

# *Pacific Rim Law & Policy Journal*



THE TRAINING, APPOINTMENT, AND SUPERVISION OF  
ISLAMIC JUDGES IN INDONESIA

*Euis Nurlaelawati and  
Abdurrahman Rahim*

STATE ISLAMIC UNIVERSITY  
SUNAN KALIJAGA  
YOGYAKARTA

*Published at the University of Washington*

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VOLUME 21, NUMBER 1

JANUARY 2012

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# *Pacific Rim Law & Policy Journal*

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Member, National Conference of Law Reviews.

**SUBSCRIPTIONS:** Subscriptions in the United States and Canada, covering three issues per volume, are U.S. \$46.54 per year and U.S. \$56.54 elsewhere. Subscription requests should be directed to the address above. Single issues and back volumes are available from William S. Hein Co., Inc., 1285 Main Street, Buffalo, New York 14209. Phone (800) 828-7571, Facsimile (716) 883-8100. Domestic claims for non-receipt of issues should be made within 90 days of the month of publication, overseas claims within 180 days. Thereafter back issue rates will apply. Overseas delivery is not guaranteed.

**CITATION:** Cite as PAC. RIM L. & POL'Y J.

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Beginning with Volume 4, each issue is designated by a month, year, volume, and number, and is consecutively paginated.

# *Pacific Rim Law & Policy Journal*

VOLUME 21, NUMBER 1

- SPECIAL ISSUE -

ISLAMIC LAW AND ISLAMIC LEGAL PROFESSIONALS IN SOUTHEAST ASIA

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# THE TRAINING, APPOINTMENT, AND SUPERVISION OF ISLAMIC JUDGES IN INDONESIA

Euis Nurlaelawati<sup>†</sup> and Abdurrahman Rahim<sup>‡</sup>

*Abstract:* This essay discusses the creation and training of Islamic court judges in Indonesia. This includes an examination of the qualifications for appointment as a judge, the recruitment of new judges, the pre-appointment and in-service training provided for Islamic judges, and the substantive and administrative supervision of the Islamic judiciary. The paper shows that significant changes have occurred in the system of recruitment and training of Islamic court judges with the establishment of new educational qualifications and the implementation of broader and more systematic training programs. As a result of these changes, the quality, professionalism, and standing of the Islamic judiciary have been significantly strengthened.<sup>††</sup>

## I. INTRODUCTION

The administration of Islamic justice began to take root in the Indonesian Archipelago in the period of Islamic kingdoms around the fifteenth century.<sup>1</sup> The Dutch colonial administration formally recognized Islamic legal institutions in 1882 when it issued a royal decree establishing a system of tribunals called *priesterraad* (priest's courts) with the power to decide Muslim matrimonial and inheritance cases in Java and Madura.<sup>2</sup> After Indonesia gained its independence in 1945, the new government expanded the system of Islamic courts to cover the entire country.

There are currently 343 first instance Islamic courts and 29 Islamic appeals courts nationwide. The first instance courts are established at the regency level while the appellate courts exercise a province-wide jurisdiction.<sup>3</sup>

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<sup>††</sup> In accordance with the policies of the *Pacific Rim Law & Policy Journal*, foreign words that have entered common English usage will not be italicized. Foreign words that are not in common usage will be italicized. Arabic words will not use diacritical marks such as macrons. However, apostrophes and reverse apostrophes will be employed to signal the letters *hamza* and *'ayn*, respectively.

<sup>1</sup> See generally DANIEL S. LEV, ISLAMIC COURTS IN INDONESIA: A STUDY IN THE POLITICAL BASES OF LEGAL INSTITUTION (1972).

<sup>2</sup> Stb. 1882, NO. 152.

<sup>3</sup> Religious Judicature Act, Act No. 7 of 1989, art. 4(2).

The supervision of the Islamic courts was, for many years, divided between the Ministry of Religion, which exercised administrative authority over the courts, and the Supreme Court, which was the ultimate authority on the law applied by the courts. In 2004, however, full authority over all aspects of the Islamic courts was transferred to the Supreme Court.<sup>4</sup>

Both the caseload and the substantive competency of the Islamic courts have expanded in recent decades. The annual caseload of the courts now stands at more than 250,000 cases per year. Although the overwhelming majority of cases decided by the Islamic courts are divorce cases, Islamic courts also have jurisdiction over inheritance, religious endowments, and disputes arising out of economic transactions based on Islamic law.

The expansion of the caseload and powers of the Islamic courts was accompanied by tremendous changes in the organization and staffing of the courts. The total number of Islamic judges has increased and the government has established new qualifications for appointment as an Islamic judge.<sup>5</sup> The government has also implemented a new system for recruiting Islamic court judges and developed a comprehensive training program that must be followed by candidates for the Islamic judiciary before they are formally appointed and begin service.

