs of the case. The costs referred to are all costs which include: clerk's fees, notifications, summons, stamp duty, and other costs required to complete the case process (Endang, 2020). The estimated amount of these costs is determined according to the distance from where the plaintiff/applicant lives, added to the distance from the place of residence. The only thing left is for the defendant/respondent, where the distance requirement is measured in kilometers from the center of the Kendal Religious Court Office. The court fee deposit will be returned to the party

plaintiff/applicant if there is an advantage in payment.

The excess or remaining deposit can be asked for and taken to the court cashier after the decision of the panel of judges. The maximum limit for taking the remainder is 6 (six) months after the case is decided.

If it is due but the plaintiff/applicant has not collected it, the court will give a warning in the form of a letter sent via the bailiff. If the summons is still not possible via letter, the remainder of the case fee deposit will be removed from the case book journal and entered into the state treasury as Non-Tax State Revenue (PNBP). As regulated in Article 1948 of the Civil Code which explains that there are 2 (two) categories of release, namely firm and tacit. Where tacit release can be seen from the expression of an action that raises suspicion that someone does not want to use something that was obtained." And the Supreme Court Circular Regulation (SEMA) Number 4 of 2008 which reads:

"If there are excess court fees that are not used in the litigation process, then these fees must be returned to the entitled party. If these costs are not collected within 6 (six) months after the party concerned and recorded in a separate book as unclaimed money (1948 Civil Code). This unclaimed money is periodically deposited into the State Treasury."

## **RESEARCH METHODS**

This article is included in the category of field research types. The approach used in this research is a qualitative approach, a research approach that emphasizes photographing the phenomena studied in the research and then describing the research results in narrative form. This qualitative approach is used to examine the law regarding the remaining retainer of case fees that exceeds the expiration date. This research also describes the differences based on positive law and sharia economics regarding the remaining down payment on case fees.

There are 2 (two) data sources used, namely primary and secondary. The primary data source used direct interviews with the Kendal Religious Court, including: judges, cashiers and the bank. Meanwhile, secondary data sources come from various scientific journals, books, photos, videos and other documents. Data collection techniques use interview techniques, observation, literature study and documentation. The data obtained was then analyzed using qualitative descriptive data analysis techniques.

## DISCUSSION/RESULTS AND DISCUSSION

### Expiration Viewed from Positive Law

Expiration according to positive law is regulated in Articles 1946-1993 of the Civil Code, which means the time limit for legally obtaining and releasing a right in accordance with the requirements of statutory regulations. As previously explained, it does not conflict with norms of decency and public order, does not disturb the comfort of other people, and does not abuse other people's rights.

Expiration can arise due to statutory regulations, namely in Articles 1946-1993 of the Civil Code. But apart from that, it can also be caused by an agreement or agreement between the parties, whether written in a notarial deed or not. Even though the expiration date is regulated in law, there are also elements of requirements which must be taken into account by someone who wants to control property rights using this route. In other words, if these elements are not met, then expiration cannot be used as a reason to master it. Things to pay attention to are as follows:

#### 1. There is good faith in obtaining it

Having a sincere intention is one of the conditions for the expiration to be allowed. Where these intentions are accompanied by actions that reflect good manners and morals in everyday life. Apart from that, he must be able to act wisely with what he has to improve welfare

general.

#### 2. There is a right base

It is a way for someone to obtain ownership rights.

This method must be in accordance with legislation without using coercive methods to obtain rights from other people.

#### 3. The existence of an object whose owner is unknown for 30 years for immovable objects without a legal basis, 20 years for immovable objects with a legal basis, and 3 (three) years for movable objects (Subekti, 2014).

### Various Expirations

#### 1. Expiry of acquisition (*Acquistieve Verjaring*)

Is the application of expiration as a way to obtain a right to an object. As regulated in Article 1963 of the Civil Code which explains that, "Whoever, in good faith and

based on a legal right, acquires an immovable object, an interest or other receivable which does not have to be paid on behalf of,

obtain ownership rights over it by expiry date, with possession for twenty years, obtain ownership rights without being forced to show the basis of the rights."

