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THE GORONTALO RELIGIOUS COURT JUDGES RESPONSE TOWARD THEIR ABSOLUTE COMPETENCE IN RESOLVING SHARIAH ECONOMY DISPUTES

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Abstract

Post the first amendment of Religious Courts Bill that provides wider authority toward Religious Courts in investigate and decide Islamic economics disputes has responses, whether support or pessimistic, especially among Religious Court judges themselves. This paper examines the Gorontalo Religious Courts judges response about their authority in resolve Shariah economy disputes. This paper is a qualitative descriptive research and the data was collected using observation, interviews and document reviews. The finding of this study revealed that the Gorontalo Religious Courts judges response well to trust laws in handling disputes Shariah economy. In other words, in principle, they are ready to handle disputes Islamic economics. Readiness, such as: the handling disputes Shariah economy is Religious Courts judges authorities and it is a professional responsibility as a judge; Religious Courts formed a special judge to handle falling out or cases of Shariah economy, and Religious Courts judges provides knowledge of Shariah economy without trainings or workshops.

Pasca amandemen pertama undang-undang Peradilan Agama yang memberikan perluasan kewenangan penyelesaian sengketa ekonomi syari'ah telah memberikan berbagai tanggapan dari berbagai kalangan, khususnya hakim-hakim Pengadilan Agama. Tulisan ini mengkaji respon para hakim di Pengadilan Agama Gorontalo terhadap kewenangan tersebut. Penelitian ini adalah deskriptif kualitatif dengan metode pengumpulan data melalui observasi, wawancara dan dokumentasi. Hasil penelitian menunjukkan bahwa hakim Pengadilan Agama Gorontalo merespon baik terhadap amanah undang-undang dalam menangani sengketa perekonomian syari'ah. Dengan kata lain pada prinsipnya mereka telah siap menangani sengketa ekonomi syariah. Kesiapan itu antara lain: penanganan sengketa ekonomi syariah adalah sebuah tanggung jawab profesi sebagai hakim; Pengadilan Agama membentuk majelis hakim khusus menangani sengketa atau perkara ekonomi syari'ah, dan hakim-hakim Pengadilan Agama dibekali dengan pengetahuan tentang perekonomian syari'ah melalui pelatihan-pelatihan.

Key Word: Falling Out, Shariah Economy, Judges, Religious Court of Gorontalo

A. Introduction

The development of science and technology has had big influence to human life, included in bussiness economy activities. The kinds of business and new issues developed rapidly, such as hedging, secularity, money market, capital market, gold investation, foreign valuta trading, e-commerce trading, commodity exchange, indeks trading *(ta'amul bil mu'syar),* credit card payment and debt system. The rapid development is also experienced by banking and monetary institutions, such as banking, leasing (*multifinance*), mutual fund, and also the instruments of moneter control by central bank, exchange rate, share property donated for religious, multi level marketing (MLM), fiducia insurance in funding, storehouse fund insurance, etc. However, shariah in business economy nowdays era do rapidly development.

In responding era development, Islam law is claimed to have significant flexibility in order to prevent its scope, either its function as social control or in certain definition as social engineering in society.[1] In sociology discussion, change is the adhere characteristic in society which gives change effect in social and religious sector. Islam religion should be able to show its interrelation with all aspects of human life and history demand of an Islam community, to keep itself from loosing its main part to guide Islam societies, either from worship aspect, social, politic, or economic aspect.[2]

The amendment of The Constitution of 1945 (UUD 1945) brought significant reformation to state structure aspect in Indonesia. For instance in court and justice aspect, namely one roof Court authorized by Supreme Court. On section 24 verse (2) the third amendment of UUD 1945 it was added about the authority of judicial affairs. The law of No 14 in 1970 (UU No. 14 Tahun 1970) about The Basic Regulation of Judicial Affairs, certainly, have been amandent many times and the last change is the Law of No 48 in 2009 (UU No. 48 Tahun 2009) about the authority of judicial affairs. The law of judicial affairs with new paradigm automatically demands amendment towards other laws in each court, included the Law of No 7 in 1989 (UU No. 7 Tahun 1989) about Religious Court.

To response the development dynamic and the necessity law of societies, then the Law of Number 7 in 1989 (UU No. 7 Tahun 1989) about Religious Court have experienced twice amendment, namely the Law of Number 3 in 2006 (UU No. 3 Tahun 2006) and the Law of Number 50 in 2009 (UU No. 50 Tahun 2009). On the amendment of the Law of Number 3 in 2006, Religious Court obtained large authority in investigating, deciding, and

[1]Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia* (Gama Media: Yogyakarta, 2001), p. 12.

