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Research Paper

Judge's Ex Officio *Authority* in Sharia Economic Dispute Resolution Without The Presence of The Defendant Civil Procedural Law Perspective

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ABSTRACT

In the procedural law system applicable in the judicial environment, there is an ex officio right. In this case, a judge can determine a policy on a decision that is considered good and fair because of his position. Law No. 48 of 2009 emphasizes that courts must adjudicate without discrimination and are obliged to assist those seeking justice. This study aims to determine the ex officio authority of judges in resolving sharia economic disputes without the presence of the defendant from a civil law perspective, using case study 1716/Pdt.G/2024/PA.Bjn. Study using a qualitative descriptive research with an empirical legal approach. The primary data source used is interview data from the panel of judges and the deputy court clerk in case 1716/Pdt.G/2024/PA.Bjn, while the secondary data source is obtained from a list of references related to the material to be analyzed, namely legal documents such as laws, regulations, and court decisions. The findings of this study indicate that judges conduct trials using their ex officio authority to ensure legal effectiveness and certainty, particularly in regulating the execution of collateral objects that are not explicitly requested in the petition. Nevertheless, the judge's actions remain consistent with the principles of civil procedure law, including legal certainty, justice, and judicial proactivity within the boundaries of the authority granted. The exercise of ex officio authority demonstrates that in matters of Islamic economics, judges are not only bound by the reasons stated in the complaint but also tasked with formulating effective and enforceable decisions.

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Introduction

The growth and development of Islamic financial institutions in Indonesia has been rapid, indicating an increase in public confidence in conducting transactions in accordance with Islamic principles. However, this has also led to disputes between service providers and

customers regarding Islamic economics (Harun et al., 2023). In response, the Supreme Court (MA) coordinated the compilation of the Compilation of Islamic Economic Law (KHES) based on Article 49 of Law No. 3 of 2006. Following the enactment of this law, the SC established formal and material laws as guidelines for judges in resolving disputes in Religious Courts, as stipulated in SC Regulation No. 02 of 2008 (Yumna & Taufik, 2023).

According to Article 49 of the Law, Religious Courts have the right and authority to adjudicate cases among Muslims in the areas of gifts, wills, marriage, Islamic economics, almsgiving, charity, zakat, and waqf.(Undang-Undang Republik Indonesia Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama, 2006) The High Religious Court also has the authority to review cases and resolve jurisdictional disputes between Religious Courts. Filing a lawsuit is the first step in the court process, and the parties involved in the dispute are summoned to court to ensure justice. To seek compensation, the plaintiff must include the lawsuit in their petition (Muara Teweh, 2021).

However, defendants often fail to appear in court, which can slow down the dispute resolution process and cause legal uncertainty. The Supreme Court has stated that judges must understand the legal values that exist in society in order to deliver fair judgments. Judges are required to accept and adjudicate all cases in accordance with Law No. 48/2009. In court, judges may not decide cases that are not requested by the plaintiff and are prohibited from granting more than what is requested (Hidayatullah et al., 2022).

The duties and powers of judges include examining, adjudicating, and resolving disputes in accordance with applicable law (Subagyono et al., 2014). Judges are responsible for producing decisions that reflect justice and legal certainty, and must understand and master their field of law. They may not refuse to examine cases brought before them and are required to enrich their legal knowledge (Wijayanta, 2014). The primary authority of judges is to assess, examine, and determine the value of behavior and circumstances to resolve conflicts impartially based on legal provisions. According to Law No. 14 of 1970, judicial power is independent and aims to uphold the law and justice. Judicial decisions are official actions that serve to resolve disputes and provide legal guidance for similar cases in the future to ensure legal unity and certainty (Kurniasih, 2018).

Research has found cases where judges have granted more than what was requested in their decisions. One such case is the case in the Bojonegoro Religious Court between PT BPRS Lantabur Tebuireng and the recipient of financing. The plaintiff demanded that the defendant pay the remaining obligations and surrender the land collateral if the obligations were not fulfilled. The decision included the obligations that must be paid and the potential auction of collateral, which could cause injustice because it was not in accordance with the lawsuit and the decision.

