

The Integration of One-Stop Integrated Service Policy in the Religious Judicial System in Indonesia

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Abstract

This study aims to depict the problems faced in the implementation of a one-stop integrated service policy in the religious judicial system. Data were also obtained through direct interviews from a number of informants, mainly the judges of the provincial and district High Religious Courts (Pengadilan Tinggi Agama) and (Pengadilan Agama). This study finds out that competence of judges in religious courts was minimal, and their selection requirements were laxer, as there were no special criteria for studying Islamic sciences. Consequently, judges preferring decisions on material laws over Islamic precepts. Therefore, judges' decisions in establishing regulations tend to be fixed on material laws, which is evident in cases such as, divorce lawsuits.

Keywords: Integration, Service Policy, One-Stop, Religious Courts.

Penelitian ini bertujuan untuk menggambarkan permasalahan yang dihadapi dalam implementasi kebijakan pelayanan terpadu satu pintu di sistem peradilan agama. Data juga diperoleh melalui wawancara langsung terhadap sejumlah informan, terutama para hakim Pengadilan Tinggi Agama dan provinsi dan kabupaten. Penelitian ini menemukan bahwa kompetensi hakim di pengadilan agama masih minim, dan persyaratan seleksinya lebih longgar, karena tidak ada kriteria khusus untuk mempelajari ilmu-ilmu keislaman. Konsekuensinya, hakim lebih memilih putusan yang berdasarkan hukum materiil dibandingkan dengan ajaran Islam. Oleh karena itu, keputusan hakim dalam menetapkan peraturan cenderung terpaku pada hukum materiil, hal ini terlihat pada kasus-kasus seperti gugatan perceraian.

Kata kunci: Integrasi, Kebijakan Pelayanan, Satu Pintu, Peradilan Agama.

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A. Introduction

The public service in any country consists of institutions, such as ministries, hospitals, judiciary, etc, as well as the individuals working within them, and are specifically established by the State to meet general needs and remain directly accountable to the government. An integrated public service system is not a guarantee of good quality work, therefore, the local government is expected to create a platform capable of assessing the performance level of an institution¹. The Religious Court (*Pengadilan Agama*) is a legal and justice service institution under one-stop in the Supreme Court (*Mahkamah Agung*), regularly carrying out the duties and functions of government services.

The importance of the public services has long been the concern of practitioners and academics to improve the quality. Several studies have shown that the current quality of public services needs to be continuously improved in line with the changing demands of the society ², and it require innovation and digitalization that is responsive to the community needs . Good quality pu³blic services greatly affect customer satisfaction⁴, and they receive a positive assessment from the community as users, including legal services in the Court⁵.

This study is in line with the existing analyses, that focused on integrated religious court services. It also assesses the problems faced by the religious court during the implementation of the one-stop integrated policy. Likewise, explaining that the one-stop system tends to be fixated on the existing positive laws,

¹ Carlolina, L. A., & Kurniasih, Y.. Reformasi Birokrasi Di Unit Pelayanan Terpadu Satu Atap (UPTSA) Melalui Surabaya Single Windows. *Jurnal Mahasiswa Administrasi Negara (JMAN)*. (2020)

² Lestari, R. P., Mutiarin, D., & Nurmandi, A.. Inovasi Mall Pelayanan Publik untuk Peningkatan Kualitas Pelayanan Publik di Kabupaten Kulon Progo. *Jurnal Ilmiah Tata Sejuta STIA Mataram*. <https://doi.org/10.32666/tatasejuta.v6i2>. (2020)138

³ Irawan, A., & Faturahman, B. M. Public Services Motivation (PSM) in One Stop Integrated Services in Merauke Regency. *Journal of Governance*. <https://doi.org/10.31506/jog.v4i2.6569>, (2019).

⁴ Engdaw, B. D.. *The Impact of Quality Public Service Delivery on Customer Satisfaction in Bahir Dar City Administration: The Case of Ginbot 20 Sub-city*. *International Journal of Public Administration*. (2020)

<https://doi.org/10.1080/01900692.2019.1644520>

⁵ Buehler, M. (2011). *Indonesia's law on public services: Changing state-society relations or continuing politics as usual? Bulletin of Indonesian Economic Studies*. <https://doi.org/10.1080/00074918.2011.556057>

consequently, discouraging the acceptance of religion as the basis for decision making.

The postulation built in this study is that the one-stop policy, in addition to providing a positive impact, also affects other services negatively, especially in judicial decisions. The one-stop system is considered effective in managing centrally controlled resources, and it is more financially efficient due to budget integration. However, in the religious judicial process, the policy essentially ignores doctrines and principles as the basis for making a decision or case. This depicts legal weakness, as it lack legitimacy in handling religious cases.