This paper examines the creation and supervision of the Indonesian Islamic judiciary. This includes an examination of the qualifications required for appointment as a judge, the recruitment of new judges, the pre-appointment and in-service training provided for Islamic judges, and the substantive and administrative supervision of the Islamic judiciary.

## II. EDUCATIONAL AND GENERAL QUALIFICATIONS FOR APPOINTMENT AS A JUDGE

### A. *What Academic Degrees Qualify a Person for an Appointment as a Judge?*

Education plays a particularly critical role in the formation of the judicial profession. However, prior to the passage of the Religious Judicature Act in 1989, there were no educational requirements for appointment as a judge in the Islamic courts. In the years following Indonesian independence, the judges who served on the Islamic courts were recruited from among the

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<sup>4</sup> Basic Law on Judicial Power, Act No. 4 of 2004.

<sup>5</sup> Mark E. Cammack, *The Indonesian Islamic Judiciary*, in *ISLAMIC LAW IN CONTEMPORARY INDONESIA: IDEAS AND INSTITUTIONS*, 146, 146-69 (R. Michael Feener & Mark E. Cammack eds., 2007).

local *ulama* (Ar: '*ulama*').<sup>6</sup> These judges had generally been trained in traditional Islamic schools that focused exclusively on the Islamic religious sciences.<sup>7</sup> This pattern began to change in the late 1950s as a result of the establishment of special schools for Islamic judges. In 1957, the Ministry of Religion set up a secondary level training school called the School for Teachers of Religion and Islamic Judges (Sekolah Guru dan Hakim Agama or "SGHA").<sup>8</sup> One of the purposes of the school was to produce graduates who had the technical ability and legal knowledge to qualify them to become judges in the Islamic courts. This school was later divided into two separate schools: the School for Teachers of Religion (Pendidikan Guru Agama or "PGA") and the School for Islamic Judges (Pendidikan Hakim Islam Negeri or "PHIN").<sup>9</sup> Some of the graduates of these "official schools" were sent to State Islamic Higher Education Schools (Perguruan Tinggi Agama Islam Negeri or "PTAIN") and Government Academies for Religious Officials (Akademi Dinas Ilmu Agama or "ADIA").<sup>10</sup> These were later transformed into the State Institutes for Islamic Studies (Institut Agama Islam Negeri or "IAIN") that were eventually established throughout the country.<sup>11</sup>

#### B. *What Are the Prerequisites to Becoming a Judge?*

The promulgation of the Religious Judicature Act in 1989 introduced major changes to the administration of Islamic law in Indonesia. The act broadens the powers of the courts, puts an end to the subordinate position of the Islamic courts within the national legal system, expands and rationalizes the organization of the courts, and for the first time stipulates requirements for appointment to the position of judge on the Islamic courts.<sup>12</sup> In order to serve as a judge on the Islamic court, a person must be Muslim, at least twenty-five years of age, religiously observant, competent, honest, just, well-behaved, well-versed in Islamic law, loyal to the official state ideology

<sup>6</sup> *Ulama* is the plural of "*alim*," an Arabic word meaning "man of knowledge," teacher or authority. An *alim* may lead prayers and perform rituals at marriages, birth, deaths, and other such occasions.

<sup>7</sup> Mark Cammack, *Indonesia's 1989 Religious Judicature Act: Islamization of Indonesia or Indonesianization of Islam*, 63 *INDONESIA* 145 (1997).

<sup>8</sup> EUIS NURLAELAWATI, *MODERNIZATION, TRADITION AND IDENTITY: THE KOMPILASI HUKUM ISLAM AND LEGAL PRACTICE IN THE INDONESIAN RELIGIOUS COURTS* 58 (2010).

<sup>9</sup> ABDUL MANAN, *HAKIM PERADILAN AGAMA: HAKIM DI MATA HUKUM, ULAMA DI MATA UMAT* 84 (2003); NURLAELAWATI, *supra* note 8, at 58.

<sup>10</sup> NURLAELAWATI, *supra* note 8, at 58.

<sup>11</sup> *Id.*

<sup>12</sup> Religious Judicature Act, Act No. 7 of 1989, *translated in* THORALF HANSTEIN, *ISLAMISCHES RECHT UND NATIONALES RECHT: EINE UNTERSUCHUNG ZUM EINFLUSS DES ISLAMISCHEN RECHTS AUF DIE ENTWICKLUNG DES MODERNEN FAMILIENRECHTS AM BEISPIEL INDONESIENS* 801, 801-845 (2002).

of *Pancasila* and the 1945 Constitution, and must never have been a member of or involved in banned organizations.<sup>13</sup> The requirement that appointees to the court be well versed in Islamic law means that the individual must hold a degree in either Islamic law or civil law. It is therefore safe to say that institutions that qualify their graduates for appointment as Islamic judges are Islamic law or civil law schools or faculties.