A person holds an immovable object which initially does not belong to him, but over time the object can become its owner. For example: Anita has controlled a piece of empty land without any legal conditions for 30 years and as long as she uses it there is no interference from other people, then the land becomes hers.

## 2. Exemption from engagement (*Exintieve Verjaring*)

Is the application of statute of limitations in releasing an obligation or legal claim. This means that a person can be free from a bill if the bill is more than 30 years old. Like debts and receivables. A person who has a debt that is more than 30 years old and is not collected by the debt provider, according to legal provisions he is released by paying the debt.

As regulated in Article 1948 of the Civil Code which explains that there are 2 (two) categories of release, namely firm and tacit. Where tacit release can be seen from the expression of an action that raises suspicion that someone does not want to use something obtained (Supriyadi, 2011).

## Expiration Viewed from Sharia Economic Law

It has the same meaning as the expiration of positive law, namely the time limit on the use or use of an object.

But the only difference is the nature of the expiration date. In Islamic law, there is no such thing as "**a dependent or obligation can be terminated by expiration**". This means that all obligations that originate from a contract are permanent. Like debts and receivables.

In positive law, the debt can be released from the debtor if for more than 30 years the debt is not taken by the creditor. But in Islamic law, a person who has a covenant or agreement must abide by it even if he is old. This is regulated in QS Ali Imron verse 76, *يٰۤاَيُّهَا الَّذِيْنَ اٰمَنَ لِمَ تَتَذَكَّرُ بِالَّذِيْ جَعَلْتَ لَكَ اٰمِنًا*

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*يٰۤاَيُّهَا الَّذِيْنَ اٰمَنَ لِمَ تَتَذَكَّرُ بِالَّذِيْ جَعَلْتَ لَكَ اٰمِنًا* B Long live God, So beware And This is it A BF n m for me B

Meaning: "(Not so), in fact whoever keeps the promise (he made) and is pious, then indeed Allah loves those who are pious."

## The concept of expiry in the Wadi'ah contract

In essence, the *al-wadi'ah* contract is an agreement to help each other commanded by Allah SWT solely to seek His blessing. It is certain that the contract is ratified but the terms and conditions must also be taken into account. The meaning of *al-wadi'ah* itself has been explained in the previous discussion, namely a contract to entrust goods to another person who must look after the goods properly until the owner takes the goods. Even though the goods are in the hands of the recipient of the deposit, ownership rights are still in the hands of the first party or the original owner. So, the recipient is only tasked with carrying out the trust that has been given.

In a historical hadith by Abu Hurairah RA, in a book by Ahmad Dahlan on the theme of Sharia Banking, it is explained that *the al-wadi'ah* agreement does not have any restrictions. This means that things cannot end without someone wanting to end them.

In the book by Hendi Suhendi entitled Fikih Muamalah, it explains the reasons why the *al-wadi'ah* contract can end, including:

1. One of the people entrusting the entrustment or receiving the entrustment dies
2. The goods entrusted to the deposit are taken by the original owner
3. Transfer of ownership of the goods entrusted to the entrusted recipient
4. If the recipient of the goods has looked after it for a long period of time, and the owner does not take the item and then the recipient looks for information about the owner and the result is that the place of residence is not known, then the entrusted item is allowed to be used for much more valuable purposes (Hendi, 2009) .

From this it can be concluded that, in the *al-wadi'ah* contract the expiration system is not enforced. This is because the nature of *al-wadi'ah* only maintains the mandate of the custodian and ownership is still in the hands of the first person. And the contract can end when one of the two breaks the agreement.