In conducting research, it is very important for researchers to review the literature from previous studies as a reference and scientific guideline. This review provides an overview of the scope, approach, and focus that has been done previously, as well as a basis for finding research gaps that can be explored further. One of the previous studies is a thesis by Ihdaul Wahyi Ningrum entitled "Analysis of the Ex Officio Rights of Judges Regarding the Imposition of Mut'ah in Divorce Rulings from the Perspective of Maqashid Al-Syariah,"(Nurningrum, 2020) which examines how judges use their ex officio authority in deciding divorce cases, particularly in granting mut'ah rights to wives. In this study, judges were found to consider the values of justice, benefit, and legal certainty as general legal objectives, based on Article 41(c) of Law No. 1 of 1974. The study shows that the use of ex

officio authority by judges is justifiable both from a Sharia and positive law perspective, as it aligns with the principles of Maqashid al-Syariah to protect women's rights post-divorce. Although it has a similar theme, namely the ex officio rights of judges, the study focuses more on the context of divorce, while the study conducted by the author will emphasize the application of ex officio in the context of resolving sharia economic cases, which have different characteristics, particularly in terms of contracts and financial responsibilities.

Another relevant study is a journal written by Syarif Hidayatullah and colleagues entitled "The Existence of the Application of the Judge's Ex Officio Rights in Decisions at the Bima Religious Court"(Hidayatullah et al., 2022). This study uses a normative legal approach and discusses how the judge's ex officio authority is applied in religious court practice, highlighting two forms of the judge's role: passive and active. In a passive role, judges are limited by the petitum and procedural legal norms, so they are not free to make decisions outside the parties' requests. However, in an active role, judges can proactively investigate facts and legal circumstances that allow the use of ex officio authority to address substantive justice. The journal also emphasizes that in practice, the application of ex officio rights cannot be generalized even if the cases are similar, as each has different legal conditions. This finding confirms that the existence of ex officio authority is highly contextual, and judges must exercise caution in its application while adhering to applicable positive law. Although this study discusses the application of ex officio, its main focus is on the existence of such authority in general at the Bima Religious Court, while the author's research will delve deeper into the realm of Islamic economics, which encompasses numerous normative and substantive aspects such as breach of contract, financing agreements, and fatwas from the DSN-MUI.

Furthermore, the thesis by Lia Adi Ilma Sari entitled "Review of Article 178 Paragraph (3) HIR Regarding Ultra Petitum Partium Decisions in Sharia Economic Disputes"(Sari, 2023) is also an important reference. This thesis analyzes whether a judge's decision to grant a petition that has been withdrawn by the plaintiff constitutes a violation of procedural law principles, specifically Article 178(3) of the HIR, which prohibits judges from ruling beyond what is requested by the parties (ultra petitum partium). The findings of this thesis indicate that the judge violated this principle, but the violation can be tolerated due to the ex aequo et bono request and considerations of justice. This study also highlights that although the decision was based on breach of contract under the Civil Code, it does not conflict with Sharia principles. However, the judge did not fully refer to Islamic economic law, such as the Compilation of Islamic Economic Law (KHES) and the fatwa of the DSN-MUI. Thus, this thesis highlights the importance of judicial caution in integrating positive law and Islamic law when adjudicating Islamic economic cases. The difference with the author's research lies in the focus of the analysis: Lia's research emphasizes the procedural law aspects related to ultra petitum partium, while the author's research specifically examines how judges can use their ex officio authority to resolve sharia economic cases with an approach that goes beyond merely ruling within the limits of the petitum, while still adhering to the principles of justice, benefit, and legal certainty.

Therefore, these three studies make an important contribution to developing a conceptual framework regarding the ex officio rights of judges, both in divorce cases and Islamic economic cases. However, there has been no study that specifically and thoroughly examines the ex officio authority of judges in the context of resolving Islamic economic cases, especially in situations where the defendant is absent (verstek). Therefore, the author's research will fill this gap by focusing on how judges can use their ex officio authority to achieve substantive justice in resolving complex Islamic economic disputes, while balancing civil

procedure law, Islamic principles, and legal protection principles for the parties involved.

Method

This study uses a qualitative descriptive research method, which is used to understand legal aspects, rules, and practices in a more comprehensive manner regarding the ex officio authority of judges in the settlement of sharia economic disputes in case number 1716/Pdt.G/2024/PA.Bjn. This study employs an empirical legal method, which analyzes law not merely as norms written in legislation but also as actual behavior observed in society or the practices of legal institutions (das sein).

This study uses an empirical legal approach to examine the practical application of judges' ex officio jurisdiction in resolving sharia economic cases at the Bojonegoro Religious Court, specifically in case No. 1716/Pdt.G/2024/PA.Bjn. This approach is considered relevant because it allows researchers to evaluate the extent to which legal rules governing judicial authority are properly applied in practice, including in cases where the defendant is absent. This approach can reveal the gap between legal theory and its practical application, while facilitating consideration of the potential use of the contra legem principle by judges to achieve substantive justice. This study uses content analysis, which is the tendency to present media content as seen from the context of media content and social reality. The researcher combines all data related to the main issue and then conducts a deductive analysis, which is drawing conclusions through the issues raised in the problem statement so that the study is easy to understand.

