P-ISSN 2621-5403
https://ejournal.unida.gontor.ac.id/index.php/muamalat
Vol. 8, No. 1 June (2025).
DOI: 10.21111/muamalat.v8i1.14676
Pages: 1-12

Islamic Financial Disputes: The Low Propensity for Litigation in Indonesia's Religious Courts

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Keywords:
Indonesia's Religious Courts, Islamic economics, interest, society

Abstract:
Since the birth of Law. No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning Religious Courts made the authority of the Religious Courts extended from merely resolving divorce and inheritance cases to the authority to resolve sharia economic cases. However, sharia economic cases that go to the Religious Courts are relatively few compared to other cases. This study aims to find out the causes of low public interest in bringing sharia economic problems to the Religious Courts. This research is a qualitative legal research, using a sociological approach. This study found that there were at least three things that caused the low public interest in bringing sharia economic issues to the Religious Courts, namely (1) the public's ignorance of the authority of the Religious Courts to resolve the sharia economy (2) the court process which takes a long time (3) the community delays the deliberation pathway

Kata Kunci:
Pengadilan Agama Indonesia, Ekonomi Islam, Kepentingan, Masyarakat

Abstrak:
Sejak lahirnya Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama menjadikan kewenangan Peradilan Agama diperluas dari sekedar menyelesaikan perkara perceraian dan waris menjadi kewenangan menyelesaikan perkara ekonomi syariah. Akan tetapi, perkara ekonomi syariah yang masuk ke Peradilan Agama relatif sedikit dibandingkan dengan perkara lainnya. Penelitian ini bertujuan untuk mengetahui penyebab rendahnya minat masyarakat dalam membawa permasalahan ekonomi syariah ke Peradilan Agama. Penelitian ini merupakan penelitian hukum kualitatif, dengan menggunakan pendekatan sosiologis. Penelitian ini menemukan setidaknya ada tiga hal yang menyebabkan rendahnya minat masyarakat dalam membawa permasalahan ekonomi syariah ke Peradilan Agama, yaitu (1) ketidaktahuan masyarakat terhadap kewenangan Peradilan Agama dalam menyelesaikan ekonomi syariah (2) proses peradilan yang memakan waktu lama (3) masyarakat menunda-nunda jalur musyawarah.

Introduction

Religious Courts (Pengadilan Agama)(Firdaus et al. 2024) constitute a specialized judicial body in Indonesia with jurisdiction over Muslim citizens, handling both civil cases involving Muslims and matters of Islamic justice. Their legal standing is formally recognized under Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power, which was subsequently amended by Law No. 4 of 2004 on Judicial Power. (Anshori 2007)

During the New Order era under President Soeharto's leadership (1966-1998), Indonesia's Religious Courts maintained limited jurisdiction, encompassing only narrow aspects of Islamic family law - specifically marriage, divorce, inheritance, wills, and waqf (Islamic endowments). Broader applications of Islamic civil law, including matters of Islamic economics, remained outside their judicial authority.

The post-Reformasi period (post-1998) marked a significant transformation, particularly through the expansion of the Courts' jurisdiction to include cases involving ZISWAF (zakat/almsgiving, infaq/voluntary charity, sedekah/donations) and sharia-compliant economic disputes. (Aripin 2008).

However, the jurisdiction granted under Law No. 3 on Religious Courts faced significant challenges in implementation. Its provisions conflicted with Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, as well as rulings by the National Sharia Council (DSN, Dewan Syariah Nasional). Furthermore, human resource limitations—particularly the lack of expertise among Religious Court judges in commercial matters—hindered effective adjudication of sharia-compliant economic cases. Many judges lacked experience in trade-related disputes, leaving them ill-equipped for this expanded mandate (Hasan 2010)

In fact, the Religious Courts handle relatively few sharia economic cases compared to the thousands of other cases related to divorce, inheritance disputes, adultery accusations, and more. Below is the data on sharia economic cases received and decided by Indonesia's Religious Courts.

TABLE 1: The State of Sharia Economic Cases in Religious Courts Over the Last Three Years

Year	Carryover Cases from Previous Years	Annual Case Intake	Active Case Volume	Perkara Cabut	Case of Withdrawal	Remaining Cases Not Yet Resolved
2022	48	496	544	141	331	772
2023	73	540	613	167	377	69
2024	15	441	456	125	321	10

Note: The details are data from Islamic economic cases in the court of first instance. The data is from the Annual Report of the Badilag (Religious Court) of the Supreme Court

Although the Religious Court has been provided with legal grounds to handle Islamic economic cases, the public's interest in bringing Islamic economic cases to the Religious Court remains low. Therefore, the focus of this study is to identify the reasons behind the low public interest in the Religious Court in resolving Islamic economic cases.