Trust and legal certainty are two essential factors to consider in community judicial system⁶. Though, the power of religious courts is significantly reduced, their existence is still being demanded by some organizations and believers, due to their functions in the form of counseling, reconciliation⁷, and mediation. ⁸In the present era, religious courts are expected to act exclusively within the framework of legislation, ensuring the normal functioning of believers' associations and contributing to the norms in the modern society, while preventing violations of the rights of religious adherents and radicalization⁹.

2. Literature Review

2.1 One-stop public service

The quality of public services is improved by broadly annexing and distributing the duties and functions of a work unit, which is an extension of the central government task¹⁰. The public service unit has become an instill node for integrated professions, while increasing the quality of services to the community. This one-stop public service is a solution to the inefficiency of the bureaucracy that

⁶ Azheri, B.. Urgency of the establishment of a special court for the resolution of Sharia economic dispute in the Religious Courts. *Journal of Legal, Ethical and Regulatory Issues*. (2018)

⁷ Mukhametzaripov, I. (2020). Religious Courts in Modern European States. *Sovremennaya Evropa*. <https://doi.org/10.15211/soveurope32020148157>

⁸ Mukhametzaripov, I. A.. Foreign scientific discourse about religious courts in a secular state. *Religiovedenie*. <https://doi.org/10.22250/2072-8662.2020.1.114-122>

⁹ Mukhametzaripov, Religious Courts in Modern European States

¹⁰ Laksana, R. D., Mayasari, V., & Setyanto, R. P.. Model of disorientation and disqualification of peripheral services in public services on local government device work units in Central Java, Indonesia. *WSEAS Transactions on Business and Economics*. (2020) <https://doi.org/10.37394/23207.2020.17.82>.

is responsive and easily accessible to the general public¹¹. Therefore, the concept of one-stop integrated service is a form of bureaucratic simplification. This is a breakthrough in minimizing and simplifying public services and it has reduced activities and procedures, cost differences, simplification of requirements, and the average time required for licensing. The licensing stages, starting from document approval, only need to be carried out in one place or with one agency¹².

The implementation of one-stop public services is followed by positive and negative impacts. The positive impact is verified when the level of trust is grown in the institution concerned. In Indonesia, the one-stop development currently being carried out by the Supreme Court is an effort to realize the independence of judicial power and create impartial court decisions¹³. It potentially have a negative impact when not carried out carefully. The study of Sahid Ullah (2016) finds out the features of one-stop public service in Bangladesh, and it benefits certain power holders in rural areas—mainly educated youths, entrepreneurs, and party activists. As a result, the rural community has become increasingly marginalized¹⁴, from the original goal of implementing the concept.

2.2 Institutional performance

Modell (2019) defines institutional performance as a socially constructed conception of an organization, which becomes firmly institutionalized as an aspect of legitimate achievement. Institutional performance is local and varies depending on its mandate and the availability of resources¹⁵. Increased attention is being given to institutional performance, whether public or private, large or small, well-regulated or not, because of the important role they play in ensuring the well-being

¹¹ Irawan, A., & Faturahman, B. M.. Public Services Motivation (PSM) in One Stop Integrated Services in Merauke Regency. *Journal of Governance*. (2019) <https://doi.org/10.31506/jog.v4i2.6569>

¹² Irawanm, A, Public Services Motivation (PSM) in One Stop Integrated Services in Merauke Regency

¹³ Aditya, Z. F.. *Penerapan Modal Sosial Dalam Praktek Peradilan Yang Berbasis Kepekaan Sosial*. *Jurnal Ilmiah Hukum Legality*. (2018) <https://doi.org/10.22219/jihl.v25i2.6002>

¹⁴ Sahid Ullah, M.. *Empowering rural communities through telecentre connectivity: experience of the Union Information and Service Centres in Bangladesh*. *Media Asia*. (2016)<https://doi.org/10.1080/01296612.2016.1205834>

¹⁵ Yomo, M., Villamor, G. B., Aziadekey, M., Olorunfemi, F., & Mourad, K. A.. Climate change adaptation in Semi-Arid Ecosystems: A case study from Ghana. *Climate Risk Management*. (2020)<https://doi.org/10.1016/j.crm.2019.100206>

of many citizens of developed and developing countries¹⁶. Institutional performance is made conventional, by the legacy practices of the various agencies responsible for the existing funds in an institution. Therefore, it is suggested not to be relying solely on the past legacy, for a future intervention. Hence, there is hope for change in order to improve the performance of an institution.

