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The Jurisdiction Of The Religious Courts Over Islamic Banking Disputes In Indonesia

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Abstract

The settlement of Islamic economic disputes, particularly those related to Islamic banking, falls under the jurisdiction of the Religious Courts in Indonesia. This study examines two main issues: the scope of the Religious Courts' authority in resolving Islamic banking disputes and their readiness in terms of institutional structure, legal politics, and substantive law. The research aims to analyze the legal foundation of such authority and to assess the institutional and normative preparedness of the Religious Courts in handling Islamic banking disputes. This study employs a descriptive qualitative method with a normative–conceptual approach, using primary data derived from statutory regulations, legal documents, and relevant legal literature. The findings indicate that the absolute jurisdiction of the Religious Courts is expressly regulated in Article 49 of Law No. 3 of 2006, which authorizes these courts to examine, adjudicate, and resolve disputes among Muslims, including those arising from Islamic economic transactions. Furthermore, the readiness of the Religious Courts in resolving Islamic banking disputes encompasses three key aspects: the professionalism and legal competence of judges and court officials; the understanding of legal politics to harmonize the Islamic banking legal system with the conventional banking framework while upholding Islamic legal principles; and the strengthening of legal substance through the enactment of statutory regulations and the development of the Compilation of Islamic Economic Law (Kompilasi Hukum Ekonomi Syariah/KHES). These elements are essential to ensure effective and legally sound dispute resolution within the Religious Court system.

Keywords: competence, Religious Courts, disputes, Islamic banking, Indonesia

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Kewenangan Peradilan Agama terhadap Sengketa Perbankan Syariah di Indonesia.

Abstract
Penyelesaian sengketa ekonomi syariah, khususnya yang berkaitan dengan perbankan syariah, berada dalam kewenangan Peradilan Agama di Indonesia. Penelitian ini mengkaji dua isu utama, yaitu ruang lingkup kewenangan Peradilan Agama dalam menyelesaikan sengketa perbankan syariah serta kesiapan Peradilan Agama ditinjau dari aspek struktur kelembagaan, politik hukum, dan substansi hukum. Penelitian ini bertujuan untuk menganalisis dasar hukum kewenangan tersebut serta menilai kesiapan institusional dan normatif Peradilan Agama dalam menangani sengketa perbankan syariah. Metode penelitian yang digunakan adalah deskriptif kualitatif dengan pendekatan normatif–konseptual, menggunakan data primer yang bersumber dari peraturan perundang-undangan, dokumen hukum, dan literatur hukum yang relevan. Hasil penelitian menunjukkan bahwa kewenangan absolut Peradilan Agama secara tegas diatur dalam Pasal 49 Undang-Undang Nomor 3 Tahun 2006, yang memberikan kewenangan kepada Peradilan Agama untuk memeriksa, mengadili, dan menyelesaikan sengketa antara orang-orang beragama Islam, termasuk sengketa yang timbul dari transaksi ekonomi syariah. Lebih lanjut, kesiapan Peradilan Agama dalam menyelesaikan sengketa perbankan syariah mencakup tiga aspek utama, yaitu profesionalisme dan kompetensi hukum hakim serta aparatur peradilan, pemahaman politik hukum untuk menyelaraskan sistem hukum perbankan syariah dengan sistem perbankan konvensional tanpa mengabaikan prinsip-prinsip hukum Islam, serta penguatan substansi hukum melalui pembentukan peraturan perundang-undangan dan pengembangan Kompilasi Hukum Ekonomi Syariah (KHES). Aspek-aspek tersebut menjadi faktor penting dalam mewujudkan penyelesaian sengketa yang efektif dan berkepastian hukum di lingkungan Peradilan Agama.

Kata kunci: Kompetensi, Pengadilan Agama, Sengketa, Perbankkan Syari'ah, Indonesia

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INTRODUCTION

The theme of Islamic economics has become increasingly popular over the past decade. One of the main reasons for this development is the growing expression among Indonesian Muslims to interpret Sharia not merely as an abstract concept, but as an empirical and practical way of life. Empirical evidence shows that Indonesian Muslim communities increasingly adopt Sharia as an alternative framework for daily living. Terms such as Islamic banking, Islamic pawnshops, Islamic insurance, and Islamic capital markets have become familiar features of economic activity (Indra Bangsawan, 2017). The rapid growth of Islamic economics has gone hand in hand with the escalating development of Islamic banking.

