


Optimizing the Improvement of Judge Competence in Settlements of Sharia Economic Disputes in Religious Courts

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Abstract

Introduction: This is motivated by the increasingly widespread sharia economic disputes being handled by the Religious Courts, so that an institution is needed that can create the character of judges that are in accordance with the expectations of society. The institution is the Research and Development Agency for Legal and Judicial Education and Training of the Supreme Court of the Republic of Indonesia (Balitbang Diklat Kumdil MA-RI).

Purposes of the Research: This paper describes the legal symptoms or legal facts related to the ability of religious court judges to decide cases related to sharia economics and studies the education and training curriculum for judges within the scope of the Supreme Court of the Republic of Indonesia No. 4 of 2019 concerning Procedures for Simple Claims and Supreme Court Regulation No. 14 of 2016 concerning Procedures for Settlement of Sharia Economic Disputes

Methods of the Research: This paper uses a normative juridical approach.

Results of the Research: Implementation of the curriculum at the Ministry of Education and Training Research and Development of the Supreme Court 'Kumdil' aims to improve the ability to organize training. The capacity building referred to is one of the certifications of sharia economic judges which is aimed at forming the quality of judges' resources in the technical field of justice who are professional, have integrity and are independent in resolving sharia economic disputes.

Keywords: Legal Protection; Traditional Knowledge; Sui Generis.

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INTRODUCTION

Broadly speaking, the purpose of the state is contained in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which reads: to protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate life nation and participate in carrying out world order based on freedom, eternal peace and social justice. To achieve these national goals, sustainable development efforts are a series of comprehensive, directed and integrated developments, including development in the field of law and government apparatus. One of them is the Supreme Court of the Republic of Indonesia as a judicial institution.

The judiciary is an agency that has a technical-juridical nature that functions to adjudicate violations in the implementation of the constitution or laws and regulations that are carried

out by government institutions widely and are independent in carrying out their duties and functions.¹

In Indonesia the Supreme Court is a Judicial Institution which is a high institution in judicial power. As the highest state institution in the field of justice, the Supreme Court stands alone and is free from the intervention of any institution. As an effort to strengthen the administration of judicial power and create an integrated justice system, the government passed Law no. 48 of 2009 concerning Judicial Power in lieu of Law no. 4 of 2004 concerning Judicial Power.

One of the main functions of the judicial power is to decide cases by forcefully applying material law, on the other hand it can be seen that the important meaning of the judicial power is to decide legal disputes that arise between community members and between community members and the government. The authority to decide cases aims to realize general involvement in society through fair decisions.² In Indonesia there are 4 (four) judicial environments. However, the Constitution also provides an opportunity for special courts to be created under each of these judicial bodies, namely: 1) General Court environment, including civil and criminal disputes; 2) The Religious Courts Environment, includes family law such as marriage, divorce, and others; 3) State Administrative Court Environment, including disputes between citizens and State Administrative Officers; And 4) The Military Justice Environment, only includes crimes or violations committed by the Military.

In principle, law enforcement is only carried out by the judiciary which is constitutionally referred to as a judicial body.³ Thus, only the judiciary under the auspices of the Judicial Authority culminates in the Supreme Court. In Law no. 48 of 2009 expressly stated that those with the authority and function to administer justice are only judiciary bodies established under a law. Beyond that it is not justified because it does not meet the formal and official requirements and is contrary to the principle of under authority of law.⁴

Religious courts are legal state courts, apart from being special courts, namely Islamic courts in Indonesia, which are authorized by state laws and regulations, to realize Islamic material law within the limits of their powers. In subsequent developments, the Religious Courts as stipulated in Law no. 7 of 1989 is no longer in accordance with the development of the legal needs of society and Indonesian constitutional life as stipulated in the 1945 Constitution. Subsequently Law No. 3 of 2006 concerning Amendments to Law no. 7 of 1989 which was later amended by Law no. 50 of 2009 concerning Religious Courts.⁵ After the promulgation of Law No. 50 of 2009 concerning the Religious Courts, there has been a major change to the authority of the Religious Courts. The Religious Courts are courts that have absolute competence in handling sharia disputes as stipulated in Law no. 50 of 2009 concerning the second amendment to Law no. 7 of 1989 concerning the Religious Courts. Of course, in this case, judges in the Religious Courts are required to have broad abilities and

¹ A. Rahman H. I, "Sistem Politik Indonesia" (Yogyakarta, 2007), 215.

² Bahder Johan Nasution, "Sejarah Perkembangan Kekuasaan Kehakiman Indonesia," *Jurnal Inovatif* 7, no. 3 (2014): 13.