### **Implementation of Case Cost Reductions at the Kendal Religious Courts**

A court fee retainer is an amount of fees entrusted by a litigant to a judicial institution to pay for a case that has been registered. Penal fees for cases are regulated in Article 90 paragraph (2) of Law Number 50 of 2009, Second Amendment to Law Number 7 of 1989 concerning Religious Courts, Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, Articles 192-194 RBg, Article 182-183 HIR, Republic of Indonesia Supreme Court Regulation (PERMA) Number 3 of 2012 concerning Case Settlement Process Costs and Management

at the Supreme Court and the Judiciary Bodies under it, the Supreme Court Circular Letter (SEMA) Number 04 of 2008 concerning the Collection of Case Fees, and Article 121 paragraph (4) which confirms that the payment of down payment fees for this case is one of the formal requirements for a lawsuit. With payment, the lawsuit can be accepted and processed properly. A lawsuit is deemed not to exist if the litigant does not pay the downpayment within the specified time.

In the Religious Courts, in general it is the person who sues or the reporting party who bears all the costs of the case as explained in Article 89 paragraph (1) of Law Number 7 of 1989 which states that "court costs in the field of marriage charged to the plaintiff or applicant". Apart from marriage cases, the burden of costs is given to the losing party. However, within the outer scope of the Religious Courts, the one who is obliged to cover all costs in all cases is the defeated party. As explained in Article 181 paragraph (1) HIR which states that,

"Whoever is defeated by decision will be sentenced to pay court costs. However, all or part of the costs of the case can be calculated between the husband, blood relatives in direct lineage, brothers and sisters or family members, especially if both parties are defeated in some way."

The down payment costs detailed by the Religious Court cashier are still temporary. Next, wait for a decision from the panel of judges regarding the exact costs. If it turns out that there is a shortage in the costs, the panel will inform the parties in the case directly. However, if the party does not appear at the hearing, the Registrar will make a summons and inform them that there is a shortfall in down payment fees. The maximum payment limit is one (1) month after the case is decided by the panel of judges and if within this limit it has not been paid, then the court acts decisively by crossing out the case from the case register and if there is any remaining fee, it will be returned to the Plaintiff/Applicant. as a party to a case which is limited to 6 (six) months from the time the case is decided by the panel of judges.

### **Payment Scheme**

1. The reporting party or legal representative comes to the Kendal Religious Court office where they will be given an ID card according to their respective interests by the security guard on duty

2. After that, come to the service ambassador who will be directed according to their respective interests and given a queue number at the queue counter provided.
3. After the queue number has been called, then come to the information desk (1 and 2) to register your case. Before being registered, the officer will check the files brought and submitted by the reporting party, then estimate the court costs or what is known as the down payment as outlined in the Power of Attorney to Pay (SKUM). The letter is proof of power given by the court cashier to the reporter or legal representative to pay the down payment to Bank 4. Then the SKUM is given to desk 3 (cashier) to record the estimated costs and give a number to the case.
5. Finally, the litigant or their legal representative submits the SKUM and pays the estimated downpayment of case costs to the bank that has collaborated with the court, where the Kendal Religious Court takes Bank Syariah Indonesia (BSI).

However, when the bank officer has not yet arrived at the office, the estimated down payment will be given to the cashier and the down payment will be given directly to the bank after the presence of the bank officer. Then the bank provides proof of receipt in 3 (three) copies that the down payment of the case fees has been paid. Where 1 (one) copy will be brought by the bank itself, 2 (two) copies will be brought by the reporting party and 3 (three) copies will be brought by the court.

6. The receipt given by the bank to the reporting party is then given to the cashier along with the SKUM to be signed and stamped in full. After that, the SKUM is given again to the reporting party

The estimate can be calculated based on the distance from where the reporting party lives which is added to the distance from where the reported party lives, which here is often called the radius. The jurisdictional area of the Kendal Religious Court was explained at the beginning of the discussion, namely that it is divided into 4 (four) parts, including radius I, II, III and IV. Where each radius has a different value. The further away from the Kendal Religious Court office, the more costs you have to incur. This estimated downpayment is determined based on the Decree (SK) of the Chairman of the Kendal Religious Court Number: W11-

A7/48/HK.05/II/2021 concerning Changes in Case Fee Fees at the Kendal Class IA Religious Court (Rohmad, 2022).