C. *What Institutions Offer Degrees That Qualify a Person to Act as a Judge?*

Under the 1989 Religious Judicature Act, appointment to the position of judge on an Islamic court requires a degree in either Islamic law or civil law.<sup>14</sup> Although graduates of the civil law faculties are eligible for appointment to the Islamic judiciary, most of the judges currently serving on the Islamic courts were recruited from among graduates of Islamic law faculties.<sup>15</sup> For that reason, this chapter will focus on the program of instruction offered in faculties of Islamic law with particular emphasis on the legal training and education provided in the faculty of Islamic law of the State Islamic University in Jakarta.

As mentioned above, the system of State Institutes for Islamic Studies (“IAIN”) that was established in the 1960s now exists throughout the country. Over the past decade, a small number of IAIN have been transformed into universities authorized to award degrees in a broader array of subjects.<sup>16</sup> The first IAIN to become a State Islamic University (Universitas Islam Negeri or “UIN”) was in Jakarta, which in 2002 became the UIN Syarif Hidayatullah.<sup>17</sup> Since then the IAIN in Yogyakarta and Malang have also become State Islamic Universities.

All of the IAIN and UIN in Indonesia have a faculty of Shari’a, or as it is spelled in Indonesia and used in this paper, “Syariah,” that provides training, among other things, for the position of judge on an Islamic court.

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<sup>13</sup> Religious Judicature Act, Act No. 7 of 1989, art. 13(1).

<sup>14</sup> Religious Judicature Act, Act No. 7 of 1989.

<sup>15</sup> NURLAELAWATI, *supra* note 8, at 182.

<sup>16</sup> ROBERT W. HEFNER & MUHAMMAD QASIM ZAMAN, *SCHOOLING ISLAM: THE CULTURE AND POLITICS OF MODERN MUSLIM EDUCATION* 189 (2007).

<sup>17</sup> In November 2001, the Ministry of National Education and Ministry of Religion issued a Joint Decree recommending that IAIN-Jakarta become a State Islamic University (Universitas Islam Negeri, UIN), and the Director General of Higher Education at the Ministry of Education approved the operation of twelve study programs in natural and social sciences. Ministry of National Education and Ministry of Religion Joint Decree, No. 500 of 2001. The process was finalized in May of 2002 with the issuance of a presidential decree for the transformation of IAIN Jakarta into UIN Jakarta. Presidential Decree, No. 31 of 2002.



The Syariah Faculty of Islamic law in the UIN consists of five programs: personal law (*ahwal shaksiyya*), comparative Islamic legal schools, Islamic government and criminal law, Islamic economics and business (*mu'amalat*), and legal studies.<sup>18</sup> Although all the graduates from the faculty of Islamic law are eligible to apply for the position of Islamic court judge, only three of the five programs of study have curricula relevant to a career in the judiciary: the programs on personal law, comparative Islamic legal schools, and government and criminal law.<sup>19</sup> Of these three, the program on personal law is the most directly relevant to the position of Islamic court judge because one of its concentrations is the field of religious justice.

*D. What Subjects Are Included in the Curricula?*

In order to equip its students with the knowledge and skills needed for a career in the judiciary, the faculty of Islamic law of the State Islamic University of Jakarta has created a set of scientific and professional courses.<sup>20</sup> These courses include, among others, private law, criminal law, civil procedure, legal drafting (*ilmu perundang-undangan*), Islamic court procedure, Indonesian Islamic family law, the administration of Islamic law in Indonesia, and selected topics in Indonesian Islamic family law. In addition to the subjects in this category, students of the three programs are required to master a number of subjects relevant to their particular program of study. Students in the program on comparative schools of Islamic law, for example, are required to master the doctrines of the schools of Islamic law in the fields of criminal law (*jinaya*), economic and commercial law (*mu'a'mala't*), the law of matrimony (*munakahat*), and religious rituals (*'ibadat*). Meanwhile, students in the program on Islamic government and criminal law are required to study Indonesian criminal procedure, Islamic criminal law, the criminal justice system, Islamic government, politics in Indonesia, Muslim politics in Indonesia and human duties and rights. In line with its focus on preparing students for a career in the Islamic judiciary, students in the personal law program with a concentration on religious justice are required to demonstrate proficiency in Islamic justice in

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<sup>18</sup> The courses offered by the faculty are divided into five categories: personal development, social development, scientific skills, creative skills, and behavioral skills. Added to these are major sciences. All students in the faculty are required to take the same number of courses in the first two categories regardless of their program of study. The courses falling into the third, fourth, and fifth categories are specific subjects that students of each program must take.

<sup>19</sup> M. B. HOOKER, *INDONESIAN SYARIAH: DEFINING A NATIONAL SCHOOL OF ISLAMIC LAW* 87-89 (2008).

