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Strengthening the Jurisdiction of Religious Courts: Resolving Sharia Financing Disputes Following Indonesia's Constitutional Court Decision No. 93/PUU-X/2012

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Abstract

The rapid growth of Indonesia's Islamic finance industry has significantly increased the complexity of legal relationships between Islamic financial institutions and their customers, resulting in more sharia financing disputes. This development has raised the need for legal certainty regarding the jurisdiction of judicial institutions in resolving such disputes in accordance with national law and sharia principles. This study analyzes the strengthened jurisdiction of the Religious Courts in resolving sharia financing disputes following Indonesia's Constitutional Court Decision No. 93/PUU-X/2012. This research uses a normative legal research method, employing statutory, conceptual, and case approaches by examining legislation, court decisions, and relevant legal literature. The findings indicate that the Constitutional Court Decision has eliminated the dualism of judicial authority between the Religious Courts and the General Courts by affirming the Religious Courts' absolute jurisdiction over sharia financing disputes. This strengthened jurisdiction enhances legal certainty, better protects disputing parties, and reinforces public confidence in Indonesia's Islamic financial dispute resolution system.

Keywords: Religious Courts; Sharia Financing Disputes; Jurisdiction; Constitutional Court Decision; Islamic Economic Law.

Introduction

Indonesia's Islamic finance industry has grown significantly, driven by rising public awareness of an economic system based on Sharia principles. The Islamic finance industry continues to grow rapidly, both globally, where it reached more than USD 4

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trillion in 2023, and domestically. In addition, the Financial Services Authority (OJK) reports that Indonesia's market share has reached 10.8% as of June 2024 (Damai & Ma’ruf, 2025). This growth has also increased the complexity of legal relationships between Islamic financial institutions and their customers, raising the potential for disputes over Islamic financing. Before the issuance of Constitutional Court Decision No. 93/PUU-X/2012, the ambiguity regarding the forum for dispute resolution due to the option of the General Court mentioned in the Explanatory Notes to Article 55(2) of Law No. 21 of 2008 created a dualism of jurisdiction that had the potential to undermine legal certainty for the parties involved (Heriyanto, 2020). This situation underscores the urgency of examining how the decision reshapes the landscape of judicial jurisdiction in Islamic economic disputes.

Studies on the impact of Constitutional Court Decision No. 93/PUU-X/2012 have drawn the attention of numerous researchers from various perspectives. In his study, Yahya (2017) demonstrated that following the decision, the legal authority to adjudicate sharia economic disputes was fully transferred to the Religious Courts. However, implementation still faces challenges because of differing interpretations of the regulations. Hariyanto (2022) highlights issues related to public trust, finding that the public still tends to utilize the Religious Courts only to a limited extent for family law cases compared to Islamic economic disputes. From a comparative perspective, Hassan, Ilias, and Tuan Ibrahim (2022) compared the mechanisms for resolving Islamic banking disputes in Indonesia with those in Malaysia, and emphasized the importance of strengthening judges’ competence in understanding both Sharia principles and civil law. Meanwhile, Hasanudin, Kamsi, and Anshori (2024) demonstrate that the legal basis for resolving Sharia economic disputes in Religious Courts remains contested among various normative frameworks, resulting in inconsistent application in practice.

Based on this literature review, it appears that previous studies have tended to examine the impact of Constitutional Court Decision No. 93/PUU-X/2012 in a piecemeal manner—whether from the perspective of public trust, mediation mechanisms, or cross-national comparisons—without comprehensively linking the certainty of the litigation forum achieved through that decision to the ongoing issues that still arise in practice, such as the overlap of jurisdiction with General Courts, the consistency in the application of substantive law, and the existence of non-litigation mechanisms. This gap constitutes a research gap that has not yet been adequately addressed in an integrated manner within normative legal studies.

The novelty of this research lies in its effort to integrate an analysis of the strengthening of the absolute jurisdiction of the Religious Courts following Constitutional Court Decision No. 93/PUU-X/2012 with a mapping of implementation issues that persist to this day, thereby providing a more comprehensive picture of the

extent to which this decision has truly resolved the issues surrounding the settlement of sharia financing disputes. Thus, this study aims to analyze the strengthening of the Religious Courts' authority in resolving sharia financing disputes following Constitutional Court Decision No. 93/PUU-X/2012, as well as to identify the legal issues that still accompany the implementation of this authority in judicial practice in Indonesia.

Methods

This study employs the normative legal research method, which examines law as "law in books" by focusing primarily on legislation, court decisions, and legal doctrine. This method was chosen because the issue under investigation relates to the interpretation of legal norms, namely the extent to which Constitutional Court Decision No. 93/PUU-X/2012 reinforces the absolute authority of the Religious Courts in resolving sharia financing disputes, as well as how these norms are implemented in judicial practice.