Chaudhry et al. (2021) analyzed institutional performance by considering seven indicators: government stability, socio-economic conditions, external and internal conflicts, religious tensions, corruption, law, and order. In contrast to this, Nuraini et al. (2021) stated that ten indicators are capable of strengthening institutions: cooperation with other organizations, boundary clarity of management area, regulatory compliance with local conditions, active community involvement in the development and management of regulations or laws, and existence of local institutions. Furthermore, the effectiveness of supervision, imposition of sanctions, conflict resolution mechanisms, government recognition through the establishment of regulations, and equal access for resource users¹⁷. Institutional performance remains an important element that stakeholders should collectively strengthen to respond better to development challenges. Also, it is positioned as a major determinant of political and institutional trust, and as a simple performance indicator for citizens to evaluate their institutions. When citizens develop trust in institutions, that means, the organization is functional¹⁸.

2.3 Religious Court

Philosophically, Western law, both substantive civil (*Burgerlijke Wetboek*) and formal procedure (HIR and Rbg), are prepared with an individualistic, secular approach. The optical properties of the nature of legal dispute are seen as objects (*Zaak*) that are purely material, Meanwhile, the substantive law in religious courts

¹⁶ Clark, G. L., & Urwin, R.. *Best-practice pension fund governance*. In *Asset Management: Portfolio Construction, Performance and Returns*. (2016) https://doi.org/10.1007/978-3-319-30794-7_13

¹⁷ Nuraini, Satria, A., Wahyuni, E. S., & Bengen, D. G. (2021). *Strengthening marine ecotourism management's institutional performance in Raja Ampat, Indonesia*. *Pertanika Journal of Social Sciences and Humanities*. <https://doi.org/10.47836/pjssh.29.3.18>

¹⁸ Dyrstad, K., & Listhaug. *Institutional trust in the Yugoslav successor states: A comparative approach*. In *Building Democracy in the Yugoslav Successor States: Accomplishments, Setbacks, and Challenges since 1990*. <https://doi.org/10.1017/9781316848289.005>

is obtained from Islamic precepts, which is sourced from the religion philosophical values¹⁹. Religious courts have the authority to settle disputes related to sharia fields²⁰, and they facilitate conflict resolution based on doctrine and principles operating within the organization or group²¹.

Religious courts have been found to develop dynamically over time, and it continue to function, as it is influenced by the following factors: the demands of principles expressed by certain sections of the population, the need for ethnocultural self-identification, the authority of religious leaders, the inefficiency and high costs of secular justice,²² allowing the existence of religious courts to be maintained. Trust and legal certainty are two crucial factors to consider in community judicial system²³. Though, the power of religious courts is significantly reduced, their existence is still being demanded by some organizations and believers, due to their functions in the form of counseling, reconciliation, and mediation (Musjtari et al., 2019). In the present era, religious courts are expected to act exclusively within the framework of legislation, ensuring the normal functioning of believers and contributing to the norms in the modern society, while preventing violations of the rights of religious adherents and.²⁴

3. Method

Implementing the one-stop service system in religious courts has technically been positive. However, it is not yet ideal for accommodating religious values in deciding a case. It is the basis for this study to evaluate the one-stop service policy, which still needs to be adjusted to the religious-based culture of the judiciary.

This study selects the Religious Courts (*Peradilan Agama*) as one of the existing courts in addition to the general, military, and state administrative

¹⁹ Gofar, A. *The reform of the procedural religious court law based on islamic law in indonesian legal system*. Sriwijaya Law Review. (2017).

<https://doi.org/10.28946/slrev.Vol1.Iss2.37.pp114-127>

²⁰ Azheri, B.. Urgency of the establishment of a special court for the resolution of Sharia economic dispute in the Religious Courts. *Journal of Legal, Ethical and Regulatory Issues*. (2018)

²¹ Mukhametzaripov, I. (2020). Religious Courts in Modern European States. *Sovremennaya Evropa*. <https://doi.org/10.15211/soveurope32020148157>

²² Mukhametzaripov

²³ Azheri, B.

²⁴ Mukhametzaripov

judicature that specifically handle cases for Muslims. This study aims to provide an insight that the existence of religious courts is maintained. Trust and legal certainty are also two important factors that guarantee confidence in a local law judicature, though, the power of religious courts is decreasing or increasing.

The method used in this study is based on qualitative data collection from texts/manuscripts, books, journals, and existing laws and regulations. The data were also obtained through sequential interview from several informants in the Religious High Courts and judges, then were typologically grouped, and analyzed.