<sup>20</sup> *Id.* at 128-203.

Indonesia, the administration and management of Islamic justice, Islamic economics, and contemporary Islamic family law.<sup>21</sup>

In addition to the course requirements described above, students in the program on personal law majoring in religious justice are also required to observe hearings held in the Islamic courts and report on what they have observed, as well as marriages performed by the Office of Religious Affairs (Kantor Urusan Agama or “KUA”).<sup>22</sup> The purpose of these assignments is to provide students with a practical perspective on what they have learned in class. In order to deepen their understanding and internalize what they have acquired in the classroom and witnessed in the hearings, the students are also required to participate in moot court (*peradilan semu*).

The texts that are used in courses in the Islamic law faculty include a variety of Indonesian, English, and Arabic sources. In a course on the law of procedure for the Islamic courts (*hukum acara peradilan agama*), the assigned texts included Yahya Harahap’s *Kedudukan, Kewenangan dan Acara Peradilan Agama* and *Hukum Acara Perdata*, Mukti Artho’s *Praktek Perkara Perdata pada Pengadilan Agama*, and Abdul Manan’s *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*. The assigned texts for a course entitled Selected Topics in Indonesian Islamic Family Law include A. Rafiq’s *Hukum Keluarga Islam*, Khairuddin Nasution’s *Status Wanita di Asia Tenggara*, Huzaemah Tahido’s *Fiqh Perempuan*, and Wahba al-Zuhayli’s *al-Fiqh al-Islamiy wa ‘Adillatuhu*.<sup>23</sup>

#### E. How Are Students Tested?

Upon completion of the required courses, students in the faculty of Islamic law must pass a comprehensive exam on the specific subjects of their area of concentration. The topics covered in the comprehensive exam may include, among others, marriage and divorce (*al-nikah* and *al-talaq*), criminal law (*jinaya*), and judging (*qada*).<sup>24</sup> In addition to the comprehensive exam, students are also tested on their ability to read *fiqh* texts in Arabic. The *fiqh* texts used for the test include Ibn Rushd’s *Bidayat al-mujtahid*, al-Jaziri’s *al-Fiqh ‘ala al-madhahib al-arba’a*, and Taqiy al-din

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<sup>21</sup> See *Buku Pedoman Akademik Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta*, FAKULTAS SYARIAH DAN HUKUM, [http://fsh-uinjkt.net/index.php?option=com\\_content&view=article&id=12&Itemid=26](http://fsh-uinjkt.net/index.php?option=com_content&view=article&id=12&Itemid=26).

<sup>22</sup> HOOKER, *supra* note 19, at 106-07.

<sup>23</sup> FAKULTAS SYARIAH DAN HUKUM, PEDOMAN AKADEMIK 2010/2011(2011).

<sup>24</sup> Interview with Drs. Basiq Djalil, SH, M.Ag., Department Head, Faculty of Law, Jakarta (July 2009); interview with Drs Kamarusdiana, M. Ag., Department Head, Faculty of Law, Jakarta (July 2009); interview with Dr. Asmawi, M. Ag., Department Head, Faculty of Law, Jakarta (July 2009).

al-Hisni's *Kifayat al-akhyar*. Students who fail to pass these exams will not be awarded their bachelor's degree even though they have already completed their theses.

*F. Are Women Allowed to Serve as Islamic Court Judges?*

The 1989 Religious Judicature Act ratified the practice of recruiting female judges to serve on the Islamic courts.<sup>25</sup> Women were first appointed to serve as judges on Indonesia's Islamic courts in 1964 when fifteen women were appointed as part-time honorary judges and one woman was appointed to a regular judgeship in the city of Tegal (Central Java).<sup>26</sup> In the same year, the wife of a government official in another part of Java applied to be a judge and was accepted. This ignited a debate and protests among the *ulama* who questioned whether a woman was permitted to be a judge under Islamic law. The Director of Religious Justice within the Ministry of Religion defended the permissibility of appointing women to the Islamic courts on the grounds that it was necessary because of a lack of qualified male candidates.<sup>27</sup> Women have served as judges on Indonesia's Islamic courts ever since.

The Religious Judicature Act provides formal legal authorization for appointment of women judges by making the position available to both male and female university graduates.<sup>28</sup> As will be discussed below, the Islamic courts now employ a significant number of female judges.<sup>29</sup>

*G. Appointment of Judges*

The system of judicial recruitment in Indonesia, including the recruitment of Islamic court judges, is very much influenced by the civil law system of recruitment applied by European continental states. Unlike the practice in common law jurisdictions, where judges are typically selected from among the ranks of experienced lawyers, the judiciary is a separate

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<sup>25</sup> NURLAELAWATI, *supra* note 8, at 59.

<sup>26</sup> *Id.*

<sup>27</sup> See LEV, *supra* note 1, at 110.