[2]Amir Mua'alim dan Yusdani, *Konfigurasi Pemikiran Hukum Islam* (Cet. 2; Yogyakarta: UII Press, 2001), p. 20.

resolving cases in first level of Court on shariah economic aspect. On section 49 letter (i) is stated that Religious Court assigns and entitled to investigate, to decide and to resolve cases on shariah economic aspect. The explanation of letter (i) on this section states that shariah economic is business activities which is done based on shariah principles, the business are included: shariah bank, shariah macro monetary institution, shariah insurance, shariah reinsurance, shariah obligation, and shariah obligation letter on middle time, shariah security, shariah finance, shariah funding, shariah monetary of pension institution, and shariah business.[3]

The appearance of shariah businesses above, give chance and at once new challenge for the judge at Religious Court to develop and pour out their competence at this aspect. They should be ready to handle and resolve the cases about shariah economy. This authority over handling gives signal about the acknowledgment of Religious Court existence, at once be the realization for Islam societies in Indonesia to solve their cases in accordance to Islam teaching. It means that Religious Court is expected and projected as the most accurate and the most representative justice institution in investigating, deciding, and resolving shariah economy cases. This authority is also applied in Gorontalo Religious Court, because it is one of Religious Court in Indonesia which is located in the city of Gorontalo and its juridicial scope cover Gorontalo City and Bone Bolango Regency. It absolutely gives big chance in handling shariah economy disputes and cases, especially which are happened in Gorontalo City and Bone Bolango Regency.

The additional authority of Religious Court in handling shariah economy cases recruit many responses from many people from many aspect of knowledge, they are the academics, judicial practitioners, and the practitioners on shariah economy (banking and finance institutions). One of the response is their hesitate toward the competence and the capability of judges in Religious Court in resolving shariah economy cases, because since then, they have only intercourse the cases which is absolutely far from bisuness and financial analysis. Salwa Kayati's research argued that the amendment of the law of Number 3 in 2006 (UU No. 3 Tahun 2006) born chance and challenge. The relevant challenge is the readiness and the competence of Religious Court, especially the judge who handle shariah economy cases.[4] It is happened, before the first amendment of Religious Court law, namely the law of Number 7 in

[3]Republik Indonesia, *Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1998 tentang Peradilan Agama*, and its explanation.

[4]Salwa Kayati, "Kompetensi Hakim Pengadilan Agama dalam Menyelesaikan Perkara Ekonomi Syari'ah (Studi Kasus di Pengadilan Agama Surakarta," *Skripsi* (Semarang: Universitas Muhammadiyah Semarang, 2010), p. 76.

1989 (UU No. 7 Tahun 1989), it only gives authority to the judje to preside over the cases about marriage, heritage, bequest, testament, property donated, and religious meal.[5] The law of Religious Court which gives chance to handle shariah economy disputes was amendment first time in 2006.

The development of shariah economy, nowadays, indicates the potency of shariah economy problems and economy judicial cases. Therefore, the competence of Religious Court should be acquired to handle some cases or judicial disputes especially on shariah economy. However, there are many aspects should be paid attention, for instance the lackness of human resources who have good competence and professional in handling shariah economy disputes and judicial problems which are related to shariah disputes. Based on the fact above, this article adopted problem about response of judges in Gorontalo Religious Court toward the additional authority in investigating and resolving shariah economic disputes pasca the law of Number 3 in 2006 (UU No. 3 Tahun 2006) about the amendment of the law of Number 7 in 1989 (Undang-Undang Nomor 7 Tahun 1989) about Religious Court.

B. Gorontalo Religious Court: History, Its Position and Competence

The position of Religious Court is included in judicial authority scope. It is based on the Constitution (UUD 1945), namely:

> The judicial authority is launced by a Supreme Court and justice institution which is controlled by Supreme Court authority, namely General Court, Religious Court, Military Court, State Structure Court, and by a Supreme Constitution.[6]

Based on the constitution, then the law about the core of judicial authority was arranged, namely the law of Number 14 in 1970 (UU No. 14 Tahun 1970), and amendment with the law of Number 49 in 2009 (UU No. 49 Tahun 2009) about judicial authority. The sections are regulating about Religious Court are listed below:

a. Judicial institutions which are controlled by Supreme Court includes judicial institution in general court scope, religious court, military court, and state structure court.
b. General Court is mentioned on the first verse has power to investigate, to justice, and to decide criminal and civil cases according to the law determination

[5]Republik Indonesia, *Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama*, section 49.

[6]Republik Indonesia, *Undang-Undang Dasar 1945 dan Amandemennya*, section 24 verse (2).

c. Religious Court is mentioned on the first verse has power to investigate, to justice, to decide, and to resolve cases between Moslem and Moslem according to the law determination.[7]

Religious Court is the first level of court which has power to investigate, to justice, to decide, and to resolve cases which been its authority. Because of the amendment of the Constitution 1945 (UUD 1945) and the law of judicial authority (UU Kekuasaan Kehakiman), then the law of Religious Court was accelerated with its first amendment namely the law of Number 3 in 2006 (UU No. 3 Tahun 2006) and its second amendment the law of Number 50 in 2009 (UU No. 50 Tahun 2009). According to Gufron, the core content of the law Number 3 in 2006 (UU No. 3 Tahun 2006) is the authority of Religious Court is enlarged to accept, to investigate, and to decide the disputes on shariah economy.[8]

