

# Improving The Professionalism of Islamic Economic Judges Through Certification Towards Asian Economic Community (AEC)

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**Abstract:** Professionalization of services in all areas is one of the positive impacts of Asian Economic Community (AEC). In the context of developing Islamic financial institutions, professional judges are required to provide legal certainty for consumers and entrepreneurs. This is important, because it is basically an improvement in the quality of Islamic economic law enforcement in Indonesia. This study aims to analyze the efforts made by the Supreme Court in enhancing the professionalism of judges on the settlement of Islamic economic disputes. This study is included in doctrinal research, using a philosophical, historical, and critical analytical approach. The results of this study find the continuing efforts of the Supreme Court, especially *Badilag*, in the technical aspects of handling cases that are standardized through the certification of Islamic economic judges. In addition, the Supreme Court has also strengthened the juridical aspect through the formal renewal of formal law against the Islamic economic disputes on Religious Courts. Clear, fast, and cheap procedures for resolving Islamic economic disputes are urgently needed for the parties. Through standardization and certification made, it is expected to meet the needs of law enforcement in the era of AEC. Therefore, it further enhances customer confidence in Islamic economic institutions in Indonesia.

**Keyword:** Islamic Economic Judges, Certification, Asean Economic Community (AEC)

## 1. Introduction

In the global financial industry, the presence of Islamic financial institutions has become an interesting phenomenon. Since modern Islamic finance was introduced by Mid Ghamr Local Saving Bank in 1963, it has attracted the interest of economists and bankers from various countries to develop the Islamic finance industry [1]. One example is the establishment of the Tabung Haji Institution in Malaysia in 1971[2]. In 2005, 75 countries have accepted and supported the Islamic economic system[3][4]. And up to now, it has been growing to more than 80 countries [5]. In addition, according to Global Islamic Finance Report 2016, Indonesia is considered as the driving force of Islamic finance in the future with Qatar, Saudi Arabia, Malaysia, the United Arab Emirates, and Turkey. Indonesia's Islamic finance industry still has the potentials to be developed and even become an inspiration for other countries [6].

The development of Islamic financial institutions requires strong philosophical and juridical consequences. In connection with this, there have been various regulations, legal institutions, and the development of a new legal culture related to Islamic economic institutions. At the same time, ASEAN realizes that increasing integration between countries in Southeast Asia is very important. As such, the Asean Economic Community (AEC) has an agreement with the surrounding country, in 1992, establishing the ASEAN Free Trade Area (AFTA). The cooperation is intended to make ASEAN products have strong competitiveness in global market. In addition, ASEAN is expected to attract more Foreign Direct Investment (FDI) and to increase trade among ASEAN countries (intra-ASEAN Trade)[7]. Based



on the above AEC objectives, certification and standardization of products and services should be applied, as a form of consumer protection [8]. In order to meet these needs, it is necessary to prepare a variety of preparations. In the context of the relationship between the development of Islamic financial institutions with the cooperation of AEC above, this paper aims to find the efforts undertaken in Indonesia to improve the professionalism of judges in solving the sharia economic disputes. Hopefully, with these efforts, the handling of disputes of Islamic economic institutions in the era of the AEC can improve customer confidence in Indonesia.

## **2. Methodology**

This study belongs to the category of doctrinal research. Approaches used include: historical; philosophical; as well as analytical and critical. The use of these methods is based on research objectives, i.e. to find the relationship between improving the quality of Islamic economic judges and the agreement of AEC. The data collection use library search method by reviewing some related rules and regulations and policies relevant to the topic. The analysis of this research is conducted qualitatively [9].

## **3. Findings**

The results of research related to the improvement of judge professionalism in handling disputes of Islamic economic institutions in the era of AEC are as described below:

### *3.1 Related Dynamics of Islamic Economic Disputes in Indonesia*

The Islamic economic system has been offered to cope with the various pressures of the global financial crisis. It is based on some suggestions that to improve financial inclusion, it needs to be done on the basis of religious, social, and moral values [10]. The settlement of Islamic economic dispute in Indonesia has a quite unique dynamic, particularly related to the institution that handles it. From a historical perspective, there are changes according to the law and/ or judicial decisions on which the law is based on. Islamic finance litigation is an area of practice which involves application of Shari'ah law [11], civil legislations, rules of court, and the civil law.

