

## **Absolute and Relative Competence in Religious Jurisdiction in Indonesia**

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### **Abstract:**

The religious judiciary has undergone significant changes following independence. The emergence of regulations has greatly promoted progress in the field of religious judiciary in civil matters. Of particular concern is the competence of the religious judiciary, which has been renewed in line with the evolving times. In this study, we will elucidate the competence of the religious judiciary in Indonesia, taking into account the results of legislation applicable in the field of religious judiciary. The methodology in this study is a literature review, based on conceptual or normative research. Primary data in this study consist of literature studies or the examination of literature (books, journals) and research results related to the research object. The analysis used is descriptive analysis, conducted in a structured and systematic manner. The research results show that the absolute authority of the religious judiciary to examine, decide, and settle cases for the Muslim community in matters of marriage, property transfer, and Sharia economics. The material legal content in the religious judiciary has undergone numerous updates through legislation, ministerial regulations, and circulars from the supreme court. Meanwhile, the relative competence of the religious judiciary is the legal jurisdiction for the orderly functioning of the judicial system.

Peradilan agama telah mengalami perubahan signifikan pasca kemerdekaan. Lahirnya regulasi yang telah banyak mendorong kemajuan peradilan agama dalam bidang perdata. Termasuk yang patut menjadi perhatian adalah kompetensi peradilan agama yang telah mengalami pembaharuan seiring dengan perkembangan zaman. Dalam kajian ini, akan menengahkan kompetensi peradilan agama di Indonesia dengan memperhatikan hasil legislasi perundang-undangan yang berlaku di bidang peradilan agama. Metodologi dalam kajian ini merupakan penelitian

kepuustakaan, dengan basis penelitian konseptual atau normatif. Data primer dalam kajian ini adalah studi kepuustakaan atau menelaah literatur-literatur (buku, jurnal) dan hasil penelitian yang berkaitan dengan objek kajian. Analisis yang digunakan adalah analisis deskriptif, dengan menelaah secara terstruktur dan sistematis. Hasil penelitian menunjukkan bahwa kewenangan mutlak bagi peradilan agama untuk memeriksa, memutus dan menyelesaikannya perkara bagi masyarakat beragama Islam dalam perkawinan, peralihan harta dan ekonomi syariah. Muatan hukum materi dalam peradilan agama telah banyak mengalami pembaharuan melalui perundang-undangan, peraturan Menteri dan surat edaran mahkamah agung. Sementara kompetensi relatif peradilan agama adalah wilayah hukum peradilan, demi tertibnya sistem peradilan.

**Key words:** *Competence; Jurisdiction; Religion; relative; absolute.*

## **Introduction**

The Islamic judiciary system in Indonesia, hereafter referred to as Religious Judiciary, has existed in various regions of the archipelago long before the arrival of the Dutch colonialists. Indeed, according to historical experts, the Religious Judiciary has been in place since the 16th century.<sup>1</sup> During this period up to the present, the Islamic Judiciary has operated, and its decisions have been willingly adhered to by the Muslim community.

The journey of the Islamic Judiciary as a legal and religious institution in Indonesia has consistently displayed a continuous historical sequence marked by the struggle between politics and Islamic legal institutions (i.e., the Islamic Judiciary), which sometimes favored and benefited the sustainability of this institution and at other times proved detrimental to its development and existence. Consequently, what has occurred is a fluctuation in the role of the political involvement of the Indonesian Muslim community.<sup>2</sup>

The ebb and flow of this tidal wave were evident during the era of the Islamic kingdoms in the Indonesian archipelago. Subsequently, it experienced a period of stagnation when Dutch colonial rule began to assert its dominance in the Indonesian archipelago. The religious judiciary once again demonstrated positive development and growth when the Indonesian nation declared its independence on August 17, 1945. However, in general, the development of religious judiciary in

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<sup>1</sup>Roihan A. Rasyid, *Hukum Acara Peradilan Agama* (1<sup>st</sup> Print; Jakarta: Rajawali Pers, 1991), p. 1.

