

# Legal Effectiveness of The Supreme Court Regulation on Sharia Economic Dispute Settlement in West Java Religious Court

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**Abstract**—Religious Courts are given the authority to settle Sharia economic disputes in Article 49 of Act Number 03, 2006 about Religious Courts and has been confirmed by the decision of the Constitutional Court number 93/PUU-X/2012. Implementation of the Supreme Court is given attributive authority to fill legal voids because the settlement of Sharia economic disputes carried out by the Religious Courts does not yet have a formal law so that there is a legal vacuum. To realize the principle of a simple, fast and low-cost trial, the Supreme Court issues various legal policies, one of which is in the form of a Supreme Court Regulation. This research examines the legal certainty and benefits of the Supreme Court Regulations, as well as measures the effectiveness or not of the Supreme Court Regulations in resolving Sharia economic disputes in court institutions. This type of research is qualitative with an empirical normative approach. The focus of the research that will be examined is the fulfillment of the factors of legal effectiveness against the Supreme Court Regulation on Sharia economic disputes in the religious courts of West Java, these factors are interrelated and are a benchmark for the effectiveness of law enforcement. The urgency of this research is to explain the legal certainty and benefits of the Supreme Court Regulations in realizing and shaping the aspired legal culture.

**Keywords**—supreme court regulation, legal effectiveness, sharia economic dispute, religious court

## I. INTRODUCTION

Justice seekers certainly want their rights to be fulfilled properly and correctly, so they have the right to consider the path they can take to realize it. In the settlement of Sharia economic disputes, justice seekers have the right to choose an entity to claim their rights through litigation and non-litigation, litigation can be taken through a religious court that has been given its authority through Law No. 3 of 2006 in conjunction with Law no. 50 of 2009 concerning Religious Courts, non-litigation can also be taken, for example through the Sharia arbitration body.

Before the enactment of Law no. 3 of 2006 concerning the Religious Courts, the settlement of sharia economic disputes

can be resolved through non-litigation channels at Basyarnas, this is because of their need for dispute resolution by Islamic law. However, when Law no. 03 of 2006 concerning the Religious Courts, the settlement of Sharia economic disputes becomes the absolute authority of the religious courts. Problems began to occur when the dualism of the authority to settle sharia economic disputes occurred, Constitutional Court Decision No. 93/PUU-X/2012 in the review of Law Number 21 of 2008 concerning Sharia Banking stated that the position of the religious court in resolving Sharia economic disputes was given full power over the authority of the sole dispute resolution entity through litigation.

Material law in resolving Sharia economic disputes is said to be still safe because the existing regulations have covered all Sharia economic problems over time, but in practice, it is still lacking in achievement, because the existing material law has not been able to provide legal certainty. This statement will be described in the discussion using the theory of legal effectiveness to community behavior patterns, which will have an impact on public interest in choosing entities to settle Sharia economic cases.

Public interest in resolving sharia economic cases is a priority even though this is a forum of choice for justice seekers, but the existence of a religious court as a litigation institution is threatened because it turns out that the awareness of legal subjects is lacking in knowing and understanding regulations, especially on the Supreme Court Regulations in resolving disputes. Islamic economics [1].