The literature review relevant to the issues in this study can be found in several research findings listed below:

Astanti et al. examined the authority of the Religious Court in handling Islamic banking cases. Using a sociological juridical research method, it was found that the Law on Islamic Banking No. 21 of 2008 has granted authority to the District Court to resolve Islamic banking cases. One of the provisions established in Law No. 21 of 2008 is Article 55, paragraph (1), which regulates the place of settlement for Islamic banking cases. This article states that 'The settlement of Islamic banking cases shall be conducted by the court within the Religious Court system.' However, the provisions in paragraph (2) and paragraph (3) of Article 55 offer the possibility of resolving the case elsewhere, as long as there is an agreement on the place of settlement made by the parties before the agreement. In other words, if the parties agree that the case will be resolved in the District Court, it does not violate the law.(Astanti, Heryanti, and Juita 2019)

Rasyid and Putri conducted a study on the authority of institutions in resolving Islamic banking cases. They began their discussion with the expanded absolute competence of the Religious Courts, which occurred following the amendment of Law

No. 7 of 1989 on Religious Courts with Law No. 3 of 2006. However, a controversy arose after the explanation of Article 55, paragraph (2), also granted authority to the general courts to resolve Islamic banking cases. Although this dualism of authority was resolved through the Constitutional Court decision No. 93/PUU-X/2012, information from the field shows that several Islamic economic institutions continue to resolve their cases in the District Court. (Rasyid and Putri 2019).

Baihaki and Prasetya discussed the absolute authority of the Religious Courts in resolving Islamic economic cases following the Constitutional Court Decision No. 93/PUU-X/2012. They found a dualism in the authority to adjudicate Islamic economic cases between the Religious Court and the District Court, due to a conflict in legal regulations, namely Article 55, paragraph (2) of Law No. 21 of 2008 and Article 49 of Law No. 3 of 2006, as well as Article 28D, paragraph (1) of the 1945 Constitution, which guarantees the right of every individual to legal certainty. Ultimately, the Religious Court was declared the sole judicial institution authorized to resolve Islamic economic cases, following the issuance of Constitutional Court Decision No. 93/PUU-X/2012. (Baihaki and Prasetya 2021)

Bahri examined the role of the Religious Court in resolving Islamic economic cases. He did not focus on the juridical review, such as the dualism of authority between the Religious Court and the District Court that was resolved by Constitutional Court Decision No. 93/PUU-X/2012. Instead, he discussed the process of resolving Islamic economic cases and the examination process of Islamic economic cases in the Religious Court. (Bahri 2020)

Rizki and Salam discussed the role of the Religious Court in resolving Islamic economic issues. The research findings show that, although many cases under the jurisdiction of the Religious Court have unique characteristics distinct from general civil cases, the Religious Court does not yet have its own procedural law. Compared to other cases, the Religious Court handles a relatively small number of Islamic economic cases. The competence of Religious Court judges has been the main focus since they were granted the authority to resolve Islamic economic cases. (Rizki and Salam 2019)

Putri J et al. conducted a study on the authority of the Religious Court in resolving Islamic banking cases. They focused on the changes in the legislation of the Religious Court, specifically the first amendment from Law No. 7 of 1989 to Law No. 3 of 2006, which included 42 articles that were added or amended. In the second amendment, from Law No. 7 of 1989 to Law No. 50 of 2009, 24 articles were added or amended. The changes in the authority of the Religious Court from Law No. 7 of 1989 to Law No. 3 of 2006 involved three main points: the expansion of authority, the change

of the venue for case resolution, and the addition of responsibilities. Furthermore, after the enactment of Law No. 50 of 2009, the essence of Article 53 of Law No. 7 of 1989 remains the same, with all four paragraphs now expanded into five paragraphs.(Putri and Andriani 2022)

This study is very important because, in previous research on the competence of the Religious Court in resolving Islamic economic cases, there has been no research addressing the low public interest in bringing Islamic economic cases under their jurisdiction. The aim of this study is to identify the causes of the low public interest in this regard. Therefore, the research question that this study seeks to answer is: What are the reasons behind the low public interest in bringing Islamic economic cases to the Religious Court?

Methodology

This qualitative legal research(Firdaus 2022) with a sociological approach aims to understand the public's interest in the competence of the Religious Court to handle Islamic economic cases.

The primary data consists of laws related to the Religious Court, specifically Law No. 3 of 2006 concerning the amendment of Law No. 7 of 1989 on Religious Courts. Meanwhile, the secondary data consists of the results of semi-structured interviews with several Religious Court judges and Islamic economic practitioners.