<sup>2</sup>Abdul Halim, *Peradilan Agama dalam Politik Hukum di Indonesia*, (1<sup>st</sup> Print; Jakarta: Raja Grafindo Persada, 2000), p. 2.

the course of Indonesian history has spent more time in periods of uncertainty than in periods of enlightenment.<sup>3</sup>

In the early stages of the development of Islamic jurisprudence in Indonesia, its jurisdiction encompassed matters pertaining to personal status law in its entirety, such as marriage, divorce, reconciliation, inheritance, guardianship, and others. Consequently, the Islamic judiciary at that time constituted a general judiciary for the Muslim community.<sup>4</sup> However, this situation did not last long, as the Dutch colonialists set foot (read: colonized) in Indonesia, the religious judiciary began to experience stagnation in its development. The presence of Dutch colonial rule turned out to be a catastrophe for the Muslim community in Indonesia. The Dutch colonialists arrived with their legal system (Western legal system) and sought to implement it in their colonial territories (Indonesia). The Dutch colonial efforts to enforce Western law in Indonesia naturally undermined the authority of Islamic religious courts. The freedom to practice Islam was gradually diminished.<sup>5</sup> In the sense that the authority of Religious Courts continues to be minimized, leading to a judiciary that has lost its identity (power).

Following Indonesia's independence, the landscape of the Religious Courts underwent changes and a new face emerged. At the very least, this change is evident in the non-application of the receipt theory, which posed a significant obstacle to the Religious Courts in actualizing themselves in Indonesia. Throughout Indonesia's history of independence, spanning three regimes, namely the old order, the new order, and the reform era, the Religious Courts have experienced positive developments. During the new order era, the enactment of Law Number 7 of 1989 granted broader competencies to the Religious Courts. Similarly, during the reform era, the Religious Courts improved further with the establishment of a unified authority and the enactment of Law Number 3 of 2006, which affirmed that zakat, infak, and sharia economy were within its absolute jurisdiction. Through this law, the Religious Courts were empowered to adjudicate cases related to sharia economic disputes.

## Method

This study represents a conceptual inquiry, which in legal studies is commonly referred to as normative research. In a broader research context, it is

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<sup>3</sup> Deliar Noer, *Islam dan Politik: Mayoritas dan Minoritas*, (1<sup>st</sup> Print; Jakarta: Prisma, 1988), p. 3 and so forth.

<sup>4</sup> Daniel S Lev, *Islamic Courts in Indonesia*, translated by Zaini Ahmad Noeh, *Peradilan Agama Islam di Indonesia: Suatu Studi tentang Landasan Politik Lembaga-Lembaga Hukum* (1<sup>st</sup> Print; Jakarta: Intermedia, 1980), p. 16

<sup>5</sup> Abdul Halim, *Peradilan Agama dalam Politik Hukum...* p. 6.

often referred to as a literature review or library research. The sources of data for this study involve an extensive review of literature, including books, journals, and research findings related to religious adjudication. Additionally, to support this data, an examination of relevant legislation concerning religious adjudication was conducted. The collected data underwent a process of sorting and classification to strengthen the argumentation. Through the gathered data, a thorough, structured, and systematic analysis, known as descriptive analytics, was performed to attain precise research outcomes. This analytical approach was consistently applied and compared with findings from prior studies, followed by drawing conclusions. These conclusions were subsequently scrutinized for alignment with the research focus to ensure they adequately addressed the study's proposed objectives.

## **Discussion**

### **Absolute Competence of Religious Jurisdiction**

Competence refers to the authority to adjudicate within a judicial institution, encompassing absolute competence and relative competence in this context. Absolute competence pertains to the jurisdiction of a judicial body to adjudicate specific types of cases, which cannot be questioned by any other judicial body, whereas relative competence relates to the jurisdiction concerning the legal jurisdiction of a particular judicial body.<sup>6</sup>

Regarding the absolute competence of the Religious Courts, it is governed by Articles 49 and 50 of Law No. 7 of 1989 concerning Religious Courts. Article 49 stipulates that the Religious Courts have the authority to adjudicate cases involving Muslims in the fields of marriage, inheritance, wills, gifts, endowments, and alms. Specifically, in the field of inheritance, their jurisdiction extends to determining rightful heirs, ascertaining the estate left behind, determining the shares of the heirs, and executing the distribution of the estate. Meanwhile, Article 50 states that in the event of disputes over property rights or other civil matters within the cases mentioned in Article 49, such disputes fall under the jurisdiction of the General Courts.<sup>7</sup>

Examining articles 49 and 50 of Law No. 7 of 1989, it can be understood that the Religious Court does not entertain cases beyond its jurisdiction. In the

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<sup>6</sup>Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (4<sup>th</sup> Print; Yogyakarta: Liberty, 1982), p. 53-54.