4. Results

4.1 Judges' decisions refer to the law.

The demands for reformation in terms of judicial power resulted in changes to the legislation. One of the changes to the legislation is the promulgation of a one-step system, namely Law Number 35 of 1999 concerning the Principles of Judicial Power (*Pokok-Pokok Kekuasaan Kehakiman*). This fosters the four judicial institutions under the Supreme Court, namely general, military, state administrative, and religious. By placing religious courts under one-step system at the Supreme Court, its position as an independent judiciary is strengthened ²⁵.

The extension of the religious courts' authority to handle certain civil cases and the possibility of dealing with some criminal issues also impact trust and legal certainty that complicate services. Trust and legal certainty are two crucial factors that guarantee the level of confidence toward a community judiciary²⁶.

Divorce cases, for example, (*cerai talak*) show a reasonably high upward trend yearly (Badan Peradilan Agama, 2020), and the criteria of filling a divorce lawsuit are shown as a sample at the Tilmuta Religious Court with Number 41/Pdt.G/2021/PA.Tim and with Decision Number 51/Pdt.G/2021/PA.

²⁵ Ali, M. D.. UU Peradilan Agama. *Jurnal Hukum & Pembangunan*. (1990)
<https://doi.org/10.21143/jhp.vol20.no2.887>

²⁶ Azheri, B. Urgency of the establishment of a special court for the resolution of Sharia economic dispute in the Religious Courts (2018).

Table 1: forms of divorce lawsuits

No.	Number of Lawsuits	Lawsuit Case	Status
1	41/Pdt.G/2021/PA.Tim	Lawsuit Divorce Case in The Tilmuta Religious Court	Accepted
2	51/Pdt.G/2021/PA.Tim	Lawsuit Divorce of <i>Talak</i> in The Tilmuta Religious Court	Accepted

Source: Tilmuta Religious Court, 2021

From the lawsuits and divorce cases above, the judge emphasized that average of the charge was granted Rajabudin, 42 years old. Even though in the trial, the act of reconciliation through mediation was attempted. The mediation was carried out based on the Supreme Court Regulation No. 1 of 2016, which became the basis for the judges in the case of litigation and divorce cases referring to the Marriage Law (*Undang-Undang Perkawinan - UUP*) NO. 1 of 1974. and the Compilation of Islamic Law (*Kompilasi Hukum Islam - KHI*) of 1991 as material law. Divorce is minimized by the tendency of judges' decisions on internal and external factors. Internal factors influence judges in decisions that emerge from within, such as the level of education and competence, mastery of the yellow book, professionalism, experience, and career. Similarly, external factors affect the decisions from the outside or normative principles, namely the existing laws and regulations as a reference.

The second is on inheritance cases, for example, a claim for determining heirs, which are later revoked or granted by judges based on their authority, also causes problems, and this trend is increasing yearly²⁷. The authority of judges to receive, examine, and decide on inheritance cases is stipulated in Law no. 7 of 1989, whose authority was expanded under Law no. 3 of 2006, and shown in table two.

27 Anwar, R.. Banyaknya Gugatan Waris di PA Selong. (2019) <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/banyaknya-gugatan-waris-di-pa-selong-19-3>

Table 2: Inheritance Cases

No	Number of Lawsuits	Lawsuit Case	Verdict
1	599/Pdt.G/2021/PA.Lbt	Inheritance Determination Case in Limboto Religious Court	The case was withdrawn
2	637/Pdt.G/2021/PA.Lbt	Inheritance Determination Case in Limboto Religious Court	The case was accepted

Source: Limboto Religious Court, 2021

Divorce cases, for example, (*cerai talak*) show a reasonably high upward trend yearly and the criteria of filling a divorce lawsuit are shown as a sample at the Tilamuta Religious Court with Number 41/Pdt.G/2021/PA.Tim and with Decision Number 51/Pdt.G/2021/PA.

The function of the religious courts in dealing with inheritance cases has not been maximized. Since the enactment of the law, the community has not been able to change its behaviour from the habit of litigation in the district court (*Pengadilan Negeri*) and then switching to the religious court (*Pengadilan Agama*). It is considered by some people to be expected because inheritance law is part of civil law. Meanwhile, in civil law there is the principle of freedom for choice of law. When it is associated with Islamic personality, the behaviour toward the choice of law, it is unpredictable. However, the right option in inheritance is currently challenging to implement because Law Number 3 of 2006 implies the application of Islamic law in inheritance disputes between Muslims. The only question now is whether the law's enactment is future dependent ²⁸.