<sup>28</sup> Religious Judicature Act, Act No. 7 of 1989.

<sup>29</sup> MAHKAMAH AGUNG INDONESIA [SUPREME COURT OF INDONESIA], PERSYARATAN PENDAFTARAN CALON HAKIM (CAKIM) DAN CALON PEGAWAI NEGERI SIPIL (CPNS) MAHKAMAH AGUNG RI FORMASI TAHUN ANGGARAN 2009 [FORMAL LETTER ON SUPREME COURT REQUIREMENTS AND RULES FOR THE SELECTION OF JUDGES 2009] (Sept. 10, 2009). The letter specifies a minimum age of twenty-five for judges and a mandatory retirement age of sixty. *Id.* no.7. Candidates for the bench must provide medical proof that they are drug-free. *Id.* The Supreme Court has also established height requirements for judges. *Id.* no.1, §8. In order to be appointed as a judge, men must be at least 160 cm (5 feet 3 inches) tall and women must be at least 152 cm (5 feet) tall. *Id.*

career path in civil law systems. Judges are selected from new law graduates, and judges typically devote their entire careers to judicial service.<sup>30</sup>

#### *H. What Are the Educational Credentials of the Islamic Judiciary?*

The 1989 Religious Judicature Act requires that all judges on the Islamic courts have at least a bachelor's degree.<sup>31</sup> In recent years, however, a growing number of judges have earned advanced degrees.<sup>32</sup> In 2009, 842 first instance judges, or 28%, had master's degrees and five had doctorates.<sup>33</sup> As of 2009, more than half of all appeals court judges—196, or 54%, had earned advanced degrees.<sup>34</sup> The number of male judges with advanced degrees is proportionally higher than the number of female judges with advanced degrees.<sup>35</sup> Thirty percent of male first instance judges had advanced degrees in 2009 compared to 21% of female judges.<sup>36</sup> Among appeals court judges, the proportion of advanced degree holders is essentially the same for male and female judges; just over 50% of the judges in both groups have advanced degrees.<sup>37</sup>

#### *I. What Is the Selection Process for Judges?*

The staffing of the Islamic courts is carried out through a regular system of recruitment administered by the Islamic appeals courts under the direction of the Supreme Court. Each year the Bureau of Islamic Courts (Badan Peradilan Agama or "Badilag"), the office within the Supreme Court that supervises the Islamic judiciary, which before, when it was under the Ministry of Religion, was called the Directorate of Development of Religious Justice (Direktorat Pembinaan Badan Peradilan Agama or "Ditbinbapera"), issues a circular announcing its recruitment plans for the

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<sup>30</sup> Paulus Effendie Lotulung, Paper, *Tanggapan terhadap Laporan Sementara Penelitian* (this paper was presented at a workshop entitled, "Membangun Sistem Pendidikan dan Pelatihan Hakim," held by Komisi Hukum Nasional in Jakarta on July 5, 2005).

<sup>31</sup> Religious Judicature Act, Act No. 7 of 1989.

<sup>32</sup> See generally BADAN PERADILAN AGAMA [THE ISLAMIC COURTS DIVISION OF THE SUPREME COURT], <http://www.badilag.net/>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

coming year and inviting applications.<sup>38</sup> University graduates with degrees in either Islamic or civil law who are interested in becoming judges on the Islamic courts are required to submit an application letter and statement of interest to the Bureau of Islamic Courts (Badilag).<sup>39</sup> The application must be accompanied by a variety of documents relating to the applicant's education, health, and good conduct.<sup>40</sup> An applicant must also attach a written declaration that he or she will accept a placement in any part of Indonesia, as well as pledge to accept an appointment if offered.<sup>41</sup>

*J. What Is the Subject Matter and Content of Tests for Appointment as a Judge?*

Applicants who meet the educational and other qualifications specified in the act must pass a number of exams in order to receive appointment as a judge. The examination process is carried out in two sessions. The first session consists of two exams, one exam testing "basic competency" (Tes Bakat Skolastik or "TBS"), which includes cognition, psychosomatics and mathematics, and a second exam on "general competency," which covers civic knowledge, languages, history, and governmental administration. The exam administered in the second session tests both specific knowledge (Tes Pengetahuan Khusus or "TPK") and specialized or substantive knowledge (Tes Kemampuan Bidang or "TKB"). This encompasses Islamic law, the procedural and substantive law for the Islamic courts, and Islamic astronomy (*hisab rukyat*).<sup>42</sup>

The length and format of the exam has changed in recent years. In 2007, the length of the exam was increased from 90 questions to a total of 150 questions that must be completed within 150 minutes. The 150 questions consist of 100 questions on basic competency and 50 questions on general competency. Meanwhile, in the second session, the applicants must answer 60 questions in 100 minutes. The type of question has also changed.