<sup>7</sup>Roihan A. Rasyid, *Hukum Acara Peradilan Agama*, p. 29-30.

event of an error in this absolute competence, the parties involved may submit an objection referred to as an absolute exception.<sup>8</sup>

Referring to Law Number 7 of 1989, Article 49, Paragraph 1, the absolute jurisdiction of religious courts encompasses the following matters: marriage, inheritance, wills, and gifts conducted in accordance with Islamic law, as well as endowments (*wakaf*) and voluntary almsgiving (*sadaqah*).<sup>9</sup> This signifies that all matters arising among the Islamic community pertaining to marriage, inheritance, wills, gifts, almsgiving, and endowments fall under the absolute jurisdiction of religious courts. In essence, religious courts possess full authority and competence to examine and adjudicate upon these matters.

The absolute jurisdiction of religious courts has undergone expansion and increased authority through Law Number 3 of 2006, amending Law Number 7 of 1989. In this law, it is emphasized that religious courts are not only authorized to scrutinize, adjudicate, and resolve cases related to marriage, inheritance, wills, gifts, endowments, and almsgiving but, beyond that, they also have jurisdiction over matters concerning zakat, infaq, and Sharia-compliant economics. Further elaborated in this law is that zakat refers to wealth that must be set aside by a Muslim individual or a legal entity owned by a Muslim, in accordance with Sharia provisions, to be disbursed to those entitled to receive it. As for infaq, it denotes an individual's act of providing assistance or fulfilling needs for others, such as providing food, drink, charity, bestowing sustenance, or benevolently donating to others solely for the sake of Allah. Additionally, in this law, Sharia-compliant economics is defined as business activities or endeavors carried out in accordance with Sharia principles, which encompass, among other things, Islamic banks, Sharia-compliant bonds, and other related activities.<sup>10</sup> The emergence of Law No. 3 of 2006 Regarding Amendments to Law No. 7 of 1989 Concerning Islamic Judiciary signifies an expansion of authority within the realm of Shariah economic disputes. This expansion can be viewed as a reflection of a Muslim's commitment to adhering to Islamic law, as it represents the most tangible manifestation of Islam as a religion.<sup>11</sup>

For religious jurisprudence, the determination of jurisdictional boundaries holds significant importance in popularizing the competition among Religious Courts as a venue for seeking justice for the Islamic community in matters regulated by the Religious Courts Act (UUPA). In this regard, for

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<sup>8</sup>Roihan A. Rasyid, *Hukum Acara Peradilan Agama*, p. 28.

<sup>9</sup> See, Law Number 1 of 1989 concerning Religious Jurisprudence

<sup>10</sup> Law Number 3 of 2006 on Amendments to Law Number 7 of 1989.

<sup>11</sup>Khisni, "Hukum Peradilan Agama." (1st Print; Semarang: UNISSULA PRESS Semarang, 2011), p. 15.

individuals belonging to the Islamic faith, when faced with issues related to marriage, wills, gifts, endowments, inheritance, and almsgiving, there is no alternative but to resolve these matters within the Religious Court. Conversely, matters other than those mentioned above do not fall under the jurisdiction of the Religious Court for their resolution. In the event of a violation in adjudicating matters beyond its jurisdictional purview, this is referred to as an "absolute jurisdiction violation."<sup>12</sup>

In the historical context of the establishment of the Religious Judiciary Institution in Indonesia, the authority of the Religious Judiciary Institution was limited exclusively to matters pertaining to marriage, divorce, and reconciliation (NTR), as well as cases closely related to NTR matters.<sup>13</sup> However, following the enactment of Law No. 7 of 1989 and Law No. 3 of 2006, the authority of the Religious Courts has expanded significantly to adjudicate cases involving Muslims. With this expansion of jurisdiction by the Religious Courts, the possibility of errors in handling cases that fall outside their absolute jurisdiction within a judicial domain cannot be ruled out.