Substitute heirs or commonly called mawali, are guardians who substitute children with inheritance when their parent die. This is regulated in Article 185 of the Compilation of Islamic Law (KHI). The main problem encountered in this study

²⁸ Susylawati, E.. *Kewenangan Peradilan Agama Dalam Menangani Perkara Waris Setelah Berlakunya Uu Nomor 3 Tahun 2006*. AL-IHKAM: Jurnal Hukum & Pranata Sosial. (2019) <https://doi.org/10.19105/al-lhkam.v2i1.2618>

are the factors influencing the judge's decision Number: 284/Pdt.G/2015/PA.Prg in determining the share of each successor heir, in addition to the Palembang Religious Court Decision Number 1854/Pdt.G/2013/PA.Plg, which gives an inheritance to non-Muslim heirs. Therefore, the judges consider the law in deciding the case and the legal consequences arising from the decision.

The third is in terms of Islamic economics is the Legislation related to the Sharia economic dispute settlement system. The implementation of the Sharia economic dispute settlement system is shown in the decision of the Makassar Religious Court judge in case Number (2279/Pd.G/2015/PA Mks). In addition, there are also cases Number 02/Pdt.G.S/2019/PA.Ptk at the Pontianak Religious Court and the Muara Enim Religious Court with Case Number 0945/Pdt.G/2014/PA.ME.

Table 3: Sharia Economic Disputes

No	Number of Lawsuits	Lawsuit Case	Judge Decision
1	2279/Pdt.G/2015/PA.Mks	Sharia Economic Dispute Makassar Religious Court	Auction
2	02/Pdt.G.S/2019/PA.Ptk	Sharia economic dispute Religious Court (Class 1A Pontianak)	Default (<i>Wanprestasi</i>)
3	0945/Pdt.G/2014/PA.ME	Sharia economic dispute Muara Enim Religious Court	Default
4	No.9/Pdt.G/2008/ PN.JMB Reg. 12 Pebruari 2008	The Plaintiffs are substitute heirs, claiming the property that has not been divided.	Revoked March 12, 2008

Source: Direktori Putusan Mahkamah Agung, 2021

Broadly, a contract in Islamic law is the same as an agreement in Indonesian law. The word "contract" is coined from *al-'aqd*, which means to bind or connect (*ar-rabt*). Binding denotes gathering the two ends of the rope and joining one another until they are connected. From a fiqh perspective, a contract is an agreement

between *ijab* (offering) and *kabul* (acceptance). In general, *murabahah* is a type of sales and purchase contract through a mutually beneficial transaction between two parties who have made an agreement. Whereby one of the parties discloses the price at the beginning of the transaction, with the addition of the cost of selling the goods and the profits that have been agreed on.

The religious courts are one of the judicial bodies that carry out law enforcement and justice for people, for example between Muslims in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, alms, and economics sharia. The authority of the religious court is also affirmed in resolving certain cases, including violations of the marriage law and regulations, and strengthening the legal basis of the Sharia Court in carrying out its precepts in the field of *jinayah* based on *qanun*. The relative authority of this court is following its place and position, as it is domiciled in the capital city of the district, and its legal decree covers the region. The High Court of Religion is domiciled in the provincial capital and its jurisdiction covers the province²⁹.

The concept of litigation shows that the law should be enforced to end the conflict. In addition, a non-litigation paradigm is also used, namely a pattern that is based on or rooted in consensus, deliberation, or peaceful settlement between the parties, Implementation of Sharia Economic Disputes in the Decision of the Makassar Religious Court Judge in Case Number 2279/Pdt.G/2015/PAMks. It has been implemented according to the existing legal provisions, but it has not fulfilled the aspect of justice that should be attached to a decision³⁰.

4.2 The competence of Religious Court Judges lacks religious understanding.

The court is an institution that upholds legal certainty and justice as well as a dynamic social organization, which is in constant relationship with the larger environment, in an effort to understand the legal values in the society. Furthermore,

²⁹ Saepullah, A., Syariah, F., Islam, D. E., Syekh, I., Cirebon, N., Perjuangan, J., Pass, B., Cirebon, S., Kunci, K., Kompetensi, ., Syari, E., Ah, ", & Yuridis, D. (2016). *Kewenangan Peradilan Agama Di Dalam Perkara Ekonomi Syariah. Mahkamah: Jurnal Kajian Hukum Islam*.

³⁰ Wahyudin Anugrah, M., Hamsir, H., & Anis, M. (2020). *Tinjauan Hukum Terhadap Penyelesaian Sengketa Ekonomi Syariah Dalam Putusan Hakim Pengadilan Agama Makassar. Iqtishaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syari'ah*. <https://doi.org/10.24252/iqtishaduna.v2i3.18793>

the court interpret the text of the law in the context of society and the change made. In Islamic countries and nations where the majority of the population is Muslim, such as Indonesia, is experiencing development in the study of Islamic law³¹.