**TABLE I. LIST OF THE NUMBER OF SHARIA ECONOMIC CASES IN THE WEST JAVA REGIONAL COURT**

1	SHARIA ECONOMIC CASES IN RELIGIOUS JURISDICTIONS IN WEST JAVA DATABASE FROM THE RELIGIOUS COURTS WEBSITE ACCORDING TO THE REGION																	
	2 <i>RELIGIOUS JURISDICTION AREAS</i>	2018				2019				2020				2021				Total Case
		Hearing	Minutes	Other Status	Total	Hearing	Minutes	Other Status	Total	Hearing	Minutes	Other Status	Total	Hearing	Minutes	Other Status	Total	
4	PA BANDUNG	0	2	0	2	0	10	3	13	1	2	0	3	0	0	0	0	18
5	PA KOTA TASIKMALAYA	0	1	2	3	0	8	2	10	0	4	1	5	1	1	0	2	20
6	PA SUMEDANG	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	PA CIMAHU	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	1
8	PA BOGOR	0	0	0	0	0	1	0	1	0	1	0	1	0	0	0	0	2
9	PA GARUT				0				0				0					0
10	PA SUKABUMI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	PA CIANJUR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12	PA CIREBON	0	0	0	0	0	0	0	0	0	2	0	2	0	0	0	0	2
13	PA INDRAMAYU				0				0				0					0
14	PA MAJALENGKA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15	PA KUNINGAN	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	1
16	PA BEKASI	0	0	0	0	0	0	2	2	0	3	1	4	3	0	0	3	9
17	PA KARAWANG	0	2	2	4	0	1	0	1	1	2	0	4	0	0	0	0	8
18	PA PURWAKARTA	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	1
19	PA SUBANG				0				0				0					0
20	PA CIBADAK	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21	PA SUMBER	0	0	0	0	0	0	0	0	0	2	1	3	0	0	0	0	3
22	PA TASIKMALAYA				0				0				0					0
23	PA CIBINONG	0	1	0	1	0	1	1	2	0	0	0	0	1	1	0	2	5
24	PA CIKARANG	0	0	1	1	0	1	0	1	0	1	0	1	0	0	0	0	3
25	PA DEPOK	0	0	0	0	0	3	0	3	1	0	0	1	0	0	0	0	4
26	PA KOTA BANJAR	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	1
27	PA SOREANG	0	0	0	0	0	1	1	2	0	1	0	1	0	0	0	0	3
28	PA NGAMPRAH	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	1
29	PA CIAMIS	0	0	0	0	0	1	1	2	0	0	1	1	0	0	0	0	3
30	PTA JAWA BARAT				0				0				0					0
	TOTAL	12				37				29				7				85

The data on Sharia economic cases that go to the Religious Courts in the West Java region is very different from the cases of Sharia economic disputes that occur in the West Java region. The number of cases entered in the religious courts of the West Java region is 36 cases (as of January 2020 - May 2021) (Table 1). The results of the questionnaire taken from several economic actor entities stated that the number of cases that occurred was more than the number of cases that went to the religious court, the possibility of a settlement occurring outside of litigation and only until mediation, that according to some Sharia economic actors, a settlement outside of litigation is more effective and efficient.

Discussing the issue of effective and efficient dispute resolution, the Supreme Court came up with several policies in the form of a Supreme Court Regulation to realize the ease of proceedings in the Religious Courts to suppress effectiveness and efficiency to realize the principle of a simple, fast and low cost-trial. In previous research, it was explained that the Supreme Court had made efforts to realize an effective and efficient judiciary by issuing several policies, namely Supreme Court Regulation Number 14 of 2016, Supreme Court Regulation Number 05 of 2016 concerning Certification of Sharia Economic Judges, Supreme Court Regulation Number 04 of 2019 Amendment to Supreme Court Regulation Number 02 of 2015 concerning Procedures for Settlement of Simple

Lawsuits and Supreme Court Regulation Number 01 of 2019 concerning Electronic Case Administration and Trial [2].

The Supreme Court Regulation is a complementary rule that is delegative, this rule becomes the attributive authority of the Supreme Court as a state apparatus and officially this authority becomes an element of the legality of the validity of the Supreme Court Regulation. Legal material that can be regulated in a Supreme Court Regulation is a rule that has not been regulated in law and only regulates the process of administering justice or material legal products, nor may it interfere with and exceed the rules regarding the rights and obligations of citizens [1].

The author tries to analyze the Supreme Court Regulations related to Islamic economics through the theory of legal effectiveness, so that it can be seen what factors cause the ineffectiveness of the Supreme Court Regulations. This is to improve the quality of religious courts and provide understanding for justice seekers in their efforts to claim their rights. Analysis of the factors in the effectiveness of the law needs to be done to find the causes of behavior from the events that occur, then the results will be a solution in implementing the Supreme Court Regulations.