This study employs three approaches simultaneously. First, the statutory approach examines provisions related to the authority of the Religious Courts, specifically Law No. 3 of 2006 Amending Law No. 7 of 1989 on the Religious Courts and Law No. 21 of 2008 on Sharia Banking. Second, the conceptual approach analyzes absolute jurisdiction, dualism of judicial authority, and legal certainty as developed in the doctrines of procedural law and Islamic economic law. Third, the case approach examines Constitutional Court Decision No. 93/PUU-X/2012, along with relevant first-instance court decisions, to determine whether the legal principles arising from these decisions are applied consistently or, conversely, leave unresolved issues in practice.

This study draws on primary and secondary legal materials. Primary legal materials include laws and regulations governing the jurisdiction of religious courts and Islamic banking, as well as Constitutional Court decisions and court rulings directly related to the study. Secondary legal materials include books, national and international academic journals, and previous research on the jurisdiction of Religious Courts and the resolution of Islamic economic disputes following these rulings.

Data collection was conducted through library research, which involved searching for, gathering, and reviewing primary and secondary legal materials relevant to the research's central issues. The collected data was then analyzed qualitatively using descriptive-analytical techniques, which involved systematically outlining the content of legal norms and the legal considerations in the ruling, and then analyzing them by referring to relevant concepts and theories to address the research questions.

Results and Discussion

The Jurisdiction of Religious Courts in the Resolution of Sharia Financing Disputes

Religious courts are judicial bodies under the Supreme Court and function as part of Indonesia's judicial branch. This status has a constitutional basis in Article 24(2) of the 1945 Constitution of the Republic of Indonesia, which places judicial bodies under the Supreme Court within the exercise of judicial power. Over time, the jurisdiction of the Religious Courts has expanded beyond Islamic family law cases to include Sharia economic cases through amendments to Law No. 7 of 1989 on Religious Courts, particularly via Law No. 3 of 2006. This expansion is a consequence of the growth of sharia-based economic activities, which require dispute resolution mechanisms grounded in clear jurisdictional authority (Ira, 2022).

Legally, Article 49 of Law No. 3 of 2006 grants Religious Courts the authority to hear, adjudicate, and resolve cases at the first instance involving Muslims in specific fields, including sharia-based economics. This provision forms the primary basis for the Religious Courts' absolute jurisdiction over disputes arising from economic activities based on Sharia principles. Thus, including Sharia-based economics within the scope of Article 49 indicates that the legislature has granted the Religious Courts special authority to resolve disputes in this field. This expansion of authority simultaneously strengthens the position of the Religious Courts in responding to the development of economic activities based on Sharia law (Samin, 2020).

In the context of Sharia financing, this authority covers disputes arising from legal relationships between Sharia financial institutions and customers based on contracts that apply Sharia principles. Sharia financing is a form of sharia economic activity involving contractual relationships through various agreements, leading to frequent disputes regarding the exercise of rights and obligations under these agreements between the parties (Azizah et al., 2024). Therefore, the expansion of the Religious Courts' jurisdiction in sharia economics is directly relevant to resolving sharia financing disputes.

These jurisdictional powers are further linked to Law No. 21 of 2008 on Sharia Banking. Article 55(1) states that courts within the Religious Courts system resolve Sharia banking disputes. This provision highlights the connection between the Religious Courts' general jurisdiction under Article 49 of Law No. 3 of 2006 and the specific provisions on Islamic banking disputes in Law No. 21 of 2008. Thus, from a normative perspective, the Religious Courts possess a strong legal basis for resolving disputes arising from sharia-based financing activities. However, Article 55(2) of Law No. 21 of 2008 also raised questions about whether the General Courts could resolve disputes.

This issue later became a key ground for Constitutional Court Decision No. 93/PUU-X/2012.

Based on the foregoing, Religious Courts' jurisdiction to resolve sharia financing disputes has a legal basis through the expansion of authority under Law No. 3 of 2006 and the specific provisions in Article 55(1) of Law No. 21 of 2008. However, the Explanatory Note to Article 55(2) raises questions about whether the Religious Court or the General Court has jurisdiction. This issue required further analysis through Constitutional Court Decision No. 93/PUU-X/2012 to determine how far that decision clarifies and strengthens the authority of the Religious Courts in resolving sharia financing disputes.