³ Abdul Manan, *Etika Hakim Dalam Menyelenggarakan Peradilan: Suatu Kajian Dalam Sistem Peradilan Islam* (Jakarta: Prenada Media Group, 2007), 23.

⁴ Hasbi Hasan, *Kompetensi Peradilan Agama Dalam Penyelesaian Sengketa Ekonomi Syariah* (Jakarta: Gramata Publishing, 2010), 137.

⁵ Ani Yumarni, "Tinjauan Hukum Status Wali Atas Perkawinan Anak Angkat," *Jurnal Hukum De'Rechtsstaat* 1, no. 1 (2015): 13.

insights related to the development of the Religious Courts, especially those concerning cases related to sharia economics and the like.

In principle, judges are people who are considered to know and understand the law. Judges also have broad authority from anyone's influence on the decisions handed down. However, even though they have freedom, it does not mean that judges make decisions arbitrarily. The judge must consider many things related to the facts that he has witnessed while examining the accused at trial, because the judge is the embodiment and reflection of the values of justice.⁶ Judges are the main actors in law enforcement in courts who have more roles than prosecutors, lawyers and clerks as well as executors of the functions of judicial power. A judge has a sizable task in the judicial power system, judges play an important role in achieving justice which is of course the ideal of every legal subject.⁷

Judges are state officials who exercise judicial power as regulated in laws and regulations. The judge is a position that has the responsibility to receive, process and decide cases so that they do not cause any more problems in the future. If the law is unclear, incomplete, or even non-existent, the judge must seek the law or make legal discoveries (*rechtsvinding*).⁸ Thus, the judge has great power over the parties to the dispute with regard to the problem or conflict that is before the judge or judges. This also means that judges in carrying out their duties fully bear a great responsibility and must be aware of their responsibilities, because a judge's decision can have far-reaching consequences on the lives of people affected by the scope of the decision.

Judges in Indonesia must adhere to the Indonesian legal system which is based on Pancasila and the 1945 Constitution, which can be found in the basic structure of the Indonesian legal system, namely the basic law contained in the Preamble to the 1945 Constitution. In the legal system, it is a benchmark, reference and basis for what and how the law is in positive law according to the views of the Indonesian people.⁹ The big role of judges is in line with the principle that the Republic of Indonesia is a state based on law and its consequences according to the 1945 Constitution. This is determined by the existence of a judicial power that is independent/free regardless of the influence of government power. The independence of judges is closely related to impartiality or impartiality of judges, both in examination and in making decisions.

Judges who are not independent cannot be expected to be neutral or impartial in carrying out their duties. The implementation of the independence of judges and the judiciary is actually limited mainly by the legal rules themselves. Legal provisions, both from a procedural and substantial or material perspective, constituting limits for judicial power so that in carrying out its independence it does not violate the law and act arbitrarily.¹⁰ With regard to expectations and efforts to get good judges, who have integrity and professionalism, it requires the commitment of the relevant institutions that have the authority to recruit and select judges, namely by prioritizing the principles of transparency, participation, accountability, the right man in the right place and objectivity. Therefore, judges must be broad-minded in applying the law. Ensure that laws and regulations are

⁶ Manan, *Etika Hakim Dalam Menyelenggarakan Peradilan: Suatu Kajian Dalam Sistem Peradilan Islam.*, 124.

⁷ Wildan Suyuthi Mustafa, *Kode Etik Hakim* (Jakarta: Prenada Media Group, 2013), 48.

⁸ Sudikno Mertokusumo dan A. Pitlo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 2013).

⁹ Sahrawandi K. Lubis, *Etika Profesi Hukum* (Jakarta: Sinar Grafika, 2012), 29.

¹⁰ Wahyu Wiriadinata, "Komisi Yudisial Dan Pengawasan Hakim Di Indonesia," *Jurnal Hukum Dan Pembangunan* 4, no. 4 (2013): 560.

properly and fairly enforced. If the application of laws and regulations will cause injustice, then the judge must side with justice and set aside the law, the judge is not merely a mouthpiece/trumpet of the law.