Discussion

The Bojonegoro Religious Court is a judicial body under the auspices of the Supreme Court, which has the duty and function of receiving, examining, deciding, and resolving certain civil cases for Muslims that are submitted in accordance with the jurisdiction granted by the applicable laws and regulations. (Pengadilan Agama Bojonegoro, 2024) Case No. 1716/Pdt.G/2024/PA.Bjn is a case related to a dispute over the right of lien on a piece of land measuring 908 m² located in Mlinjeng Village, Sumberrejo Subdistrict, Bojonegoro Regency. The land in question is secured by Mortgage Certificate No. 00636/2023, and in the course of the proceedings, the plaintiff, as the mortgage holder, filed a lawsuit against the defendant, who has continued to occupy the property. During the court hearing, the defendant failed to appear despite having been properly summoned in accordance with applicable procedures, prompting the judge to issue a default judgment in accordance with applicable legal provisions.

In the decision, the judge exercised his ex officio authority to order the transfer of the collateral property, which is still under the defendant's control, to the plaintiff, in an empty condition and ready for auction. This was done to provide legal protection to the plaintiff and to ensure that their rights as the holder of the mortgage right remain protected, particularly to ensure that the auction process can be conducted effectively, safely, and in accordance with legal provisions. The use of this authority is also considered a step that maintains legal certainty, given that the defendant's absence does not diminish the continuity of the legal process.

Additionally, this process demonstrates how the judge is able to utilize his ex officio

authority to seek and uphold justice, even though the defendant is absent and there is no explicit request in the statement of claim. The judge also adheres to formal procedures, such as ensuring notification to the defendant, so that the decision rendered complies with the principles of legal formality while maintaining substantive justice. Through these steps, the court strives to achieve substantive justice while fulfilling its role in protecting the rights of the parties in a proportional and legally compliant manner.(*Salinan Putusan Pengadilan Agama Bojonegoro 1716/Pdt.G/2024/PA.Bjn*, n.d.)

The Ex Officio Authority of Judges in the Settlement of Sharia Economic Disputes Without the Presence of the Defendant in Case Study No. 1716/Pdt.G/2024/PA.Bjn

In the context of resolving sharia economic disputes, particularly in case number 1716/Pdt.G/2024/PA.Bjn, religious courts have important authority known as ex officio authority. This authority grants judges the right to take action and decide a case based on their official capacity, without necessarily relying on requests or submissions from the parties involved. This is aimed at ensuring substantive justice and guaranteeing the effectiveness and certainty of the law in the judicial process. (Ihzafitri et al., 2022) The ex officio authority exercised by the judge in this case is based on a strong legal foundation, such as Article 2 paragraph (1) and Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority, which requires judges to pay attention to and understand the values of justice in society and actively consider legal aspects, including taking actions beyond the charges filed by the parties. (Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman, 2009) This policy is also based on the principle that judges must be able to control the trial process so that there are no delays or legal uncertainties that could harm the parties involved, especially in the context of sharia economic disputes that require certainty in the implementation of decisions.

In practice, based on the results of an interview with Mr. BE, judges do not only rely on the petitum submitted by the plaintiff, but also take supporting measures such as conducting field inspections (descente) to ascertain the actual condition of the disputed collateral. (B.E, 2025) This demonstrates that the judge actively exercises his authority, exercising judicial discretion to arrive at a legal determination that is appropriate and consistent with the principles of justice and Sharia values. This ex officio interpretation and application of the law is carried out to ensure substantive justice for all parties, particularly the plaintiff who has rights to the collateral in question. (A.L, 2024) This application aims to protect the plaintiff's rights as the holder of the lien and ensure that the resulting decision has valid executory power and can be implemented quickly and effectively.

Based on the results of an interview with Mr. BE During the trial process, the obstacles encountered included the absence of the defendant, which hindered the examination of evidence and testimony, as well as the defendant's control over the collateral, which caused obstacles in the execution process. To address this, the judge issued a decision strengthening the enforceability of the court order, enabling the collateral still under the defendant's control to be transferred to the plaintiff. This step is crucial to ensure the execution process proceeds smoothly, providing legal certainty and protecting the plaintiff's rights as the first mortgagee. (B.E, 2025)

The use of *ex officio authority* not only serves to strengthen the binding power and effectiveness of judges' decisions, but also reflects the role of judges as active and proactive guardians of justice. In the context of sharia economic disputes, this role has become

increasingly significant due to the characteristics of cases that demand legal certainty as well as substantive justice that is in line with sharia principles. Through *ex officio* authority, the judge does not simply wait for the parties' arguments and pleas, but is able to take the necessary legal initiatives to fill the gaps in norms, clarify the legal position of the parties, and ensure that the verdict handed down truly reflects the values of justice that live in the Islamic economic legal system.