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<sup>38</sup> MAHKAMAH AGUNG REPUBLIK INDONESIA [SUPREME COURT OF THE REPUBLIC OF INDONESIA], PENERIMAAN CAKIM DAN CPNS MA (2007), available at [http://www.mahkamahagung.go.id/images/uploaded/pengumuman\\_pegawai.pdf](http://www.mahkamahagung.go.id/images/uploaded/pengumuman_pegawai.pdf).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Interview with Judicial Candidate Syarifuddin, in Jakarta, (Nov. 12, 2008). The candidate graduated from the Faculty of Sharia and Law, applied for the judgeship position, was selected in 2008, and was attending pre-service training at the time of the interview. He now works as staff at Religious Court in Medan. Interview with B. Djalil, former senior staff at the Directorate of Religious Justice, in Jakarta, (July 2009); see also Mark Cammack, *Islamic Law in Indonesia's New Order*, 38(1) INT'L & COMP.L. Q. 54 (1989).

In 1999, the use of essay questions was discontinued. The current exam consists entirely of multiple choice.<sup>43</sup>

For applicants who pass the written tests, the next stage in the selection process is an oral exam. The oral exam includes a psychometric test developed by the University of Indonesia to assess the candidate's fitness to serve as a judge, a ten-minute interview on issues related to the procedural and substantive law of the Islamic courts, and a test of the applicant's ability to read and comprehend passages from *fiqh* texts dealing with legal issues.<sup>44</sup> To complete the application, the applicant must also submit documentary proof that he or she is free from drug addiction, together with a letter from the local police.

In the past, this system of regular recruitment was not in itself sufficient to meet the staffing demands resulting from the creation of new Islamic courts. In order to meet the shortfall, the Ministry of Religion, in cooperation with the Department of Justice, organized massive recruitment programs to train and develop would-be judges. The faculty of Islamic Law of IAIN-Jakarta (now UIN-Jakarta) was commissioned to carry out one such recruitment effort in the period 1992 to 1994. The participants in the program were selected from among recent IAIN graduates from around the country who had an interest in a career as an Islamic judge. This group was then brought together for four months of intensive instruction based on the Religious Judicature Act of 1989 and the Kompilasi Hukum Islam.<sup>45</sup> The subject matter and instruction was oriented toward practical matters pertaining to members of the judiciary. Participants were given instruction in legal method and trained in trial procedures, resolving cases, and drafting judgments. To ensure the best training, most of the instructors were judges from the Islamic courts and the Supreme Court, including Bustanul Arifin, Yahya Harahap and Bismar Siregar. The program also included segments taught by specialists in Islamic law such as Professor Tahir Azhari of the University of Indonesia.<sup>46</sup>

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<sup>43</sup> This has led to complaints from some applicants who criticize the exam as being ambiguous and confusing. Other applicants have found the new format helpful because they are allowed to guess if they do not know the answer or fail to complete the exam within the allotted time.

<sup>44</sup> SEBASTIAAN POMPE, *THE INDONESIAN SUPREME COURT: A STUDY OF INSTITUTIONAL COLLAPSE*, 344, 360 (2005) (applicants are informed of the test results by the Supreme Court).

<sup>45</sup> Interview with Drs. Mas'udi, Project Director, in Jakarta (June 3, 2006); Interview with Drs. B. Djalil, former senior staff of Directorate of Religious Justice, in Jakarta, (July 2009); *see also*, NURLAELAWATI, *supra* note 9, at 60. Drs. Mas'udi, who is now retired, was the assistant dean of the faculty of Sharia, IAIN Syarif Hidayatullah Jakarta, when he was in charge of the project.

<sup>46</sup> Interview with Drs. Mas'udi, Project Director, in Jakarta (June 3, 2006).

As of this writing, the regular recruitment system is deemed adequate to meet the hiring needs of the Islamic courts, and the program of special recruitment has been discontinued. The Supreme Court has also ended the previous practice of accepting applications from individuals employed as clerks or other Islamic court staff with expertise in Islamic law or national law. This so-called “inside gate” to a judgeship on the Islamic courts was closed with the issuance of a 2006 amendment to the 1989 Religious Judicature Act; the position of Islamic court judge is now available only to recent university graduates through the “outside gate.”<sup>47</sup>

*K. What Training Is Provided to Candidates Prior to Appointment?*

Every year the Supreme Court carries out a recruitment program to fill vacancies on the Islamic courts. In 2007, for example, the Supreme Court announced that more than 200 judges were needed to fill posts around the country. Following the testing, 224 applicants were selected. However, successful completion of the qualifying exams does not result in an immediate appointment as a judge. Candidates who are selected for positions on an Islamic court are designated as “candidate judges” (*calon hakim/cakim*), and must complete a number of additional requirements before receiving a formal appointment as a full-fledged judge. First, because the judiciary is part of the Indonesian civil service, judicial recruits must successfully complete a course of civil service training and be granted the status of civil servants. The next stage in the process is pre-appointment judicial training. This program, which is called “Diklat Cakim,” is designed both to strengthen the candidates’ command of Islamic law and legal procedure and to foster judicial integrity and moral fortitude. Finally, before assuming the position of judge, all candidates must serve a period of internship.