The Supreme Court of the Republic of Indonesia, in this case, as the highest institution tasked with supervising the judicial and non-judicial administration of the implementation of the justice system in the Religious Courts, pays serious attention, especially in implementing the functions and roles of judges as mandated in Law no. 48 of 2009 concerning Judicial Power.¹¹ The Supreme Court as the highest judicial institution in Indonesia has appreciated the principle of judge integrity. The main principle of this development is that judges have the personality to be unshakable, dare to resist temptation and intervention, and always try to carry out their duties in the best way possible in order to achieve good goals.¹²

In accordance with the words of Articles 4 and 5 of Law no. 7 of 1989 jo. Law No. 3 of 2006 jo. Law No. 50 of 2009 concerning Religious Courts. The Religious Courts are domiciled in the capital city of the regency/city and their jurisdiction covers the regency/city, in which the judicial technical, organizational, administrative and financial development is carried out by the Supreme Court.¹³ In resolving disputes, the Religious Courts use formal law and material law. Formal law in the form of dispute settlement procedures as stipulated in the Supreme Court Regulations and procedural law in the Civil Code. While the material law is in the form of the Sharia Economic Law Book (KHES), Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), Bank Indonesia Regulations (PBI), and Financial Services Authority Regulations (POJK) and other laws and regulations.¹⁴

This is as stated in the decision of the Religious Court of the Special Region of Yogyakarta regarding guarantee cases in murabahah contract disputes, the judge is of the opinion that the position of collateral in a murabaha contract is strong, as is the case with positive/conventional law, Mortgage and Fiduciary Laws can be applied full although in the realm of shari'ah, different from mudharabah and musyarakah. If it's murabaha, the sale and purchase uses wakalah, if you don't pay in installments it becomes a debt, so the guarantee can be executed immediately.¹⁵

Some examples of the implementation of the competence of the Religious Courts in the field of Islamic Economics are related to the implementation of the *murabahah bil wakalah* contract in the civil case of Islamic economic disputes Number 0001/Pdt.GS/2020/PA. In terms of the DSN-MUI fatwa, the pwt is in accordance with the provisions stipulated in the DSN-MUI fatwa number DSN-MUI Number 04/DSN-MUI/IV/2000 concerning *Murabahah*. However, there is evidence of an agreement to sell that was made separately from the agreed agreement, making the contract less perfect from a contract perspective and less in accordance with the provisions contained in the DSN-MUI fatwa which discusses

¹¹ Ani Yumarni, "Kesadaran Hukum Masyarakat Dalam Perkara Mediasi Berdasarkan PERMA No 01 Tahun 2008," *Jurnal Sosial Humaniora* 5, no. 2 (2014): 58-59.

¹² Wiriadinata, "Komisi Yudisial Dan Pengawasan Hakim Di Indonesia.", 565.

¹³ Ani Yumarni, *Mediasi Dalam Perkara Perceraian Di Pengadilan Agama* (Depok: RajaGrafindo Persada, 2019)., 56.

¹⁴ Muhammad Ridwan, "Pola Penyelesaian Sengketa Perbankan Syariah Pada Pengadilan Agama Di Indonesia," *Jurnal Hukum Ekonomi Syariah* 4, no. 2 (2020).

¹⁵ Restudiyani, "Kedudukan Jaminan Dalam Sengketa Pembiayaan Syariah Pada Putusan Pengadilan Agama Di Daerah Istimewa Yogyakarta," in *The National Conferences Management and Business (NCMAB)*, 2018, 599.

Murabaha.¹⁶ Meanwhile, the rules used in the execution of mortgages in the Religious Courts are in accordance with the recommendations of the DSN Fatwa No: 92/DSN-MUI/IV/2014 and the Civil Code (KUH Perdata) in accordance with the execution rules in force in the Religious Courts. in accordance with the rules of ushul fiqh "Tradition Becomes Law". Besides that, the execution of Islamic banking mortgage rights in the Religious Courts is to enforce Islamic material civil law, so that the Religious Courts become more authoritative.¹⁷ Normatively, Islamic law that applies in Indonesia is Islamic law in the field of muamalah, namely the law that regulates the relationship between humans and the natural surroundings. Therefore, for Indonesian people who are Muslim, they are normatively bound by Islamic law that has been enacted, whether it is enforced independently as statutory regulations such as Law No. 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning Religious Courts.¹⁸

The case currently being handled by the Religious Court is based on Article 49 of Law No. 7 of 1989 jo. Law No. 3 of 2006 jo. Law No. 50 of 2009 concerning the Religious Courts, the Religious Courts have the duty and authority to examine, decide and settle cases at the first level between people of Muslim faith in the field of Marriage, Inheritance, Wills, Grants, Endowments, Zakat, Infaq, Sadaqoh and Sharia Economics.¹⁹ It is necessary to increase the ability of judges to master various scientific disciplines and knowledge related to issues of wills, grants, waqf, zakat, infaq, shadaqoh and sharia economics. Of course this is motivated by the increasingly widespread sharia economic disputes being handled by the Religious Courts as the absolute competence possessed by the Religious Courts.

