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The Role of Religious Courts in Settling Sharia Economic Disputes in Indonesia: Genealogy Analysis of Constitutional Court Decision Number 93/PUU-X/2012

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Abstract

For more than five decades (Since the implementation of Law Number 3 of 2006, which expanded the jurisdiction of religious courts to resolve Sharia economic disputes, there have been various debates regarding the effectiveness and implementation of this policy. Constitutional Court Decision Number 93/PUU-X/2012 clarified the legal position of religious courts, affirming their exclusive authority to adjudicate Sharia economic disputes. Therefore, this research provides an examination of the evolution of Religious Courts and their authority in resolving Sharia economic disputes following Constitutional Court Decision Number 93/PUU-X/2012, and the implications of implementing this decision. This study is normative research using historical, statutory, and conceptual approaches. The findings of this study indicate that the constitutional evolution of Religious Courts in resolving Sharia economic

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disputes in Indonesia has made significant progress. Their jurisdiction has been expanded by laws such as Number 3 of 2006 and Number 50 of 2009, which grant authority in Sharia economics and Sharia banking disputes. Constitutional Court Decision Number 93/PUU-X/2012 eliminated the legal dualism of the controversial provisions in Law Number 21 of 2008, ensuring legal clarity and consistency in upholding justice in Sharia economic cases. Following Constitutional Court Decision Number 93/PUU-X/2012, Religious Courts in Indonesia possess absolute authority in resolving Sharia economic disputes. The resolution of Sharia economic disputes by Religious Courts is expected to provide justice and welfare for the parties involved in the disputes.

KEYWORDS *Constitutional Court Decision, Absolute Authority, Religious Courts, Resolution of Sharia Economic Disputes*

Introduction

Indonesia as a country that has a Pancasila state foundation is a middle way for the relationship between religion and the state while at the same time emphasizing that religious law is one of the sources of national law. In line with Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, one of the important principles of the rule of law is the existence of guarantees for the administration of the powers of the judiciary which are free from interference by extrajudicial authorities to administer justice to uphold order, justice, truth and legal certainty capable of protecting the community. Therefore, a Religious Court was established with the duty and authority to examine, decide and settle cases between people of the Muslim religion.

The Religious Courts have been recognized since the time of the Dutch Government with the establishment of the Staatblad (LN) 1882 No. 152 jo Staatblad 1937 for the Religious Courts in Java and Madura, StaatBlad 1937 No. 638 and 639 in South Kalimantan. After Indonesia's independence, the government established a Religious Court other than Java-Madura and South Kalimantan with government regulation Number 45 of 1975, until the issuance of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989

concerning Religious Courts which stated that the settlement Sharia economic disputes are included in the authority within the scope of the Religious Courts.[1]

In the Indonesian legal system, religious courts play a significant role in settling sharia economic disputes. The Constitutional Court Decision Number 93/PUU-X/2012 is a pivotal milestone that reinforces the authority of religious courts in resolving these disputes. This decision not only provides legal legitimacy to religious courts but also reflects the dynamics and evolution of legal thought in Indonesia in response to the increasingly complex demands for justice in sharia economics.

The formation of the Religious Courts as they are today cannot be separated from the historical process of resolving disputes or cases that arose in society during the early days of Islam developing in Indonesia. Where in its development of religious courts has always been held by respected scholars who have long been involved in administering religious courts since the royal era.[2] Based on this, it can be seen that the history of the Religious Courts in Indonesia as one of the executors of judicial power has taken quite a very long time, as long as Islam itself exists in Indonesia.[3]

Local cultural practices are the basis for implementing Islamic teachings.[4] The existence of the Religious Courts is a *conditio sine qua non*, namely something that is absolute for Indonesian Muslims.[5] The practice of administering an efficient judiciary based on the principles of being simple, fast, and low-cost is a practice based on universal principles.[6] Based on this fact, the

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[1] Andi Intan Cahyani, "Peradilan Agama sebagai Penegak Hukum Islam di Indonesia," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 6, no. 1 (30 Juni 2019): 123, https://doi.org/10.24252/al-qadau.v6i1.9483.

[2] Miftakhur Ridlo, "Sejarah Perkembangan Peradilan Agama pada Masa Kesultanan dan Penjajahan Sampai Kemerdekaan," *Asy-Syari'ah : Jurnal Hukum Islam* 7, no. 2 (25 June 2021): 165, https://doi.org/10.55210/assyariah.v7i2.612.

[3] Rahadi Wasi Bintoro, "Paradigama Peradilan Agama Sebagai Peradilan Bagi Umat Muslim di Indonesia," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 17, no. 2 (2017): 17–28, http://dx.doi.org/10.31941/pj.v17i2.547.

[4] Syaikhu, "The Dispute Settlements of Inheritance in Palangka Raya: A Legal Anthropology Approach," *Mazahib* 18, no. 1 (2019): 117–41, https://doi.org/10.21093/mj.v18i1.1441.

[5] Ahmad, "The Settlement for Shariah Economy Disputes Within Religious Court," *Jurnal IUS: Kajian Hukum dan Keadilan Sosial* 2, no. 6 (2014): 476–88, https://doi.org/10.12345/ius.v2i6.182.

[6] Susanto Susanto, Muhamad Iqbal, and Wawan Supriyatna, "Menciptakan Sistem Peradilan Efisien Dengan Sistem E-Court Pada Pengadilan Negeri Dan Pengadilan Agama Se-Tangerang Raya," *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 104, https://doi.org/10.33760/jch.v6i1.287.

Religious Court is a judicial institution that has a very large role in the realization of justice in Sharia economic disputes or cases that occur. Therefore, it is very important to know and understand the historical traces of the formation of the Religious Courts, what are their duties and functions in the life of Indonesian society, and how the form of constitutionalism of the Religious Courts is in resolving Sharia economic disputes.

Since the enactment of Law Number 3 of 2006, which expanded the jurisdiction of religious courts to include sharia economic disputes, there has been ongoing debate regarding the effectiveness and implementation of this policy. The Constitutional Court Decision Number 93/PUU-X/2012 clarifies the legal position of religious courts and asserts their exclusive authority to resolve sharia economic disputes. This decision responds to the rapid growth of the sharia economic sector in Indonesia, necessitating a dispute resolution mechanism consistent with sharia principles.

When case Number 93/PUU-X/2012 was decided by the Constitutional Court, there was no longer any dualism in the authority to settle Sharia economic disputes. The constitutional consequence is that the Religious Courts are the only court authorized to resolve Sharia economic disputes.[7] Related to this, the Constitutional Court Ruling has abolished the idea of the choice of law and choice of forum in resolving disputes in the field of Sharia economics.[8] In the previous period, it had also been regulated regarding the distribution of absolute authority for each judiciary, namely in Law Number 48 of 2009 concerning Judicial Power, which emphasized the authority of the religious courts.[9]

Although juridically the existence of Sharia banking and religious courts in Indonesia already has such strong legitimacy, namely based on Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, Law Number 21 of 2008 concerning Sharia Banking and Decision of the Constitutional Court Number 93/PPU-X/2012. Based on the

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[7] Dody Sulistio, "Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 dan Kewenangan Pengadilan Agama Dalam Penyelesaian Sengketa Ekonomi Syariah," *Indonesian Journal of Islamic Economics* 2, no. 2 (2017): 24–42.

[8] Fahadil Amin Al Hasan, "Peran Pengadilan Agama dalam Mendukung Perkembangan Industri Keuangan Syariah di Indonesia," *al-ahkam: Jurnal Ilmu Syariah dan Hukum* 4, no. 1 (2019): 36, https://doi.org/10.22515/alahkam.v4i1.1329.

[9] Suparji dan Muhammad Abdul Roni, "Analisis Putusan Mahkamah Konstitusi No . 93 / PUU- X / 2012 Terhadap Penyelesaian Sengketa Perbankan Syariah Di Indonesia," *Jurnal Magister Ilmu Hukum* 2, no. 1 (2017): 1–12, http://dx.doi.org/10.36722/jmih.v2i1.736.

Elucidation of Article 55 Paragraph (2) of the Sharia Banking Law, it is stated that dispute resolution is carried out according to the agreement in the contract, with several alternative positions, including through deliberation, mediation, arbitration institutions, and the Religious Courts. On the other hand, there are major problems in carrying out this mandate or authority, including the settlement of Islamic banking disputes which is the absolute competence of the Religious Courts in contrast to the public stigma which still considers that the Religious Courts are divorce courts which are certainly incapable of resolving Islamic banking disputes.

Departing from this reality, there are actually several studies that provide a study of the role of the Religious Courts and the Constitutional Court Decision Number 93/PUU-X/2012, including research by Nurhayati,[10] Mustjari,[11] Yuniardi,[12] Hasan,[13] Cahyani,[14] and Ridlo.[15] Compared to some of the previous studies that have been stated previously, this research aims to explore and analyze the role of religious courts in settling sharia economic disputes in Indonesia, particularly after the issuance of Constitutional Court Decision Number 93/PUU-X/2012. Through genealogical analysis, this research will outline the historical background, development, and legal implications of this decision. The genealogical approach is used to understand

[10] Siti Nurhayati, "Penguatan Peran Hakim Pengadilan Agama Dalam Penyelesaian Sengketa Perbankan Syariah Pasca Putusan Mahkamah Konstitusi Nomor 93/Puu-X/2012," *Jurnal Pemikiran Dan Penelitian Sosial Keagamaan, YUDISIA* 7, no. 2 (2016): 335, https://doi.org/http://dx.doi.org/10.21043/yudisia.v7i2.2157.