The authority or the competence of Religious Court was arranged in section 49 to section 52 the law of Number 7 in 1989 (UU No. 7 Tahun 1989). The competence was classified into two, namely relative competence and absolute competence. Its relative competence refers to section 118 HIR or section 142 RBg jo section 73 the law Number 7 in 1989 (UU No. 7 Tahun 1989) about Religious Court. Its absolute competence bases on section 49 the law Number 7 in 1989 (UU No. 7 Tahun 1989), namely the authority to justice civil cases on; (a) marriage; (b) heritage, bequest, property donated which is done based on Islam law; (c) and religious meals.[9] However, section 49 has been amendment with the law Number 3 in 2006 (UU No. 3 Tahun 2006) and its absolute authority is added with shariah economy.

Related to the position, Gorontalo Religious Court was established, since the kingdom era until nowadays.[10] In history reviews, Gorontalo has had some kingdoms which have strong power influence, because most of them empowered regions which covered all the region of Tomini Bay. The kingdoms are: (1) Suwawa Kingdom; (2) Limboto Kingdom; (3) Gorontalo Kingdom; (4) Bolango Kingdom; and (4) Atinggola Kingdom. The kingdoms are unified in one family branch which is known as "*limo lo pohalaa*" (brotherhood or five kingdoms united). In the region of "*limo lo pohalaa*" the same law custom was applied, namely Gorontalo law custom as one of custom from 19 law custom in

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[7]Republik Indonesia, *Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*, section 25 verse (1), (2), dan (3).

[8]Abd. Ghofur Gufron, *Peradilan Agama dan Kompilasi Hukum Islam dalam Tata Hukum Indonesia* (Yogyakarta: UII Press, 2009), p. 19-20.

[9]Sulaikan Lubis, et. al., *Hukum Acara Perdata Peradilan Agama di Indonesia* (Jakarta: Kencana, 2006), p. 103.

[10]Pengadilan Agama Gorontalo, *Profil Pengadilan Agama Gorontalo,* www.pa-gorontalo.go.id, browsed on March, 21st in 2013.

Indonesia. After Islam religion arrived in Gorontalo in 1525, then the kingdoms became Islam kingdoms regulately. The region was led by a king.

To drive the government in the kingdom, it is divided into three parts which were known as *buatulo totolu*, (1) *Buatulo bantayo* was led by *Bate* (custom figure) and has duty to arrange regulations and guidelines kingdom goal and interest; (2) *Buatulo saraa* (shariah') was led by *Qadli* and has duty to handle the cases in kingdoms which were related to religion judicial, such as: marriage and its problems, *malwares*, *hadhona*, and other cases which were still related; and (3) *Buatulo bala* was led by *Apitalau* (navigator captain) and has fnction as the army and soldier of kingdom.

In the era of King Motoladulakiki, it was legalized the relation between law custom and religious law shariah)' it is known with the statement *"adati hula-hulaa to saraa, saraa hula-hulaa to adati*" (custom based on shariah', shariah based on custom'). It meant that either custom or shariah, can be applied as long as it was not contradicted each other. Then, in the era of King Eyato, there was a big reformation on law aspect, especially on law custom which was arranged with the statement "*adat hula-hulaa to saraa, saraa hula-hulaa to kuruani*" (custom based on shariah', shariah' based on al-Qur'an).

In the era of Dutch Colonization came to Gorontalo in 17 centuries, then in politic dynamic, all the government led by king, was erased by Dutch governor in 1889 and directly governed by the Dutch Colony. However, especially *syara'*official still had chance to do their duty, because Qadli and is staffs was earned by the Dutch Colony. After Dutch colony left Gorontalo, Japan continued to colonilize this region from 1942 to 1945. Even though, the government organization and structure did not changed, because Japan focused more on defense than the government administration, thus the duty of syara''s staffs did not change, the one changed is the term of public official, for example: Head of Regency (*Residen)* became *Sun Ken Rikan*, *Jogugu* changed to *Gunco* and the head of village *changed to Suco*.

Pasca Independence Day until 1952, Qadli still executed his duty which is related to Islam law, such as marriage, divorce, dowry, handlanah, bequest, and etc. In 1952 the Office of Religious Affairs was established, and then marriage administration does in the office, while divorce and others which related was still handled by Kadli. After the government regulation Number 45 in 1957 was arranged about the establishment of Religious Court/shariah Supreme in out of Java, Madura and South Borneo, namely South Sulawesi, East Sulawesi, Central Sulawesi, North Sulawesi (included Gorontalo) and Maluku, and then on November in 1962 Religious Court/Shariah Supreme of Gorontalo was established. The establishment was regulated in Religious Minister Regulation Number 05 in 1958, even though its building was not ready yet, for a while it had office at the Representative Office of Gorontalo Religious

Department, nowadays the building has been arranged as Official Inn for Religious Department Gorontalo City.