## II. METHODS

The method used in this research is a qualitative method with an empirical normative approach so that it can be exploratory in uncovering legal facts in the context of sharia economic dispute resolution.

## III. RESULTS AND DISCUSSION

### A. Sharia Economic Dispute Resolution Mechanism

Settlement of sharia economic disputes can be carried out through litigation and non-litigation channels, both of which must prioritize sulh/peace. The choice of a dispute resolution institution depends on the parties or is adjusted to the choice of forum contained in the contract.

Litigation in English is called "litigate" which is defined as "To dispute or contested in form of law; to settle a dispute or seek relief in a court of law" [3]. Litigation dispute resolution means that it is resolved through the judiciary, and if appropriate, the dispute is a civil dispute. In general, the main points of civil disputes, processes, and procedures have been stated previously. However, apart from litigation, there are also non-litigation settlements [4].

Non-litigation settlement is an out-of-court settlement which means that the dispute or dispute between the parties has not been brought to court. Settlement of such disputes has its characteristics because there are several ways of resolving them, namely First, through Arbitration (Arbitration) which is defined by Steven H. Gifis as "submission of controversies, by agreement of the parties thereto, to persons chosen by themselves of determination" [5]. M. Yahya Harahap said that Arbitration is one method of dispute resolution and the dispute that must be resolved comes from a dispute over a contract [6]. And Second, through alternative dispute resolution in Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution [7].

### B. Supreme Court Regulations on the Effectiveness and Efficiency of Sharia Economic Dispute Resolution in Religious Courts

The Supreme Court has issued legal instruments that regulate the technical juridical efforts to realize an effective and efficient judiciary, namely:

- Supreme Court Regulation 04 of 2019 amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits
- Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges
- Supreme Court Regulation Number 01 of 2019 concerning Electronic Case Administration and Trial [2].

The Supreme Court Regulation above complements Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases. These are some of the policies issued by the Supreme Court to create an effective and efficient judiciary for the realization of a simple, fast and lowcost judicial principle

### C. Factors in the Implementation of Legal Effectiveness in the Regulation of the Supreme Court for the Settlement of Sharia Economic Disputes in the Religious Courts of West Java

Humans need guidelines or benchmarks to control values in society, in legal actions these guidelines can be called norms or rules. Rules are needed to maintain social behavior so that they are orderly and peaceful, this can be influenced by three main variables, namely the existence of a set of rules that are organized into a system, the process of literacy socialization and the existence of a repressive social control process [8]. In reality, the law does not only function as social control, but can also carry out the function of social engineering. Thus, the effectiveness of the law can be seen both from the point of view of the social function of control and from the point of its function as a tool for making changes.

Effectiveness in general according to Amin Tunggul Widjaya is the result of making decisions that lead to doing something right, which helps fulfill a company's mission or achieve goals [9]. Then Sarwoto termed effectiveness with "successful" i.e. good service, the style and quality match the needs in achieving the goals of an organization [10]. Achmad Ali argues that what is called effectiveness in the field of law when we want to know the extent of the effectiveness of the law, then we must first be able to measure the extent to which the rules are obeyed or not obeyed [11].

Legal effectiveness is a study that is located outside the field of legal dogmatic studies, because this study not only examines legal rules but also examines globally the factors contained in the legal system, including the reciprocal relationship between law as a social phenomenon and social phenomena. others in the sociology of law [12].

The legal system is a unified whole of orders consisting of parts or elements that are interrelated and closely related [13]. To achieve legal certainty, all elements must be managed properly so that they influence each other and strengthen each other in carrying out their functions. The functions of the legal system in question are: social control, dispute settlement, social engineering function and social maintenance.

Lawrence M. Friedman explained that a system can affect the effectiveness of law enforcement seen from 3 elements, namely, legal structure, legal substance and legal culture. The legal structure will work well if it is supported by legal substance, the legal structure and legal substance will show its existence well if it is supported by a legal culture that works from the strength of values and social attitudes to move the law, all elements must complement each other and create law enforcement [14].