[11] Dewi Nurul Musjtari, "Rekonstruksi Lembaga Penyelesaian Sengketa Akad Pembiayaan Dengan Jaminan Hak Tanggungan Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *Jurnal Media Hukum* 23, no. 1 (2016): 62–75, https://doi.org/10.18196/jmh.2015.0068.62-75.

[12] Silvi Yuniardi, "Penyelesaian Sengketa Perbankan Syariah Berdasarkan Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah Pasca Keputusan Mahkamah Konstitusi No 93/PUU-X/2012 Dihubungkan Dengan Asas Kepastian Hukum (Studi Kasus Putusan No.28/PDT.G/2018PT.BDG)," *Nurani Hukum* 2, no. 2 (2020): 35, https://doi.org/10.51825/nhk.v2i2.8656.

[13] F A Al Hasan, "Peran Pengadilan Agama Dalam Mendukung Perkembangan Industri Keuangan Syariah Di Indonesia," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, 2019, https://doi.org/https://doi.org/10.22515/alahkam.v4i1.1329.

[14] Andi Intan Cahyani, "Peradilan Agama Sebagai Penegak Hukum Islam Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 1 (2019): 119, https://doi.org/10.24252/al-qadau.v6i1.9483.

[15] Miftakhur Ridlo, "Sejarah Perkembangan Peradilan Agama Pada Masa Kesultanan Dan Penjajahan Sampai Kemerdekaan," *Asy-Syari'ah : Jurnal Hukum Islam* 7, no. 2 (2021): 152–67, https://doi.org/10.55210/assyariah.v7i2.612.

how the concepts and practices of law in resolving sharia economic disputes have evolved over time and what factors have influenced these developments.

This research will also examine how the Constitutional Court Decision Number 93/PUU-X/2012 has been implemented in practice and how it affects the performance of religious courts. Additionally, this research will evaluate the challenges and opportunities faced by religious courts in exercising their authority to resolve sharia economic disputes. Thus, this research is expected to make a significant contribution to the development of theories and practices of sharia economic law in Indonesia. In the end, to emphasize the content of this research, there are three main points of discussion, namely *first,* evolution of religious court constitutionalism in resolving sharia economic disputes in Indonesia. *Second,* the genealogy of constitutional court decisions in the settlement of sharia economic disputes. *Third* development of sharia economic dispute resolution after the constitutional court decision.

This type of research is a type of normative legal research, which is legal research conducted by examining literature or secondary data.[16] Normative legal research is also known as doctrinal legal research, namely literature-based research that aims to provide a systematic exposition of legal rules in a particular field, analyze the relationship between one legal rule and another, and possibly also include predictions of developments in certain legal rules in the future.[17] The approach used is the statute approach, historical approach, and conceptual approach.[18] Through the use of this approach, the researcher traces the history of the absolute authority of the Religious Courts or studies each different historical background, then the researcher examines and understands the concepts, especially those related to the principle of constitutionalism. The sources of legal materials consist of primary legal materials and secondary legal materials. Primary legal materials consist of various laws and regulations and Constitutional Court Decision Number 93/PUU-X/2012, while secondary legal materials are in the form of books, journals, and some other literature that has strong relevance to this research.

Related to that, by paying attention and considering the identification of the topics that have been described previously, genealogical analysis is an

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[16] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2003), 13.

[17] Aan Efendi, Dyah Ochtorina Susanti, and Rahmadi Indra Tektona, *Penelitian Hukum Doktrinal* (Yogyakarta: LaksBang Justitia, 2019), 32.

[18] Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2007), 318. Baca Juga Peter Mahmud Marzuki, *Penelitian Hukum, 2005, hal 93* (Jakarta: Kencana, 2005), 93.

appropriate thing to use in this study. Genealogy can be defined as the study of the evolution and networks of a group of people (parties or institutions) throughout generations.[19] The term genealogy is a language expression that has the meaning of the origin of something. If the word genealogy is juxtaposed with the word human, then what is meant is the human lineage in blood relations.[20] In this context, genealogy is used to analyze the dynamics, transformation, and discontinuity of the absolute authority given to the Religious Courts in resolving Sharia economic disputes and the historicization of the birth of the Constitutional Court Decision Number 93/PUU-X/2012. Tracing constitutionalism in granting absolute authority to the Religious Courts in resolving Sharia economic disputes, where in tracing the genealogy of this authority in its journey through certain stages and processes. Therefore, how does the Constitutional Court Decision Number 93/PUU-X/2012 see the principle of constitutionalism in adding the absolute authority of the Religious Courts in resolving Sharia economic disputes and proving the credibility of the Religious Courts in resolving cases or Sharia economic disputes in Indonesia.

Evolution of Religious Court Constitutionalism in Resolving Sharia Economic Disputes in Indonesia

The concept of a rule of law is rooted in the notion of the rule of law which is essentially principled that the highest authority in a country is based on law. As explained in the third amendment of the Indonesian state legislation, namely, the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3, which implies that the Indonesian state is a state based on law and not based on power.[21] Therefore, in essence, the understanding of modern constitutionalism concerns the principle of limiting power or what is commonly referred to as the principle of limited government. That is, in the understanding of constitutionalism, the power to prohibit and the procedure is determined, so that the government's power guarantees a government that is not arbitrary and a responsible government. The idea of regulating and limiting this power

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[19] Abdurrahman Abdurrahman, "Sejarah Pesantren di Indonesia: Sebuah Pelacakan Genealogis," *Jurnal Penelitian Ilmiah Intaj* 4, no. 1 (2020): 84–105.

[20] Hasep Saputra, "Genealogi Perkembangan Studi Hadis dI Indonesia," *AL QUDS: Jurnal Studi Alquran dan Hadis* 1, no. 1 (2017): 41, https://doi.org/10.29240/alquds.v1i1.164.

[21] Ishaq, *Pengantar Hukum Indonesia* (Jakarta: Rajawali Pers, 2014), 74. Read too CST. Kansil and Christine, *Sistem Pemerintahan Indonesia* (Jakarta: Bumi Aksara, 2014), 30.

scientifically arises because of the need to respond to the development of the relative role of general power in the life of the state and society.

The principle of modern constitutionalism concerns the regulation and limitation of state power so that the dynamics of power in the government process can be limited and controlled accordingly.[22] Countries based on constitutional democracy, namely the constitution, have a role, namely limiting government power in such a way that it does not use power arbitrarily so that people's rights can be protected.[23] The role of the state which has become bigger in administering government and managing people's lives to achieve the goals of the state by a common consensus, which is formulated in the constitution, causes the development of general powers in the lives of citizens to increase and also demands regulation and restrictions on them.

In this context, the Indonesian government has implemented it by mapping out the absolute powers of the existing judiciary, including the powers of the District Court and the Religious Court. Based on this, the principle of *lex specialist derogate legi generalis* can be applied, in which the District Court has the authority to decide general criminal and civil cases, while the Religious Courts as a *lex specialist* have the authority to decide on specific civil cases concerning the subject, object or contract. with the Islamic religion.[24] Islam is a significant historical force in historical dynamics.[25] The decisions and decisions taken by the judges of the Religious Courts are guided by Islamic values and sources of Islamic law such as the Qur'an, Hadith, and other sources of Islamic law. Apart from this division of authority, there are several historical sequences in the establishment of the Religious Courts in Indonesia, both from pre-independence to post-independence.

In the past, during the era of the popularity of Islamic kingdoms that already had a stronghold in the archipelago, the embryo of the Religious Courts was founded. At that time, solving family problems was usually held in the foyer of the mosque, which was often called the "Serambi Court", by the Penghulu

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[22] Jimly Asshidiqie, *Konstitusi & Konstitusionalisme Indonesia* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006), 23–24.

[23] Cahya Maharani Cahya, "Konstitusionalisme Dalam Pembatasan Masa Jabatan Presiden," *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia* 2, no. 1 (2022): 14–20, https://doi.org/10.52005/rechten.v2i1.53.

[24] Sri Winarsi, Prawitra Thalib, and Sri Hajati, "Sharia Banking Dispute Resolution in Indonesia after the Verdict of the Constitutional Court No. 93/Puu-x/2012," *Utopia y Praxis Latinoamericana* 26 (2021): 410, https://doi.org/10.5281/zenodo.4678930.

[25] Fauzan Ali Rasyid, "Konfigurasi Politik Hukum Ekonomi Syariah Di Indonesia," *IJTIHAD Jurnal Wacana Hukum Islam Dan Kemanusiaan* 16, no. 2 (2017): 297, https://doi.org/10.18326/ijtihad.v16i2.297-315.

and local administrative officials. According to Zaini Ahmad Noeh, cases that were settled by the Religious Court before the arrival of the Dutch were regarding marriage, divorce, inheritance, wills, grants, endowments, and almsgiving based on Islamic law.[26] So at that time, the existence of Religious Courts greatly benefited the people who were seeking justice and legal provisions for disputes that occurred. Apart from being an institution that operates to provide justice, the Religious Courts also provide strong values of benefit to litigants, because the parties can feel peace, and tranquility and receive their rights according to their respective levels.