There are fundamental differences between the Islamic banking system and the conventional banking system. First, the basic principle of Islamic economics is that transactions must be free from maysir (gambling), gharar (uncertainty), haram elements, riba (usury), and batil (invalid

transactions). This principle embodies values of prudence, trust, and collective welfare. Sharia principles are derived from the Qur'an and Hadith as the primary sources governing economic activities and transactions (Utama, 2020). In contrast, conventional banking is based on an interest-based system applied to both loans and deposits, whereby customers are charged or granted returns in fixed nominal amounts or percentages (Danisman et al., 2020).

Second, Islamic banking applies a profit-and-loss sharing system, whereas conventional banking relies on interest margins. Profit-sharing–based financing is believed to strengthen the economy because it emphasizes justice and honesty in economic activities. Under this system, returns are proportional to performance, which serves as the benchmark for determining outcomes and requires a high degree of integrity (Trisanty, 2018). Through profit-sharing mechanisms, Islamic banks are able to promote healthy and equitable investment practices, where all parties share both profits and potential risks, thereby creating a balanced relationship between banks and customers (Hasan, 2003:179; Lahrech et al., 2014). Conversely, conventional banking operates using interest rate systems and general contractual arrangements based on national regulations.

Third, although both banking systems embody principles of economic democracy and prudential standards, Islamic banking incorporates Sharia principles that are absent in conventional banking. Conventional banks are oriented toward a value-neutral system embraced by the general public, whereas Islamic banks are not solely profit-oriented in a worldly sense (duniawiyyah), but also aim for spiritual well-being (ukhrawiyyah). The operational system of conventional banking employs interest calculations on credit or loan instruments (investment notes), where interest represents an additional margin due to customers' deposits or loans (Lee & Isa, 2017).

The development of Islamic banking in Indonesia has accelerated significantly in recent years. Following the merger of three Islamic banks—Bank Syariah Mandiri, BNI Syariah, and BRI Syariah—into Bank Syariah Indonesia, the Islamic banking sector has been expected to grow even stronger. As of 2023, there were 14 Islamic commercial banks, 20 Islamic business units, 163 Islamic rural banks, and 20 conventional banks offering Islamic business units (National Committee for Islamic Finance, 2023). According to Islamic banking statistics, total Islamic banking assets reached IDR 541 trillion in February 2024, while assets of Islamic business units in the same quarter amounted to IDR 260 trillion. The Islamic banking sector has experienced significant growth, with asset expansion reaching approximately 30 percent annually (Financial Services Authority, 2024).

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Islamic banking plays a vital role in Indonesia's economy. It contributes to financial inclusion by providing access to financial services for broader segments of society. Islamic banks also offer financing for housing, micro and small enterprises, as well as medium and large businesses. Furthermore, Islamic banking contributes to the equitable distribution of income and wealth, enabling synergy with government efforts to reduce poverty and unemployment in Indonesia (Azqia et al., 2024). Another distinctive function of Islamic banks is their social role. Unlike conventional banks, Islamic banks provide social financial services such as qard funds, zakat, and other charitable contributions in accordance with Sharia principles. Islamic banks may also collect social funds derived from cash waqf and distribute them to waqf managers in line with the intentions of the donors (Mohammad, 2015).

From a legal perspective, however, the development of Islamic banking has not been fully aligned with the development of its legal framework in Indonesia. Numerous controversies and debates have emerged, resulting in pro and contra positions that have somewhat hindered legislative progress. Observations of regulatory developments in Islamic banking reveal a jurisdictional tug-of-war concerning the authority to resolve Islamic banking disputes between the District Courts and the Religious Courts. Two laws claim jurisdiction over the settlement of Islamic banking disputes: Law No. 21 of 2008 on Islamic Banking and Law No. 3 of 2006 concerning the jurisdiction of the Religious Courts.

Law No. 21 of 2008 governs Islamic banking and, under Article 1, defines Islamic banking as encompassing Islamic banks, Islamic business units, institutional structures, business activities, and operational processes in conducting Sharia-based financial activities. Furthermore, Article 55 of Law No. 21 of 2008 stipulates that disputes related to Islamic banking may be resolved through two channels: the Religious Courts and mechanisms outside the Religious Courts.

Meanwhile, Law No. 3 of 2006 serves as the primary legal basis for the implementation of Islamic banking dispute resolution in Indonesia. The absolute jurisdiction of the Religious Courts is set out in Article 49 of Law No. 3 of 2006, which provides that the Religious Courts are authorized to examine, adjudicate, and resolve cases at the first instance between Muslims in matters concerning marriage, inheritance, grants, waqf, zakat, infaq, almsgiving, and Islamic economics.