In 1992, an Islamic banking institution was first established. Furthermore, in 2006, Law no. 3 of 2006 amendment to Law no. 7 of 1989 on Religious Courts was published. In the period between 1992-2006, regulations related to Islamic financial institutions are still small. This is due to the limited number of people, relevant officials, or institutions have a good understanding of Islamic financial institutions. Meanwhile, the relevant reference or study results are also not many. The period can be said as the period of formation of Islamic economic law. In the end, after 14 years, an amendment was made to Law No. 7 of 1989 on Religious Courts with the issuance of Law no. 3 of 2006. In essence, the amendment confirms the absolute competence of dispute resolution of Islamic financial institutions at Religious Courts institutions.

Association with the above absolute competence can be understood, because in principle, a bank that declares as a sharia bank along with its customers have submitted themselves to Islamic economic law (muamalat). Islamic economic law is part of the Islamic legal system, in which since the colonial era of Dutch East Indies, law enforcement has been established in the Religious Courts. This is also reinforced in Paragraph (1) of Article 55 of Law No. 5/1999. 21 of 2008 concerning Sharia Banking (UUPS). Based on Paragraph (2) of Article 55 of the UUPS, some people interpret that dispute settlement may take place in the General Court, with the requirements (in Paragraph (3) Article 55 UUPS) not to be contrary to sharia principles. This condition is called the dualism of absolute competence.

In reviewing the UUPS to the Constitutional Court, there are several reasons for the decision, for example the existence of the rights of customers and the Sharia business units to obtain legal certainty as provided in Article 28D paragraph (1) of the 1945 Constitution [12]. Therefore, the Court considered the provisions in the Elucidation of Article 55 Paragraph (2) of the quo Law does not provide legal certainty and / or creates a fair legal uncertainty. In addition, it also causes the loss of the constitutional rights of customers in the settlement of Islamic banking disputes, [vide Article 28D paragraph (1) of the 1945 Constitution]. This is against the constitutional principles. Therefore, the explanation of Article 55 Paragraph (2) of the Sharia Banking Law which allows the settlement of disputes through the general court is contradictory to the constitutional principle guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Basically, the Constitutional Court's decision confirms that the absolute competence of sharia banking disputes is fully in PA.

### *3.2 Improving the Quality of Islamic Economic Judges in the AEC Era*

In economic activity, there is always a possibility that even a potential conflict can lead to a dispute. However, disputes that occur in financial institutions require serious attention. This is because financial institutions are highly dependent on customer trust. Therefore, in order to maintain and even increase customer confidence, it is necessary to ensure that the aspects of dispute resolution are carried out appropriately. The existence of the AEC agreement allows the parties to be involved in the dispute, from countries with different legal systems. Thus, the phenomenon requires the preparation of the judge's ability in the judicial institution. This is in line with the agenda of the activities to be implemented to realize the 2020 Vision, by improving the quality of human, economic, environmental, social, technological, intellectual property, security and peace that mutually beneficial to ASEAN member countries [13]. In the context of the development of Islamic financial institutions in Indonesia, especially in dispute resolution, also requires professional judges. Judges have a very important role, especially in building public confidence in law enforcement in Indonesia. To Islamic financial institutions in Indonesia, the existence Islamic economic judge is very important to improve professionalism.

Basically, potential disputes can be avoided at the time of drafting agreement documents[14]. However, if there has been a dispute, it must be done according to sharia. The settlement of sharia disputes is generally implemented by the judiciary in the form of mechanisms in the judiciary. Judicial institutions in addition to functioning to apply or enforce the law, also has a function to explore and find the law (*rechtsvinding*). For the discovery of the law required to settle a case, there is no relevant legal provisions. Therefore, the judiciary has a very strategic role in the formation of the law to provide justice and legal certainty.

Nascent Islamic banking and finance has become a substantial challenge to the firmly rooted western counterpart [15]. Based on the philosophy of Islam, people must use sharia law accordingly, even in conducting economic activities. If the actor is an institution, then it is shared with the corporate identity. Corporate identity has legal consequences in running its operations. That is, all aspects of the company must be linear with the principles of sharia. One important aspect of this is in the settlement of disputes that is a part of the enforcement of Islamic economic law.