For this reason, judges are expected to be chosen from the best sons and daughters, who are educated through a strict educational process and are continuously honed to sharpen their skills. Judges must be brewed with multidimensional experiences in various fields, as well as undergo a continuous spiritual process to become individuals with integrity. So we need an institution that can create the character of judges in accordance with the expectations of society. the institution is the Research and Development Agency for Legal and Judicial Education and Training of the Supreme Court of the Republic of Indonesia.²⁰

METHOD

The approach used in this study is a normative legal approach. This study attempts to describe legal symptoms or legal facts related to the ability of religious court judges to decide sharia economic cases. Data collection was carried out using library research, then analyzed qualitatively.

RESULTS AND DISCUSSION

In principle, the objective of sharia economic dispute resolution is to find a solution to solving an economic problem that occurs between one party and another party that carries

¹⁶ Endang Eko Wati; Fetri Fatorina, "Endang Eko Wati Dan Fetri Fatorina, Kuasa Menjual Jaminan Pada Pembiayaan Akad Murabahah Bil Wakalah (Studi Analisis Perkara Nomor : 0001/Pdt.G.S/2020/PA.Pwt)," *At-Turost: Journal of Islamic Studies* 08, no. 01 (2021): 127.

¹⁷ Suhaimi, "Eksekusi Hak Tanggungan Di Bank Syariah Pasca Undang-Undang Nomor 3 Tahun 2006," *Jurnal Qiyas* 2, no. 1 (2017): 39.

¹⁸ Eka Susylawati, "Landasan Hukum Positif Pemberlakuan Hukum Islâm Di Indonesia," *Jurnal Al-Ihkam* VI, no. 1 (2011): 138-39.

¹⁹ Yumarni, *Mediasi Dalam Perkara Perceraian Di Pengadilan Agama.*, 94-96.

²⁰ Mahkamah Agung RI, "Badan Penelitian Dan Pengembangan KUMDIL," 2018.

out economic activities based on sharia economic principles and principles. So as to create a decision that can provide legal justice, legal certainty, and legal benefits for both parties to the litigation.²¹ The Religious Courts are one of 4 (four) courts in Indonesia whose existence is legally recognized through Law Number 48 of 2009 concerning Judicial Power. The Religious Courts have an equal position with other environmental court institutions. Besides that, the Religious Courts also have the status of a legal system.²²

In accordance with the theory of the legal system, one of the components of the legal system is the purpose of the legal system. Because the Religious Courts are a legal system, the Religious Courts must also have clear objectives. The objectives of the Religious Courts are the same as those for the establishment of four judicial institutions in Indonesia, namely to uphold law and justice based on Pancasila in accordance with Article 2 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power.

A. Analysis of Formal and Material Legal Sources for Judges in the Scope of Religious Courts in Conducting Legal Considerations for Disputes in the Field of Sharia Economics

The legal rules that exist in the Religious Courts in terms of their functions consist of material law and formal law. Formal law is the law that regulates how to implement and maintain material law or often called procedural law (Mas 2004). The formal law that applies in the Religious Courts is stated in Article 54 of Law Number 7 of 1989 as amended by Law Number 50 of 2009 concerning Religious Courts. The source of sharia economic law in question is a source of formal law and a source of material law. The following are legal sources that can be used as a legal basis for resolving sharia economic disputes:²³

1) Sources of Formal Legal

The following are formal legal sources of sharia economic dispute resolution, namely:²⁴

- a) *Het Herzeine Inlandsch Reglement* (HIR). The provisions of this procedural law are intended for the male and foreign easterners who are in Java and Madura;
- b) *Rechtreglement Voor De Buittengewesten* (R.Bg). The provisions of this procedural law are intended for foreign male and eastern groups who are outside Java and Madura who have had a case before the Landraad. These two Rules of Procedure Law are enforced within the Religious Courts, except for matters specifically regulated in Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.
- c) *Burgerlijke Wetboek* (BW) or what is also called the Civil Code, especially book IV on Evidence contained in Article 1865 to Article 1993.
- d) *Regulation op de Burgerlijk Rechtsvordering* (B. Rv). The procedural law contained in the B.Rv is intended for European groups who have litigation before the Raad van Justitie and Residentie gerecht.
- e) Law Number 48 of 2009 concerning Judicial Powers.

²¹ Muaidi, "Penyelesaian Sengketa Dalam Hukum Ekonomi Syari'ah," *TAFALQUH: Jurnal Hukum Ekonomi Syariah Dan Ahwal as Syakhsiyah* 5, no. 2 (n.d.): 6-7.

²² Qodri Azizy, *Eklektisme Hukum Nasional: Kompetisi Antara Hukum Islam Dan Hukum Umum* (Yogyakarta: Gama Media, 2002), 144.

²³ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Prenada Media, 2015), 27.

²⁴ Suparman Usman, *Hukum Islam: Asas-Asas Dan Pengantar Studi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta: Gaya Media Pratama, 2011), 31.