### **Amount of Court Fee Penalty**

Calculation of case down payment fees is regulated in Article 121 paragraph (4) HIR or Article 145 RBg which states that the retainer for case costs is calculated based on the estimated costs of the clerk's office and



all types of party summons costs as well as material costs. Apart from that, it is also regulated in Article 90 paragraph (1) of Law Number 50 of 2009 Second Amendment to Law Number 7 of 1989 which explains the details of case costs, including:

1. Clerkship fees and stamp duty
2. Administrative costs, such as editorial costs, duplicating case files, duplicating copies of decisions, filing and binding files and other necessary documents
3. Costs of witnesses, expert witnesses, translators and oath taking
4. Costs for summons, notification, inspection or other costs is required.

The amount of these costs is regulated by the Minister of Religion with the approval of the Supreme Court, which will be detailed to the litigants, which will make it easier to obtain information about the amount of costs covered and what costs must be incurred by the litigants.

The cost of the matter set by the Supreme Court, among others:

1. The first instance process is regulated and determined by the chairman of the first court in accordance with applicable statutory provisions
2. The appeal procedure has a nominal value of Rp. 150,000.00 (one hundred and fifty thousand rupiah)
3. Cassation in civil and state administrative cases with a nominal value of Rp. 500,000.00 (five hundred thousand rupiah)
4. Reviewer of nominal civil and state administrative cases Rp. 2,500,000.00 (two million five hundred thousand rupiah)
5. Cassation in commercial civil cases with a nominal value of Rp. 5,000,000.00 (five million rupiah)
6. Review of commercial civil cases with a nominal value of Rp. 10,000,000.00 (ten million rupiah)
7. Free case costs at the first level, appeals and cassation whose value is below IDR 150,000,000.00 (one hundred and fifty million rupiah) will be borne by the state

These fees apply to the Supreme Court and High Court. Meanwhile, the first level Religious Court is adjusted to the decision of the Chair of the Religious Court which is stated in the Decree (SK). Details of case fees at the Kendal Religious Court are as follows: 1. Petition Cases

COST	NO	COMPONENT	RADIUS	RADIUS	RADIUS	RADIUS
			I	II	III	IV
	1	Registration	30.000	30.000	30.000	30.000

2	Filing of Submission	75.000	75.000	75.000	75.000
3	of Deed by JS 2X @Rp. 10,000,-	20.000	20.000	20.000	20.000
4	Call (2x)	160.000	180.000	200.000	240.000
5	Announcement decision	80.000	90.000	100.000	120.000
6	Editorial	10.000	10.000	10.000	10.000
7	Duty stamp	10.000	10.000	10.000	10.000
Amount		385.000	415.000	445.000	505.000

## 2. Matter of Divorce Lawsuit

NO	COMPONENT COST	RADIUS I	RADIUS II	RADIUS III	RADIUS IV
1	Registration of	30.000	30.000	30.000	30.000
2	Submission of	75.000	75.000	75.000	75.000
3	Deed by JS 3X @Rp.10,000,-	30.000	30.000	30.000	30.000
4	Call (2x)	160.000	180.000	200.000	240.000
5	Decision notification	80.000	90.000	100.000	120.000
6	Editorial	10.000	10.000	10.000	10.000
7	Duty stamp	10.000	10.000	10.000	10.000
Amount		635.000	695.000	755.000	875.000

## 3. Divorce Matters

NO	COMPONENT COST	RADIUS I	RADIUS II	RADIUS III	RADIUS IV
1	Registration of	30.000	30.000	30.000	30.000
2	Submission of	75.000	75.000	75.000	75.000
3	Deed by JS 3X @Rp.10,000,-	30.000	30.000	30.000	30.000
4	P Calls (3x)	240.000	270.000	300.000	360.000
5	T Calls (3x)	320.000	3.100.000	400.000	480.000
6	Editorial decision notification	80.000	90.000	100.000	120.000
7		10.000	10.000	10.000	10.000
8	Duty stamp	10.000	10.000	10.000	10.000
Amount		795.000	3.615.000	955.000	1.115.000