Another point of contention arises from Article 55 paragraphs (2) and (3) of Law No. 21 of 2008. These provisions introduce a choice of forum principle based on freedom of contract, allowing dispute resolution through deliberation, mediation, or litigation within the general court system.

The core issue faced by Islamic economic actors is the need for legal

certainty in resolving disputes. The existence of overlapping jurisdictions may result in inconsistent judicial decisions. In practice, disputing parties continue to utilize various forums to resolve Islamic banking disputes, potentially leading to constitutional issues and legal uncertainty. It is also evident that some Islamic banking institutions remain reluctant to bring disputes before the Religious Courts.

This paper examines the problem of jurisdiction in resolving Islamic banking disputes in Indonesia and identifies the institution that should hold authoritative competence in this area. It also analyzes the readiness of the Religious Courts in terms of strengthening human resources and developing substantive legal materials related to Islamic banking. In addition, this paper briefly discusses the sociology of Islamic economic law, illustrating the historical and sociological factors that support the placement of Islamic economic dispute resolution under the authority of the Religious Courts.

Previous studies have examined judicial authority in resolving Islamic banking disputes in Indonesia, including works by Guntur Rambey (2023), Ahmad Fikri Oslami (2023), Husni Kamal Nur (2023), Muhammad Syukran (2023), Andrew Shandy Utama (2020), and Ratih Agustin Wulandari (2023), who analyzed the development of Islamic banking dispute resolution regulations from a legal politics perspective. Amran Suadi (2021) examined Judicial Authority and the Role of the Religious Courts in the Settlement of Sharia Economic Disputes. While these studies share similarities with the present research in examining the competence of the Religious Courts in Islamic banking dispute resolution, this paper differs by further analyzing the readiness of institutional structures, legal politics, substantive law, and facilities and infrastructure of the Religious Courts in resolving Islamic banking disputes in Indonesia.

RESEARCH METHODS

This study constitutes legal research employing a conceptual normative approach. This approach aims to identify legal bases, legal principles, and sources of law, as well as to explore their philosophical and juridical meanings. The purpose of the conceptual normative approach is to develop legal arguments, theories, or new concepts in addressing problems arising from statutory regulations and other relevant legal literature. Primary data are derived from statutory provisions, legal journals, documentation, tertiary legal materials, and non-legal journals as supplementary sources.

To formulate the jurisdiction of the Religious Courts in the field of Islamic banking, this study employs two methods, namely literature review, normative statutory analysis, and structured interviews. The literature review is conducted by collecting and

analyzing previous studies. This approach is considered effective as it provides a comprehensive overview of a particular issue or serves as a foundation for further research. The literature review critically evaluates studies related to specific topics.

Meanwhile, the statutory approach analyzes laws and regulations normatively by examining their legal substance. Structured interviews were conducted with court clerks and judges of the Religious Courts in Makassar and Gowa. The purpose of these interviews is to obtain their perspectives and to confirm the competence of the Religious Courts in resolving Islamic economic disputes.

This research applies a legal analysis approach combined with innovative legal concepts. The method of interpretation used is comparative interpretation. In addition, the study employs discussion and deliberation (sharing and musyawarah) methods regarding statutory regulations, focusing on both the text and substance of the legislation.

RESULTS AND DISCUSSION

The Jurisdiction of the Religious Courts in the Settlement of Islamic Banking Disputes.

When discussing the authority of a judicial institution, jurisdiction is generally divided into two categories: absolute jurisdiction and relative jurisdiction. Absolute jurisdiction refers to authority based on the type or subject matter of cases that fall exclusively within the competence of a particular court. Relative jurisdiction, on the other hand, concerns authority based on territorial scope, including domicile and levels of courts (Lev, 1978).

From a sociological perspective, the resolution of Islamic economic disputes has long been practiced within Muslim communities. For Muslims, such mechanisms have functioned as living law and have been widely applied in practice. Within the framework of national law, Islamic law (including its legal and fiqh dimensions) constitutes one of the sources of national law that can be flexibly integrated with other legal sources whose substance is mutually acceptable. Islamic law may coexist as a source of national law alongside Western law and customary law (MD., 2009). Substantively, the existence of Islamic economics is not a new phenomenon in the Islamic world. Since the advent of Islam, the Qur'an and Hadith have regulated Islamic economic law, serving as the foundational framework for economic interaction and transactions.

The development of Islamic economics in Indonesia began with the emergence of Islamic banking. One notable aspect of this development concerns the resolution of economic disputes in relation to the jurisdiction of the Religious Courts. This authority is regulated under Law No. 3 of 2006 concerning the Amendment to Law No. 7 of 1989. Article 49 of this law stipulates that the Religious Courts are

authorized to examine and adjudicate Islamic economic disputes.