- f) Law Number 14 of 1985 in conjunction with Law Number 5 of 2004 in conjunction with Law Number 3 of 2009 concerning the Supreme Court of the Republic of Indonesia which contains civil proceedings and matters related to cassation in the proceedings at the Supreme Court.
- g) Law Number 2 of 1986 jo, Law Number 8 of 2004 jo, Law Number 49 of 2009 concerning General Courts. This law regulates the composition and powers of the Judiciary within the General Court environment as well as the procedures for proceedings within the General Court environment.
- h) Supreme Court Jurisprudence.
- i) Supreme Court Circular Letter, Republic of Indonesia.

2) Source of Material Law

Besides the formal law that applies in the Religious Courts, there is also material law. The most important legal sources to be used as a basis for adjudicating sharia economic cases after the Al-Quran and As-Sunnah as the main sources, include: (Rosadi 2015)

a) Legislation

The laws and regulations referred to in this case are all regulations related to Islamic economics, namely: 1) Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking; 2) Law Number 3 of 2004 concerning Amendments to Law Number 23 of 1999 concerning Bank Indonesia; 3) Law Number 21 of 2008 concerning Islamic Banking; 4) Law Number 24 of 2004 concerning Deposit Insurance Corporation; 5) Law Number 19 of 2008 concerning State Sharia Securities; 6) Law Number 41 of 2004 concerning Waqf; 7) Law Number 23 of 2011 concerning Management of Zakat; 8) Bank Indonesia Regulation (PBI) Number: 6/24/PBI/2004 dated 14 October 2004 concerning Commercial Banks conducting business activities based on Sharia Principles; 9) Bank Indonesia Regulation (PBI) Number: 6/17/PBI/2004 dated 1 July 2004 concerning Rural Banks Based on Sharia Principles; 10) Decree of the Board of Directors of Bank Indonesia Number: 21/48/Kep./Dir/1988 concerning certificates of deposit; 11) Bank Indonesia Circular Letter Number: 28/32/UPG dated 4 July 1995 concerning Bilyet Giro; 12) Various Bank Indonesia Decrees and Circulars relating to Sharia Banking business activities.

b) Fatwa of the National Sharia Council

The National Shari'ah Council is under the MUI, this institution has the authority to issue fatwas regarding products and services in the business activities of banks that carry out business activities based on shari'ah principles.

c) *Aqad* (Agreement) or (Contract)

In adjudicating cases of shari'ah economic disputes, the main source of law is the agreement, while the others are only complementary. Therefore, the judge must understand that an agreement has met the requirements and pillars of the validity of an agreement.

d) *Fiqh* and Usul Fiqh

Fiqh is a source of law that can be used in resolving shari'ah economic disputes. Most of the muktabar fiqh books contain various muamalah issues which are used as guidelines in solving shari'ah economic problems.

e) Habits

In order to be used as a source of law to serve as a basis for adjudicating Islamic banking cases, the practice of Islamic economics has at least three requirements,

namely:²⁵ The act is carried out by certain people repeatedly for a long time; 1) This custom is already a legal belief of the community; 2) There are legal consequences if the custom is violated.

If the custom in the field of sharia economics has these three conditions, then it can be used as a source of law as a basis for adjudicating sharia economic cases.

f) Compilation of Sharia Economic Law (KHES)

The emergence of KHES is the result of one of the policies of the Supreme Court to realize Law Number 3 of 2006, which gave new authority, namely completing the sharia economy.

g) Islamic Economic Jurisprudence and Doctrine

Jurisprudence that can be used as a source of law in this case is a judge's decision that has actually gone through the process of "examination" and "notation" from the Supreme Court with a recommendation as a decision that has met the legal standards of jurisprudence.²⁶

The type of material law most widely used by judges as a basis for considering decisions in the Religious Courts is the Compilation of Islamic Law. But even though the Compilation of Islamic Law has been written, it is not yet a written law, because the Compilation of Islamic Law is not stipulated by the State. While the Religious Courts are State Courts, the material law used should be laws established by the State.²⁷ According to Lawrence M Friedman, law enforcement issues must be viewed from 3 elements, namely legal substance, legal structure, and legal culture. If these three elements are reduced to a more operational level, law enforcement will lead to reforming the judiciary by increasing the professionalism of judges, rearranging laws and regulations and enhancing legal culture.²⁸

The three elements in the legal system have their respective roles, as follows:

1) Strong legal substance

In the context of sharia economics, the substance here is the integration of the principles of Islamic law into national regulations in Indonesia, either in the form of amendments to regulations or making special regulations governing the implementation of sharia principles in the economy.

2) A complete legal structure or regulation implementing device.