Results and Discussion

A. History and Development of Religious Courts

Regarding their naming, status, and position, Religious Courts (Pengadilan Agama) have undergone numerous transformations. This institution existed prior to Indonesia's independence and continues to operate today. A brief historical overview of Religious Courts can be outlined as follows:

B. The Religious Court in the Islamic Sultanate Era

The development of the Religious Court during the Islamic Sultanate era varied according to the process of Islamization carried out by religious officials and scholars in each region. One of the actions taken by the king or sultan was the establishment of the Religious Court. Family law matters, such as marriage and inheritance, were included under their jurisdiction

The Hindu court based on the Pradata law was transformed into the Serambi Court during the reign of Sultan Agung of Mataram from 1613 to 1645. This court was held in the mosque's veranda (serambi). The penghulu (*qadhi*), accompanied by several pesantren scholars, served as the head of the court. The Sultan never opposed the penghulu and the accompanying scholars, although he held authority over the court's decisions (Hasan 2010).

The court system in the Sultanate of Banten was established in accordance with Islamic law. The Hindu court was no longer in effect during the reign of Sultan Hasanuddin because there was only one judge. The Religious Court of the Sultanate of Cirebon was not based on the Qur'an and Hadith, but rather on the *Papakem Cirebon* legal code, which had been influenced by Islamic law. The court was presided over by seven ministers, each acting as a representative of the three sultans.

Islamic law in Aceh was unified with the court system and implemented in a hierarchical structure. In other regions, religious judges were usually appointed by local leaders, such as in South and East Kalimantan, as well as South Sulawesi. In some areas, like North Sulawesi, North Sumatra, and South Sumatra, there were no separate religious courts, and religious judges directly performed judicial duties. (Anshori 2007).

C. The Religious Court During the Colonial Era

Legally, based on a decree by the Dutch King, King Willem III, dated January 19, 1882, Number 24, published in Staatsblad 1882 Number 152, on August 1, 1882, the Serambi Court was officially recognized by the Dutch government as a legitimate judicial body. During the Dutch colonial era, the Religious Court was known as the *Priesteraaden*, which later became known as the *Rapat Agama* or *Raad Agama*. These courts were also spread across areas where the Government Court was established and became part of the Indigenous Courts, or in the areas of princely states, they were integrated into the Swapraja Courts.

Unlike during the Dutch colonial era, the Japanese occupation saw limited interference with the Religious Court, as Japan was focused on confronting the Allies. As a result, Japan adopted a sympathetic policy toward Muslims in Indonesia. This allowed efforts to restore the *Sanyo Kaigi* (Advisory Council) as a judicial authority, particularly in matters of inheritance and endowment (*waqf*). However, these efforts by the Islamic group failed due to opposition from nationalist factions. (Bisri 2003).

D. The Religious Court from the Early Independence Era to the Reform Era

In the early years of Indonesia's independence, the Religious Court did not undergo significant changes compared to the colonial period. This was because Indonesia was focused on resisting the return of Dutch colonization. However, in the following years, based on the provisions of Article 98 of the Interim Constitution and Article 1, paragraph (4) of Emergency Law No. 1 of 1951, the government issued Government Regulation No. 45 of 1957 regarding the establishment of Religious Courts/Shari'ah Courts outside Java and Madura. According to the provisions of Article 1, 'In areas where there are District Courts, a Religious Court/Shari'ah Court shall be established, with its jurisdiction being the same as that of the District Court.'

Meanwhile, according to the provisions of Article 11, 'Unless otherwise provided, a Provincial Religious Court/Shari'ah Court shall be established in the provincial capital, with jurisdiction covering one or more districts or provinces as designated by the Minister of Religious Affairs.

Subsequently, in the 1970s, particularly with the enactment and enforcement of Law No. 14 of 1970, in conjunction with Law No. 35 of 1999, and Law No. 1 of 1974 along with its implementing regulations, the Religious Court underwent significant changes. The implementation of Law No. 14 of 1970, in conjunction with Law No. 35 of 1999, granted the Religious Court its place as one of the courts in the Indonesian judicial system, exercising judicial power within the Unitary State of the Republic of Indonesia (NKRI). With the enactment of Law No. 1 of 1974, the authority of the Religious Court was enhanced. The number of cases handled across Indonesia increased dramatically, from an average of 35,000 cases before the marriage law was enacted to nearly 300,000 cases at that time.