The effectiveness of the law according to Soerjono Soekanto is that whether or not a law is effective is determined by 5 (five) factors, namely:

- 1) The legal factor itself
- 2) Law enforcement factors, namely the parties that form and apply the law
- 3) Factors of facilities or facilities that support law enforcement
- 4) Community factors, namely the environment in which the law applies and is applied
- 5) Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life [15].

The five factors above are closely related, because they are the essence of law enforcement, as well as a measure of the effectiveness of law enforcement.

**First factor**, will analyze 3 (three) Supreme Court Regulations as legal instruments that regulate juridical technical efforts to realize an effective and efficient judiciary in resolving Sharia economic cases, namely:

- 1) Regulation of the Supreme Court Number 5 of 2016 concerning Certification of Sharia Economic Judges
- 2) Supreme Court Regulation Number 01 of 2019 concerning Electronic Case Administration and Trial
- 3) Supreme Court Regulation Number 04 of 2019 amendment to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits

The legal concept of enactment of the Supreme Court Regulation above refers to the principles of fast, simple and lowcost justice. The simple meaning is that the examination and settlement of cases are carried out effectively and efficiently which of course must not ignore the accuracy and precision of the judge in adjudicating a case. For this reason, it is necessary to study from the regulatory aspect and see the potential implementation of these regulations on changes in people's behavior.

For the sake of realizing rules that create legal certainty, regulations need to take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically. The philosophical basis is a consideration or reason that illustrates that the regulations that are formed take into account the views of life, awareness, and legal ideals which include the spiritual atmosphere and the philosophy of the Indonesian nation originating from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945).

The sociological basis is a consideration or reason that illustrates that regulations are formed to meet the needs of the community in various aspects. The sociological basis concerns empirical facts regarding the development of problems and

needs of society and the state. The juridical basis is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal voids by considering existing rules, which will be changed, or which will be revoked to ensure legal certainty and a sense of community justice [16].

The Supreme Court regulations discussed in this study are considered sufficient to meet the philosophical and juridical basis, this statement is the result of the FGD together with 3 legal practitioners and researchers, the elements contained in it can fill the legal vacuum in the formal law of Sharia economic dispute settlement in the Religious Courts. PERMA Number 5 of 2016 concerning Certification of Sharia Economic Judges, although it has fulfilled the juridical basis, the implications have not been seen.

Laws that are not static and always change over time do not seem to allow a rule to be certain, there will be a legal vacuum if a rule is not developed. The legal reforms started in the Supreme Court Regulation Number 01 of 2019 concerning Electronic Case Administration and Trial can accommodate problems that occur even although there are still network constraints to reach the e-court system in several regions and the lack of human resources as supporting personnel for electronic administration. court. The sociological basis is still not fulfilled, this will have an impact on the community's insensitivity to the rules.

**Second factor**, is that the law enforcers referred to in this factor are judges because they relate to the judicial institution that is the focus of research. Law enforcers make efforts to enforce and build real functions of legal norms as behavioral guidelines in traffic or legal relations in social and state life.

In the Supreme Court Regulation Number 5 of 2016 concerning the Certification of Sharia Economic Judges, it is explained how the urgency of holding training and certification for Sharia economic judges is explained. In 2017 the number of judges who have been certified amounted to 120 people and there has been no training and reinstatement until in 2019 registration is reopened to obtain a certificate of Sharia economic judges. The number of Sharia economic cases may still be relatively small compared to other Sharia civil cases, but with the number of judges who are certified it is impossible to meet the quota of Sharia economic cases in religious courts throughout Indonesia, so the need for certified judges should be increased again with the encouragement of effective and efficient case settlements.

**Third factor**, facilities and facilities that support law enforcement are the main point in improving law enforcement performance. Therefore, these facilities and facilities need to be continuously improved so that law enforcers can continue to increase their potential in realizing the optimal performance of the Religious Courts, this will have an impact on the public's perspective on the competence of judges in the Religious Courts.

The readiness of juridical facilities, material facilities, personal facilities and financial facilities will greatly affect the performance of judges for the realization of an effective and efficient judiciary [17]. The knowledge development facilities provided by the Supreme Court through Islamic education and training and training for Religious Court judges are still not effective because the training is not immediately tested for certificates so that PERMA Number 5 of 2016 concerning Certification of Sharia Economic Judges can be realized properly.