Law enforcement agencies such as the judiciary or institutions that oversee and enforce regulations must exist in a legal system. The existence of the religious court in Indonesia as a dispute resolution institution in the field of sharia economics is proof of commitment in developing the sharia economy.

3) Legal culture (community culture)

Legal culture plays a very large role in determining the implementation of a regulation. Without a strong legal culture, the enforcement and implementation of law to the community will experience problems.

In the context of Islamic economics, the substance here is the integration of the principles of Islamic law into national regulations in Indonesia, either in the form of amendments to regulations or the making of special regulations governing the implementation of sharia

²⁵ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Bandung: Citra Aditya Bakti, 2009), 99.

²⁶ Ahmad Kamil; M Fauzan, *Kaidah-Kaidah Hukum Yurisprudensi* (Jakarta: Khairulbayan, 2004), 11.

²⁷ Abdul Hamid S. Attamimi, *Kedudukan Kompilasi Hukum Islam Dalam Sistem Hukum Nasional* (Jakarta: Gema Insani Press, 2008), 153.

²⁸ Ramdani Wahyu Sururi, *Sosiologi Hukum: Perspektif Baru Studi Hukum Dalam Masyarakat*, tp. (Bandung, 2006), 99.

principles in the economy. Specifically in adjudicating sharia economic disputes, the legal sources for religious courts used are the Al-Quran and Hadith, then legal regulations and legislation related to sharia economic regulations in Indonesia include: a) Law No. 19 of 2008 concerning Surat Berharga Syariah Nasional (SBSN) as the basis for the development of Islamic financial instruments; b) Law No. 21 of 2008 concerning Islamic Banking; c) Kompilasi Hukum Ekonomi Syariah (KHES); d) Jurisprudence; e) Habits as the rules of fiqh, "al 'âdah al-muhakkamah"; f) The Fatwa of the National Sharia Council which is the result of the ijma' of the Ulama.

In its development, the legal source for religious courts to adjudicate and resolve sharia economic disputes uses the Compilation of Sharia Economic Law (KHES). Unlike the Islamic Law Compliance, KHES is enforced as applied law through Supreme Court Regulation No. 2 of 2008. Although there are still many shortcomings, KHES is seen as sufficient as material law to anticipate sharia economic disputes submitted to the Religious Courts.

Elements of legal instruments in the implementation of sharia economic dispute resolution include formal law and material law. The procedural law that applies to the Religious Courts to resolve sharia economic disputes is the procedural law that applies to the General Courts, unless there are special rules governing it. This provision is regulated in Article 54 of Law no. 50 of 2009 concerning the Second Amendment to Law no. 7 of 1989 concerning the Religious Courts. The special rules governing the procedures for resolving sharia economic disputes are regulated by Supreme Court Regulation No. 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases.

In this case, there are 2 (two) forms of shari'ah economic dispute resolution that can be carried out through litigation in Indonesia, namely:

1) Settlement of Cases with Simple Procedures (Small Claim Court)

The legal basis for a simple lawsuit refers to Supreme Court Regulation No. 2 of 2015 concerning Simple Claim Procedures. Supreme Court Regulation No. 2 of 2015 concerning Procedures for Simple Claims as referred to hereinafter amended/updated by Supreme Court Regulation No. 4 of 2019 which contains many new norms.

2) Settlement of Cases with Ordinary Procedures

Settlement of shari'ah economic disputes with ordinary procedures is an ordinary lawsuit that is guided by the applicable civil procedural law unless specifically stipulated in the PERMA. This is as stated in the Supreme Court Regulation No. 14 of 2016 concerning Procedures for Settlement of Sharia Economic Disputes.

The formation of a legal culture in the context of Islamic economics must cover all social aspects and the application of Islamic economic law. Therefore the regulation of Sharia law must be market oriented, so that it can be implemented in practice.²⁹

B. Implementation of the Curriculum at the Supreme Court Kumdil Education and Training Center to Improve the Ability of Judges in Resolving Sharia Economic Disputes.

²⁹ Bambang Sutiyoso, *Aktualita Hukum Dalam Era Reformasi* (Jakarta: Raja Grafindo Persada, 2004), 57.

At this time the Islamic economic business in Indonesia is growing rapidly. This is also accompanied by the emergence of disputes or disputes in the field of sharia economics between people who are Muslims which also include people/individuals or legal entities which themselves voluntarily submit themselves to Islamic law regarding matters that become authority of the Religious Courts.