After the establishment of Religious Court/Shariah Supreme in Gorontalo, the duty and the authority of Qadli shift to Religious Court, thus *Kadli* only handle religious/custom ceremony. Qadli is still exists in Gorontalo who occupied and retired by regional Government \ (Head of Regency/Major of City). Moreover, the position and the authority of Gorontalo Religious Court follow the development of national law in Indonesia until nowadays.

Religious Court is the legal term for one of between four states Court or legal judicial justice in Indonesia. In implementing its function, religious Court has relative and absolute authority. Rasyid states that relative authority is defined as one kind and one level judicial authority, in its different with the same kinds and the same level of judicial authority, while absolute authority is judicial authority which is related to the kind of case or the kind of court or the level of court in its different with the other kind of case or the kind of court or the kind level of court.[11]

Based on the definition above, the relative authority of Gorontalo Religious Court covers the region of Gorontalo City and Bone-Bolango Regency, and the absolute authority of Gorontalo Religious Court as stated in the law Number 3 in 2006 (UU No. 3 Tahun 2006), thus Religious Court has duty and authority to investigate, to decide, and to resolve cases in the first level between Moslem societies in the aspects of: 1) Marriage; 2) heritage; 3) bequest; 4) property donated; 5) dying exhortation; 6) realm; 7) religious meals; and 8); shariah economy.[12] Thus, Gorontalo Religious Court as the actor of judicial authority has duty and authority to investigate, to decide, and to resolve cases in the first level between Moslem societies in the aspects as has been mentioned above.

Supreme Court as the highest level of court in implementing its function and its role determined its vision and mission. Supreme Court's Vision and Mission is stated: "to keep the autonomy of court institution, to assist justice judicial service for justice seekers, to improve the credibility and the transparence of court institution." Referring to the vision amd nission, absolutely, Gorontalo Religious Court in implementing and doing its main duty and function also determines its vision and mission. The vision of Gorontalo Religious Court, stated: "To materialize clean, autonomous, and prestige court through resolving cases simply, fast, and cheap." Its mission in its guideline is

[11]Roihan A. Rasyid, *Hukum Acara Peradilan Agama* (Cet. 3; Jakarta: RajaGrafindo Persada, 1994), p. 25-27.

[12]Republik Indonesia, *Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama*, section 49.

formulated as follows: (1) to prepare fast, honest, clean, and autonomous court service; (2) to prepare easy access for justice seekers toward law and judicial service; (3) to shape autonomy and independent court by improving the human resources quality proportionally and professional.[13]

To ensure the successful of its vision and mission, thus independency should be the soul of all elements of court. In other words, a case process in a court should be sterilized from the government power and other powers intervention, thus the independency of court is one of basic democracy for State to develop based on constitution and law.

C. General Description about Shariah Economy System

Shariah economy law is the law is used to empower macro shariah economy and micro shariah economy. Analysing macro shariah economy is analyzing society economy generally, not individually or institution. Otherwise, discussing about micro shariah economy is discussing the aspect of contract relation between the debitor and creditor.[14] Moreover, the term of shariah economy defines as a bussines action or a business activity which is done refer to shariah principle which includes shariah bank, micro shariah finance institution, shariah insurance, shariah reinsurance, shariah reksadana, shariah obligation, and shariah security, shariah finance, shariah funding, and shariah business.[15]

Islam economy system which is based on Alquran and Sunnah regulations contains the value of brotherhood, love, respect, discipline, and togetherness. The system of Islam economy included namely: (a) acknowledge individual property as long as it does not loose the public interest; (b) individual has characteristic, which can be developed according to his/her potency; (c) there is social insurance from State for societies, mainly to fulfill the societies' main demands; (d) to escape the richness consentration on a small people who has power; (e) to forbid restocking stuffs, thus it disturbs distribution and price stability; and (f) to forbid asocial practice (mal-business).[16]

Shariah economy activities or Islam economy is large and various, as many as the human activities in this world to find welfare. However, in this writing, it will be delimited on shariah economy activities which have been popular and also have had institutions in Indonesia, as stated on the explanation

[13]Pengadilan Agama Gorontalo, *Profil Pengadilan Agama Gorontalo.*

[14]Edy Sismarwoto, *Prinsip-Prinsip Ekonomi Syari'ah* (Semarang: Pustaka Magister, 2009), p. 1.

[15]The explanation of the law Number 3 in 2006 (*Undang-Undang Nomor 3 Tahun 2006)*.

[16]Gita Danupranata*, Ekonomi Islam* (Cet. 1; Yogyakarta: UPFEUMY, 2006), p. 26-27.

of the law Number 3 in 2006 about the amendment of the law Number 7 in 1989 about Religious Court. Some activities are explained below:

1. Bank Syari'ah

Islamic bank or Shariah bank technically has the same definition with the other bank. The Islamic bankers scientists argue some definition, for example according to Karnaen A. Perwaatmadja, bank syari'ah is a bank which operates according to Islam principles, it is a bank with its operation and procedures follows Islam shariah regulation. One of regulation must be obeyed is business practices which contain usury.[17]

Islamic bank is in its operational should follow or refer to business practices which are done in Rasulullah saw's era., the kinds of business were done before but they are not forbidden by Rasulullah, the new kinds of business as the result of Islam prominent figures or Moslem scientists which are not deviated from Alquran and hadist rules.[18] From some definition above, it can be concluded that Islam bank is a financial institution which has function to save money and distribute them to the societies, where the system, procedure, mechanism, based on Islam law, namely Alquran and hadist.