The competence of a judge as a State Official should be undoubtedly good, to meet the demands and carry out obligations, tasks, functions, authorities, and responsibilities. Judges are selected for Field Competency (*Seleksi Kompetensi Bidang - SKB*) and Basic Competency Selection (*Seleksi Kompetensi Dasar - SKD*). In addition to the selection test above, and passing as a CPNS, a prospective judge is subjected to an additional competency test. The additional test in question is the ability to read the yellow book, such as Wahbah Zuhaili's *fiqh*, *Sunnah fiqhi*, and others, as emphasized by Moh. Yamin (56 years), Rajabudin (42 years), and Muh. Hasanuddin (57 Years).

The requirements to become a religious court judge (pa-kuningan.go.id & Be, 2017) are as follows, the prospective person:

1. Should be an Indonesian citizen.
2. A Muslim.
3. Have the fear of God Almighty.
4. Be loyal to Pancasila and the 1945 Constitution of the Republic of Indonesia.
5. Have Sharia degree and/or law degree in mastering Islamic law.
6. Be physically and mentally healthy.
7. Be authoritative, honest, fair, and not reprehensible.
8. Should not be a former member of the banned Indonesian Communist Party, including its mass organisations, or not a person directly involved in the September 30th Movement or the Indonesian Communist Party (*Partai Komunis Indonesia - PKI*).

The acquisition of *kitab kuning* or Yellow Book skills for prospective judges is mandatory, as well as learning the fiqh books³². Furthermore, the head of the

³¹ Aziz, A. S.. Posisi Lembaga Peradilan dalam Sistem Pengembangan Hukum Islam. *Syariati : Jurnal Studi Al-Qur'an Dan Hukum*. (2016)

<https://doi.org/10.32699/syariati.v2i02.1134>

³² Safriadi, S.. Otoritas Kitab Kuning Dalam Putusan Hakim: Analisis Putusan Hakim di Mahkamah Syar'iyah Lhokseumawe Aceh. *Analisis: Jurnal Studi Keislaman*.

Administrative Affairs Agency of MA, Aco Nur, stated that the judges from the 2017 CPNS recruitment should be placed in general, religious, and state administrative courts (*Pengadilan Tata Usaha Negara - PTUN*). Applicants that passed through the general assessment should have a cumulative grade point average (GPA) of at least 2.75 on a scale of 0-4.00.

The process of resolving sharia economic disputes at the Religious Courts Class I.B Bukittinggi is classified into 2 phases, namely the stage before the enactment of Perma No 14 Tahun 2016. Second, the position of the *bacha kitab* for judges in making decisions is very dominant in addition to using written law in the form of statutory regulations. In deciding sharia economic cases, judges do not only use KHES as a reference for material legal sources and Perma Number 14 of 2016 as a formal legal source. They make legal discoveries, and as one of the primary considerations in making decisions, referring to the yellow book even though it is not explicitly quoted. The yellow book is known to be inseparable in judges' decisions, especially in the settlement of sharia economic disputes to realize legal objectives. It also supports the judge's moral responsibility for the claim that what has been decided is considered correct (*res judicata pro veretatur habetur*). Judges are advised to master the sharia economy, and as efforts are being made to posit the Yellow Book material into law for the realization of justice, benefit, and legal certainty (HANIFA, 2017). Then, in the tradition of Islamic law (*Fiqh*), the yellow book is one of the sources of reference in determining the precepts. It also have the authority to determine the law in judicial institutions that apply Islamic principles.

From legal description, the Yellow Book is compiled from Islamic law (*Kompilasi Hukum Islam - KHI*). Therefore, the judges should no longer refer to the Yellow Book when deciding cases. This is because the official and material laws that apply in the Religious Courts are already enforced and have permanent legal force.

4.3 Structural and functional positions of judges have no basis of understanding

The profession of a judge as a state official is vital in the judiciary, considering all its authorities ³³. Being skilled in the judiciary is essential, but it is not as

(2019)<https://doi.org/10.24042/ajsk.v19i1.3384>

³³ Indrayati, R. (2016). *Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem*

important as a judge whose intellectual breadth in the field of religious knowledge³⁴ and professional in adjudicating cases³⁵.

Furthermore, in order to achieve competence, one of the main focuses of this Third Educational Training (*Diklat III*) is to increase proficiency, both soft (*kompetensi lunak*) and hard (*kompetensi keras*). Hard competency is easier to learn because it is related to judicial technical material. However, soft competency lies at the bottom of the heart, ranging from behaviour and morals to a person's antecedents. "Assuming in the assessment of an aspirant (*calon hakim - cakim*), the following results are obtained, a hard competency value of 40, while the soft score is 60, the aspirant should be able to become a good judge. However, a good judge is not guaranteed when the hard competency is 80 and the soft is 20." Therefore, in addition to materials related to Post-Training or Internship III, the first material that is delivered in this training is the judge profile, which aims to enable the candidates to carry out in-depth reflections on their profession and authority, as well as the professional ethics that should be adhered to guard. Therefore, when the prospective judge have these two competencies and produce quality decisions, it greatly contribute to realizing the supreme judicial objectives.