Indonesian society, which is predominantly Muslim, is one of the driving factors for the development of Islamic law in Indonesia, especially with regard to muamalah. Shari'ah economic institutions are growing, starting from Islamic banking institutions, Islamic insurance, Islamic capital markets, and Islamic pawnshops. Of course, this development also has an impact on the development of disputes or conflicts in its implementation. So far, if there is a conflict in the field of sharia economics, it must go through a general court.³⁰ In addition, there are several reasons put forward by Islamic economic activists regarding the choice of resolving disputes internally (kinship), including the following:³¹ 1) Disputed scope factor; 2) Economic Factors; 3) The factor of maintaining good relations.

While in Article 55 of Law no. 21 of 2008 concerning Islamic Banking states: 1) Settlement of sharia banking disputes is carried out by courts within the religious courts; 2) In the event that the parties have agreed to settle a dispute other than as referred to in paragraph (1), the settlement of the dispute is carried out in accordance with the contract; 3) Dispute settlement as referred to in paragraph (2) may not conflict with sharia principles.

The provisions of Article 55 paragraph (1) mentioned above are in line with Article 49 letter I of Law no. 3 of 2006 as amended by Law no. 50 of 2009 concerning the Religious Courts states that the authority of the religious courts is to resolve economic disputes including Islamic banking. Explanation of Article 55 paragraph (2) of Law no. 21 of 2008 concerning Islamic Banking states that what is meant by dispute resolution is carried out according to the contents of the contract by means of:³² a) Discussion; b) Mediation; c) Through the National Sharia Arbitration Board (Basyarnas) or other arbitration institutions; and/or; d) Through the Court within the general Court environment.

Therefore, it is hoped that judges will be able to professionally handle sharia economic cases based on Law no. 50 of 2009 regarding the Second Amendment to Law No. 7 of 1989 concerning the Religious Courts and other regulations related to the sharia economy, and the results of the decisions are of high quality by including considerations that fulfill the elements of justice for society. Certification training academic achievements can also be used as a basis for promotions and transfers.

In handling sharia economic cases, a judge must at least master two things, namely procedural law and micro practices as well as sharia macro economic practices. Efforts have been made by the Supreme Court in order to prepare human resources for judges who are ready to accept sharia economic dispute cases by organizing sharia economic training for judges. In fact, formally the Supreme Court also recruited Religious Court judges to carry out advanced/postgraduate studies of sharia economics in collaboration with Universities.

³⁰ Ahmad Khotibul Umam, "Hukum Penyelesaian Sengketa Ekonomi Syariah Di Indonesia," *Jurnal Risalah* 1, no. 1 (2016): 6.

³¹ Tim Peneliti PEKKA & USAID PEKKA, "Akses Terhadap Keadilan: Pemberdayaan Perempuan Kepala Keluarga Di Indonesia" (Jakarta, 2010), 62.

³² Umam, "Hukum Penyelesaian Sengketa Ekonomi Syariah Di Indonesia.", 8.

For cases in the small claims court category, it is sufficient for the Chief Justice to appoint one judge. Meanwhile, if it is an ordinary lawsuit, the head of the court appoints a panel of judges. A single judge in a simple lawsuit case and a panel of judges in an ordinary lawsuit case are required to be certified. These judges have been declared to have passed the certification of sharia economic judges held by the Supreme Court, which refers to PERMA Number 5 of 2016 concerning Certification of Sharia Economic Judges. If the Religious Court does not yet have a certified judge, then the head of the court can appoint a judge who has attended sharia economic functional training.³³ Currently, there are 117 judges within the scope of the Religious Courts who have sharia economic certificates. Among them consisted of 40 High Court Judges and 77 First Instance Judges. Meanwhile, the judges of the Religious Courts who have participated in sharia economics training are more than 1,000 people.

As stated in Article 1 paragraph (1) Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges. Sharia economic judges are religious court judges who have been certified and appointed by the chairman of the Supreme Court. Furthermore, in Article 3 it is explained that certification aims to increase the effectiveness of handling sharia economic cases in the Religious Courts/Shari'iyah Courts as part of efforts to uphold sharia economic law that fulfill a sense of justice.

Every judge who will become a sharia economic judge must meet administrative requirements, competence, integrity, attend training and be declared by the selection team. Administrative requirements include being physically and mentally healthy and serving as a judge for 8 years. Competency requirements include being able to understand sharia economic law norms, being able to apply law as an instrument in trying sharia economic cases, being able to make legal discoveries, and being able to apply procedural guidelines in adjudicating sharia economic cases.³⁴

The aim of organizing the Sharia Economic Judge Certification Training is to form professional, integrity, and independent judicial technical human resources in resolving disputes in the field of sharia economics. The objective of organizing the Sharia Economic Judge Certification Training is to produce competent, skilled and professional judicial technical staff in carrying out their duties, authoritative in maintaining the dignity of the judiciary, and behaving well in accordance with the Judge's code of conduct.