Then during the Dutch colonial period, precisely on January 19, 1882, based on LWC Van den Berg's proposal, King William III issued a decree No. 24, which is contained in Stbl. 1882 No. 152 concerning the establishment of the Religious Courts in Java and Madura, (in Dutch it is called: *Bepaling Betreffende de Priesterraden op java en Madoera*), while customary regulations or Swapraja regulate courts outside Java and Madura. The decision is to administer Islamic law through the Religious Courts.[27] Thus, the presence of Islamic courts (Religious Courts) gradually or gradually received more and more attention from the Dutch colonial government, as well as giving judges freedom and flexibility to handle Islamic civil cases, such as marriage and Islamic philanthropy which were often applied at that time.

Based on the aforementioned facts, it can be understood that the history of religious courts in resolving Sharia economic disputes in Indonesia has deep-rooted origins and is closely linked to the country's social, political, and legal dynamics. In the context of legal genealogy, the evolution of the jurisdiction of religious courts reflects the long process of reconstructing Islamic law within the national legal system. Since the era of Islamic kingdoms in the archipelago, Sharia-based economic dispute resolution has been carried out by qadis authorized to adjudicate *muamalah* cases. This tradition continued into the colonial era with the establishment of the *Priesterraden* in 1882, which accommodated Islamic law within the judicial system for Muslim communities, albeit with strict limitations imposed by the Dutch colonial government.

Islamic Sharia at a practical level then acts as a basis for the actions of legal subjects.[28] Although Indonesia is still caught adopting the civil law tradition as

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[26] A. Basiq Jalil, *Peradilan Agama di Indonesia* (Jakarta: Kencana, 2006), 57.

[27] Muhammad Jazil Rifqi, "Perkembangan dan Pemanfaatan Teknologi Informasi Pengadilan Agama," *Al-Qadau: Jurnal Peradilan dan Hukum Keluarga Islam* 7, no. 1 (2020): 70–82.

[28] Renny Supriyatni and Nurjamil, "The Urgency of Handling Non-Performing Financing in Sharia Banks in the Development of Indonesian Sharia Economics,"

inherited from the Netherlands in the colonial era.[29] However, the existence of the Religious Courts is a *conditio sine qua non*, that is, something that is necessary for Indonesian Muslims.[30] This means that the existence of the Religious Courts in Indonesia has a very important role in adjudicating and deciding community cases, especially Muslim communities who are fighting for their rights and seeking justice in both personal and structural matters, such as marriage, inheritance, endowments, and other cases. With the existence of this judiciary, of course, the community will be more guaranteed to obtain welfare and benefit as the state has aspired for.

In countries that have become the rule of law, including Indonesia, it is necessary to make some changes in the justice system.[31] In this regard, in the post-independence era, efforts to strengthen religious courts continued to develop in line with the growing role of Islamic law within the national legal system. Law Number 7 of 1989 became a significant milestone in institutionalizing the jurisdiction of religious courts, which was later expanded by Law Number 3 of 2006. This expansion not only reflects the state's recognition of Islamic law but also serves as a response to the rapid development of the Sharia economy.

Therefore, significant changes occurred after Indonesia became independent because the Dutch East Indies government regulations based on the reception theory were considered no longer valid because they contradicted the Qur'an and Sunnah and the 1945 Constitution.[32] Inpres 1/1991 is a legal instrument that makes Islamic law a positive law in Indonesia, however, the development of the constitutional system and the legislative system in Indonesia

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Padjadjaran Jurnal Ilmu Hukum 8, no. 1 (2021): 26–46, https://doi.org/10.22304/pjih.v8n1.a2.

[29] Bisariyadi, "Referencing International Human Rights Law in Indonesian Constitutional Adjudication," *Constitutional Review* 4, no. 2 (2018): 249–70, https://doi.org/10.31078/consrev424.

[30] Erie Hariyanto and Moh. Hamzah, "Bibliometric Analysis of the Development of Islamic Economic Dispute Resolution Research in Indonesia," *JURIS: Jurnal Ilmiah Syariah* 21, no. 2 (2022): 221–33, http://dx.doi.org/10.31958/juris.v21i2.6997.

[31] Erie Hariyanto and Made Warka, "The Political Scrimmage of The Religious Court's Law as The Judicial Institution in The Reformation Era in Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 11, no. 01 (2016): 178–200, https://doi.org/https://doi.org/10.19105/al-lhkam.v11i1.782.

[32] Tuti Haryanti, "Kewenangan Pengadilan Agama dalam Penyelesaian Sengketa Ekonomi Syariah," *Tahkim* 9, no. 1 (2013): 74–87, http://dx.doi.org/10.33477/thk.v9i1.90.

have undergone very rapid changes since the reform era.[33] Nevertheless, the existence of the Religious Courts has been recognized and included within the judiciary, although it cannot yet be said to be an independent, self-sufficient, and solid institution (Article 24 of the 1945 Constitution and Law of the Republic of Indonesia Number 14 of 1970 concerning Principles of Judicial Power). This is because no law explicitly regulates the composition and powers of the Religious Courts. After the promulgation of Article 10 paragraph 1 of Law No. 14 of 1970 concerning judicial power, it has had a very large impact on the Religious Courts, where the existence of Religious Courts is getting stronger even though the birth of these regulations also makes it clear that the Religious Courts are not yet equal to the District Courts because every Religious court decisions are confirmed by district courts and religious courts are still under the authority of the Ministry of Religion.

Law Number 14 of 1970 is a legal product that contains that Judicial Power is a power that is independent and free from the interference of other powers. This is in line with Article 24 of the 1945 Constitution. The provision that the Judicial Power is independent is contained in Article 1 of Law Number 14 of 1970 concerning Principles of Judicial Power which states that Judicial Power is an independent power to administer justice to upholding law and justice based on Pancasila for the sake of the implementation of the legal state of the Republic of Indonesia. Then regarding the administration of Judicial Power is regulated in Article 2 paragraph (1) of Law Number 14 of 1970 which states that the administration of Judicial Power listed in Article 1 is handed over to judicial bodies and determined by law, with the main task of receiving, examining and adjudicate and resolve each case filed.

Law Number 14 of 1970 concerning the Main Law on Judicial Power is an organic law, which is a legal umbrella for other laws in the field of Judicial Power and constitutes the elaboration of Articles 24 and Article 25 of the 1945 Constitution. 1986 Law Number 2 of 1986 concerning General Courts was promulgated, Law Number 5 the Year 1986 concerning State Administrative Courts, and only in 1989 Law Number 7 the Year 1989 concerning Religious Courts was promulgated. When viewed legally, especially those relating to laws and regulations, it appears that the Judicial Power has been recognized as an independent power within the framework of law enforcement in the Unitary Republic of Indonesia.

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[33] Fajar Sugianto and Slamet Suhartono, "The Existence of President Instruction of The Republic of Indonesia Number 1 The Year 1991 on The Wide Spread of Compilation of Islamic Law in Indonesian Legal System," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 2 (2018): 291, https://doi.org/10.19105/al-ihkam.v13i2.1727.

The Religious Courts as one of the courts existing in the Supreme Court are also legally regulated in a separate law, namely Law Number 7 of 1989 concerning Religious Courts. The Law on the Religious Courts gives absolute competence to the Religious Courts in terms of receiving, examining, and deciding disputes that are closely related to family law. As time goes by and civilization continues to change, the law on judicial matters has been amended twice since the enactment of Law No. 14 of 1970 concerning Judicial Power. The first change was the issuance of Law Number 35 of 1999 concerning amendments to Law Number 14 of 1970 concerning Main Provisions of Judicial Power which was then amended again by Law No. 4 of 2004 concerning Judicial Power which is in effect to date. With the promulgation of the rule of law, the Religious Courts have an equal position with other courts in rendering legal decisions in Indonesia.

Religious courts are courts that have specificity in their scope and authority. Starting from the settlement of certain cases which then on certain groups of people as well. The Civil Procedure Code of the Religious Courts is the law that functions to regulate the traffic of case examinations in courts within the Religious Courts.[34] The Religious Courts are one of the actors and organizers of judicial power. It has an equal position with other courts in upholding the law.[35] The position of the Religious Courts is increasingly gaining a place and is considered by many as the most historic momentum for the development of the Religious Courts in expanding their authority in Sharia economic cases marked by the birth of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts.[36] Since the promulgation of the above regulation, the authority of the Religious Courts has expanded and will not only focus on family issues and Islamic philanthropy, such as divorce, divorce proceedings, inheritance, endowments, and other matters but will also focus on resolving Sharia economic disputes.

The authority of the Religious Courts in resolving banking disputes is further strengthened in Article 55 paragraph (1) of Law Number 21 of 2008

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[34] Abdul Halim Talli, *Asas-asas Peradilan Dalam Risalah Al-Qada Kritik Terhadap Beberapa Asas Peradilan di Indonesia* (Yogyakarta: UII Press Yogyakarta, 2014), 113–14.

[35] Andi Fariana, "Peran Strategis Pengadilan Agama Dalam Penyelesaian Sengketa Ekonomi Syari`ah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 10, no. 2 (2 February 2016): 241, https://doi.org/10.19105/al-lhkam.v10i2.720.