Constitutional Court Decision No. 93/PUU-X/2012 and the Strengthening of the Authority of Religious Courts

Constitutional Court Decision No. 93/PUU-X/2012 marks a significant milestone in strengthening the authority of Religious Courts to resolve Islamic banking disputes. This decision stemmed from a review of Law No. 21 of 2008 on Sharia Banking, specifically Article 55, which governs the resolution of sharia banking disputes. The issue arose because Article 55(1) stipulates that courts within the Religious Court system resolve Islamic banking disputes. In contrast, the Explanatory Note to Article 55(2) provides the option to resolve disputes through courts within the General Court system if agreed to in the contract. This situation raises concerns about two judicial forums capable of handling Islamic banking disputes and could create uncertainty about which forum has jurisdiction. This issue indicates a dualism of jurisdiction in resolving Islamic banking disputes following the enactment of Law No. 21 of 2008 (Heriyanto, 2020).

In its deliberations, the Constitutional Court subsequently determined that the Explanatory Note to Article 55(2) creates legal uncertainty because it opens the possibility of resolving Islamic banking disputes through different forums, even though Article 55(1) has already established the jurisdiction of the Religious Courts. Therefore, the Constitutional Court, through Decision No. 93/PUU-X/2012, declared that the Explanatory Note to Article 55(2) of Law No. 21 of 2008 was inconsistent with the 1945 Constitution and had no legally binding force. With the repeal of this provision, the option to resolve disputes through the General Courts based on the Explanatory Note to Article 55(2) no longer has a legal basis. The Supreme Court’s Ruling Directory also notes that the provision declared inconsistent with the 1945 Constitution is the Explanatory Note to Article 55(2), which previously provided for dispute resolution through courts within the general court system.

This ruling has significant implications for the role of Religious Courts in resolving Islamic banking disputes. Because the Explanatory Note to Article 55(2) has been

declared legally nonbinding, parties no longer have a basis to designate the General Court as the forum for resolving Islamic banking disputes solely based on a clause in the contract. Consequently, Constitutional Court Decision No. 93/PUU-X/2012 eliminated dualism in resolving Islamic banking disputes and affirmed that such disputes fall under the exclusive jurisdiction of the Religious Courts (Rasyid & Putri, 2019). This finding also aligns with research by Hasbi, Iswanto, and Mulyadi (2018), which identifies this ruling as the basis for strengthening the Religious Courts' authority to resolve Islamic banking disputes.

This strengthening of authority can also be viewed as an effort to provide certainty regarding the forum for dispute resolution. Before this ruling, the Explanatory Note to Article 55(2) allowed parties to include an option to resolve disputes through the General Courts in their contracts, creating the potential for a conflict of jurisdiction between the Religious Courts and the General Courts. Once the Explanatory Note was declared to have no legally binding force, the normative basis for directing Islamic banking disputes to the General Courts through that provision ceased to exist. Consequently, Constitutional Court Decision No. 93/PUU-X/2012 has clarified the legal standing of the Religious Courts and reaffirmed their jurisdiction over the resolution of Islamic economic disputes (Susylawati et al., 2025).

Nevertheless, the strengthening of the Religious Courts' authority through this Constitutional Court decision must be understood proportionally. While the decision directly resolves forum selection in Islamic banking disputes arising from the Explanatory Notes to Article 55(2), it does not mean that all issues in Islamic economic dispute resolution have been automatically resolved. Najib (2020), for example, points out that even after Constitutional Court Decision No. 93/PUU-X/2012, jurisdictional dualism persists in the enforcement and annulment of Sharia arbitration awards, creating legal uncertainty. Thus, Constitutional Court Decision No. 93/PUU-X/2012 can be understood as reinforcing certainty in the forum for resolving Islamic banking disputes; however, its implications for the overall mechanism of Islamic economic dispute resolution still need to be viewed in the context of broader legal issues.

Implications of Constitutional Court Decision No. 93/PUU-X/2012 on the Resolution of Sharia Financing Disputes

Constitutional Court Decision No. 93/PUU-X/2012 has significant implications for resolving sharia financing disputes, particularly regarding the certainty of the forum for dispute resolution. By declaring that the Explanatory Note to Article 55(2) of Law No. 21 of 2008 has no legal force, the normative basis that previously allowed the General Courts to resolve Islamic banking disputes is no longer valid. This strengthens the Religious Courts as the forum for litigation in Islamic banking disputes and reduces the

potential for forum shopping that could lead to legal uncertainty. Umam (2016) explains that this ruling has legal implications for resolving Islamic business and financial disputes because of the Constitutional Court's decision's final and binding nature and its universal applicability (erga omnes).

These implications are also evident in the increased certainty regarding which institution has the authority to handle Islamic banking disputes through litigation. Before the Constitutional Court's ruling, the existence of the Explanatory Note to Article 55(2) had the potential to create a conflict of jurisdiction between the Religious Courts and the General Courts. With the provision declared legally nonbinding, the jurisdiction of the Religious Courts has been given a clearer and more definitive position within the Islamic banking dispute resolution system. Thus, this ruling strengthens the existence and legal certainty of the Religious Courts in carrying out their function of resolving Islamic banking disputes (Lubis, 2021). Furthermore, Constitutional Court Decision No. 93/PUU-X/2012 has also succeeded in eliminating the legal dualism arising from the controversial provisions in Law No. 21 of 2008 and has provided certainty regarding the jurisdiction of the Religious Courts in resolving Islamic economic disputes (Susylawati et al., 2025).