The pre-appointment training of Islamic court judges seeks to develop both the professional skills and knowledge and the moral character of candidates for Islamic court judgeships and is considered an essential part of the recruitment process. The training of judicial recruits to the Islamic courts was for many years under the auspices of the Ministry of Religion. Since the implementation of the so-called “one-roof” system of judicial management in 2004, however, the Supreme Court has assumed

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<sup>47</sup> See BADAN PERADILAN AGAMA [THE ISLAMIC COURTS DIVISION OF THE SUPREME COURT], 221 CAKIM PERADILAN AGAMA IKUTI DIKLAT (2008), available at [http://www.badilag.net/index.php?option=com\\_content&task=view&id=1085&Itemid=122](http://www.badilag.net/index.php?option=com_content&task=view&id=1085&Itemid=122).

responsibility for the pre-service training for all prospective judges, including judges on the Islamic courts.

The institution charged with conducting pre-appointment training of judges is called the Center for Judicial Training and Education of the Supreme Court (Pusat Pendidikan dan Pelatihan Mahkamah Agung). In recent years the training has been conducted in the city of Mega Mendung in Bogor, near Jakarta, and a number of other large cities in Java. The length of the pre-appointment training for judges has varied in recent years from as long as six months to as short as two months. As of 2009, the pre-appointment training for judges consisted of 600 hours of instruction over a two-month period.<sup>48</sup>

The education and training package currently used in training prospective judges was developed by the Directorate of Development of Religious Justice (Ditbinbapera) while the Islamic courts were still under the auspices of the Ministry of Religion. Nearly half of the course—280 hours—consists of training that is provided to all judicial recruits from the four branches of the Indonesian judiciary. This segment of the program focuses on judicial morals, general legal knowledge, and judicial management. The subjects that are covered in this segment include the Indonesian legal system, judicial ethics, legal philosophy, the role of judges, and legal method. The remaining 320 hours of the course cover subjects pertinent to judges in the Islamic courts. This includes a range of topics. In addition to the substantive law of matters within the courts' jurisdiction, judges are also given instruction on trial practice, the law of procedure, contracts, land law, notarized documents and transactions, court administration and management, the role of lawyers, and Islamic astronomy (*hisab rukyat*).<sup>49</sup>

The pre-appointment training is intended to produce professional judges of integrity and high moral character. In order to accomplish these objectives, the program is not limited to classroom teaching and learning, but seeks to develop personal qualities of discipline and obedience by monitoring and ordering all aspects of the candidates' daily lives, including praying, eating, speaking, dressing, and personal interaction.<sup>50</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> See Basic Act on Judicial Power, Act No.14 of 1970 (the Islamic courts are not responsible for the issue of *hisab rukyat*, but since the Islamic court judges are mandated by the law to provide confirmation of the witnessing of the appearance of the hilal, judges are required to be able to read and comprehend literature about *hisab rukyat* to do the task).

<sup>50</sup> Interview with Judicial Candidate Syarifuddin, *supra* note 42.



The Supreme Court has recently expanded the emphasis on judges' internalizing the values of obedience and discipline with the introduction of two new programs. One of the programs is a form of semi-military discipline training called *Persatuan Baris Berbaris* that is designed to train judges to control their emotions and feelings.<sup>51</sup> The second addition to the training and education program designed to develop judicial character and morals is called "Emotional Spiritual Quotient," a self-improvement regime developed by a motivational expert named Ary Ginanjar Agustian.<sup>52</sup> It is based on the principle that regulation of emotional and spiritual balance enhances mental ability and performance. Emotional Spiritual Quotient courses have become increasingly popular programs for training employees in Indonesian government offices and private companies over the past decade.

In addition to completing the requirements of appointment as a judge, candidates for positions on the Islamic courts must also be admitted to the Indonesian civil service. This involves passing both written and oral examinations and completing a period of pre-service education called *prajabatan*.<sup>53</sup> The length of this pre-service education has been shortened in recent years from three months to three weeks.

*L. Are Candidates Required to Fill a Period of Probation or Other Pre-Appointment Service?*

The final stage in the recruitment process is practical training in the court. Candidates who successfully complete the pre-appointment training are assigned to an Islamic court to fill a period of probation as an intern (*magang*). During the internship period candidate judges are assigned to work in the office of the court clerk.<sup>54</sup> The specific assignments performed by judicial trainees during the internship vary from court to court, but typically include preparing reports of judicial proceedings (*berita acara pengadilan*) and other technical matters related to court procedure and the

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<sup>51</sup> This material was first included in the pre-service training in 2007. Given that the material is typically related to military training, there was concern that the purpose of the segment might be misunderstood. To meet this concern the head of the pre-service training stressed that the inclusion of the segment was not intended to militarize the judges but was to help them develop the ability to control their emotions.