2. Islamic Investment Fund

According to the law Number 8 in 1995 (UU No. 8 Tahun 1995) about Capital Market, Section 1 verse 27, Islamic Investment Fund is an institution which built to save money from societies and the money is invested in portofolio effect by the manager investwho has gotten license from BAPEPAM.[19] Reksadana can be divided into some kinds of instrument of bill money exchange such as, share, obligation, money market instrument, or the mixcture of the instruments above.

Therefore, an Islamic Investment Funds is a trilateral relation, because it involves some sides who have contract or trust deed legally. They are the capital investor, manager investation, and custodian bank. Manager investation usually is a company which its business is to manage portofolio effect, and it is called *fund Management Company*. Besides as manager investation, *fund Management Company* also handle the issue which are related to marketing and fund administration. Portofolio effect is the combination between security or bill money exchange or instruments which are managed.

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[17]Karnaen A. Perwaatmadja, "Membumikan Ekonomi Islam di Indonesia," dalam Sofiniyah Ghufron (Peny.), *Briefcase Book Edukasi Profesional Syari'ah, Konsep dan Implementasi Bank Syari'ah* (Cet. 1; Jakarta: Renaisan, 2005), p. 18.

[18]*Ibid*., p. 19.

[19]Republik Indonesia, *Undang-Undang No. 8 Tahun 1995 tentang Pasar Modal*.

Islamic Investment Funds in this case, has the same definition with conventional investment fund, but the mechamism of management and its investment share should base on Islam rules, either on its contract aspect, investment management, or on profit sharing. *Islamic Investment Fund* is an intermediaris institution which is improved unit surplus to do placement and to be invested. One of the aim of Islamic Investment Fund is to fulfill the interest of investor groups who want to get investation profit from the clean source and clean procedure and it can be responsible religiously, and proper with shariah principles.[20]

Thus, Islamic Investment Fund is an institution which is utilized by the societies to invest collectively, where the procedure and the investation process refers to Islam rules. Islamic Investment Fund is the solution for small investors who want to participate in market capital with minimal capital and little brave to take the risk. Islamic Investment Fund gives great contribution in national economic, because it can mobile fund to improve and develop nasional companies, either BUMN or private companies. In other sides, Islamic Investment Fund gives profit to the society namely saveness and profit to improve society's welfare.

3. Shariah Insurance

Insurance business is included on the field of economic environment, it is classified into the law which regulates people relationship, the law is called *muamalah* law, and therefore it is open in its development.[21]

The definition of economic field in the context of insurance company according to shariah or Islam insurance generally it is not really different with conventional insurance. Both, conventional insurance and shariah insurance are equal, namely insurance company only function as fasilitator of structural relationship between the member of insurance and the company insurance. Generally, Islam insurance or known as takaful can be described as insurance where its operational principle based on Islam rules namely Alquran and al-Sunnah.[22]

When tafakul insurance is included on the field of *muamalah*, thus tafakul in the definition of *muamalah* has meaning namely take risk each other between one men with other men. Therefore, the idea of tafakul insurance related to the element of take risk each other between the members of insurance, thus takaful has helping each other principle.

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[20]Sofiniyah Ghufron (Peny.), *Briefcase Book Edukasi Profesional Syari'ah*, *Investasi Halal di Reksa Dana Syari'ah* (Cet. 1; Jakarta: Renaisan, 2005), p. 16.

[21]Gemala Dewi, *Aspek-Aspek Hukum dalam Perbankan dan Perasuransian Syari'ah di Indonesia* (Cet. 4; Jakarta: Kencana, 2007), h. 135.

[22]H. A. Dzajuli dan Yadi Janwari, *Lembaga-Lembaga Perekonomian Umat (Sebuah Pengenalan)* (Jakarta: RajaGrafindo Persada, 2002), h. 120.

D. The Readiness of Gorontalo Religious Court Judges in handling shariah economy disputes

1. The knowledge about shariah economy terms have been known long time ago

The message of the law to trust Religious Court to resolve shariah economy disputes become a new polemic in the intern of Religious Court. Before realizing the law Number 3 in 2006 (UU No. 3 Tahun 2006), the absolute authority of Religious Court is concern to the law of family cases, thus when it resolve about shariah economy disputes, the judges are not familiar. Fauzi stated that how hard the public opinion that accused Religious Court is not familiar in resolving shariah economy disputes, but it can not be debated that the law of shariah economy full with the content and terms which really familiar for Religious Court judge, such as *mudharabah, musyarakah, murabahah, wadhiah, hiwalah, kafalah, qardh, ijarah*, and etc. Besides that, Religious Court judges have ever studied about the field of *fikih muamalah*. Thus, in the context of knowledge, Religious Court judges are more competence and ready than General Court judges in resolving shariah economy disputes.[23]