The elucidation of Article 49 provides definitions and details regarding the scope of Islamic economics. Islamic economics is defined as business or economic activities conducted in accordance with Sharia principles, encompassing eleven sectors: Islamic banking, Islamic microfinance institutions, Islamic insurance, Islamic reinsurance, Islamic securities, Islamic financing, Islamic pawnshops, Islamic pension funds, Islamic financial institutions, and other Sharia-based businesses (Najib et al., 2024). These eleven categories are not exhaustive or rigid but rather flexible in nature. Given the rapid development of Islamic economics, it is possible for additional forms of Sharia-based economic activities to emerge, such as Sharia-based corporations, Islamic bankruptcy proceedings, and Sharia-compliant business competition. Consequently, an increasing number of Islamic economic cases may arise that fall under the jurisdiction of the Religious Courts (D. Rahmi, 2014).

Differences of opinion regarding the expansion of fields beyond the aforementioned eleven categories raise an important question: do the Religious Courts possess the authority to examine and adjudicate cases that fall outside these sectors? If one accepts the premise that the Religious Courts are empowered to resolve economic disputes based on Sharia principles, then the expansion beyond the eleven categories also falls within their jurisdiction, provided that the disputes involve Sharia principles.

The definition of Sharia principles can be found in Article 1 point 12 of Law No. 21 of 2008, which states that Sharia principles are principles of Islamic law applied in banking activities based on fatwas issued by authorized institutions in the field of Sharia (Adibah, 2016). Furthermore, Article 2 of Law No. 21 of 2008 stipulates that Islamic banking activities, in addition to being based on Sharia principles, must also adhere to economic democracy and the prudential principle. Economic democracy emphasizes values of justice, togetherness, equity, and public benefit. The prudential principle refers to selectivity and accountability in banking management to ensure a sound, robust, and efficient banking system in accordance with statutory regulations (Rasyid Rizani et al., 2024).

Sharia principles, in essence, prohibit elements of riba. Riba refers to the extraction of unjust and invalid gains, such as exchanging identical goods of unequal quality or quantity, or loan transactions that impose conditions requiring repayment exceeding the principal due solely to the passage of time. Sharia principles also prohibit maisir, which involves speculative or gambling-like transactions characterized by uncertainty and chance. In addition, transactions containing gharar where the object of the transaction is unclear, not owned,

uncertain in existence, or not deliverable at the time of the contract, such as purchasing fruit while it is still flowering on the tree are prohibited. Transactions involving unlawful (haram) elements likewise violate Sharia principles (Irsyad, 2023).

Article 26 of Law No. 21 of 2008 provides that: (1) business activities as referred to in Articles 19, 20, and 21, as well as Sharia-based products and services, must comply with Sharia principles; (2) the fatwas referred to in paragraph (1) are issued by the Indonesian Council of Ulama; (3) such Sharia principles are incorporated into Bank Indonesia regulations; (4) in the formulation of these regulations, Bank Indonesia establishes a Sharia Banking Committee; and (5) further provisions concerning the formation, membership, and duties of the Sharia Banking Committee are regulated by Bank Indonesia regulations (Madjid et al., 2023).

Based on the foregoing provisions, it can be concluded that all civil-law Islamic economic disputes fall within the absolute jurisdiction of the Religious Courts. The Religious Courts are therefore authorized to receive, examine, adjudicate, and resolve such disputes, unless expressly stipulated otherwise by statutory regulations.

The Principle of Islamic Personality and the Principle of Voluntary Submission

Law No. 7 of 1989, Article 1 point 1, stipulates that "the Religious Courts are courts for Muslims." This provision represents the realization of the principle of Islamic personality (asas personalitas keislaman). Furthermore, Article 49 of Law No. 3 of 2006 provides that the Religious Courts have the duty and authority to examine, adjudicate, and resolve cases at the first instance between persons who profess Islam in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, almsgiving, and Islamic economics.

These two provisions indicate the existence of the principle of Islamic personality, which constitutes a fundamental principle serving as a guideline in the determination and application of law amid the plurality of legal systems binding legal subjects (Zahraa, 1995). The principle of Islamic personality functions as both a limitation and a binding norm for legal subjects who are subject to Islamic law (Septiani, 2022). Legal subjects falling under the jurisdiction of the Religious Courts must meet the following criteria: (1) the disputing parties must both be Muslims; (2) the civil dispute must concern matters of marriage, inheritance, wills, grants, zakat, waqf, almsgiving, or Islamic economics; and (3) the legal relationship must be based on civil matters governed by Islamic law (Sayyaf, 2017).