[36] Saut Maruli Tua Manik et al., "Penyelesaian Sengketa Ekonomi Syariah Melalui Pengadilan Khusus Ekonomi Syariah di Lingkungan Peradilan Agama," *Ahkam: Jurnal Ilmu Syariah* 17, no. 2 (2017): 435–48, https://doi.org/10.15408/AJIS.V17I2.6082.

concerning Sharia Banking which states that: "The settlement of Islamic banking disputes is carried out by courts within the Religious Courts."[37] The existence of the Religious Courts as a limiting Islamic court influences Islamic society to obtain justice. Thus, the existence of Law Number 50 of 2009 on the second amendment to Law No.7 of 1989 concerning the Religious Courts, became a milestone in the legal supremacy of the Religious courts in Indonesia. The legal sources of the Religious Courts, in general, consist of material legal sources originating from Islamic law and material law that is bound by Law Number 50 of 2009 on the second amendment to Law Number 7 of 1989 concerning Religious Courts and formal legal sources are legal sources that consist of statutory law, customary law, jurisprudential law, religious law, and customary law which are stated as positive law.[38] In Sharia economic law, customary law and benefit in Islamic law are very closely related.[39] The authority to examine, decide and settle cases at the first level between people who are Muslim is the responsibility of the Religious Courts which is based on relative authority and absolute authority.

As part of the national legal system, religious courts have undergone significant transformation, particularly following Constitutional Court Decision Number 93/PUU-X/2012, which eliminated the dualism of jurisdiction in resolving Sharia economic disputes. This decision can be understood within a genealogical framework as the outcome of a series of legal debates reflecting the tension between the state's interest in building an inclusive economic system and the demands of the Muslim community for legal certainty based on Sharia principles.

Prior to this ruling, Article 55 paragraph (2) of Law Number 21 of 2008 provided parties with the option to choose their dispute resolution forum, either through religious courts or general courts, thereby creating legal uncertainty. This indicates a strong influence from the civil law tradition inherited from Dutch colonialism, where the national legal system continued to uphold elements of legal pluralism.

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37 Rasyid and Putri, "Kewenangan Lembaga Penyelesaian Sengketa Perbankan Syariah."

38 Andi Intan Cahyani, "Peradilan Agama sebagai Penegak Hukum Islam di Indonesia," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 6, no. 1 (2019): 119, https://doi.org/10.24252/al-qadau.v6i1.9483.

39 Abdulahanaa, "A Review of Islamic Economic Law on Religious Tourism Arrangements in South Sulawesi," *Samarah* 5, no. 1 (2021): 450–70, https://doi.org/10.22373/sjhk.v5i1.9088.

From Michel Foucault's genealogical perspective,[40] the Constitutional Court's decision can be seen as a manifestation of shifting legal discourse over the past few decades, marking a transition from the dominance of civil law towards broader recognition of Islamic law within the national judiciary. This shift has been driven not only by social and political pressures from the Muslim community but also by the urgent need to establish a dispute resolution system more consistent with Sharia principles.

Beyond political and social dimensions, this development also reflects a structural transformation within Indonesia's legal system, which increasingly acknowledges religious court institutions as an integral part of national legal constitutionalism. Thus, Constitutional Court Decision Number 93/PUU-X/2012 not only strengthened the authority of religious courts but also affirmed that Indonesia's legal system is moving towards greater integration between national law and Islamic law in the field of Sharia economics.

However, the absolute authority of the religious courts in the field of Sharia economics basically cannot reach disputed agreements that contain arbitration clauses.[41] A vital element in a justice system is the rule of law as a legal reference for every legal decision. Legal certainty cannot be achieved without a rule of law. In addition, legal uncertainty will result in public distrust of legal institutions.[42] The new authority possessed by the Religious Courts in resolving Sharia Economic disputes is part of the spirit of legal renewal and development in Indonesia, all of these judicial instruments were created to achieve true legal objectives, in which the purpose of the law is to create certainty, justice, and utility so that guarantees in the predictability of economic activity, equity and freedom enjoyed are measurable and regular based on mutual agreement.[43]

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[40] Yohanes Alfrid Aliano and Mathias Jebaru Adon, "Percaturan Politik Genealogi Kekuasaan Dalam Sistem Pemilu '2024' Di Indonesia Menurut Etika Michel Foucault," *Jurnal Filsafat Indonesia* 6, no. 3 (2023): 480–480, https://doi.org/https://doi.org/10.23887/jfi.v6i3.62767.

[41] Reny Hidayati, "Eksistensi Klausul Arbitrase Dalam Penentuan Penyelesaian Sengketa Syariah," *Mazahib: Jurnal Pemikiran Hukum Islam* 14, no. 2 (2015): 169–78.

[42] Ahmad Imam Mawardi and Achmad Kemal Riza, "Why did Kompilasi Hukum Islam succeed while its counter legal draft failed? A political context and legal arguments of the codification of Islamic law for religious courts in Indonesia," *Journal of Indonesian Islam* 13, no. 2 (2019): 421–53, https://doi.org/10.15642/JIIS.2019.13.2.421-453.

[43] Imron Rizki A, Safrin Salam, and Andi Marlina, "Menguji Eksistensi Pengadilan Agama Dalam Menyelesaikan Sengketa Ekonomi Syariah," *Indonesia Journal of Criminal Law* 3, no. 1 (2021): 65–76.

Islamic economics emphasizes the importance of paying attention to justice, balance, and general welfare in economic development.[44] Justice is the basic spiritual need of everyone and is the glue of social relations in the state.[45] Religious courts are efforts made to seek justice or resolve certain cases for people who are Muslim through institutions that function to exercise judicial power according to the applicable laws and regulations.[46] The Religious Courts embody the people's desire to obtain legal certainty, justice, and religious guidance.[47] the promulgation of the law above, the Religious Courts have absolute authority to resolve disputes or cases in the areas of marriage, inheritance, wills, grants, endowments, zakat, infaq, almsgiving, and sharia economics. Sharia economics is one of the cases that has become a new authority in the Religious Courts. Sharia economic cases are cases that arise as a result of actions or business activities carried out according to Sharia principles.

Genealogy Analysis of the Constitutional Court Decision Number 93/PUU-X/2012 in the Settlement of Sharia Economic Disputes

Genealogy when viewed from its meaning comes from the Greek, namely *genea* and *logos* which means descent and knowledge. So it can be concluded that genealogy is the study of the family and tracing its ancestry and history.[48] The term genealogy is a language expression that has the meaning of the origin of something.[49] Genealogy is an attempt to dismantle assumptions about values

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[44] Irma Suryani et al., "Integration of Islamic Law in Regional Development in Indonesia," *JURIS: Jurnal Ilmiah Syariah* 22, no. 1 (2023): 1–11, https://doi.org/http://dx.doi.org/10.31958/juris.v22i1.8770 Integration.

[45] Wildana Arsyad and Edi Gunawan, "Ekonomi Syariah dan Penyelesaiannya di Pengadilan Agama," *Jurnal Ilmiah Al-Syir'ah* 16, no. 1 (2018): 93, https://doi.org/10.30984/jis.v16i1.649.

[46] Nur Aisyah, "Religious Courts Jury role in Islamic law implementation in Indonesia," *Al-Qadau: Jurnal Peradilan dan Hukum Keluarga Islam* 5, no. 1 (2018): 73–92.

[47] Lego Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021): 216, https://doi.org/10.15408/ajis.v22i1.22833.

[48] M. Zaini and Mahsun, "Genealogi Pendidikan Pesantren Studi Genealogi Syaikhona Kholil Bangkalan Madura," *Al-Fikrah* 2, no. 1 (2019): 35–44.

[49] Abdullah Khozin, "Konsep Kekuasan Michel Foucault," *Teosofi: Jurnal Tasawuf dan Pemikiran Islam* 2, no. 1 (2012): 132–49, https://doi.org/10.15642/teosofi.2012.2.1.131-149.

in the traditional view and provide new alternative interpretations.[50] From this study concept, genealogy is defined as a framework for analyzing a certain perspective from several sources or archives from several periods and events, then from this analysis, it is oriented to find the essence, value, or meaning and a new interpretation of an object being studied.

Genealogy is the development of archaeological analysis which focuses on the study of 'power' and the depiction of the 'history of the present', so the genealogy developed by Foucault essentially aims to trace the beginning of the formation of episteme that can occur from time to time.[51] The genealogical approach used in Foucault's terminology means that the objectivity of science includes two aspects, namely the archeology of knowledge and power.[52] Genealogy is a method that uses discourse or discourse analysis which in sociology is a collection of statements that form social reality as a focus. Genealogy seeks to find out from archives, how the ways of power operate behind social reality. Therefore, genealogy is not only part of a theory, but more than that this genealogy is a perspective model and a way of providing an objective point of view to see properly and correctly in questioning episteme, social practice, and human life.

The Constitutional Court is one of the state institutions of the branch of judicial power (judicial power) which has strategic authority to uphold human rights.[53] In the genealogy of the Constitutional Court Decision Number 93/PUU-X/2012, it is presumed that various circumstances occurred both before and after the decision was issued. Starting from the amendment of Law Number 7 of 1989 with Law Number 3 of 2006 concerning the Religious Courts, in which the absolute competence of the religious courts was expanded to reflect the structure and culture of Islamic law.[54] Through this amendment,

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[50] Yogie Pranowo, "Genealogi Moral Menurut Foucault dan Nietzsche: Beberapa Catatan," *Melintas* 33, no. 1 (2018): 52–69, https://doi.org/10.26593/mel.v33i1.2954.52-69.