#### 4. Simple Lawsuit Case

NO	COMPONENT COST	RADIUS I	RADIUS II	RADIUS III	RADIUS IV
1	Registration	30.000	30.000	30.000	30.000
2	Filing	75.000	75.000	75.000	75.000
3	Submission of Deed by JS 3X @Rp.10.000,-	30.000	30.000	30.000	30.000
4	P Calls (2x)	160.000	180.000	200.000	240.000
(3x)	T Calls	240.000	270.000	300.000	360.000
6	Decision notification	80.000	90.000	100.000	120.000
7	Editorial	10.000	10.000	10.000	10.000
8	Duty stamp	10.000	10.000	10.000	10.000
Amount		635.000	695.000	755.000	875.000

For reporting parties who live outside the jurisdiction of the Kendal Religious Court, the case fee will be adjusted to the local Religious Court and a fee will be charged for correspondence with the following conditions: 1. Plaintiff: 2 x Rp. 14,000 = Rp. 28,000, 2. Defendant: 3 x Rp. 14,000 = Rp. 42,000(PA, Kendal, 2022)

#### Analysis of Case Fee Penalty at the Kendal Religious Court

Refund of the remainder of the court fee deposit is mandatory. This is because the initial agreement between the reporting party and the Court Cashier was an *al-wadi'ah* agreement, in which the reporting party only entrusts money to settle the case with the court. So in conclusion, the court or the bank have no obligation to swallow the balance of the deposit, because it belongs purely to the reporting party. Procedures for collecting remainder include:

1. The reporting party met the cashier and then asked if there was anything left against previously paid deposits
2. The cashier will ask for a receipt given by the Member Judge regarding the decision of the case

3. The cashier checks the court fee deposit
4. If there is a balance, the cashier will return it by giving a receipt as proof that the remaining balance has been returned (Meyda, 2022).

In the Kendal Court itself, every time a retainer is paid and after the case is declared complete, the retainer from the reporting party always remains, in other words it is never correct and the retainer is rarely stated to be insufficient. This is due to the initial registration of the party

PTSP or cashier is limited to temporary assessments. These estimates include *calls* or call reports. So the main factor is the call. PTSP or cashier takes the middle way in estimating how often the litigant will be summoned. If the estimated call turns out to be less, it will be added and vice versa. If it turns out that there are more summonses, the remaining court fees will be reduced or the remaining court fees will be deducted and returned to the litigants. And the reality is that from the past until now, the court fee deposit has never been left over. Even though it was only tens of thousands of rupiah (Rohmad, 2022).

In an *al-wadi'ah contract*, even though the contract is only for safekeeping, it is permissible for the entrusted party to take the

safekeeping fees. Heri Sudarsono, *Sharia Banks and Financial Institutions*, 115.. However, this does not apply to a judicial institution that strongly rejects additional fees, in this case the Kendal Religious Court. The courts and banks working together do not take advantage of depositing the deposit (Rohmad, 2022).

According to Mega, an employee of Bank Syariah Indonesia (BSI), there are no additional fees for depositing deposits. This is because the account used by the court in this custody is a Giro account. However, in the last 6 (six) months the Court requested Net-Banking application facilities from BSI so that it could check balances, transfer transactions, transfer between banks and so on. Using this application costs Rp. 10,000/month. And it turns out there is a problem regarding the admin fees, where the High Religious Court (PTA) does not allow these additional fees. This is because the application used is an account in the name of the local court. Given these pros and cons, BSI proposed withdrawing the application to BSI KC Kendal. However, this was not possible, until finally the Bank took the initiative to cover the application costs. Down payment can also be made online, namely using the E- Court application. For this application, there is an additional fee for using the application online.

The nominal value is around Rp. 3,500 (three thousand five hundred rupiah).

And he also said that the court fee deposit collected at the bank was still intact, where it was not used for other purposes, only the physical money was used. This is because the down payment physical money is mixed with other money in the bank. And if the court asks for the money back, the bank must be ready to provide the money. So it can be concluded that the nominal down payment amount in the bank account remains intact, only the physical money is used (Mega, 2022).