The competencies built on the Sharia Economic Judge Certification Education and Training are competencies that include the following:

- 1) Ability to internalize the Code of Ethics for Judges and the Code of Conduct for Judges in managing the implementation of agency activities;
- 2) Ability to explain Civil Contract Law in general and International Private Business Contracts;
- 3) Ability to explain comprehensively about products and contracts for the collection and distribution of funds in Islamic banking, both in theory and in practical implementation;
- 4) Ability to apply laws relating to services in resolving banking disputes;

³³ Hermansyah, "Membedah PERMA Tata Cara Penyelesaian Perkara Ekonomi Syariah," *Mahkamah Agung RI*, 2021, www.badilag.mahkamahagung.go.id.

³⁴ Yenni Wiranti et. al., "Penerapan Gugatan Sederhana Dalam Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Hukum Islam* 20, no. 2 (2020): 161-62.

- 5) Ability to apply sharia insurance and reinsurance law in resolving the case dispute;
- 6) Ability to apply sharia capital market dispute resolution techniques;
- 7) Ability to apply Sharia Pawn Law in adjudicating sharia economic disputes;
- 8) Ability to explain the concept of sharia business comprehensively;
- 9) Ability to apply techniques for resolving default disputes and unlawful acts;
- 10) The ability to carry out the execution of mortgage rights, fiduciary rights, and arbitral awards in resolving sharia economic disputes in accordance with applicable legal provisions;
- 11) The ability to explain comprehensively about the cancellation of the arbitral award;
- 12) Ability to implement principles and procedural law in adjudicating sharia economic cases in accordance with applicable regulations;
- 13) Ability to apply waqf law in resolving endowment disputes;
- 14) Ability to explain comprehensively about Alternative Dispute Resolution, Execution of Sharia Arbitration, and Cancellation of the Decision;
- 15) Ability to explain aspects related to sharia contract law and its problems;
- 16) Ability to apply Zakat Law in resolving Zakat Cases;
- 17) The ability to understand the subject matter, and administrative aspects of organizing the Education and Training for sharia economic judge certification, and participants getting to know one another;
- 18) Ability to understand the Islamic capital market and its operational system to be analyzed and find solutions to the institutions visited;
- 19) Ability to diagnose the findings of Field Observations and reflect on findings of problems in the field based on concepts/theories acquired in class;
- 20) Ability to compile procedures for making decisions on sharia economic cases in a comprehensive manner.³⁵

The curriculum structure of the Islamic Economics Judge Certification Training curriculum consists of groups of basic material, core material and supporting material. In general, the curriculum structure contains brief descriptions, learning outcomes, learning outcome indicators, subject matter, learning methods, media and time. After participating in the Sharia Economic Judge Certification Education and Training, participants are expected to be able to improve their skills in the form of legal technical capacity; technical skills in applying the law, as well as creating professional and moral judges.

CONCLUSION

The formal source of law used in disputes in the field of sharia economics still refers to the Civil Procedure Code in force in Indonesia and Supreme Court Regulation Number 4 of 2019 concerning Procedures for Simple Claims and Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Disputes. Meanwhile, material legal sources come from Law Number 50 of 2009 concerning the Religious Courts and Law Number 21 of 2008 concerning Sharia Banking. According to Lawrence M Friedman, law enforcement issues must be reviewed from 3 (three) legal elements, namely legal substance, legal structure, and legal culture. In the context of Islamic economics, the substance here is the integration of the principles of Islamic law into national regulations in

³⁵ M. Furqonsyah, "Kompetensi Hakim Peradilan," 2023.

Indonesia. Then the legal structure in question is the Religious Courts as a dispute resolution institution in the field of sharia economics. Furthermore, legal culture plays a very large role in determining the implementation of a regulation. Without a strong legal culture, the enforcement and implementation of law to the community will experience problems. The implementation of the curriculum at the Supreme Court's Kumdil Education and Training Center aims to improve the ability of judges to resolve sharia economic disputes. The structure of the Sharia Economic Judge Certification Training curriculum consists of groups of basic material, core material and supporting material. In general, the curriculum structure contains brief descriptions, learning outcomes, learning outcome indicators, subject matter, learning methods, media and time. Judges who have attended the Training will receive a Certification of Sharia Economic Judges. Based on Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges, if there are no certified judges in the Religious Courts, then the head of the court can appoint judges who have participated in Islamic economic functional training. For now, Religious court judges who have sharia economic certificates totaled 117 people. Among them consisted of 40 High Court Judges and 77 First Instance Judges. Meanwhile, the judges of the Religious Courts who have participated in sharia economics training are more than 1,000 people.

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