[51] Ampy Kali, *Diskursus Seksualitas* (Yogyakarta: Ledalero, 2013), 39; Sara Mills, *Michel Foucault: Routledge Critical Thinkers* (London-New York: Routledge, 2005), 24.

[52] Suyadi and Sutrisno, "A genealogycal study of Islamic education science at the faculty of Ilmu Tarbiyah dan Keguruan UIN Sunan Kalijaga," *Al-Jami'ah* 56, no. 1 (2018): 29–58, https://doi.org/10.14421/ajis.2018.561.29-58.

[53] Gugun El Guyanie and Aji Baskoro, "The Constitutional Rights of Indigenous Beliefs Adherents in Minority Fiqh Perspective," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (2021): 155–76, https://doi.org/10.18326/ijtihad.v21i2.155-176.

[54] Andi Fariana, "Legal Politics as a Catalyst in Forming Sharia Economic Legal System in the Indonesia's New Order and Reform Era," *Ijtihad : Jurnal Wacana Hukum Islam*

apart from being given the authority to examine, decide and resolve disputes at the first level between people who are Muslim in the areas of marriage, inheritance, wills, grants, *waqf*, *zakat*, *infaq*, and sadaqah, the religious court is also authorized to examine, decide, and resolve disputes in the field of sharia economics. This is regulated explicitly in Article 49 letter (i) of Law Number 3 of 2006 concerning the First Amendment to Law Number 7 of 1989 concerning the Religious Courts which states as follows: "The Religious Courts have the duty and authority to examine, decide and resolve cases in the first level between people who are Muslim in the areas of (a) marriage; (b) inheritance; (c) will; (d) grants; (e) waqf; (f) zakat; (g) *infaq*; (h) sadaqah; and (i) sharia economy.

By making this change, it means that the overall policy foundation has been laid that all matters relating to the Religious Courts, both related to judicial and non-judicial techniques, namely organization, administration, and finance, are under the authority of the Supreme Court.[55] The orientation and secret of determining the absolute competence of each judiciary is none other than for the establishment of an orderly and orderly exercise of judicial power from each judiciary.[56] With it, each judiciary will move and play a role according to the limits of authority granted by law, as well as provide peace and certainty to the public in seeking justice.

After seeing the great encouragement and support from the public to draw up a Sharia Banking Law that is separate from the Conventional Banking Law, finally after going through intensive discussions the Islamic Banking Law was completed and entered into force on July 16, 2008.[57] This represents the aspiration of Muslims to implement Islamic teachings regarding economic justice by creating a banking system that complies with Sharia principles.[58]

Dan Kemanusiaan 21, no. 2 (29 December 2021): 206, https://doi.org/10.18326/ijtihad.v21i2.197-212.

[55] Diana Rahmi, "Ruang Lingkup Kewenangan Peradilan Agama Dalam Mengadili Sengketa Ekonomi Syariah," *Syariah: Jurnal Hukum dan Pemikiran* 13, no. 2 (2013): 1–12, https://dx.doi.org/10.18592/syariah.v13i2.174.

[56] Syaugi Mubarak Seff, "Regulasi Perbankan Syari'ah Pasca Lahirnya Undang-undang Nomor 21 Tahun 2008 tentang Perbankan Syari'ah (Kajian Politik Hukum)," *Jurnal Risalah* 4, no. 2 (2008): 86–92.

[57] Arif Effendi, "Industri Perbankan Syariah Di Indonesia Dalam Perspektif UU no. 21 tahun 2008 Tentang Perbankan Syariah," *Wahana Akademika* 1, no. 2 (2014): 151–66, https://doi.org/10.21580/wa.v1i2.809.

[58] Nur Hidayah, Moch. Bukhori Muslim, and Abdul Azis, "Complying with Sharia While Exempting from Value-Added Tax: Murābaḥah in Indonesian Islamic Banks,"

Then from that, the authority of the Religious Courts in resolving banking disputes is further strengthened in Article 55 paragraph (1) of Law Number 21 of 2008 concerning Sharia Banking which states that: "The settlement of Islamic banking disputes is carried out by courts within the Religious Courts."[59] That is, the enactment of the Law of the Republic of Indonesia Number 21/2008 strengthens the existence of Islamic banking to freely carry out its activities and products.[60] However, problems arise when Article 55 paragraph (2) of Law Number 21 of 2008 also provides an opportunity for the disputing parties to resolve their case through a district court, if it is mutually agreed upon in the contents of the contract.[61] Article 55 paragraph (2) reads, namely "If the parties have agreed to settle disputes other than those referred to in paragraph (1), dispute resolution is carried out by the contents of the contract."

Even though Law Number 21 of 2008 concerning Sharia Banking was ratified and promulgated on July 16, 2008, the existence of Islamic Banking in Indonesia has a very strong formal juridical basis.[62] The elucidation of Article 55 paragraphs (2) and (3) creates legal uncertainty which creates a dispute settlement mechanism in the event of a dispute between an Islamic bank and a customer, in which the editorial section of the article provides an opportunity for the general court to adjudicate sharia economic cases.[63] There is a clear contradiction where one expressly states and the other frees one to choose, so different interpretations are born so that the meaning of legal certainty becomes non-existent and contradicts the 1945 Constitution of the Republic of

AHKAM: Jurnal Ilmu Syariah 22, no. 1 (30 June 2022): 65, https://doi.org/10.15408/ajis.v22i1.22833.

[59] Abdul Rasyid and Tiska Andita Putri, "Kewenangan Lembaga Penyelesaian Sengketa Perbankan Syariah," *Jurnal Yudisial* 12, no. 2 (2019): 159, https://doi.org/10.29123/jy.v12i2.256.

[60] Fikri and Budiman, "Penerapan Asas Lex Specialis Derogat Legi Generalis dan Penyelesaian Sengketa Ekonomi dalam Undang-Undang Perbankan Syariah di Indonesia," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (2017): 149–69, https://doi.org/10.19105/al-lhkam.v12i1.1200.

[61] Daniel Peterson, "Constitutional Court Decision No 93/PUU-X/2012 on Shari'a Banking Dispute Resolution," *Australian Journal of Asian Law* 20, no. 2 (2020): 391.

[62] Muhamad Kholid, "Prinsip-Prinsip Hukum Ekonomi Syariah Dalam Undang-Undang Perbankan Syariah," *Asy-Syari'ah* 20, no. 2 (2018): 145–62, https://doi.org/10.15575/as.v20i2.3448.

[63] Afif Noor and Bagas Heradhyaksa, "Execution Mechanism of Mortgage Rights Using Executorial Title in Sharia Banking Is Whose Authority?," *Diponegoro Law Review* 5, no. 2 (30 October 2020): 247, https://doi.org/10.14710/dilrev.5.2.2020.245-259.

Indonesia article 28D paragraph (1).[64] This means that the existence of the two intersecting verses mentioned above has brought tension in legal operations in resolving Sharia economic disputes. Where the first paragraph provides legality and competence to the Religious Courts in resolving Sharia economic disputes, but the second paragraph still provides a way for the District or General Courts to resolve the same dispute as well. The existence of this dualism has created legal uncertainty, as well as brought confusion to the public who wish to resolve disputes that have occurred.

Since happened, Dadang Achmad (Director of CV. Benua Engineering Consultant) submitted a judicial review of Article 55 paragraphs (2) and (3) of Law No. 21 of 2008 concerning Sharia Banking against Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which was registered at the Registrar's Office of the Constitutional Court on October 19, 2012, based on the Deed of Acceptance of Application Files Number 322/PAN.MK/2012 and has been recorded in the Registration Book of Constitutional Cases dated 24 September 2012 with No.93/PUU-X/2012. The Petitioner presented two experts named Ija Suntana and Dedi Ismatullah, whose testimony was heard under oath at the trial on 20 December 2012, and one witness named Muhammad Ikbal whose testimony was heard under oath at the trial on 29 January 2013.[65] According to the Petitioner, Article 55 paragraphs (2) and (3) do not provide legal certainty so it is contrary to Article 28 of the 1945 Constitution of the Republic of Indonesia. Article 28, reads "Independence to associate and assemble, to express thoughts orally and in writing and as has been established by law."

In legal theory, Fuller emphasized in the theory of *principles of legality*, that it is not permissible to contain regulations that conflict with one another. Fuller's principle is parallel or equivalent to synchronization rules. Rule synchronization is examining the extent to which a written positive legal regulation is in sync or harmony with other regulations, both vertically (higher degree) and horizontally (equal).[66] By looking at this legal theory, what Dadang Achmad is doing is the right effort to return national law to the right axis.

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[64] Suparji Suparji and Muhammad Abdul Roni, "Analisis Putusan Mahkamah Konstitusi No.93/PUUX/2012 Terhadap Penyelesaian Sengketa Perbankan Syariah Di Indonesia," *Jurnal Magister Ilmu Hukum* 2, no. 1 (2021): 1, https://doi.org/10.36722/jmih.v2i1.736.

[65] Suparji and Roni.

[66] Ahmad Baihaki and M. Rizhan Budi Prasetya, "Kewenangan Absolut Pengadilan Agama Dalam Penyelesaian Sengketa Ekonomi Syariah Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," 2021.

Because if this is not done, there may be overlapping legal rules which will then have an impact on law enforcement operations in resolving Sharia economic disputes later.