Nevertheless, this Constitutional Court Decision has not fully resolved the jurisdictional issues that continue to arise in Islamic financing disputes. As noted in Almaududi's (2024) study, he found that even after Constitutional Court Decision No. 93/PUU-X/2012, there remains a possibility that sharia banking disputes may still be heard by General Courts, as exemplified by the Decision of the Padang District Court No. 27/Pdt.G.S/2022/PN Pdg. According to him, Religious Courts and General Courts still have overlapping jurisdiction over disputes involving property rights, unlawful acts, and consumer disputes. This suggests that jurisdictional issues following the Constitutional Court Decision are not determined solely by Article 55 of the Sharia Banking Law but also by other provisions governing jurisdictional relationships among judicial institutions.

Beyond jurisdictional issues, post-Constitutional Court ruling challenges also involve applying substantive law in dispute resolution. Fatimah and Ludfi (2024) note that although the formal jurisdiction for resolving Islamic banking disputes now lies with the Religious Courts, the application of substantive law in practice still faces challenges. The study found that judges still tend to use the Civil Code as a primary reference, while the Compilation of Sharia Economic Law (KHES) and fatwas from the National Sharia Council–Indonesian Ulema Council (DSN-MUI) are used to a more limited extent. These findings indicate that strengthening the Religious Courts' authority through the

Constitutional Court's ruling is important. Still, it does not, by itself, resolve how substantive Islamic economic law is consistently applied in dispute resolution.

Other issues also arise in non-litigious dispute resolution mechanisms. The Constitutional Court's decision clarifies the appropriate forum for litigation in Islamic banking disputes. Still, it does not preclude resolving disputes through alternative mechanisms such as arbitration and alternative dispute resolution, provided they comply with applicable legal provisions. Najib (2020) also points out that even after Constitutional Court Decision No. 93/PUU-X/2012, issues regarding jurisdiction to enforce and annul sharia arbitration awards persist. This indicates that certainty about the authority of Religious Courts to hear disputes through litigation is not yet fully synonymous with resolving all jurisdictional issues within the Islamic economic dispute resolution ecosystem.

Based on this analysis, Constitutional Court Decision No. 93/PUU-X/2012 can be considered a significant contribution to legal certainty in resolving sharia financing disputes, as it clarified the appropriate forum for litigation and strengthened the Religious Courts' position. However, the effectiveness of this decision cannot be adequately assessed solely by the elimination of the option to bring cases before the General Courts. Issues remain regarding jurisdictional overlap, the application of substantive law, and the enforcement of decisions within non-litigious dispute resolution mechanisms. Thus, the Constitutional Court's decision can be viewed as an important step toward establishing legal certainty; however, the implementation of the Religious Courts' jurisdiction still requires consistency in regulations and legal practice so that the goal of resolving sharia financing disputes effectively, fairly, and in accordance with sharia principles can be achieved.

Conclusion

Based on the results of the analysis outlined above, it can be concluded that Constitutional Court Decision No. 93/PUU-X/2012 has significantly strengthened the absolute authority of the Religious Courts in resolving sharia financing disputes, particularly through the removal of the legal basis for choosing the General Court as the forum which was previously contained in the Explanatory Notes to Article 55(2) of No. 21 of 2008, thereby enabling the dualism of litigation forums which has long caused legal uncertainty to be resolved normatively.

Nevertheless, this study also found that this certainty regarding the forum has not yet fully resolved all issues related to the settlement of sharia economic disputes, as there are still overlapping jurisdictions with the General Courts in cases involving property rights and consumer protection; inconsistencies in the application of substantive law by judges, who still tend to refer to the Civil Code rather than the

Compilation of Sharia Economic Law and DSN-MUI fatwas; and issues regarding jurisdiction in the enforcement and annulment of sharia arbitration awards through non-litigious channels.

These findings underscore that the effectiveness of Constitutional Court Decision No. 93/PUU-X/2012 must be assessed not only in terms of forum certainty but also in terms of the overall consistency of regulations and judicial practices. For future research, it is recommended to conduct an empirical study based on court decisions issued after the Constitutional Court's ruling to quantitatively measure the level of consistency in the application of substantive Sharia law, as well as a comparative study on the effectiveness of non-litigious mechanisms as a complement to the authority of the Religious Courts. The author would like to express gratitude to the Faculty of Sharia at UIN Raden Mas Said Surakarta for the academic support provided, as well as to all parties who provided input and assistance during the drafting of this article.

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