From the description above, it can be said that in the context of dispute resolution, the legal instruments of Islamic banking institutions have been quite strong. Meanwhile, other Islamic financial institutions are not complete and tend to be neglected. Particularly, in the context of improving the professionalism of judges in the resolution of Islamic economic disputes in Indonesia, various efforts have been made. One of them made PERMA No. 5 Year 2016 on Sharia Economic Judge Certification. The regulation is a special regulation to improve the quality of Islamic economic judges. In the case of court and judge discussions, the legal discovery process gets more attention than its application. This is

due to in the process of legal discovery (*rechtsvinding*), there is a vast space for judges to make new laws appropriate to the development of society and in accordance with the conviction of his conscience. Intervention of the judge's conscience in making decisions is a key feature of progressive judges. Furthermore, it also reflects the involvement of the spiritual aspects of the judge as the legislator through his verdict.

Previously, efforts to improve the quality of education of judges have been done. The result shows that there is a significant increase. Thus, it shows that the PA institution prepares the new authority responsively. In the short term, efforts are made by providing technical guidance in the field of Islamic economics for 5 days [12]. Some of the materials presented are:

- a. Legal Aspects of Sharia Banking.
- b. BMT and BPR sharia.
- c. Compilation of Islamic Economic Law.
- d. Islamic Investment Law (Capital Market, Shari'ah Bonds, and Mutual Funds)
- e. Legal Aspect of Pension Fund of Sharia Financial Institution.
- f. Settlement of sharia economic disputes.
- g. The Legal Aspects of Sharia Economics.
- h. Islamic Insurance and Reinsurance Law.
- i. Contract Law In Islam.
- j. Mediation in Islamic Economic Dispute Settlement.
- k. Sharia pawn law.
- l. Wakaf Law (Juridical Review From Law No. 41 of 2004).
- m. Indonesian Zakat Law.

In practice, in some places the material of Islamic economic law is varied by: a). The Material Law of Sharia Economics, from the classical and contemporary Fiqh books; b). Ushul fiqh, including ways of *istimbat* (taking the law from the texts of the Qur'an or Hadith) and others according to local conditions respectively. When viewed from the content of training materials and educational improvement of religious judges above, it shows their sincerity in the effort to carry out new tasks [16]. Intensive socialization of the development of Islamic economic law, is also in great demand by the judges. It is a good awareness of BADILAG on the new tasks. In fact, an increase in number of bank service offices is followed by an increase in cases processed by the judiciary in the past three years, which is shown as follows.

Table 1. Number of Shariah Economic Cases received by PA in Indonesia.

	2014	2015	2016	2017 / Jun
<b>Cases</b>	73	102	229	121

Source: Kasubdit Statistics and Documentation BADILAG MA, October 2017

From the above data, it can be understood that the 'doubt' [16] of the public against the competence of PA judges in the settlement of Islamic economic disputes has been reduced. It is a challenge for the Supreme Court, especially BADILAG, to be able to foster public confidence in the new tasks. Basically certification of Islamic economic judges stated in Perma further strengthens the efforts that have been done before. Thus, the competence of Islamic economic judges in the era of MEA that has been passed for 2 years has been quite strong.

#### 4. Conclusion

From the overall description of the improvement of professionalism of sharia economic judges in the era of AEC, it can be concluded that philosophically, historically, and juridically; there is a strong relationship between Islam, Muslims, Muslims and religious courts. This can be seen from sociological empirical facts, as well as juridical facts, in the form of legal formal legislation.

Indonesia is one of the founders of ASEAN. Therefore, all government and non-governmental elements concerned should make various efforts to improve the quality of performance. This is necessary in the face of economic integration through the AEC. Various efforts have been made by the Supreme Court, particularly by the Director General of BADILAG to prove its readiness in the resolution of the sharia economic disputes. The main target is to increase the competence of judges by improvement of education level and certification of competence in sharia economy, which are done gradually and comprehensively. The efforts have been substantially set forth in PERMA No. 5 Year 2016 on Sharia Economic Judge Certification. It is based on the awareness that with regard to the judicial process. The judge has the greatest role in ensuring proper punishment, in accordance with the needs and development of the society.

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