For Gorontalo Religious Court Judges, shariah economy issues are new, therefore they need to improve their competence and skill to study all dimensions which are related to the issues. One of the efforts is done by studying deeply some cases which have ever resolved in other Reigious Court in Indonesia. Besides that, the item which is supported the readiness of judge in resolving shariah economy cases, because they have studied the main content of shariah ecomony in their campus, especially about *fikih muamalah*. The problem is often appeared is the consistency of contract implementation is when doing transaction at shariah bank.[24] The resolving of shariah economy disputes at Gorontalo Religious Court can be anticipated and solved based on the guidance prepared, either formal or non formal. But it is not impossible that it will appear some broad cases, such as shariah finance, shariah obligation, etc, which require more accurate studying in resulting accurate and responsibility decision.[25]

[23]Achmad Fauzi, "Tanggungjawab Akademis Fakultas Syariah dalam Perspektif UU No. 3 Tahun 2006," *Jurnal Al-Mawarid*, Edisi XVIII, Tahun 2008, p. 161.

[24]Drs. Burhanuddin Mokodompit, Hakim Pengadilan Agama Gorontalo, *interview*, October, 20th 2014.

[25]Drs. Ramlan Monoarfa, M.H., Hakim Pengadilan Agama Gorontalo, *interview*, October, 20th 2014.

E. Profesionality Responsible of Religious Court Judge

Pasca the publishing of the law Number 3 in 2006 (UU No. 3 Tahun 2006), Gorontalo Religious Court has tried to enlarge its study and its judges' knowledge view by reading and analyzing references which are related to shariah economy. However, the government has published guidance book to solve shariah economy disputes, namely *Kompilasi Hukum Ekonomi Syariah*. Besides that, in analyzing information about resolving shariah economy disputes, religious Court judge can discuss with the judges from other region in Indonesia, either by telephone, social media, email and etc. In other words, Gorontalo Religious Court judge who will resolve shariah economy disputes as the new authority in Religious Court need to develop their knowledge aspect and their skill. The judges who work in Religious Court capable to practice the regulation of the law Number 48 in 2009, namely the judges and constitution judges must analyze, follow, and understand law values and justice sense which bear in society's life.[26]

The judges of Gorontalo Religious Court have had readiness in resolving shariah economy disputes as the message of the law Number 3 in 2006 (UU No. 3 Tahun 2006), namely: *First,* by forming its own judges commitee; *Second,* the judges are the graduation of Shariah Faculty who have known the base of Shariah economy in the subject of *fikih muamalah*; *Third*, The judges have moral and law responsibility and profession technic; *Fourth¸* the judges have been followed workshop and training about shariah economy which undertaken by Supreme Court.

Related to four points above about the readiness of the judges of Gorontalo Religious Court in resolving shariah economy disputes, certainly there are some items which can be taken as the measurement of evaluation about the readiness of the judges of Religious Court, such as to certify and to arrange portofolio for the judges of Religious Court. Certifying is done after the judges of Religious Court followed workshop and training of shariah economy in Supreme Court.

According to Purwosusilo, the General Director of Religious Court Council, the readiness of the human resources is the very important item, thus it should be prepared very serious and need time. The preparations are listed below:

1. Workshop, Course or Certify, either in Indonesia or Abroad

Nowadays, there are 380 the judges of Religious Court who have certificates to resolve shariah economy disputes. The certificates are published by The Council of Research, Development, Education and Workshop of Law

[26]Republik Indonesia, *Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*,section 5 verse (1).

and Court of Supreme Court Republic Indonesia (Badan Penelitian, Pengembangan, Pendidikan dan Pelatihan Hukum dan Peradilan Mahkamah Agung Republik Indonesia)=(Balitbangdiklatkumdil) MA. The detail, in 2009 there are 80 judges, in 2010 99 judges, in 2011 50 judges, in 2012 40 judges, and in 2013 100 judges.

The Council of Religious Court (Badan Peradilan Agama)=(Badilag) done Training of Trainer (ToT) which followed by 30 judges, either from the first level of court or the next level. The judges are expected to be the trainers on the workshop of shariah economy held in provinces. Besides that, there is workshop hold by Judicial Comission (Komisi Yudisial)= (KY). On February in 2013 Judicial Comission held shariah economy workshop which followed by 54 judges of Religious Court in West Java region.

Balitbangdiklatkumdil is also holding workshop in abroad. For example in Riyadh, Arab Saudi, which have been held twice. First workshop was held from December 2008 to January 2009 which followed by 38 judges. Second workshop was held from May to June in 2012 which followed by 40 judges. To Send 7 judges to Sudan for studying shariah economy. Recently, there were 3 judges to send to Sudan for continuing their Post Doctoral Program. There were 2o judges have ever followed shariah economy workshop in British, and in 2013 sent 10 judges to British.