Where the principle of Islamic personality is fulfilled, the case falls within the absolute jurisdiction of the Religious Courts, and its resolution must be based on the principles of

Islamic law (Permata & Ali, 2022). This principle requires that, at the time the legal relationship arises, both legal subjects profess Islam and that the relationship itself is founded upon Islamic law (Rohman et al., 2023). Accordingly, Islamic legal scholars view the principle of Islamic personality as the starting point for the theory of legal capacity.

The phrase "between persons who profess Islam" in Article 49 of Law No. 3 of 2006 may also be interpreted to include individuals or legal entities that voluntarily "submit themselves" to Islamic law. Thus, legal subjects who may litigate before the Religious Courts include: (1) persons who profess Islam; (2) persons who do not profess Islam; and (3) legal entities that conduct business activities based on Islamic law (Sahroni, 2020).

This interpretation indicates that non-Muslim legal subjects and legal entities may also become parties to Islamic economic disputes. The key principle in this context is the principle of voluntary submission (asas penundukan diri). Submission to Islamic law may occur either voluntarily or by virtue of legal obligation. In this regard, Mukti Ali emphasizes that discrimination against litigants is impermissible, and that distinctions based on ethnicity, religion, race, lineage, nationality, or similar factors are not allowed (N. Rahmi & Taufik, 2022). Such differences do not affect the applicability of Islamic economic law to disputes subject to judicial examination and adjudication.

Conflicts among Islamic economic actors do not arise solely between Muslims, but also between Muslims and non-Muslims. This phenomenon reflects a legal development in which economic activities based on Sharia principles attract participants from diverse backgrounds. In practice, customers of Islamic banking institutions are not exclusively Muslim but also include non-Muslims. Therefore, it is appropriate that Islamic economic disputes are regulated under Law No. 3 of 2006 and classified as falling within the absolute jurisdiction of the Religious Courts.

In this context, submission occurs either by the will of the disputing parties or as mandated by law (Bagenda et al., 2023). However, the application of the principle of voluntary submission cannot be uniformly applied to all matters under the absolute jurisdiction of the Religious Courts, particularly due to the expansion of the Religious Courts' competence to include Islamic economic disputes (Conita, 2023). Where a dispute involves non-Muslim legal subjects, such parties are required to submit to Islamic law insofar as statutory regulations so mandate. A legal subject or legal entity is deemed to have submitted to Islamic law when it engages in economic transactions governed by Sharia principles, provided that the dispute falls within the absolute jurisdiction of the Religious Courts as

stipulated in Article 49 of Law No. 3 of 2006.

From the foregoing analysis, it can be understood that any citizen, whether Muslim or non-Muslim, who conducts business activities based on Islamic Sharia principles is subject to the jurisdiction of the Religious Courts in the event of a dispute, since the parties have voluntarily entered into transactions using Sharia-based contracts. Such contracts signify voluntary submission to Islamic law. For example, where two individuals—one Muslim and one non-Muslim—enter into a business partnership using a musharakah contract, any dispute arising therefrom must be resolved before the Religious Courts, as the contractual relationship is founded upon a Sharia-based agreement.

Choice of Forum in the Settlement of Islamic Banking Disputes.

Law No. 3 of 2006, particularly Article 49, reinforces the jurisdiction of the Religious Courts. However, this provision differs from Article 55 of Law No. 21 of 2008, which introduces a choice of forum for the settlement of Islamic economic disputes. Article 55 of Law No. 21 of 2008 provides as follows:

1. The settlement of Islamic banking disputes shall be conducted by courts within the Religious Court system.
2. In the event that the parties have agreed upon an alternative dispute resolution mechanism other than that referred to in paragraph (1), the dispute shall be resolved in accordance with the terms of the contract.
3. The dispute resolution mechanism referred to in paragraph (2) must not contravene Sharia principles (Law No. 21 of 2008).

The interpretation of these provisions indicates that parties are granted the option to select an alternative forum based on the contents of the contract, as stipulated in paragraph (2). Accordingly, the resolution of Islamic economic disputes may be conducted through deliberation (musyawarah), banking mediation, or litigation before the general courts, provided that such mechanisms comply with Sharia principles. This arrangement gives rise to dualism in jurisdiction over Islamic economic dispute resolution, potentially resulting in overlapping authority and legal uncertainty.

In fact, this issue has been addressed by the Constitutional Court in Decision No. 93/PUU-X/2012. Nevertheless, the problem has not been entirely resolved, as the Court's decision merely provided an interpretation of Article 55 paragraph (2) without annulling the provision itself. In practice, many Islamic banking institutions continue to resolve disputes through alternative forums (Aprianto, 2023).