In the event of an error in absolute jurisdiction, the judge of the respective court must render a "negative verdict." This negative verdict is intended to declare that the case does not fall within their jurisdiction to resolve. For a clearer understanding of this matter, consider the following example:

A judge of the district court receives a lawsuit related to inheritance from an individual who practices Islam. It is evident that the civil dispute in question clearly falls outside the absolute jurisdiction of the district court but falls within the absolute jurisdiction of the religious court. In such a case, the judge of the district court must conduct a thorough examination and scrutiny by evaluating the jurisdictional boundaries meticulously. After this step is taken and it is determined that the case is not within their jurisdiction, a negative verdict can be issued with a legal statement in the judgment: "Declares that the District Court is absolutely not authorized to examine and adjudicate."<sup>14</sup> The fundamental consideration for this decision is based on the principle of absolute competence, which outlines the guideline that any case falling outside its jurisdiction is inherently unauthorized to adjudicate.

In the process of socializing the concept of absolute jurisdiction, the Religious Court institution cannot be dissociated from its relationship with other judicial bodies, particularly the general judiciary. In this regard, the general

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<sup>12</sup>Law Number 3 of 2006 on Amendments to Law Number 7 of 1989

<sup>13</sup>Anwar Sitompul, *Kewenangan dan Tata Cara Berperkara di Pengadilan Agama*, (Bandung: CV. Armico, 1984), p. 33

<sup>14</sup>Roihan A. Rasyid, *Hukum Acara Peradilan Agama*, p. 93

judiciary must exercise great diligence in accepting and examining civil cases whose jurisdiction may lie within the purview of the Religious Court. Therefore, in cases that have connections to the jurisdiction of the Religious Court for their resolution, the priority scale of the Islamic identity of the petitioner must be considered. This is intended to prevent violations of absolute jurisdiction between one judicial environment and another.

Efforts to formulate legislative regulations, which serve as legal sources and the juridical foundation for absolute competence within the Religious Court environment, constitute one of the patterns of empowering diverse Islamic-seeking justice-seeking communities in choosing the Religious Court as the appropriate place to file their cases. Over the past few decades, the government has undertaken these efforts to strengthen the existence of the Religious Court institution in Indonesia. These efforts include the enactment of several legislative regulations/government regulations (PP), and laws (UU), namely:

- 1) Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 regarding marriage.
- 2) Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974.
- 3) Law No. 41 of 2004 concerning endowments (*waqf*).
- 4) Government Regulation No. 28 of 1977 concerning the endowment of privately-owned land.
- 5) Minister of Religious Affairs Regulation No. 1 of 1978 regarding the implementation of Government Regulation No. 28 of 1977.
- 6) Minister of Religious Affairs Regulation No. 2 of 1987 concerning guardian judges, revised by Minister of Religious Affairs Regulation No. 30 of 2005.
- 7) Laws related to religious jurisdiction, namely Law No. 7 of 1989, Law No. 3 of 2006, and Law No. 50 of 2009.
- 8) Circular Letter of the Supreme Court (SEMA) No. 2 of 1990 regarding guidelines for the implementation of Law No. 7 of 1989.
- 9) Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law.
- 10) Government Regulation No. 45 of 1990 concerning amendments to Government Regulation No. 10 of 1983 regarding marriage and divorce permits for Civil Servants.
- 11) Circular Letter of the Supreme Court (SEMA) No. 2 of 2023 concerning guidelines for Judges when adjudicating cases of marriage registration between individuals of different religions and beliefs.