Furthermore, this approach allows judges to overcome various administrative and procedural obstacles that often arise in the trial process, without having to sacrifice the principles of legality and legal certainty. Ex *officio* authority can be used proportionately to protect the rights of the parties, especially structurally weaker parties, so as not to be harmed by mere procedural formalities. Thus, the resulting verdict not only fulfills the aspect of formal justice, but also reflects the balance between justice, legal certainty, and legal *utility*, so that the legal goals in the substantive sense can be optimally achieved.

The use of ex officio authority must be exercised while observing the limits of authority in accordance with legal provisions to prevent abuse of power. In this case, the judge successfully balanced the application of formal law and the principle of substantive justice, so that despite obstacles such as the defendant's absence, the decision could be effectively enforced and provided meaningful input into the practice of resolving sharia economic disputes in court. This step also demonstrates that the use of ex officio authority can serve as a strategic and flexible solution for resolving complex disputes that require in-depth assessment, ensuring that justice is felt and upheld optimally by all parties involved.

Analysis of the Ex Officio Authority of Judges in the Settlement of Sharia Economic Disputes Without the Presence of the Defendant in Case Study No. 1716/Pdt.G/2024/PA.Bjn from a Civil Procedure Law Perspective

The process of resolving sharia economic disputes in religious courts, the application of ex officio authority by judges plays a very important and strategic role. Ex officio authority, as regulated in civil procedure law, is an authority inherent to the position of judge, which can be exercised without being requested by the parties. According to Subekti, ex officio authority is an authority that arises from the position, not based on a decree or appointment, and also not based on a request. In the context of civil procedure law, this authority is strictly regulated and must be used in accordance with applicable rules to avoid conflicting with the principles of justice and the public's sense of justice (Subekti & R., 1979).

In case number 1716/Pdt.G/2024/PA.Bjn, the judge actively exercised his ex officio authority to add executory power to the verdict. This was done because the collateral at issue, which is part of the dispute, remains under the defendant's control, and there was no explicit request from the plaintiff for the collateral to be surrendered, auctioned, or its proceeds handed over to the plaintiff. In this situation, without active intervention by the judge, the judgment issued risks being unable to be enforced efficiently and effectively, thereby creating legal uncertainty and potentially undermining the sense of justice. Through this authority, judges can add executory power to their verdicts so that collateral still in the hands of the defendant can be handed over to the plaintiff even if there is no explicit request from the plaintiff.

The use of ex officio authority in this case is based on procedural law provisions that allow judges to take proactive measures to ensure substantive justice is achieved. This

principle is regulated in PERMA No. 14 of 2016 concerning the procedures for resolving sharia economic matters, which recognizes the importance of the judge's role in exploring the value of justice more deeply than mere procedural rules. Judges must not only follow formalities, but also be able to understand and uphold the principles of justice in depth so that decisions can truly be implemented and do not cause problems in the future.(Perma Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana, n.d.) Judges also engage in ijtihad, which is contextual and flexible interpretation and consideration of the law, in order to arrive at the appropriate legal basis and principles of justice in each case they encounter.

More detail, based on an interview with Mr. BE, the judge in this case took several important actions to ensure the fairness and effectiveness of the judicial process. First, the judge assessed the defendant's absence by continuing the trial even though the defendant was not present and had not been legally summoned to appear. This was based on the principle that the right to be heard must be respected, as long as the summons and notification had been carried out legally in accordance with applicable legal norms. (B.E, 2025) Second, because the collateral was still in the possession of the defendant and there was no explicit request from the plaintiff for the collateral to be surrendered, the judge exercised his ex officio authority to add executory power to the verdict. This step was intended to ensure that the verdict had full power to be enforced, even though the defendant was not present and did not directly request that the collateral be surrendered or auctioned (B.E, 2025).