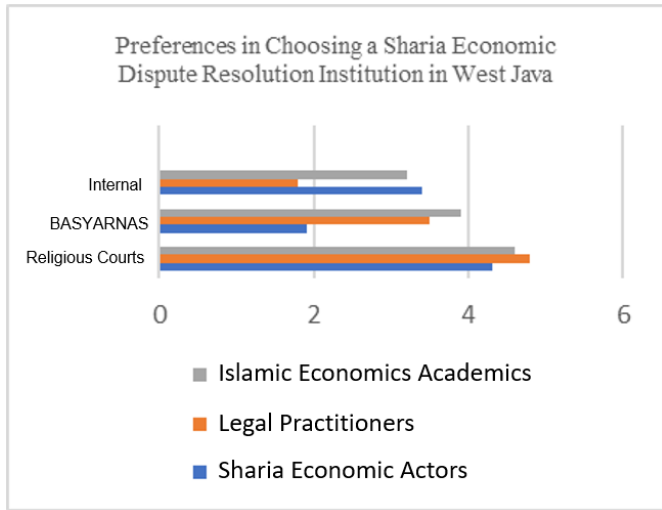


Fig. 1. Preferences in choosing a sharia economic dispute resolution institution in West Java.

The preference obtained by the table above states that the Religious Court is the highest choice based on 5 factors, namely regulatory factors, the principle of freedom of contract, Islamic resource factors, institutional factors and time and cost efficiency factors. The table above is the result of a questionnaire using a purposive sample with representative respondents from the population in West Java. From the results of the questionnaire, it is very unfortunate if the competence of judges in resolving Islamic economic disputes is still not effective. PERMA Number 5 of 2016 concerning Certification of Sharia Economic Judges has explicitly regulated that every Sharia economic case must be resolved by Sharia economic judges, the competence and integrity of judges must be united in the case so that justice can be achieved and become an effort in upholding Sharia economic law.

**Fourth factor**, the people in question are legal subjects in the West Java area, so our observations can be the direction of the goal of seeking the effectiveness of legal instruments in procedural law in religious courts throughout West Java. This factor is realized through interviews and questionnaires to Islamic economic actors on the knowledge and understanding of the community towards the Supreme Court Regulation which coordinates the settlement of sharia economic disputes in the West Java Regional Court.

In this case, there is a need for legal effort for public behavior, which can be seen from its relation to rules, internal and external factors, legal awareness and benefits, values and goals in a regulation. The internal and external factors referred to are directed at regulatory knowledge, regulatory understanding, legal attitude or legal attitude towards regulation and the impact on legal behavior patterns [14]. The regulations made must include an understanding of the applicability of the rules to all citizens or only certain groups, either in general or specifically in an area/region, because this will greatly affect the effectiveness of the law.

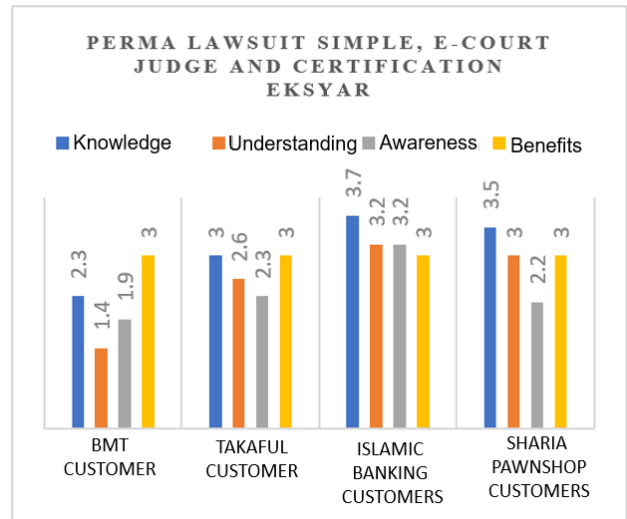


Fig. 2. PERMA law suit simple, e-court judge and certification eksyar

The results of the table state that there are still many Sharia economic actors who do not know the existence of PERMA in technically resolving Sharia economic disputes, they only know that religious courts can be used as Sharia economic dispute settlement institutions, but with mechanisms that of course they do not recognize, the image of the ease of litigation in religious courts being biased, they explain that the settlement of cases there is the same as other Sharia civil cases. This lack of information and literacy is the main obstacle that must be improved, not to force but to facilitate the community.