In line with this, the head of the Center for Judicial Technical Education and Training (*Pendidikan dan Pelatihan Teknis Peradilan*), IG Agung Sumanatha, in a report stated that the main objective of this Integrated PPC Education and Training III is to increase morality and integrity. Therefore, the content related to morality and integrity, in the form of material for the profile, should receive an adequate portion, for the candidate to become a formidable judge. Then the increase in hard competency, namely capacity building and intellectual enhancement, has been comprehensively prepared for several subjects to ultimately support their ability as

Ketatanegaraan Indonesia. Kertha Patrika. <https://doi.org/10.24843/kp.2016.v38.i02.p02>

³⁴ Azizah. (2021). *Ketua Pengadilan Agama Harus Bijak Dan Profesional Menjamin Kepastian Hukum Pelaksanaan Eksekusi.*

<https://www.mahkamahagung.go.id/id/berita/4809/ketua-pengadilan-agama-harus-bijak-dan-profesional-menjamin-kepastian-hukum-pelaksanaan-eksekusi>

³⁵ Nofriandi, P. (2021). *Pelaksanaan Seleksi Calon Pegawai Negeri Sipil Mahkamah Agung Republik Indonesia Tahun Anggaran 2021.*

<https://www.mahkamahagung.go.id/id/pengumuman/4697/pelaksanaan-seleksi-calon-pegawai-negeri-sipil-mahkamah-agung-republik-indonesia-tahun-anggaran-2021>

judges. "With these two objectives, it is expected that the appointed Judges become authoritative, responsible, and professional in their duty.

For example, the Training III of the Integrated PPC Program Batch VI was attended by 200 judge candidates (*calon hakim - cakim*), consisting of General Court candidates (97), Religious Courts (78), and Administrative Court (25). The training duration was 66 days, from July 2nd, 2012, to September 16th, 2012. All Education and Training III activities were centered at the Research and Development Agency for Education and Training of the Supreme Court of the Republic of Indonesia, Megamendung, Bogor of West Java³⁶.

4.4 Career path

Career positions are generally managed and fostered in an integrated manner in one staffing system ³⁷and under the leadership of judges³⁸. The involvement of the DPR in filling the positions of supreme and constitutional judges after the amendment to the 1945 Constitution was motivated by the DPR in the Indonesian judiciary system during the democratic transition period. However, this involvement has the potential to give rise to many problems, including the authority of the DPR being very decisive in the selection process for supreme justices and constitutional judges, which is liable to cause problems of politicization. This research focused on first, the reason behind the Legislative, i.e., the House of Representatives (*Dewan Perwakilan Rakyat - DPR*) involving in filling the Supreme Court Justices and Constitutional judges Justices. Second, is to find out whether the involvement is in line with the principles of separation of power and checks, and balances.

The involvement of the DPR in filling the positions of supreme justices and constitutional judges is part of the democratic process that began to run in the post-

³⁶ <https://bldk.mahkamahagung.go.id/id/arsip/44-pusdiklat-teknis/dok-keg-teknis/565-calon-hakim-diminta>

³⁷ Suhariyanto, B. (2016). *Rekonstruksi Pengembangan Karier Jabatan Fungsional Panitera Pengganti Peradilan Di Indonesia / The Career Development Reconstruction Of Registrar Functional Position In Indonesian Judiciary*. Jurnal Hukum Dan Peradilan. <https://doi.org/10.25216/Jhp.5.3.2016.391-406>

³⁸ RIVAI, F. S. M. (2021). *Peran Dan Fungsi Kepemimpinan Dalam Organisasi Peradilan Agama*. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/peran-dan-fungsi-kepemimpinan-dalam-organisasi-peradilan-agama>

New Order transition period. The involvement of the DPR is also a deviation from the principle of separation of power. This practice is found not to reflect the principle of check and balance, because the DPR is so decisive in all selection processes³⁹.

For more than 30 years, the discourse on the selection of judges has become a serious issue throughout the world for several reasons, mainly related to the primary function of the court, such as the resolution of disputes that affect the lives of individuals and society. The problems raised are, first, how to fill in the positions of Supreme Court Justices and Constitutional judges in post-reform Indonesia.

