



ABSOLUTE COMPETENCE OF COURTS ON ISLAMIC BANKING DISPUTE RESOLUTION IN INDONESIA

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**The 2nd Annual Conference
on Islamic Economics and Islamic Finance**

October 30th, 2014,

Venue: Chestnut Conference Center, Toronto University, Canada

Organized by: ECO-ENA, Inc., Canada www.eco-ena.ca

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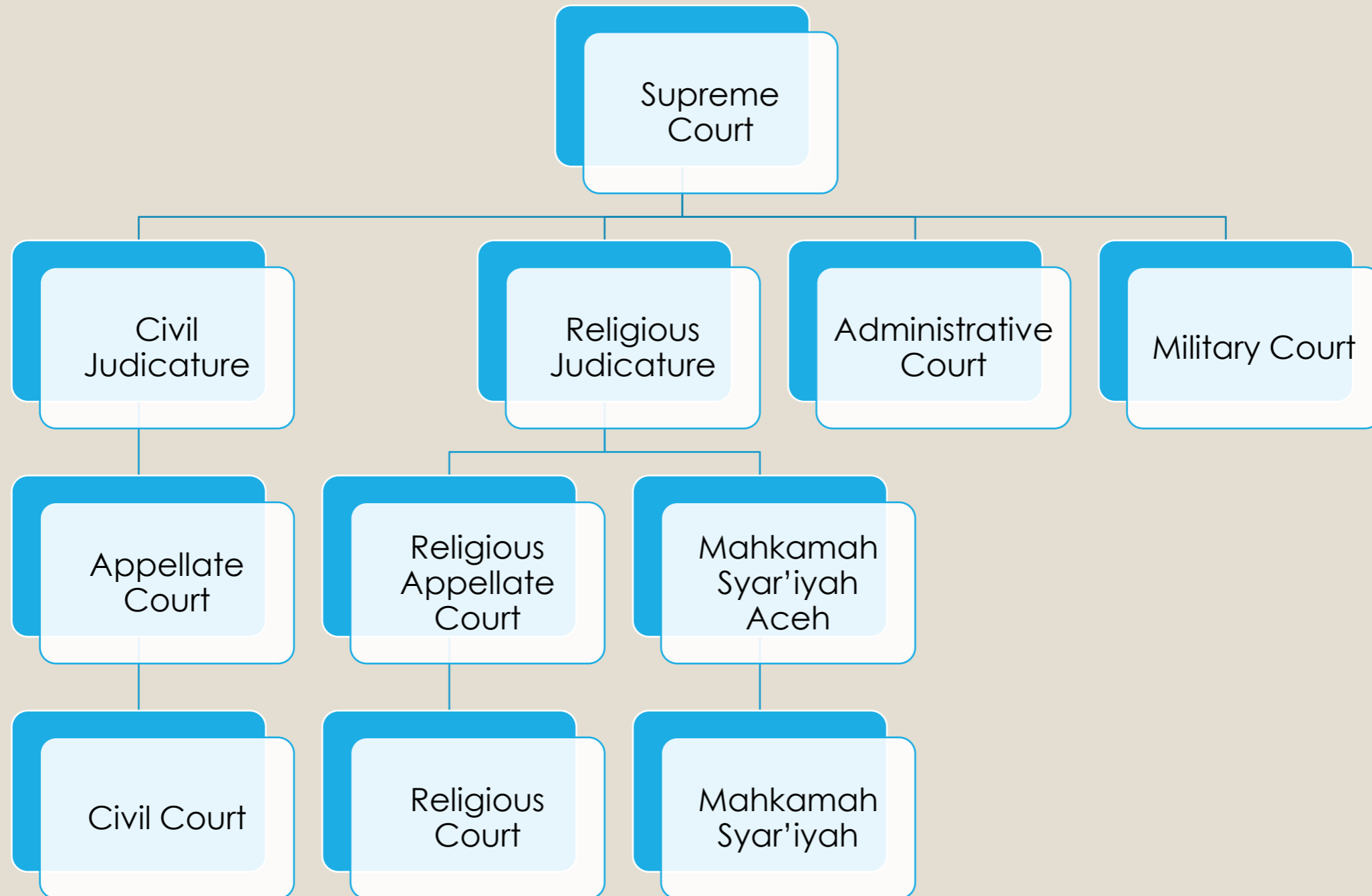
Development of Islamic Finance in Indonesia

- The first islamic finance was started by islamic banking (Bank Muamalat) operated in 1992
- Islamic insurance (Asuransi Takaful) was operated in 1994
- Islamic Capital Market was in 1997
- Monetary Crisis in 1997-1998, Bank Muamalat was survived

System of Judicature

- Supreme Court
- Constitutional Court

Supreme Court



Absolute Competence of Courts on Islamic Economic Cases

Law of Alteration of Religious Judicature (Law No. 3 of 2006), article 49:

- Marriage, divorce, custody of child, inheritance, zakat, waqf, hibah, and islamic economic

Islamic Banking Dispute Resolution in Law of Islamic Banking

Law of Islamic Banking (Law No. 21 of 2008),
article 55:

1. Islamic banking dispute resolution resolved by the court within the Religious Court.
2. In the event that the parties have agreed on dispute resolution other than as referred to in paragraph (1), the dispute resolution carried out in accordance with the clause of agreement.
3. Settlement of disputes referred to in paragraph (2) shall not be inconsistent with Islamic principles.

Cont'd

Elucidation of Article 55 paragraph (2):

- Definition of "dispute resolution carried out in accordance with the clause of agreement" is deliberation, banking mediation, Badan Arbitrase Syariah Nasional (National Islamic Arbitration Board) or other arbitrations, and/or the courts in Civil Judicature

Legal Issue

- Abolition of absolute competence of courts concerning islamic banking
- Choice of Forum

Verdict of Constitutional Court No. 93/PUU-X/2012

- a. Elucidation of Art. 55 paragraph (2) of Law of Islamic Banking contrary to the Constitution of Republic of Indonesia of 1945
- b. Elucidation of Art. 55 paragraph (2) of Law of Islamic Banking has no binding legal force

Conclusion

- Abolition of elucidation of Art. 55 Paragraph (2) Law of Islamic Banking must be read with the legal consideration of verdict, and concurring opinions, as well as dissenting opinion, to get fully appropriate interpretation
- Civil court has no authority to try islamic banking cases
- Religious court has absolute authority to try the case



WASSALAM

THANK YOU