2. Holding Technical Training for Judges

In holding technical training in 2014 Badilag will be more focus on resolving shariah economy disputes, and every technical training will be followed by 30 judges, thus in a year there are 150 judges have ever followed the training. Badilag is also supporting Religious Court in every province (Pengadilan Tinggi Agama)= (PTA) to hold shariah economy technical training at least once in 2014. When one technical training is followed by 30 judges and in all provinces in Indonesia, there are 29 PTA, thus in the end of 2014 there were 870 judges could follow shariah economy technical training which held by Religious Courts in all provinces. Thus, in 2014 there were 1400 judges who have followed workshop, traning, and certificate of shariah economy. And in 2013, there were 400 judges, thus in 2014 there ere 1800 judges were ready to resolve shariah economy disputes. The amount is more than a half of the amount of Religious Court judges in religious Court, because nowadays there are 3000 judges.

3. The readiness in Material and Formal Law dan formil

One of material laws which is used to judge shariah economy disputes since 2008 is the Compilation of Shariah Economy Law (Kompilasi Hukum Ekonomi Syariah)= (KHES) 2008, besides the other regulations of law. For its

formal law, the draft of Compilation of shariah economy written law (Kompilasi Hukum Acara Ekonomi Syariah)= (KHAES) is still arranging..[27]

Based on the fact above, the judges of Gorontalo Religious Court have been ready to resolve shariah economy disputes as strategic action to be able to form justice issues and law enforcement for the justice seekers who have cases or diputes. However, shariah economy cases are new and should be handled based on the message of the law Number 3 in 2006 (UU Nomor 3 Tahun 2006) which give enlargement authority to religious Court to resolve shariah economy disputes.

F. The Response of Gorontalo Religious Court Judges in Facing the Authority to Resolve Shariah Economy

Pasca the law Number 7 in 1989 (UU No. 7 Tahun 1989) about Religious Court was amendment firstly, into the law Number 3 in 2006 (UU No. 3 Tahun 2006) which contains the enlargement authority to resolve shariah economy disputes. In Gorontalo Religious Court, there are 6 disputes listed which related to shariah bank, especially, dispute between Muamalah Bank and its customer who took *mudharabah* or *murabahah* product.[28] Therefore, the judges of Gorontalo Religious Court assumed that the work commitment of the judges always should be developed because the problems are also developed, especially about the development of shariah economy. It can not be debated that even though it has been done according to shariah and has been assumed as a business which permitted by religion, but it is still face problems which should be resolved. Because, the disputes of shariah economy are the new items and they born as the effect of the amount of Moslem who involved in the institution with shariah nuance, either shariah bank, shariah finance, or shariah insurance.

Before the enlargement authority to resolve shariah economy cases, the judges of Religious Court only resolve the cases about marriage case, divorce, heritage, property donated, and etc. By the enlargement of its authority the judges should be prepared them selves to face it, especially the judges of Gorontalo Religious Court. Therefore, they need to do some items: *First*, the judges must develop their law aspect of shariah economy in the frame of Indonesia regulation and the actualization of Islam fikih; *Second*, the judges must have enough aspect about the service product and operational mechanism of shariah bank, shariah micro institution, Islamic Investment Fund, shariah obligation, and etc; *Third*, the judges must develop law aspect about the

[27]Purwosusilo, "Peradilan Agama Sangat Siap Mengadili Sengketa Ekonomi Syariah," http://www.pa-probolinggo.go.id/index.php/id/component/content/article/24-berita/, browsed on June 14th 2015.

[28] Data Source Gorontalo City Religious Court, 2014.

prediction of disputes in contract which based on shariah economy; *Fourth*, the judge must develop their aspect about the basic law and the regulation of laws and the conception in fikih Islam about shariah economy.[29]

Before the law Number 3 in 2006 legalized disputes in shariah bank resolved through arbitrase. However, since February 21st in 2006, shariah bank disputes become the absolute authority of Religious Court. It means that it does not debate anymore the subject of law who make contract with shariah bank, either individually or institution.[30] Otherwise, the process of dispute resolving which argued by the clients also can be resolved through mediation by selecting mediator prepared by Religious Court or selected by the clients who have cases.[31] The resolving of shariah economy disputes actually is not new thing for the judges of Religious Court, because in its structural organization, there is *Subdit Syariah u*nder the coordination of *Direktorat Pranata* and *Tatalaksana Perkara Perdata Agama*. At the time, the *Subdit* focuses more on field of *hisab rukyat*, but also concentrate to shariah economy, namely to collect data and to analyze the data as the source of decision making. Besides that, there is *Subdit Pengembangan Tenaga Teknis* under the coordination of *Direktorat Pembinaan Tenaga Teknis Peradilan Agama*. The *Subdit* tries to develop the quality of judges at Religious Court, especially in the field of shariah economy.[32]

Since getting authority through the law Number 3 in 2006, Religious Court, especially Gorontalo Religious Court is always reforming itself, either its human resources, its law material and law formal. Religious Court states itself after Supreme Constitution published the Decision Statement Number 93/PUU-X/2013 (Putusan Nomor 93/PUU-X/2013) which ended the dualism of shariah economy disputes resolving in Religious Court and General court. The existence of these rules bring forward an extraordinary of law politic movement in equipying law institution to build shariah economy action in Indonesia because it has obtained positif response and politic support from many sides of decision makers. As the message of the Constitution 1945 (UUD 1945) and the effort to alive of Islam law for its followers, thus Religious Court nowadays is

[29]Drs. Burhanuddin Mokodompit, Hakim Pengadilan Agama Gorontalo, *interview*, October 20th 2014.