The loss of knowledge and understanding of the regulation in question causes a loss of interest which has an impact on their legal attitude towards regulations, this will be an opportunity for legal relaxation resulting from legal behavior in society.

**Fifth factor**, in this culture there will be a strong relationship with the sociology of law, so that it can be seen the influence of the sociology of law in the attitude of action in society. The solution that needs to be conveyed is the existence of legal communication and more literacy to the community who are still closely related to existing cultural patterns, so that changes in legal behavior that occurs have an impact on public trust in religious courts. So it can be concluded that this cultural or cultural component is in the form of attitudes and values of the community. Whether the community will use the courts as

a Sharia economic dispute resolution institution or not is influenced by attitudes and values called legal culture [18].

**IV. CONCLUSION**

It can be concluded that Supreme Court Regulation 04 of 2019 concerning Procedures for Settlement of Simple Lawsuits, Regulation of the Supreme Court Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Disputes, Regulation of the Supreme Court Number 5 of 2016 concerning Certification of Sharia Economic Judges, Supreme Court Regulation 01 of 2016 2019 Regarding Case Administration and Electronic Trial is still not effective, because the factors that measure the effectiveness of the law have not been met, to facilitate the analysis, the researchers made a simple table 2.

**TABLE II. ILLUSTRATION OF THE ASSESSMENT OF LEGAL EFFECTIVENESS BENCHMARKS AGAINST PERMA IN THE SETTLEMENT OF SHARIA ECONOMIC CASES**

No	PERMA	LEGAL EFFECTIVE FACTORS	VALUE
1	Supreme Court Regulation 04 of 2019 concerning Procedures for Settlement of Simple Lawsuits	Legal factors that do not meet the sociological basis, community factors that still do not know the existence of PERMA and lack of literacy.	2
2	Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges	Legal factors whose implications are still not visible, then law enforcement factors and community factors	1
3	Supreme Court Regulation 01 of 2019 concerning Electronic Case Administration and Trial	Community factors and legal culture factors, constrained by network access and understanding of the parties to e-court and the lack of human resources in electronic administration managers	1
<b>TOTAL</b>			<b>4</b>

\*The table 2 above is only an illustration of the assessment of legal effectiveness benchmarks against PERMA in the settlement of Sharia economic cases.

The Supreme Court's regulations in realizing an effective and efficient sharia economic dispute resolution must meet all factors of legal effectiveness, from a maximum value of 10 in the table above, only a score of 7 means that there are still deficiencies in the fulfillment of factors so that the PERMA becomes effective. The provision of the ease of juridical technical efforts carried out by the Supreme Court through a simple lawsuit, judges who adjudicate must have competence in the field of sharia economics and electronic case administration services and electronic courts should be more effective and efficient, but there are still several things that are obstacles to fulfillment legal effectiveness.

The Supreme Court is given the authority to make and stipulate laws and regulations by Article 8 paragraph (2) of Law Number 12 of 2011. PERMA is recognized as one of the laws and regulations that have binding legal force as long as they do not conflict with the highest legal position. PERMA mentioned in this study is expected to be a legal umbrella and provide legal certainty for justice seekers, the existing rules should be improved again for the realization of an effective and efficient judiciary. The realization of a simple, fast and low-cost judicial principle will be realized when the Religious Courts in the West Java region in particular can fulfill all the factors of legal effectiveness. Efforts that can be made include socializing regulations and literacy of litigation procedures in the Religious Courts to the public, increasing modern human resources in the 4.0 era and increasing the number of judges with Sharia economic certification.

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