Third, this action was taken to increase legal certainty and the effectiveness of the implementation of the decision, avoiding situations where the decision cannot be implemented immediately because the collateral is still in the possession of the defendant. By affirming the executory power, the judge ensures that the decision can be implemented fairly and in a timely manner in accordance with the principle of substantive justice. Fourth, this step is in line with the Principle of Judicial Activism in the resolution of special disputes, as stipulated in PERMA No. 14 of 2016.(Siswajanthy & Abid, 2021) This principle directs judges to actively explore the values of justice, uphold substantive legal norms, and not stop at procedural formalities. This ex officio authority is part of a strategy to fulfill the primary purpose of the court, which is to uphold justice optimally and ensure that the judicial process can address challenges related to justice in practice. Thus, the judge's actions demonstrate a commitment to performing jurisdictional functions professionally and responsibly to achieve comprehensive substantive justice.

The exercise of ex officio authority, in addition must be carried out carefully and with clear limitations to prevent abuse of power. In this regard, judges must balance the desire to deliver substantive justice with the need to uphold the principles of legality and procedural justice, while also addressing the challenge that, in sharia economic disputes, there is often a lack of norms or a failure to clearly meet the demands of the parties involved in a case. Judges must be able to adapt the legal process to ensure that the outcome remains consistent with the principles of justice and legal certainty. In this regard, the role of judges is not only as enforcers of procedures but also as active actors capable of interpreting norms and facilitating the implementation of decisions. In addition to formal legal aspects, the use of ex officio authority must also take into account ethical aspects and Islamic principles of justice that influence the judicial system in Indonesia, especially in the Religious Courts. This is to ensure that the decisions made are not only legally valid but also morally and socially just, given the depth of the values of justice in the Indonesian legal system, which is based on belief in One God.

The exercise of *ex officio* authority by judges is essentially an important instrument to ensure the realization of substantive justice, but its use must be done carefully and measurably.

This authority cannot be exercised freely without limits, because it has the potential to cause abuse *of power* and erode the principle of *due process of law*. Therefore, judges are required to balance the need to provide real justice for the parties with the obligation to maintain the principles of legality and procedural justice. This challenge is increasingly complex in sharia economic disputes, where there is often a vacuum of positive legal norms or provisions that have not been able to fully accommodate the demands and interests of the parties explicitly.

In this context, judges are not enough to be positioned solely as "mouthpieces of the law", but rather as active actors who have an interpretive and creative role in interpreting legal norms. The use of *ex officio authority* allows judges to adjust legal processes and decisions to remain in line with the objectives of justice and legal certainty, without disregarding the applicable legal framework. The ability of judges to make legal discoveries (*rechtsvinding*) is crucial, especially when dealing with the dynamics of transactions and sharia economic practices that develop faster than written regulations. Thus, proportionate judicial adaptation is key so that the verdict is not only formally valid, but also relevant and responsive to the justice needs of the parties.

Furthermore, the use of *ex officio authority* cannot be separated from the ethical dimension and values of Islamic justice which are the foundation of the religious justice system in Indonesia. Judges are required to consider moral principles, such as justice (*al-'adl*), benefit (*maslahah*), and responsibility before God, as an integral part of the decision-making process. This is in line with the character of the Indonesian legal system which is based on the One Godhead, so that court decisions are expected not only to meet juridical validity, but also reflect moral and social justice. With this approach, *ex officio* authority functions as a means to strengthen the legitimacy of judges' decisions, both legally positive and in terms of the values of justice that live in society.

The Final Statement is the use of ex officio authority by judges in such cases is a concrete manifestation of their responsibility to ensure that substantive justice is upheld and that decisions can be effectively enforced. This action is supported by legal provisions that permit it, as well as the principle of justice that encourages judges to be proactive, flexible, and adaptive in addressing unfavorable situations arising from the absence of parties or normative gaps. In this way, the court is able to provide comprehensive legal protection and ensure that the rights of the parties are protected fairly and not overlooked simply because some parties are absent from the trial process.

Conclusion

Based on the analysis conducted, it can be concluded that the application of ex officio authority by judges in the resolution of sharia economic disputes, particularly in case number 1716/Pdt.G/2024/PA.Bjn, constitutes a proactive and strategic effort to ensure substantive justice and legal certainty. Judges may take steps beyond the defendant's request, such as strengthening the enforcement power over the collateral object even if the defendant is absent and the collateral object is under the defendant's control. The use of ex officio authority must remain grounded in applicable legal provisions to prevent abuse of power. This demonstrates that judges are capable of balancing the formal application of the law with the need for substantive justice. In general, this practice demonstrates that ex officio authority can be an effective and flexible solution in overcoming various obstacles during the judicial process, particularly in the field of Islamic economics, which considers aspects of justice and legal certainty for all parties involved.

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