Several arguments assert that Islamic banking disputes fall within the

realm of contract law and are governed by the principle of freedom of contract. Under this principle, disputing parties are entitled to choose the forum for resolving their economic disputes. Article 1338 paragraph (1) of the Indonesian Civil Code (KUHPerdata) stipulates that "all legally executed agreements shall bind the parties as law." This implies that where a contract expressly designates a particular institution for dispute resolution, the dispute must be resolved before that institution. Such contractual agreement serves as binding law for both parties. This principle is further reinforced by Article 1338 paragraph (2) of the Civil Code, which provides that "agreements cannot be revoked except by mutual consent of the parties or for reasons declared sufficient by law" (Ishak et al., 2021).

This raises a critical question: is it permissible to have multiple dispute resolution forums for a single substantive law involving the same legal subjects? According to Harahap, Islamic banking disputes must be resolved in accordance with the absolute jurisdiction of a specific court. This is essential to ensure orderly judicial authority within each jurisdictional framework and to uphold legal certainty and justice. Without such regulation, judicial authority and law enforcement would become disorganized and ineffective (Aryanto, 2012).

Bagir Manan argues that the existence of different forums may be permissible where the substantive law or the legal subjects involved differ from those generally applicable. However, if multiple forums are applied while the substantive law and legal subjects remain the same, such a situation would result in disparities in judicial decisions and ultimately lead to legal uncertainty (Hasan, 2010).

Yasardin contends that the contradictory interpretation of Article 55 paragraph (2) of Law No. 21 of 2008 does not negate the provision itself, and thus cannot justify the involvement of general courts in Islamic banking disputes. The Constitutional Court's decision affirms the authority of the Religious Courts in resolving Islamic banking disputes, as previously established under Law No. 3 of 2006 on the Religious Courts (Rasyid & Putri, 2019). Yasardin further asserts that if an Islamic banking dispute is brought before a general court, the claim should be declared Niet Ontvankelijke Verklaard (NO), meaning that it is inadmissible due to formal defects, such as obscuur libel, ne bis in idem, or violations of absolute or relative jurisdiction. Nonetheless, in practice, several Islamic banking disputes continue to be filed, examined, and adjudicated by general courts. In response to this phenomenon, Yasardin notes that such decisions are ultimately annulled by the Supreme Court at the cassation stage (Sulaikin Lubis, 2018).

The establishment of absolute jurisdiction in the settlement of Islamic banking disputes cannot rely solely on judicial consensus within the Supreme

Court. It is therefore recommended that the Supreme Court issue formal regulations, either in the form of a Supreme Court Circular Letter (Surat Edaran Mahkamah Agung—SEMA) or a Supreme Court Regulation (Peraturan Mahkamah Agung—PERMA), to explicitly affirm the absolute jurisdiction of the Religious Courts in resolving Islamic banking disputes. Such regulations should be widely disseminated to courts, academics, legal practitioners, and Islamic banking institutions to ensure compliance, thereby preventing future disputes from being brought before the general courts (Rasyid & Putri, 2019).

The application of legal principles such as lex posterior derogat legi priori (a later law overrides an earlier law) and lex specialis derogat legi generali (a specific law overrides a general law) must also be carefully examined. At first glance, Law No. 21 of 2008 on Islamic Banking might be perceived as modifying Law No. 3 of 2006 on the Religious Courts. However, these principles apply only within the same legal regime. For instance, both laws must operate within the same branch of law, such as criminal law or civil law. Law No. 3 of 2006 governs the Religious Courts, while Law No. 21 of 2008 regulates Islamic banking; thus, they belong to distinct legal regimes. Furthermore, the Religious Courts Law constitutes a lex specialis of the Judicial Power Law, whereas the Islamic Banking Law is a lex specialis of the Banking Law. Accordingly, Law No. 21 of 2008 cannot override Law No. 3 of 2006, nor can it transfer the jurisdiction of the Religious Courts to another judicial body (Hafi & Budiman, 2017).

In the author's view, there is an urgent need to reaffirm the absolute jurisdiction of the Religious Courts in the settlement of Islamic banking disputes. Despite existing regulations, many Islamic banking institutions continue to resolve disputes through alternative forums. Such practices risk perpetuating legal uncertainty and overlapping jurisdiction. A clear and unequivocal affirmation of jurisdiction is therefore essential to ensure legal certainty and the orderly administration of justice.