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The religious judiciary under Law No. 3 of 2006 has conferred new authority upon religious courts in the form of Sharia economic adjudication. As previously mentioned in the explanation, "Sharia economics" refers to actions or business activities conducted in accordance with Sharia principles, including but not limited to: Islamic banks, Islamic microfinance institutions, Islamic insurance, Islamic mutual funds, Islamic bonds and securities, Islamic medium-term futures, Islamic securities, Islamic financing, Islamic pawnshops, Islamic financial institution pension funds, and Sharia-compliant businesses.<sup>15</sup> This demonstrates the role of religious jurisprudence in addressing the expanding scope of Islamic legal issues. The inclusion in the field of Sharia economics is a response to the presence of various Sharia-based products.<sup>16</sup>

Through Law No. 3 of 2006 and Law No. 50 of 2009 concerning the Authority of Religious Judiciary resulting from the Amendment of Law No. 7 of 1989 concerning Religious Judiciary, the substance has indeed strengthened the function of religious judiciary. Furthermore, in terms of legislation, it has expanded the authority of religious judiciary with the establishment of specialized courts in Nangroe Aceh Darussalam. Additionally, it has also broadened their jurisdiction to adjudicate Sharia economic disputes. In addition, these changes have reinforced the fundamental principles of judicial power administration, namely the principles of judicial independence, judicial freedom, and judicial oversight.<sup>17</sup> "In this regard, the Religious Judiciary is not only obligated to enforce the provisions outlined in the compilation but also holds a role in furthering and supplementing them through jurisprudence."<sup>18</sup>

Furthermore, the presence of several legislative regulations, for Muslims, is a manifestation of divine grace that must be acknowledged and celebrated in daily life. The existence of these legislative regulations serves as a means for Muslims to transparently understand Islamic law, which has often been poorly understood, leading to frequent violations of Islamic law that should ideally be avoided.

In addition, the codification of legal regulations within the Religious Judiciary Environment is a proactive response to the inconsistencies in the

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<sup>15</sup>Explanation of Law No. 3 of 2006 regarding Amendments to Law No. 7 of 1989 on Religious Judiciary.

<sup>16</sup>Hamzah, "Peranan Peradilan Agama Dalam Pertumbuhan Dan Dinamika Hukum Kewarisan Di Indonesia." *ALSYAKHSHIYYAH Jurnal Hukum Keluarga Islam dan Kemanusiaan* 2.2 (2020), p. 125.

<sup>17</sup>Linda Firdawaty, "Analisis Terhadap UU No 3 Tahun 2006 dan UU No. 50 Tahun 2009 tentang Kekuasaan Peradilan Agama." *Al'Adalah* 10.2 (2011), p. 213.

<sup>18</sup>Syarief Husien and Akhmad Khisni. "Hukum Waris Islam Di Indonesia (Studi Perkembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam Dan Praktek Di Pengadilan Agama)." *Jurnal Akta* 5.1 (2017): 75-86.



application of Islamic law within various Religious Judiciary institutions in Indonesia. These inconsistencies threaten the very existence of the Religious Judiciary institutions in the eyes of the public. This codification effort aims to provide answers to the Islamic community regarding the role of the Religious Judiciary institutions while empowering them within a universally applicable Islamic legal system. Consequently, the Religious Judiciary institutions will be utilized appropriately by the Islamic community seeking justice.

Regarding the aforementioned legislative regulations, it is evident that one of their primary missions is to address the challenges faced by Muslims in promoting the principles of Islamic identity in the application of Islamic law in Indonesia. The presence of the Compilation of Islamic Law (KHI), which compiles various Islamic teachings applicable in Indonesia and adapts them with an Indonesian flavor, represents significant potential in implementing the principles of Islamic identity.<sup>19</sup> It can be observed how the compilation of Islamic law has evolved in line with the modern times.

The modernization of the legislative framework within the domain of Islamic judiciary holds added value for the assimilation of Islamic law into the national legal system of Indonesia. This signifies a proactive response to the concerns of the Muslim community when bringing their cases before religious courts in this contemporary era. The existence of such codification motivates the awareness of Islamic identity within individuals, even as they navigate the modern world. Consequently, there is no alternative legal recourse for them, aside from Islamic law as administered within the framework of the religious judiciary.

The application of the principle of Islamic identity through the dissemination of the absolute jurisdiction of religious courts is closely intertwined with the codification system of legislation within the domain of religious judiciary. The presence of absolute jurisdiction within religious courts facilitates the implementation of prevailing legislation within that legal domain. Similarly, the consistent enforcement of legislation within religious courts can enhance the position of these judicial institutions compared to other branches of the judiciary.