On December 29, 1989, Law No. 7 of 1989 was enacted and published in the State Gazette of the Republic of Indonesia No. 49 of 1989, along with the Supplement to the State Gazette No. 3400. Overall, this law brought significant changes to the administration of Religious Courts in Indonesia, including changes to the legal basis for court operations, the status of the court and judges, the authority of the court, the procedural law, the court administration, and the protection of women. (Bisri 2003).

During the reform era, the Religious Court underwent significant changes in its position and authority. Previously, the Religious Court was under the Ministry of Religious Affairs. However, with the enactment of Law No. 3 of 2006, which amended Law No. 7 of 1989, its jurisdiction was expanded, including handling Islamic economics cases. The Religious Court is now under the auspices of the Supreme Court.(Aripin 2013).

E. The Authority of the Religious Court in Islamic Economic Affairs

Law No. 3 of 2006 broadly outlines the absolute jurisdiction of the Religious Court in the field of Islamic banking. Article 49 of this law states that 'the Religious Court is tasked with and has the authority to examine, adjudicate, and resolve cases at the first level between Muslim individuals in the field of... i) Islamic economics.' Furthermore, according to the explanation of this article, Islamic economics refers to 'activities or business practices carried out according to Islamic principles, which among other things includes: a) Islamic banks...'

The regulations governing banking operations in Indonesia include Islamic banking, which falls under three areas of law: civil law, criminal law, and

constitutional law. The four areas of jurisdiction of the Religious Court in the field of Islamic banking are as follows:

F. The Jurisdiction of the Religious Court in Islamic Banking Covers All Civil Islamic Banking Cases

The Religious Court in the field of Islamic banking can only handle civil cases. This is in accordance with Article 49 of Law No. 3 of 2006, which states, 'The Religious Court is tasked with and has the authority to examine, adjudicate, and resolve cases at the first level between Muslim individuals...,' as well as the explanation of this article, which mentions that 'case resolution is not limited to Islamic banking, but also includes other areas of Islamic economics.' According to this article, the Religious Court has no jurisdiction to examine or adjudicate Islamic banking cases in the criminal or constitutional law fields. Islamic banking cases in the criminal and constitutional law fields fall under the jurisdiction of the District Court. Meanwhile, administrative cases remain under the exclusive jurisdiction of the Administrative Court (Tata Usaha Negara /TUN)

G. Including Cases Between Islamic Banks and Non-Muslim Parties

The explanation of Article 49 of Law No. 3 of 2006 establishes the principle of voluntary submission to Islamic law, which is one of the key principles set forth in the law. It states that 'What is meant by "between Muslim individuals" includes individuals or legal entities that voluntarily submit to Islamic law regarding matters that fall under the jurisdiction of the Religious Court in accordance with the provisions of this article.'

Therefore, it can be clearly understood that the parties who can be involved in cases at the Religious Court are not limited to Muslim individuals, but also non-Muslim individuals, as long as the dispute relates to the operations of an Islamic bank that is conducted in accordance with Islamic principles. (Bisri 2003).

H. Excluding Arbitration Clauses

In the field of Islamic banking, the jurisdiction of the Religious Court does not extend to cases involving agreements that contain an arbitration clause. In the business sector, this is already quite common. Juridically, the inclusion of an arbitration clause is indeed permissible, in accordance with the explanation of Article 3, paragraph (1) of Law No. 14 of 1970 regarding judicial power (this law has been amended to Law No. 35 of 1999 and Law No. 4 of 2004), which states that although a case can be settled outside of court through reconciliation or arbitration, the decision of the arbitrator can only be enforced after the court grants permission or an order for execution (Susilawetty, 2013). This means that the arbitration forum itself must handle disputes related to the agreement or contract in question.

I. Concerning the Enforcement of Shariah Arbitration Decisions in Islamic Banking

In accordance with legal provisions, the Religious Court has the authority to order the enforcement of an arbitration decision if the parties involved in the case refuse to voluntarily implement it. However, the arbitration body itself holds the authority to carry out the enforcement. Therefore, in line with Article 61 of Law No. 30 of 1999 and the Supreme Court Circular No. 08 of 2008 concerning the Enforcement of Shariah Arbitration Awards, a Shariah arbitration award will be enforced upon the request of one of the parties involved in the dispute. (Bisri 2003).

J. Challenges Faced by the Religious Court in Resolving Shariah Economic Disputes

After the enactment of Law No. 3 of 2006, which amended Law No. 7 of 1989 on Religious Courts, the ability of the Religious Court to resolve Shariah economic cases has proven to be difficult to achieve. In fact, the National Shariah Arbitration Board (Basyarnas) considers that the Religious Court does not have the authority to act as an executive body. This is due to the contradiction with the Fatwa of the National Shariah Council (DSN) and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (UUAAPS). Additionally, there is a small assumption that the resolution of Shariah economic issues in Indonesia cannot be forced, as the Islamic law principles that apply in this field are not positive law(Hasan 2010).