[30]Dra. Medang, MH., Hakim Pengadilan Agama Gorontalo, *interview*, October 20th 2014.

[31]Drs. Ramlan Monoarfa, MH., Hakim Pengadilan Agama Gorontalo, *interview*, October 20th 2014.

[32]Purwosusilo, "Peradilan Agama Sangat Siap Mengadili Sengketa Ekonomi Syariah," http:/badilag.net/seputar-ditjen-badilag/dirjen-badilag-peradilan-agama-sangat-siap-mengadili-sengketa-ekonomi-syariah-2012, browsed on September 15th 2014.

not doubt anymore it is ready to resolve shariah economy disputes, not excepted Gorontalo Religious Court.

However, there is a problematic in society that the ability in implementing economy activity with shariah nuance tends to not understanding well about transcation which put shariah sytem in priority; therefore socialization to always run business based on shariah is needed. Besides that, the public should paid attention accurately to the contract which agreed with the bank or other shariah business institution, thus they will find law enforcement which can be taken as guidance in determining critical power to clear the meaning of the contract has been done.[33]

The readiness of the judges of Religious Court, especially Gorontalo Religious Court is closely related to their own basic namely the trust and the satisfactory of justice seekers. It is related to the integrity of the judges personality and character, who out far from corruption and nepotism. It is proven by the small amount of Religious Court's decision which approved to the next level of court and resolved cases. Most of cases resolved in the first level. H. Purwosusilo, as the General Director of the Council of Religious Court Supreme Constitution Republic Indonesia stated during 2012 the amount of cases which resplved by Religious Court were 476.961 cases; the cases were gone to the next level is 2.533 cases; and the cases were on kasasi or peninjauan kembali were smaller.[34] It means that the public satisfy with the decision which resulted by Religious Court, thus when shariah economy disputes enter to Religious Court, it can be sure that the public will satisfy toward the decision made by Religious Court.

However, it is necessary to give input for the judges of Gorontalo Religious Court, eventhough they have been ready to resolve shariah economy disputes, the judges of Gorontalo Religious Court still necessary to improve their competence, however it is compared with the judges of Religious Court in other province. The indicators are to be exist and ready to resolve shariah economy disputes, such as:

1. Every judge develops his academic competence through Magister and Doctoral Program.
2. Every judge has followed workshop and technical training about the analysis of shariah economy either in national or international scala.
3. Every judge has owned certificate which published by Supreme Court about the competence and skill in resolving shariah economy disputes.

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[33]Drs. Muhlis, MH., Hakim Pengadilan Agama Gorontalo, *interview*, October 21st 2014.

[34]H. Purwosusilo, "Peradilan Agama Sangat Siap Mengadili Sengketa Ekonomi Syariah," http:/badilag.net/seputar-ditjen-badilag/dirjen-badilag-peradilan-agama-sangat-siap-mengadili-sengketa-ekonomi-syariah-2012, browsed on September 15th 2014.

When the third elements above have been owned by the judges of Gorontalo Religious Court, then the assumption from the one who pesimist toward the resolving of shariah economy disputes by the judges of Religious Court, especially at Gorontalo Religious Court can be proved that it can be resolved well.

G. Conclusion

The response of the judges of Gorontalo Religious Court about the enlargement absolute authority as stated on the law Number 3 in 2006 (UU No. 3 Tahun 2006) is a positive action in Indonesia law system. It is base on the assumption that Indonesia society majority is Moslem and automatically in doing their daily life always in the corridor of Islam religion, also in economic activities. The presence of the law Number 3 in 2006 which give relative authority enlargement for Religious Court to resolve shariah economy disputes make the public smart in determining their action and getting law enforcement in resolving shariah economy disputes. The judges of Religious Court have opinion that the socialization of the law should be improved, thus the public run their business based on shariah, and for the actors of shariah economy sould pay attention accurately the contract has been made, thus when the disputes happened, there is an accurate prove.

Principally, the judges of Gorontalo Religious Court have been ready to resolve shariah economy disputes. Their readiness are described through: *First,* to send its judges to follow workshop about shariah economy, thus the judges have gotten certificate; *Second*, to form the special committee judges to resolve shariah economy; *Third*, to develop their competence by reading more about the reference about shariah economy by making portofolio; *Fourth*, to make dialogue with the other judges at all provinces in Indonesia, either by telephone, social media, or email. Besides that, the readiness of the judges at Gorontalo Religious Court is closely related to their profesionality and their responsibility which argued by the law.

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