### **Analysis of the Remaining Remaining Deposit for Case Fees in the Religious CourtsKendal**

The meaning of expiration itself has been explained in the previous sub- chapter, namely the time limit used in returning the remaining down payment on case fees, namely 6 (six) months after a case is declared terminated. If it is not taken within the time limit, it will be handed over to the state where it will later be removed from the State Financial Journal and recorded as unclaimed money.

This notification is included in Article 2 paragraph (2) of Government Regulation (PP) Number 05 of 2019 concerning Types of Non-Tax State Revenues that Apply to the Supreme Court and Subordinate Bodies (PERMA, 2019) and paragraph (2) of the Court Circular Letter Agung (SEMA) Number 4 of 2008 concerning Collection of Case Fees (SE, 2008).

According to Mr. Rohmad as Judge of the Kendal Religious Court, the excess deposit actually expires because sometimes the reporter or legal representative does not take the remainder or does not report to the cashier if it turns out that the deposit remains.

This is due to the emotional attitude of the reporter which can result in him being reluctant to handle it and take the rest to the cashier. This emotional attitude can be proven by the reporting party feeling very happy or very saddened by the decision of the chief judge. Apart from that, there are elements of distance, energy, time and costs on the part of the reporting party where it turns out that the retainer has little remaining. This is a consideration for whether to take it or not. Where they think that the remaining deposit is not worth what they spend when they want to collect it, whether in terms of costs or the time and energy spent and added to the long queues. For example, in the divorce case number 666/Pdt.G/2022/PA.Kdl which has a remaining deposit of Rp. 10,000 (ten thousand rupiah), the remainder has the possibility not to be taken. This is because the remaining costs are not commensurate with the costs incurred and the distance traveled.

For example, if this party lives far from the court office, it is possible that he will give up the remaining Rp. 10,000 rather than having to take it a long distance.

The next cause is the absence of the reporting party or legal representative at the final hearing, where the reporting party did not know that it turned out that the down payment previously paid had a balance until in the end no one was there to take care of it and collect it. The cashier will not even check whether the deposit for a case will remain or not. Because the cashier will only check and give the remainder if the reporting party or legal representative gives it

Receipt as proof of termination of a case. However, the registrar will give a warning letter to the reporting party stating that they must immediately collect the remainder (Rohmad, 2022).

The application of this statute of limitations is based on the non-use of the rights of the reporting party who is the owner of the remaining down payment on case fees and the Kendal Religious Court as the manager of the down payment on case fees. Apart from that, the implementation of this expiration date also aims to bring order in the administrative sector at the Kendal Religious Court so that there is no accumulation of costs. And also to minimize the occurrence of use by irresponsible parties. Therefore, it is necessary to determine the legal status of the remainder of the deposit, namely that it be managed by the state and used for the public interest.

### **Analysis of the Expiration of the Remaining Deposit for Case Fees from a Positive Legal**

**Perspective and Sharia Economic Law.** In essence, the trial process in a judicial institution also requires costs to be used to resolve a problem that has been registered. These costs include: 1. Clerk's fees and

stamp duty

2. Administrative costs, such as editorial costs, duplicating case files, duplicating copies of decisions, filing and binding files and other necessary documents

3. Costs for summoning witnesses, expert witnesses, translators and taking the oath

4. Notification fees, inspections or other necessary fees

All of these costs are deposits or advances paid by the litigants to the Court Cash Holder, where these costs are temporary estimates whose final decision will be made by the panel of judges processing the case. It has been clearly stated previously that this down payment uses

an *al-wadi'ah yad amanah* agreement, which means that the money handed over is money entrusted to you by the reporting party and the money cannot be used outside the interests of processing the case.

In the down payment itself there is never any remaining amount. This means that the deposit always remains and the remainder must be returned to the original owner. This is based on the previously used contract. The balance of the down payment will be returned if the reporting party reports to the Cash Holder of the Kendal Religious Court if the down payment has been left over. The penalty can be taken when the reporting party has submitted a receipt for the decision of a case given by the panel of judges to the Cash Holder or Cashier. According to the previous discussion, according to Mr. Rohmad as a Religious Court Judge Kendal, there are several problems regarding the reasons why the balance of the deposit was not collected, one of which is emotional factors where the reporting party sometimes feels that he is very happy with the decision of the chief judge or vice versa, where the reporting party feels that the decision makes him discouraged. This is what makes the reporting party unwilling to deal with the penalty a second time. The second factor that causes the remainder of the downpayment not to be collected is the failure of the reporting party to attend the decision hearing (Rohmad, 2022).