The Constitutional Court in one of its powers is the final interpreter of the Constitution.[67] Therefore, as an actor of judicial power, the Constitutional Court has the position, duties, functions, and authorities as determined by Article 24 paragraph (2), Article 24C and further regulated in Law No. 24 of 2003 concerning the Constitutional Court.[68] Based on the provisions of Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution *Juncto* Article 2 of Law No. 24 of 2003 concerning the Constitutional Court, the position of the Constitutional Court is one of the State institutions that exercise judicial power and is an independent judicial power, as well as law enforcement and justice.[69] In addition to overseeing the constitution, the Constitutional Court also has the authority to handle certain constitutional/state administration cases as stated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution as follows:[70]

1. Examining the Act against the 1945 Constitution;
2. Deciding disputes over the constitutional authority of state institutions;
3. Deciding the dissolution of political parties;
4. Deciding disputes over general election results;
5. Decide on the opinion of the DPR regarding alleged violations by the President and/or Vice President (impeachment).

The law in the perspective of legal history in principle is permanent but needs to be adjusted to changes in society.[71] So that with strong legal reasons from the applicant and the presentation of sufficient expert witnesses to

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[67] Angghie Permatasari, Lusy Liany, and Amir Mahmud, "Disharmonisasi Antara Mahkamah Konstitusi Dan Mahkamah Agung Dihubungkan Dengan Asas Kepastian Hukum (Studi Putusan Nomor 30/PUU-XVI/2018 Dan Putusan Nomor 65 P/HUM/2018 Dengan Pemohon Oesman Sapta Odang)," *JURIS: Jurnal Ilmiah Syariah* 19, no. 1 (2020): 97, https://doi.org/10.31958/juris.v19i1.2043.

[68] Purnama Hidayat Harahap, "Penyelesaian Sengketa Perbankan Syariah Sesuai Isi Akad Berdasarkan Ketentuan Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *USU Law Journal* 4, no. 2 (2016): 165–76.

[69] Abdul Mukhti Fadjar, *Hukum Konstitusi dan Mahkamah Konstitusi* (Jakarta: Konstitusi Press, 2006), 118.

[70] Fadjar, *Hukum Konstitusi dan Mahkamah Konstitusi.*

[71] Khamami Zada, "Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 1–17, https://doi.org/10.18326/ijtihad.v23i1.1-17.

convince the Constitutional Court of the existence of legal uncertainty in Law Number 21 of 2008 concerning Sharia Banking, on August 29, 2013, the Constitutional Court made Decision Number 93/PUU -X/2012, granted part of the applicant's request, stating that the elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.

The sense that formation of the National Legal System is influenced by legal raw materials that grow and live in a society (the live law). Furthermore, in one of its considerations, the Constitutional Court stated that there is a choice of forum for resolving Sharia banking disputes. The elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 will cause an overlapping authority to adjudicate because two courts are given the authority to resolve Sharia banking disputes. Whereas in Law Number 50 of 2009 concerning the Religious Courts, it is expressly stated that the Religious Courts have the authority to resolve this matter.[72] Thus, the decision taken by the Constitutional Court is an embodiment of its role, function, and position in upholding justice. Where this decision, has given fresh air to the government and society in dealing with Sharia economic disputes that have occurred.

After the issuance of the Constitutional Court decision No.93/PUU-X/2012 which explained that the elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking was declared contrary to Article 28 of the 1945 Republic of Indonesia Law and not have legally binding, Islamic financial institutions, customers or the general public do not need to follow Article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking in the context of non-litigation dispute resolution. That is, if in Article 55 paragraph (1) the litigation settlement is carried out within the Religious Courts, then in the non-litigation context the parties can resolve it by deliberation, negotiation, mediation, conciliation procedures or by bringing the dispute before the National Sharia Arbitration as stated in Law Number 30 of 1999 concerning Arbitration and Alternative Sharia Economic Dispute Resolutions.

In this regard, within Indonesia's legal system, which accommodates legal pluralism, the interaction between Religious Courts and District Courts often raises jurisdictional issues, particularly in resolving Sharia economic disputes. Prior to the issuance of Constitutional Court Decision Number 93/PUU-X/2012, there was uncertainty regarding which court had the authority to handle Sharia economic cases, as regulated under Article 55 of Law Number 21

[72] Rasyid and Putri, "Kewenangan Lembaga Penyelesaian Sengketa Perbankan Syariah."

of 2008 on Sharia Banking. This article allowed parties to choose between resolving disputes through the Religious Court or the District Court, depending on the clause agreed upon in the contract. This provision created a gap for jurisdictional dualism, where disputes with the same substance could be adjudicated by two different judicial institutions.

For instance, in several Sharia banking cases, parties who found the general judiciary system more favorable tended to bring their cases to the District Court, arguing that Sharia banks are legal entities subject to national law. Conversely, customers seeking a resolution based on Sharia principles were more inclined to file their disputes with the Religious Court.[73] This dualism resulted in legal uncertainty and prolonged dispute resolution, as each party could raise objections to the jurisdiction of the court handling the case.

The interaction between Religious Courts and District Courts also often led to differences in the interpretation of Sharia economic law. Religious Courts base their decisions on Islamic legal principles, while District Courts apply national civil law, which does not always align with Sharia norms. For example, in *murabaha* financing cases that result in default, District Courts tend to refer to general civil contract law and breach of contract principles, whereas Religious Courts consider compliance with the principle of justice in Islam.

Therefore, Constitutional Court Decision Number 93/PUU-X/2012 became a significant milestone in resolving this jurisdictional conflict. By annulling the provision in Article 55(2) of Law Number 21 of 2008 that allowed Sharia economic disputes to be resolved in District Courts, this ruling affirmed that all Sharia economic disputes must be adjudicated exclusively in Religious Courts. This decision provided legal certainty and strengthened the position of Religious Courts as the sole institution authorized to handle Sharia-based economic disputes.

With the Constitutional Court's decision, there is no longer any dualism in resolving Sharia Banking disputes.[74] The development of the implementation of Sharia economic dispute resolution after the Constitutional Court decision

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[73] Redaksi Justika, "Contoh Kasus Sengketa Perbankan Syariah Di Indonesia," *Justika*, 2022, https://blog.justika.com/bisnis/contoh-kasus-sengketa-perbankan-syariah/?utm_source=chatgpt.com; Willa Wahyuni, "Penyelesaian Sengketa Perbankan Syariah," *Hukum Online*, 2023, https://www.hukumonline.com/berita/a/penyelesaian-sengketa-perbankan-syariah-lt6425451edb4e1/?utm_source=chatgpt.com.

[74] Titik Triwulan Tutik, "Penyelesaian Sengketa Letter of Credit Ekspor-Impor Syariah Pascaputusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *IJTIHAD Jurnal Wacana Hukum Islam Dan Kemanusiaan* 16, no. 1 (2016): 43, https://doi.org/10.18326/ijtihad.v16i1.43-66.

No. 93/PUU-X/2012 based on the opinions of several judges at the one-sided Religious Courts increasingly shows the public understanding that Sharia economic disputes are the absolute competence of the Religious Courts so that they no longer submit cases to the General Courts.[75] Based on this, with the issuance of the Constitutional Court decision No. 93/PUU-X/2012, the polemic of dualism in resolving Sharia economic disputes in Sharia financial institutions has been completed and is considered finished. With this decision, it has provided legal firmness and understanding to the public that the resolution of Sharia economic disputes is absolutely the absolute authority of the Religious Courts, and has led the public not to submit their disputes to the General Courts anymore.[76] In addition, this will motivate the Religious Court judges to further improve the readiness of academics and judicial credibility in resolving Sharia economic disputes.

Development of Sharia Economic Dispute Settlement Post Constitutional Court Decision Number 93/PUU-X/2012

The development of Islamic banking is supported by the potential for the Indonesian Muslim population to increase every year, where according to a report by The Royal Islamic Strategic Studies Center (RISSC), in 2022 Indonesia will again become the country with the largest Muslim population in the world with an estimated Muslim population in Indonesia of ± 237.56 million people.[77] Indonesia is like a field that will become a fertile field for the development and progress of the Islamic economy.[78] This can be seen from the

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[75] Neni Sri Imaniyati and Panji Adam, "Implikasi Putusan Mahkamah Konstitusi (MK) No. 93/PUU-X/2012 Terhadap Penyelesaian Sengketa Nonlitigasi Perbankan Syariah," *Prosiding SNaPP: Sosial, Ekonomi dan Humaniora* 5, no. 1 (2015): 723–30; Dewi Nurul Musjtari, "Rekonstruksi Lembaga Penyelesaian Sengketa Akad Pembiayaan Dengan Jaminan Hak Tanggungan Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *Jurnal Media Hukum* 23, no. 1 (2016): 62–75, https://doi.org/10.18196/jmh.2015.0068.62-75.

[76] Erie Hariyanto, "Public Trust in the Religious Court to Handle Dispute of Sharia Economy," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (2022): 187, https://doi.org/10.15408/ajis.v22i1.22833.

[77] Monavia Ayu Rizaty, "Jumlah Penduduk Muslim Indonesia Terbesar di Dunia pada 2022," *Dataindonesia.id*, 3 November 2022. Accessed on 21 February 2023.