Evidently, the filling of these positions shows that they are more political in nature, therefore, the participation of the People's Representative Body or Parliament to reform the principle of self-restraint need to be carried out by each branch of power to minimize political bias⁴⁰. For example, the position of the judge has been confirmed as a state official, but in reality, several aspects regarding it are still tied to the civil service system. Therefore, the position of judges is often known to have a dual status, namely as state officials and civil servants. The omission of the dual status has caused severe problems both from a managerial perspective and to the potential of reducing judicial independence. When independence begins to reduce, the implication is to hinder the efforts to realize the vision of the Supreme Court, namely to create a Supreme Judicial Body ⁴¹.

At the international level, there is a tendency in many countries to improve the integrity of the judiciary and increase public trust. This is observed, for example, in the agreement of a number of countries to be bound by the International Framework for Court Excellence (IFCE). This framework provides conceptual insight into the relationship between "Court Performance and Quality" and "Court Values," such as

³⁹ Puspitasari, S. H. (2018). *Pelibatan Dewan Perwakilan Rakyat Dalam Pengisian Jabatan Hakim Agung Dan Hakim Konstitusi*. *Jurnal Hukum Ius Quia Iustum*. <https://doi.org/10.20885/iustum.vol25.iss3.art1>

⁴⁰ Harijanti, S. D.. *Pengisian Jabatan Hakim: Kebutuhan Reformasi Dan Pengekangan Diri*. *Jurnal Hukum Ius Quia Iustum*. (2014) <https://doi.org/10.20885/iustum.vol21.iss4.art2>

⁴¹ Nurjannah, S.. *Mewujudkan Visi Ma Tentang Badan Peradilan Yang Agung Melalui Undang-Undang Jabatan Hakim*. *Jurnal Hukum Dan Peradilan*. (2015) <https://doi.org/10.25216/jhp.4.1.2015.65-82>

equality in the law, honesty, impartiality, independence in decision making, proficiency, integrity, transparency, accessibility, timeliness, and certainty ⁴².

5. Discussion

Judges' decisions in establishing a law tend to be fixed on material laws. This is observed in the following cases, particularly in divorce lawsuits where the judges use material law (positive law). It is also found in the implementation of mediation in the settlement of divorce cases in the religious courts (Handayani & Syafliwari, 2017). As well as in the construction of the Dwangsom Sanction Law in the decision of living costs in the Religious Courts through the "*Argumentum a Contrario*" ⁴³.

The public's legal awareness of mediation in divorce cases is based on regulation No. 1 of 2008 (A Yumarni, 2014). This is due to the implementation of a law that is approached as a point of assessment for the community and direct the promulgation of Marriage Law no. 1 of 1974. The implementation of the law and government regulation no. 9 of 1975 (PP No. 9 of 1975) caused problems, because of the enactment of Law number 1 of 1974 concerning "Marriage" (*Perkawinan*), which is mandatory for every Indonesian citizen to comply⁴⁴.

The competence of judges is found to be minimal in understanding religion, and their selection requirements are laxer, with no special requirements for studying Islamic sciences; for example, reading the Yellow Book has resulted in preference decisions on material laws over Islamic principles. Judges' structural and functional positions have no basis in understanding Islamic religion/law. Therefore, this study differs from the existing, that focused on the competence of judges in the Religious Courts, who prefer to use material law in decision making. The aspect of the initial selection process for judges caused this preferential treatment, because of the lack of religious knowledge mastery.

⁴² Utama, L.. *Majalah Peradilan Agama*. (2018) <https://drive.google.com/file/d/1g0IBj-57R61Uo-JK4VcsdtlksL1yONRb/view>

⁴³ Sam'ani, M.Ag, D. Konstruksi Hukum Sanksi Dwangsom Dalam Putusan Nafkah Di Peradilan Agama Melalui *Argumentum A Contrario*. *JURNAL HUKUM ISLAM*. (2018) <https://doi.org/10.28918/jhi.v15i1.860>

⁴⁴ Hakim, R.. *Poligami Dan Perceraian Suatu Analisa Sosial Dan Perundangan-Undangan*. Al-Qalam. (2018) <https://doi.org/10.31969/alq.v2i2.667>

6. Conclusion

This study proposed a one-stop integrated policy system, which has both positive and negative impact on public services, especially in making religious court decisions. The system is considered adequate in centrally monitoring of resources and more financially efficient due to budget integration. However, in the religious judicial process, it significantly ignores the main points of religion as the basis for making a decision, which depict legal weakness and lack of legitimacy in handling religious cases.

This study has some limitations, which includes the use of small available samples, few instances, and methodological restrictions which is solely qualitative or quantitative, making it challenging to comprehend. Considering these restrictions, it is suggested that additional studies should be conducted with a larger sample size that accommodates various educational backgrounds and genders to achieve an in-depth understanding.

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