If the remainder of the deposit is not collected within the 10 (ten) day period, the registrar will issue a letter of warning directly, which letter is specific and does not incur additional costs. If it is still not collected by the time limit for collecting the remainder, namely 6 (six) months, then the remainder is considered to have expired and will be handed over to the state treasury.

Mechanism for disbursing remaining deposits from Court Cash Holders Kendal's religion to the state includes:

1. The cash holder or cashier will issue the remaining deposit from the Case Register Book, in this case the Kendal Religious Court uses the Case Tracking Information System (SIPP) application
2. The cash holder inputs the remaining recapitulation data to be returned to the State
3. The remaining money and the results of the recapitulation are handed over to the Treasurer  
Kendal Religious Court Reception
4. The revenue treasurer creates and submits the billing code to Bank Syariah Indonesia (BSI) so that payments are processed into the State account
5. The bank provides a receipt as proof that it has paid it to the state (Yudit, 2022).

From the theory of the expired concept which has been explained

previously, the researcher concludes that the existence of the expired concept regarding the remaining down payment on case fees is a unilateral decision where only the legislator can make a decision and ratify it. And of course the community or reporting party must comply with the regulations that have been made.

This concept can also be applied to transfers of ownership rights that occur between the reporting party and the country where only one party confirms.

According to positive law, the concept of expiration as a reason for allowing the transfer of ownership of a right from the individual to the state is very clear. This is proven in Article 584 of the Civil Code which provides the essence that a person's property rights can change ownership status, namely by: 1. Taking (*theorigening*)

A person can acquire rights over a thing, when the thing has no legal owner. That is, the item belongs to everyone who is universal. Forexample: fishing in the river.

2. Attraction by other things (*natrekking*)

Ownership can be acquired when the thing increases large caused by nature. For example: a fruit tree.

3. Expiry (*verjaring*)

Ownership rights can change hands if the object exceeds the maximum limit or expires and certain conditions are stated in the Law Article 1946 of the Civil Code.

4. Inheritance

Property rights can be obtained by inheritance. This means that someone bequeaths or gives goods to another person as an heir, in this case the goods can be said to belong to the heir, which originally belonged to the heir.

5. Submission

Property rights can be obtained by handing over an item free of charge to another person.

Meanwhile, in sharia economic law, the factors that cause an item or object to be owned by someone include:

1. *Ikhraj al-Mubahat* (property whose legal owner is unknown)

Mubahat objects can be owned if someone has the intention to own them and no one else owns the object.

2. *Khalafiyah* (inheritance)

Khalafiyah is a replacement for someone who will occupy the old ownership position. Such as inheritance and responsibility when



destroying other people's property.

### 3. *Tawallud min Mamluk* (breeding)

It is ownership that produces something new from something old, productive goods can reproduce into something useful and more productive, for example: chickens lay eggs and produce chicks.

### 4. *Uqud* (contract)

It is an alliance, agreement and agreement between one person and another person which is proven by saying *ijab* and *qabul* which then produces satisfaction between the two.

The concept of expiration is expressly permitted in positive law.

However, this is different from the concept in sharia economic law, where there are no expired reasons for obtaining one's rights. However, this concept falls into the category of *Uqud* (contract) which is at the start of the down payment

case fees there is an agreement between the cashier and the reporter regarding the existence of the expiration concept applied at the Kendal Religious Court. This agreement can be proven by the reporting party signing a statement of payment of down payment of case fees. Even though they have signed it, there are still many reporting parties who are not aware of the concept of expiry of the remaining down payment on case fees. This can be caused by the reporting party only focusing on the signature so that they are not clear in reading the statement given by the cashier and are less active in asking the cashier. Not only that, the reporting party will also be informed if the remaining deposit for the case fee is not immediately collected within 10 (ten) days after the case is deemed completed. Where the Registrar will inform you by sending a letter of warning containing an order to collect the remainder and the concept of expiry for the remainder of the court fee deposit which is not immediately collected.