The Readiness of the Religious Courts (Legal Structure, Legal Policy, and Substantive Law) in Resolving Sharia Banking Disputes in Indonesia

Following the Constitutional Court Decision Number 093/PUU-X/2012, which affirms that the absolute authority to resolve Sharia banking disputes lies within the exclusive jurisdiction of the Religious Courts, an important question arises regarding the readiness of the Religious Courts in terms of legal structure, substantive law, and legal policy in resolving Sharia economic disputes. According to Amran Suadi, the role of the Religious Courts in exercising authority over the Sharia economic sector is twofold: first, to provide legal justification and justice for disputing parties; and second, to

contribute to the development of Sharia economics in Indonesia (Suadi, 2020).

As is well known, legal developments in the economic sector particularly in contracts based on Sharia principles have progressed significantly. The need for legal resolution in this field through litigation has become a necessity and serves as a last resort when amicable settlement cannot be achieved. One essential legal component that must be adequately prepared is the legal structure, particularly the competence of Religious Court judges who are capable of examining and resolving Sharia economic disputes as part of their jurisdiction.

Pursuant to Article 19 of Law Number 48 of 2009 on Judicial Power, judges are state officials who exercise judicial authority as regulated by law. Similarly, Law Number 7 of 1989 on Religious Courts defines judges as state officials entrusted with judicial authority. These provisions affirm that judges are appointed, dismissed, and sworn in according to statutory requirements. The qualifications and oath-taking of Religious Court judges are regulated under Article 13 of Law Number 7 of 1989.

The statutory requirements for judges in the Religious Courts are largely similar to those applicable to judges in the General Courts and Administrative Courts, with certain distinctions. Judges in the General Courts and Administrative Courts are required to hold degrees in general law or administrative law, whereas judges in the Religious Courts must possess degrees in Sharia or Islamic law. Furthermore, being a Muslim constitutes an absolute requirement for judges of the Religious Courts, a condition that does not apply to judges in the General Courts.

After the Religious Courts were granted jurisdiction over Sharia economic disputes, doubts emerged regarding their readiness particularly concerning the capability of Religious Court judges to adjudicate such cases. This skepticism stems from the fact that Sharia economic disputes represent a relatively new area within the jurisdiction of the Religious Courts. Concerns have been raised regarding judges' understanding of Sharia economic contracts, developments in Sharia economics, and the limited number of cases handled thus far compared to traditional matters such as marriage, inheritance, wills, grants, waqf, and almsgiving.

In terms of judicial qualifications, not all Religious Court judges are authorized to adjudicate Sharia economic disputes. Judges must first obtain certification through specialized education and training programs on Sharia economic law conducted by the Supreme Court. Provisions regarding the requirements and appointment of Sharia economic judges are regulated under Supreme Court Regulation Number 5 of 2016 concerning the Certification of Sharia Economic Judges. Furthermore, Article

14 paragraph (2) of Supreme Court Regulation Number 14 of 2016 on Procedures for Resolving Sharia Economic Disputes allows for the appointment of judges who have completed functional training in Sharia economics during the transitional period.

Several progressive measures have been undertaken by the Supreme Court to enhance the qualifications of Religious Court judges in resolving Sharia economic disputes. These include collaborations with relevant institutions such as universities, the Indonesian Council of Ulama (MUI), and the Ministry of Religious Affairs. For instance, the Supreme Court has partnered with public and private universities offering undergraduate and postgraduate programs in Sharia Economics and Sharia Economic Law. Additionally, judges have participated in short training programs on Islamic finance at the Markfield Institute of Higher Education (MIHE) in Leicester, the United Kingdom, and attended Sharia economic training at the Judicial Training Institute of Imam Muhammad ibn Saud Islamic University in Riyadh, Saudi Arabia, in 2015. Judges are also encouraged to continuously enhance their understanding of Sharia economic law and contemporary fiqh developments. Moreover, the Supreme Court, in cooperation with MUI, DSN, Basyarnas, OJK, and DPS, has established certification mechanisms for Sharia Economic Judges.

Regarding legal policy readiness, legal politics is often associated with political policy (Irawan, 2018). In practice, Mahfud MD conceptualizes legal politics through a socio-political juridical approach, asserting that legal progress is influenced by the political configuration of the ruling regime, which significantly affects the resulting legal products (Mahfud, 2000). Lawrence M. Friedman further emphasizes that law responds significantly to social dynamics to achieve certain objectives (Friedman, 2005).

Mashudi defines legal politics as a guideline or framework for the formulation and implementation of law aimed at achieving state objectives. Legal politics serves as a mechanism to position law as a means of attaining national goals and responds to the question of how law should be utilized within the formal structure of the state. Juridically, the application of Sharia economic law in Indonesia is strongly grounded in Article 29 of the 1945 Constitution (Mashudi, 2016).