[78] Moh. Hamzah and Wasilatur Rohmaniyah, "Pembebasan Denda (al-Gharāmah) pada Nasabah Wanprestasi di Lembaga Keuangan Syariah: Analisis Maqāṣid asy-

rapid development of Islamic financial institutions' current financial products.[79] In response to the large population of the Muslim community and the statement above, many Islamic financial institutions have been established, both in the form of banks and non-banks. This is intended to provide convenience to the Muslim community when they want to carry out economic transactions using Islamic principles, both in the form of raising funds and channeling funds that have been well conceptualized by several Islamic financial institutions.

Regardless, fundamentally everyone on this earth dreams of not only lasting peace but also social justice to a certain degree, as well as prosperity and economic stability.[80] economic activity is an integral part of human life, the principle of maṣlaḥah in Islamic economics is not just a theoretical study but needs to be implemented using the right method.[81] So Sharia banking activities and Sharia quality must be maintained.[82] Religious courts are efforts made to seek justice or resolve certain cases for people who are Muslim through institutions that function to exercise judicial power according to the applicable laws and regulations.[83]

In this regard, Indonesia's legal system is a combination of various legal traditions, including customary law (*adat* law), Islamic law, and civil law inherited from Dutch colonial rule.[84] In the context of Sharia economics, the national legal system faces challenges in integrating Islamic economic principles into the state's legal framework, which remains secular in nature, as affirmed in Article 1(3) of the 1945 Constitution, which states that Indonesia is a rule-of-law state (*rechtstaat*), not a theocratic state.

Syarī'ah Perspektif asy-Syāṭibī," *J-HES : Jurnal Hukum Ekonomi Syariah* 06, no. 02 (2022): 175–94, https://doi.org/10.26618/j-hes.v6i02.7440.

[79] Elsy Renie, "The Urgency of Fatwa in The Law of Sharia Economics in Indonesia," *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (2021): 201–8, https://doi.org/10.31958/juris.v20i2.4059.

[80] Svetlana Karamysheva, "Protection of Socio-Economic Rights by the Constitutional Court of the Russian Federation," *Constitutional Review* 6, no. 1 (2020): 1, https://doi.org/10.31078/consrev611.

[81] Rizal Fahlefi, "Implementasi Maṣlaḥah Dalam Kegiatan Ekonomi Syariah," *Juris: Jurnal Ilmiah Syariah* 14, no. 2 (2016): 225, https://doi.org/10.31958/juris.v14i2.310.

[82] Amirizal, Arini Azka Muthia, and Sonia Ivana Barus, "The Protection of Spiritual Rights in the Sharia Banking Dispute Settlement: Overview of the Sharia Banking Law in Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 9, no. 3 (2022): 388–407, https://doi.org/10.22304/pjih.v9n3.a5.

[83] Aisyah, "Religious Courts Jury role in Islamic law implementation in Indonesia."

[84] Ratno Lukito, *Hukum Sakral Dan Hukum Sekuler: Studi Tentang Konflik Dan Resolusi Dalam Sistem Hukum Indonesia* (Jakarta: Pustaka Alvabet, 2008).

Thus, the fundamental principles of Indonesia's legal system are the supremacy of law and constitutionalism, which require that all regulations align with the 1945 Constitution. Consequently, the implementation of Sharia economic law must remain within the framework of national law, meaning that Sharia principles cannot be applied in an absolute manner without considering broader constitutional and positive legal aspects.

Settlement of economic disputes through litigation in court is an act of *ultimum remedium* through the competent court environment. *Ultimum remedium* is the last action that can be taken if an amicable solution is not obtained.[85] Thus, the existence of Sharia Banking and the Religious Courts have a very close relationship. Islamic Banking as an Islamic financial intermediary institution and the Religious Courts as a special judicial institution that has absolute authority both emphasize the application of Sharia principles in operational. Sharia banking and religious courts are expected to synergize by adhering to Sharia principles.

Unlike its neighboring country Malaysia, the *Syariah Court* has exclusive jurisdiction over matters related to Islamic law but does not cover more complex Sharia economic cases, such as Islamic banking and finance. Disputes related to Islamic banking or Sharia-based business contracts are resolved by civil courts or through arbitration at institutions such as the Kuala Lumpur Regional Centre for Arbitration (KLRCA), which has a dedicated division for Sharia financial dispute resolution.[86]

The key difference with Indonesia is that in Malaysia, Sharia economic disputes are more commonly resolved through arbitration forums or civil courts, whereas in Indonesia, following Constitutional Court Decision No. 93/PUU-X/2012, Sharia economic disputes fall entirely under the jurisdiction of the Religious Court. This ruling grant broader authority to Indonesia's Religious Court compared to Malaysia's Syaria Court, which does not have jurisdiction over complex Islamic financial cases.

In the context of Indonesia, the Religious Courts are one of the actors and administrators of judicial power and have an equal position with other courts

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[85] Dhian Indah Astanti, B. Rini Heryanti, and Subaidah Ratna Juita, "Kewenangan Pengadilan Agama Dalam Penyelesaian Sengketa Perbankan Syariah," *Adhaper: Jurnal Hukum Acara Perdata* 5, no. 1 (2019): 167, https://doi.org/10.36913/jhaper.v5i1.94.

[86] Wan M. Zulhafiz, "The Role of Asian International Arbitration Centre (AIAC) as a Regional Hub for Oil and Gas Sector," *International Journal of Engineering & Technology* 7, no. 3.21 (2018): 345, https://doi.org/10.14419/ijet.v7i3.21.17185.

in upholding the law.[87] Then Islamic law, which is one form of law that exists today, has tried to give color to the national legal system.[88] Therefore, 2006 was a historic moment for the development of the judiciary in Indonesia. Where with the issuance of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts, the Religious Courts have an expansion of absolute authority to resolve and decide Sharia economic disputes.[89] As stated in Law no. 3 of 2006 Article 49 explains that "The Religious Courts have the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the field of marriage, inheritance, wills, grants, endowments, zakat, *infaq*, sadaqah; and shari'ah economics."

In addition, Article 55 of Law Number 21 of 2008 concerning Sharia Banking states: 1) The settlement of Sharia Banking disputes is carried out by courts within the Religious Courts; 2) If the parties have agreed to settle a dispute other than as referred to in paragraph (1), the settlement of the dispute is carried out by the contents of the Akad; and 3) Dispute settlement as referred to in paragraph (2) may not conflict with Sharia Principles. The elucidation of Article 55 paragraph (2) of the Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking states that what is meant by "dispute settlement is carried out by the contents of the Akad" are the following efforts: a) Deliberation; b) Banking mediation; c) Through the National Sharia Arbitration Board (Basyarnas) or other arbitration institutions; and/or d) Through courts within the General Court environment. From the above rules, the Religious Courts have absolute authority in examining, deciding, and resolving cases between the parties involved in the agreement (contract) when a dispute occurs between them including those involving Islamic economic institutions (covering problem financing).[90] In this case, Sharia economic

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[87] Manik et.al., "Penyelesaian Sengketa Ekonomi Syariah Melalui Pengadilan Khusus Ekonomi Syariah di Lingkungan Peradilan Agama."

[88] Erina Pane, "Eksistensi Mahkamah Syar'iyah Sebagai Perwujudan Kekuasaan Kehakiman," *Al-'Adalah* 13, no. 1 (2017): 39–52, https://doi.org/10.24042/adalah.v13i1.1128.

[89] H.Y. Sonafist et al., "Ibn Al-Muqaffa's Proposal for Taqnīn and Its Synchronization with Islamic Law Codification in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (28 Desember 2020): 517, https://doi.org/10.22373/sjhk.v4i2.7864.

[90] Renny Supriyatni and Nurjamil Nurjamil, "The Urgency of Handling Non-Performing Financing in Sharia Banks in the Development of Indonesian Sharia Economics," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 8, no. 1 (2021): 29, https://doi.org/10.22304/pjih.v8n1.a2.

disputes can occur due to several factors, including the parties to the transaction defaulting and cancellation of the transaction, as well as third parties and the parties to the transaction experiencing cancellation of transactions, cancellation of mortgage rights, resistance to the confiscation of collateral or confiscation of execution and auction cancellation.

The proper and effective implementation of laws and regulations in a society cannot be separated from the role of the government.[91] Since the first time, the Religious Courts received authority to resolve Sharia Economic disputes, many have doubted the effectiveness of resolving disputes, starting from outreach to the community, the new legal system is built, the procedural law formulation used, to the capacity of the judges who will adjudicate sharia economic disputes.[92] However, with the existence of Law Number 3 of 2006, the Religious Courts must be ready to accept new powers to resolve disputes in the field of Sharia economics. This means that if an economic dispute occurs between parties who have a good agreement between individuals or institutions, then the settlement of the dispute can be resolved by the Religious Courts, where the nature of the decision is in the form of a win-win or final solution.

One of the main challenges in the implementation of Islamic economic law is the tension between the principle of *lex specialis derogat legi generali*, where Islamic law in the economic aspect is considered a special law that can override general law, and the principle of unity within the national legal system, which requires all laws to comply with the constitution. This tension is reflected in the debate over the jurisdiction for resolving Islamic economic disputes, which was ultimately settled through Constitutional Court Decision No. 93/PUU-X/2012.

Prior to this ruling, the dualism in the resolution of Islamic economic disputes created legal uncertainty, as some parties opted to bring their cases to the District Court, which applied the national civil law approach, while others chose the Religious Court, which was based on Sharia principles. This situation contradicted the principle of legal certainty (*rechtszekerheid*), which is one of the fundamental pillars of the rule of law.[93] Therefore, in its decision, the Constitutional Court affirmed that the Religious Court has absolute

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[91] Akhmad Mujahidin, "Peran Negara Dalam Hisbah," *Al-Iqtishad: Journal of Islamic Economics* 4, no. 1 (2016), https://doi.org/10.15408/aiq.v4i1.2544.