By the reporting party signing the payment statement, without realizing it, he had agreed to all the provisions enforced at the Kendal Religious Court, especially regarding court fee deposits. Therefore, the reporting party must comply with the regulations that have been implemented and must fulfill all obligations that have been previously agreed, even though they are not aware of the concept of expiration of the remaining down payment for the case fees. This is in accordance with the substance of Surah al-Maidah verse 1 which reads:

H  
 LM-E-H-  
 Ay yyy yyy  
 A B B Y M  
 T lyy'm yn hyym I don't like it  
 HOUD Hiblaa Hawa F HAWA O N Amen Oh God Yes  
 AM  
 H-H-H-M-Y Allah Na y H H t and d YAI-S Q Gi KEHM LIYA ALI LHAM until AM



Meaning: "And do not let some of you consume the property of others among you in a false way and (do not) bring (the affairs of) that property to the judge, so that you can consume part of the property of others by (doing) sin, even though you knowing" (Al-Baqarah: 188).

Given the concerns regarding the issues above, therefore, it is necessary to determine the legal status of the remainder of the down payment, namely that it be managed by the state and used for the public interest or what is known as *maslahah murlah*. The concept of transferring ownership rights explained above is related to the concept of *maslahah murlah*, which allows a judge to make a decision on an expired case. Because essentially the initial goal of a court is to solve a problem by achieving the concept of public benefit. Apart from that, it can also keep the court away from complicated problems in making a decision over a long period of time (Mukhsin, 2017).

*Maslahah murlah* can be interpreted as something that can produce benefits for other people, but there are no arguments that require or prohibit this benefit, it's just that according to human reason, these benefits have important value in social life (Wahbahm 2011). *Maslahah Murlah*, which is obtained from the expired concept, aims to avoid acts of ghasab as well as wasting the remainder of the court fee deposit which is considered unimportant because the money is considered to be unclaimed money.

Not only that, the remaining penalties in the Kendal Religious Court are not only in the hundreds but in the millions.

Data obtained from the cashier shows that the remaining court fees as of December amount to 34,771,000 (thirty-four million seven hundred and seventy-one thousand rupiah) with a total of 130 (one hundred and thirty) cases, of which it is impossible to keep the money forever. the cashier, because in essence it belongs to the party

reporter(Meyda, 2022). Therefore, to minimize the use of money by irresponsible parties, this amount of money needs to have a clear legal status. The concept of expiry of the remaining down payment on case fees as stated in Government Regulation (PP) Number 5 of 2019 concerning Types and Levels of Non-Tax State Revenue at the Supreme Court and Subordinate Bodies is the result of the *ijtihad* of legal experts regarding the status of clarity regarding the transfer of ownership from the reporting party to a country where the theory focuses on the public benefit without any coercive action to have other people's rights.

## **Conclusion**

The causal factor for the remaining case fee deposit at the Kendal Religious

Analysis of the Expiration of the Remaining Deposit for Case Fees...

Court is none other than the temporary nature of the initial estimate managed by the cashier. Where the estimate is taken from *reports* or call reports that have been previously estimated. The return of the remainder of the deposit in the case is mandatory because initially, the relationship between the reporter and the court was to use *an al-wadi'ah yad amanah* agreement, which means a custody agreement in which the goods or assets entrusted to him may not be used outside his interests. Factors causing the expiration of the deposit that has been

The advantages of the Kendal Religious Court are *firstly*, there is an emotional attitude on the part of the reporting party which can result in him being reluctant to deal with it and taking the rest to the cashier. *Second*, there is an element of distance, energy, time and costs on the part of the reporting party which turns out to be a fee. have a little left. *Third*, the absence of the reporting party or legal representative at the final trial, where the reporting party did not know that it turned out that the down payment previously paid had a balance until in the end no one took care of it and took it.

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