In the context of Sharia economic legal politics in Indonesia, it may be interpreted as the establishment of Sharia economic legal institutions as an absolute necessity due to the rapid development of Sharia economic practices. Formal legal regulations governing Sharia economics are those that have undergone state positivization processes. Once formalized, such regulations derive their authority from

the state, apply to all Indonesian citizens, and are enforceable.

Sharia economic regulations are designed to strengthen the growth and development of Sharia economic practices. The government's role as a regulator is to facilitate the advancement of Sharia economics by creating a competitive and healthy business environment. Regulatory objectives include fostering public trust in Sharia-based institutions and business practices, as well as ensuring legal certainty and security for business actors and Sharia financial institutions (Badruzaman, 2019). Relevant regulations include Law Number 7 of 1992 and Law Number 10 of 1998 on Banking, Law Number 38 of 1999 on Zakat Management, Law Number 3 of 2006 on Religious Courts, Law Number 40 of 2007 on Limited Liability Companies, Law Number 40 of 2014 on Insurance, Law Number 21 of 2008 on Sharia Banking, Law Number 19 of 2008 on State Sharia Securities (SBSN), and Law Number 33 of 2014 on Halal Product Assurance (JPH).

From the perspective of substantive law readiness, the establishment of the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah/KHES) represents a significant development. The KHES emerged as a response to Law Number 3 of 2006 and was codified through Supreme Court Regulation Number 2 of 2008. It constitutes an academic contribution by Indonesian scholars in the field of Sharia Economic Law, serving as a codified collection of fiqh-based legal opinions on Sharia economics (Abdillah & Susilawati, 2020).

The KHES offers several advantages: first, it serves as a primary reference for judges in adjudicating Sharia economic cases; second, it promotes uniformity of ijtihad by minimizing divergent legal references that could undermine legal certainty; and third, existing Bank Indonesia Regulations (PBI) are insufficient as sources of substantive Sharia economic law because they focus primarily on Sharia banking, whereas Sharia economic disputes encompass broader issues. Similarly, fatwas issued by the National Sharia Council (DSN) are limited in scope and legal authority (Iyan, 2017).

Furthermore, DSN fatwas lack strong constitutional standing within Indonesia's legal hierarchy and are often concise, requiring detailed interpretation. As adjudicative authority over Sharia economic disputes rests exclusively with Religious Court judges, comprehensive codification of Sharia economic law is necessary to ensure legal certainty and provide standardized references. Although jurisprudence in Sharia economic cases remains limited, prior judicial decisions may still be referenced provided they do not conflict with Sharia principles. In such cases, past rulings are evaluated through a fiqh-based perspective to assess their Sharia compliance (Hermawan & Sumardjo, 2016).

The introduction of the KHES provides a new solution for justice seekers in the Religious Courts and facilitates judges in rendering equitable decisions in Sharia economic disputes amid limited positive law regulations. Although its legal status is confined to a Supreme Court Regulation (PERMA), the KHES holds binding authority for judges alongside other legal sources. Undeniably, the KHES has contributed to the codification and unification of Sharia Economic Law reforms, fulfilling both substantive and procedural legal needs. Nevertheless, judicial discretion remains crucial, as judges' ijtihad ultimately determines decisions rendered *ex aequo et bono.*

CONCLUSION

The resolution of Sharia banking disputes must be conducted through courts with appropriate jurisdiction in order to ensure legal certainty and justice. In this regard, the Religious Courts constitute the judicial institutions vested with such authority. The jurisdiction of the Religious Courts in the field of Sharia economics encompasses eleven sectors, namely: Sharia banking, Sharia microfinance institutions, Sharia insurance, Sharia reinsurance, Sharia securities, Sharia financing, Sharia pawnshops, Sharia pension funds, and Sharia-based business activities. The fundamental principles of Sharia economics require that transactions be free from elements of riba (usury) and gharar (uncertainty), and that the goods or services transacted are lawful (halal).

The principles of Islamic personality and voluntary submission apply to individuals and legal entities that willingly subject themselves to Islamic law. Accordingly, the legal subjects eligible to litigate before the Religious Courts include: first, individuals who adhere to Islam; second, non-Muslim individuals; and third, legal entities that conduct business activities based on Islamic law. As institutions of law enforcement in Indonesia, the Religious Courts are closely interconnected with the legal structure, national legal policy, and substantive law. The synergy among these three aspects significantly influences the quality of law enforcement, legal development, and judicial competence in Indonesia.

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