The two patterns of applying the principles of Islamic personality mentioned above constitute an integrated system that is inherently linked to the presence of a judge as the ultimate decision-maker in resolving Islamic civil issues within the jurisdiction of religious courts. Therefore, every judge at all levels of the judiciary directly involved in the application of the principles of the Religious Courts Law must possess a globally capacitated and forward-thinking ability. This is

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<sup>19</sup>Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, (1<sup>st</sup> Print; Jakarta: Akademika Pressindo, 1982), p. 5

crucial so that when facing emerging societal issues, a judge can continue to perform their judicial duties as long as the matter remains within their absolute jurisdiction.

In the context of the strategy of applying the principles of Islamic personality to the absolute authority of the Religious Courts as stipulated by the law, the intellectual integrity of Religious Court judges in understanding a rule plays a pivotal role. Additionally, the faith-based integrity of the Muslim community in submitting to the authority of the Religious Courts as a specialized judicial institution for Muslims also plays a significant role. This means that the awareness of the Muslim community to abide by their religious law (Islam) through the institution of the Religious Courts contributes to the application of the principles of Islamic personality to cases falling under the absolute competence of religious courts.

### **Relative Competence of the Religious Jurisdiction**

The explanation regarding the jurisdictional competence of the Religious Courts is governed by Article 4 of Law No. 7 of 1989. This article specifies that the Religious Courts in municipalities or the capital of regencies have jurisdiction over areas encompassing the respective municipalities or regencies.

The Religious Courts are authorized to examine cases within their jurisdiction, including the following locations: (1) the domicile of the defendant, (2) the domicile of one of the defendants, if there are multiple defendants in the case, (3) the domicile of the main defendant, if there are other parties involved as co-defendants in the case, (4) the domicile of the plaintiff, if the address of the defendant is unknown, (5) the domicile of the plaintiff, specifically in divorce cases, (6) the domicile of the plaintiff, if the defendant does not have a permanent residence, (7) the residence of immovable property, if the case concerns a dispute related to immovable property.<sup>20</sup>

The relative competence mentioned holds significant importance concerning the respective legal jurisdictions of the existing Religious Courts. As elaborated in Article 4 of Law Number 7 of 1989 regarding religious judiciary, it is stated that:

In essence, the location of the Religious Court is typically situated within the municipal city or the capital city of a district, whose jurisdiction encompasses the areas of the municipality or district. However, it is not entirely impossible for exceptions to exist. The significance of this relative competence is to

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<sup>20</sup>Umar Mansyur Syah, *Hukum Acara Perdata Peradilan Agama* (1<sup>st</sup> Print; Bandung: Sumber Bahagia, 1991), p. 7-8.

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determine which Religious Court an individual should file their case with and its relation to the defendant's right to exceptions.

In reference to the aforementioned competencies of the Religious Courts, it is pertinent to note that for the Maros Religious Court, its jurisdiction encompasses cases related to marriage, inheritance, wills, grants, endowments, and almsgiving concerning individuals of the Islamic faith residing within the jurisdiction of Maros Regency. Consequently, parties seeking to initiate a case must possess a comprehensive understanding of both the absolute and relative jurisdictions of all judicial bodies in existence. Conversely, case intake personnel within a judicial institution must exercise diligence and precision when receiving the types of cases brought before them. Naturally, the objective is to prevent any overlap or redundancy between one judicial body and another in the adjudication of cases.

**Conclusion**

Absolute competence refers to matters that fall under the absolute jurisdiction of religious courts to examine, adjudicate, and resolve in accordance with prevailing legal provisions. Religious courts serve as a judicial system for individuals of the Islamic faith in specific cases, as a result of amendments to the Religious Courts Act. Furthermore, absolute competence within the realm of inheritance matters within religious courts has been affirmed to be carried out within the Islamic religious court system, thereby eliminating any juridical option granted to those involved in inheritance disputes. Through the Religious Courts Act No. 3 of 2006, the jurisdiction of religious courts has been expanded to encompass Shariah economic disputes, representing the latest jurisdictional development for religious courts and a response to contemporary issues pertaining to the evolution of Shariah financial institutions. On the other hand, the relative competence of religious courts pertains to the legal jurisdiction within which these courts can decide cases within their respective domains, aimed at ensuring an orderly legal process within each judicial institution.

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