K. Other Challenges Faced by the Religious Court in Resolving Shariah Economic Disputes

Another challenge faced by the Religious Court is the incomplete material legal sources for financial institutions. Not all areas of the Religious Court's jurisdiction have material law in the form of legislation. Not all Shariah institutions are protected by law. For example, microfinance institutions, Shariah insurance, Shariah pawnbroking, Shariah mutual funds, Shariah bonds, and others are not covered by any law. This is as stated in the explanation of Article 49 of Law No. 3 of 2006. Only Islamic banking is based on banking law and the Bank Indonesia Law, which has clear and comprehensive regulations. Additionally, Feriyanto, a Judge at the Religious Court of Nunukan, stated that only the Religious Courts in major cities are prepared to handle Shariah economic cases, while those in smaller cities only handle issues like inheritance, divorce, and similar matters.

The lack of resources for judges in the Religious Courts poses another significant challenge, as their experience is primarily in cases related to divorce, inheritance, and similar matters. This is compounded by the incomplete facilities and infrastructure at the Religious Courts, such as the absence of a well-equipped library

within the court environment. According to Judge Muhammad Imdad Azizy of the Tanjung Balai Karimun Religious Court, not all judges in the Religious Courts possess the qualifications to handle Shariah economic cases, even though these judges may have served for a long time.

L. Reluctance of the Public to Bring Islamic Economic Cases to Religious Courts

According to the annual report of the Religious Courts Judicial Body (Badilag) of the Supreme Court, the number of Islamic economic cases submitted to Religious Courts throughout Indonesia was only 1,477 cases between 2021 and 2024. The reluctance of the public to bring Islamic economic cases to the Religious Courts is caused by several factors, including a lack of awareness about the jurisdiction and procedures in the Religious Courts, limited time available for resolving cases, and the preference for conciliation and family-based settlement, which is more commonly practiced in society.

From the interviews conducted, there are several reasons why the public does not bring Islamic economic cases to the Religious Courts. One of the reasons is their lack of awareness. This was stated by Faiz Kamal, the owner of Sunan Travel in Cilacap, who admitted that he did not know that the Religious Court actually has the authority to handle Islamic economic cases. Similarly, Alfan Khumaidi, an importer of classical Islamic books, mentioned that, as far as he knew, the Religious Court was only involved in cases of divorce, inheritance, and similar matters.

Another reason is time efficiency. This was mentioned by Muhammad Rifki Arriza, a member of the supervisory board at BMT Fastabiq Pati, who, despite knowing the authority of the Religious Court, does not choose it as a place to resolve Islamic economic cases because it takes a considerable amount of time. Rifki prefers to use the National Arbitration Board (Badan Arbitrase Nasional) if there are Islamic economic cases at the BMT where he works.

Another reason is the emphasis on deliberation, as mentioned by Faisol El Amin, the General Manager of Pralim Motor Yogyakarta. He believes that if there is an Islamic economic issue at his office, the first step is to discuss it amicably. If the matter needs to proceed further, he would take it to a non-litigation path, specifically the National Arbitration Board.

Conclusion

Public interest in bringing their Islamic economic cases to the Religious Courts remains low. Several factors contribute to this, as follows:

First, Lack of Knowledge about the Authority of the Religious Courts: Many people are not aware that the Religious Courts have jurisdiction over Islamic economic cases. Historically, the Religious Courts have been known for handling issues such as

divorce, inheritance disputes, and waqf, leading to the perception that their jurisdiction in Islamic economics is limited.

Second, Lengthy Court Process: The lengthy process in the Religious Courts is a barrier for Islamic economic actors who need to focus on the continuity of their business. Therefore, for time efficiency, they prefer the National Arbitration Board (Badan Arbitrase Nasional), which resolves disputes more quickly.

Third, Emphasis on Consultation: Apart from taking time, bringing issues to the Religious Courts can damage relationships with business partners. Therefore, Islamic economic actors prefer to prioritize consultation to resolve their disputes. If consultation fails, they are more likely to choose non-litigation routes, such as the National Arbitration Board.

Several actions need to be taken to increase public interest in bringing economic sharia cases to the Religious Courts: (1) increasing public knowledge, especially among economic sharia actors, about the authority of the Religious Courts; (2) resolving economic sharia cases as quickly as possible to avoid wasting time and money.

With the solutions proposed by the researcher, it is hoped that the authority of the Religious Courts in the field of economic sharia will not only be a subject of study but will also attract the general public, particularly economic sharia actors.

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