[92] A. Salam, and Marlina, "Menguji Eksistensi Pengadilan Agama Dalam Menyelesaikan Sengketa Ekonomi Syariah."

[93] H Heriyanto, "Dualisme Penyelesaian Sengketa Perbankan Syariah Di Indonesia," *Nusantara Journal of Islamic Studies* 1, no. 2 (2020): 106–12, http://ejournal.kopertais4.or.id/tapalkuda/index.php/NJIS/article/view/4091.

jurisdiction over the resolution of Islamic economic disputes, in line with the spirit of harmonizing Islamic law within the national legal system.

Therefore, Juridically the existence of Sharia banking and religious courts in Indonesia already has such strong legitimacy, based on the Law on Religious Courts, the Law on Islamic Banking, and the Constitutional Court decision Number 93/PPU-X/2012 Elucidation of Article 52 Paragraph (2) of the Law Islamic banking, but within certain limits still occupies the position of "alternative choice". The biggest problems in carrying out this mandate are: First, the public stigma that still thinks that Syari'ah Banks have not fully implemented practices by sharia guidelines and are only intended for Muslims in conducting business transactions. Second, the resolution of sharia economic disputes which is the absolute competence of the Religious Courts.

Dispute resolution in Islamic financial institutions provides opportunities as well as challenges for the Religious Courts.[94] In this regard, in the context of Sharia economic dispute resolution, it must be submitted to the Religious Courts. The Choice of Forum was declared invalid with the Constitutional Court's decision Number 93/PUU-X/2012 concerning the Elucidation of Article 52 Paragraph (2) of the Sharia Banking Law. The incompetence of the District Court in adjudicating Islamic banking cases when connected with the theory of the legal system put forward by Friedman states that the effectiveness of a statutory regulation depends on three things, namely legal structure, legal substance, and legal culture. This theory can be used as a benchmark to determine the effectiveness of the norms of the absolute authority of the Religious Courts in resolving Sharia economic disputes.

However, despite this ruling providing jurisdictional clarity, the integration of Islamic economic law into Indonesia's legal system still faces constitutional challenges. One of these challenges is how Islamic economic principles can be implemented without contradicting the principle of legal pluralism as recognized in the 1945 Constitution. In certain cases, provisions of Islamic economic law, which are based on the principle of *lā ḍarara wa lā ḍirāra* (there should be no harm or detriment), may conflict with the principle of freedom of contract in national civil law, which adopts a more flexible approach in regulating contractual terms and the consequences of breach of contract.

[94] Erie Hariyanto et al., "Ash-Shulh as an Attempt of Sharia Microfinance Institutions to Solve Sharia Economic Disputes in Madura Society," *Jurisdictie: Jurnal Hukum dan Syariah* 12, no. 1 (2021): 275–93, http://dx.doi.org/10.18860/j.v12i2.13531.

The *legal structure* is described as a machine, *legal substance* is described as what is produced and *legal culture* is described as how the machine is used.[95] Departing from this theoretical understanding, the authority granted by law must of course be carried out and applied properly and correctly by the Religious Courts. If it is correlated with the theory above, the absolute authority given to the Religious Courts is the engine, so the authority given can be used to resolve Sharia economic disputes that occur in society by what has been stated in the laws and regulations, then the results of dispute resolution carried out by the judiciary can provide benefits, justice, and welfare to litigants.

Thus, Constitutional Court Decision No. 93/PUU-X/2012 has had a significant impact on Indonesia's legal system, particularly in strengthening the position of the Religious Court in resolving Islamic economic disputes. Prior to this ruling, jurisdictional uncertainty between the Religious Court and the District Court led to many cases that should have been handled by the Religious Court being brought before the District Court instead, creating conflicts of authority that hindered legal certainty. With this decision, the Constitutional Court eliminated jurisdictional dualism and established that all Islamic economic disputes must be resolved in the Religious Court.

From the perspective of the separation of powers,[96] this ruling clarifies the distribution of authority between judicial institutions, particularly between the Religious Court and the District Court. Within the framework of Indonesia's Constitution, the Constitutional Court serves as the guardian of legal supremacy by ensuring that the jurisdiction of the Religious Court does not overlap with that of the District Court. This is in line with Article 24 of the 1945 Constitution, which affirms that judicial power is exercised by the Supreme Court and the courts under its authority, including the Religious Court.

Religious courts can provide guarantees and legal certainty for all parties involved in the perpetrators, especially those related to the Sharia economic dispute resolution because, in the Sharia financial industry, everything requires

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[95] Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2017): 148–63, https://doi.org/10.1017/S0041977X00106330; Yuliana Yuliana, "Dampak Pelaksanaan Hukuman Mati Terhadap Kondisi Kejiwaan Terpidana Mati Di Indonesia," *IJCLS (Indonesian Journal of Criminal Law Studies)* 1, no. 1 (2017): 39–54, https://doi.org/10.15294/ijcls.v1i1.10804.

[96] Sarah Nur Annisa, "Konsep Independensi Kejaksaan Republik Indonesia Dalam Perspektif Teori the New Separation of Power Bruce Ackerman," *JIL : Journal of Indonesian Law* 2, no. 2 (2021): 226–48, https://doi.org/10.18326/jil.v2i2.226-248.

regulation as a basis for action.[97] Then from that, the principle of a fast, simple, and inexpensive trial must still exist in the procedures of the Religious Courts, such as in Sharia economic disputes related to business disputes as stipulated in Supreme Court Decision Number 14 of 2016 concerning Procedures for Sharia Economic Disputes.[98] Therefore, Sharia economic disputes resolved by judges in the Religious Courts have certain characteristics or characteristics. First, the parties involved in the litigation in the Religious Courts are mostly Sharia economic disputes between Sharia commercial banks, Sharia people's financing banks, and BMT (Baitul Mall wa Tamwil). Second, the Sharia economic dispute resolution solution provided in the judge's decision is in the form of rescheduling, reconditioning, and restructuring. Third, the types of contracts that are often settled in the Religious Courts are *mudarabah, musyarakah* and *murabahah* financing contracts.

The implementation of Constitutional Court Decision No. 93/PUU-X/2012 is evident in various cases where the District Court has transferred Islamic economic dispute cases to the Religious Court.[99] This measure aligns with efforts to enhance consistency and legal certainty in the enforcement of Islamic economic law in Indonesia.

Given this reality, Constitutional Court Decision No. 93/PUU-X/2012 not only resolves the jurisdictional conflict between the Religious Court and the District Court but also strengthens the position of Islamic economic law within the national legal system. This ruling serves as an important precedent, demonstrating how Indonesia's legal system can accommodate Sharia principles within the constitutional and national legal framework in a more structured and harmonious manner.

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[97] Selvi Diana Rosyidah and Faif Nafif, "Peran Bank Syariah dalam Berbagai Aspek Bagi Masyarakat Indonesia," *Jurnal Rekognisi Ekonomi Islam* 1, no. 2 (2022): 180–85, https://doi.org/10.34001/jrei.v1i2.304.

[98] A Afriana and H Kusmayanti, "Review of Syaria Economy Disputes in Religious Courts within the Perspective of Small Claims Court (SCC)," *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 1 (2021): 183–94, https://doi.org/10.25041/fiatjustisia.v15no2.2086.

[99] Khotibul Umam, "Implikasi Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 Bagi Penyelesaian Sengketa Bisnis Dan Keuangan Syariah," *Jurnal Konstitusi* 12, no. 4 (2016): 691, https://doi.org/10.31078/jk1242.

Conclusion

The Constitutional Court Decision Number 93/PUU-X/2012 has marked a turning point in strengthening the jurisdiction of the Religious Courts in resolving Sharia economic disputes in Indonesia. This ruling eliminated the dualism of jurisdiction that previously allowed the District Court to handle Sharia economic cases, thereby creating legal certainty for parties involved in Sharia-based economic transactions. With this decision, the Religious Courts now have full authority in adjudicating Sharia economic disputes, which, in turn, reinforces the application of Islamic law within the national legal system.

However, despite providing jurisdictional clarity, challenges remain in its implementation. Some of these challenges include the limited capacity and expertise of Religious Court judges in handling complex Sharia economic disputes, as well as gaps in coordination between Sharia banking regulations and the religious judiciary system. Therefore, more comprehensive policy measures are required to ensure the long-term effectiveness of this decision's implementation.

One of the urgent steps that need to be taken is enhancing the competence of Religious Court judges in handling Sharia economic disputes. To date, most Religious Court judges have an academic background primarily focused on Islamic family law, such as divorce, inheritance, and endowments, while Sharia economic law has not been widely mastered. In addition to improving judicial competence, harmonizing Sharia economic law with national regulations is also a crucial factor in ensuring the effective implementation of the Constitutional Court's ruling. Therefore, the government needs to formulate more detailed derivative regulations concerning the authority of Religious Courts in resolving Sharia economic disputes to avoid overlapping jurisdiction with other institutions. Furthermore, enhanced coordination between the Supreme Court, the Financial Services Authority (OJK), and Bank Indonesia is necessary to ensure that Religious Court rulings can be effectively enforced within the national banking and financial system.

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