<sup>52</sup> For more information, see DAROMIR RUDNYCKYJ, *SPIRITUAL ECONOMIES: ISLAM, GLOBALIZATION, AND THE AFTERLIFE OF DEVELOPMENT* (2011).

<sup>53</sup> See KOMISI NASIONAL HAK ASASI MANUSIA, *LAPORAN PENELITIAN 2005* (2005).

<sup>54</sup> PETER H. RUSSELL & KATE MALLESON, *APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD* 368 (2006).

conduct of trials. The precise length of the probation is set by the Supreme Court on a case-by-case basis, but it is usually about two years.

The evaluation of judicial recruits continues during the internship period. In the rare circumstance in which the intern's performance is deemed unsatisfactory, the candidate is appointed to the position of court clerk. For those who demonstrate the skills and other qualities required of a judge, the status of candidature comes to a conclusion with the end of the probation. The candidate is formally appointed by the President as a full judge.<sup>55</sup>

*M. Are Judges Required to Participate in In-Service Training?*

The development of human resources is generally assumed to be an institutional rather than a strictly personal matter within modern organizational systems, and the Islamic judiciary is no exception. In addition to the pre-appointment training described above, the Supreme Court conducts in-service training programs in order to strengthen the technical, managerial, and conceptual skills of the Islamic judiciary.

Most of the in-service training for judges focuses on matters of court administration such as the supervision, rotation, and promotion processes, and it is limited to judges who hold leadership positions within the court. Though less common, the Supreme Court also occasionally organizes programs intended to enhance judges' understanding of the law. In early 2010, for example, the Supreme Court held a day-long seminar on a draft Islamic marriage law. The program was attended by more than 500 judges from around the country and included presentations by senior judges and academics on issues treated in the draft.

In addition to the in-service training provided by the Supreme Court, a number of non-governmental institutions concerned with judicial practice and the Indonesian justice system have developed programs to strengthen the capacity of judges and equip the courts to address contemporary problems. One particularly noteworthy initiative was a program on gender sensitivity carried out by the United States-based Asia Foundation. Collaborating with a number of non-governmental institutions and women's groups, and with the full cooperation and support of the Supreme Court, the Asia Foundation conducted training sessions designed to enhance judges'

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<sup>55</sup> Second Amendment to Act No. 7 of 1989 on Religious Judicature, Act No. 50 of 2009, art. 15.

sensitivity to the impact of the law on women, and therefore, produce judgments that provide justice to both male and female litigants.<sup>56</sup>

*N. The Profile of the Islamic Judiciary*

According to data released by the Supreme Court's Bureau of Islamic Courts (Badan Peradilan Agama or "Badilag"), in 2009 there were 343 first instance Islamic courts in Indonesia and 29 Islamic appeals courts. The first instance courts are divided into three classes in terms of rank and level of authority. In 2009, there were 57 courts ranked as IA, 99 courts ranked IB, and the remaining 187 courts were placed in category IIA.

In 2009 the first instance Islamic courts employed a total of 3,047 judges nation-wide. Out of all judges, 78% or 2,390 first instance court judges were male and 22%, or 659 were female. The total number of appeals court judges in 2009 was 361. The proportion of women on the appeals courts was smaller than on the first instance courts. In 2009, 5% or 19 Islamic appeals court judges were women.

*O. The Supervision and Regulation of the Islamic Judiciary*

The administrative regulation of the Islamic judiciary has been a sensitive and contested issue in Indonesia, and authority over the courts has shifted over the years as a result of struggles for control within the bureaucracy. The single most important development in this process was the formation of the Ministry of Religion when Indonesia achieved independence in 1945.<sup>57</sup>

During the colonial period, Islamic legal institutions were under the administrative purview of the Ministry of Justice. After achieving independence, the Indonesian government addressed the matter of authority over the Islamic courts in its first official act. On the basis of a proposal by the Minister of Religious Affairs, authority over the Islamic courts was transferred from the Ministry of Justice to the Ministry of Religion.<sup>58</sup>

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<sup>56</sup> For details on this program and its effect on the legal attitude of judges, see ARSKAL SALIM ET AL., DEMI KEADILAN DAN KESETARAAN: SEBUAH DOKUMENTASI PROGRAM SENSITIVITAS JENDER HAKIM AGAMA DI INDONESIA 52-88 (2009).

<sup>57</sup> The Ministry of Religion had earlier been an "Office for Religious (Islamic) Affairs." As soon as the Japanese surrendered and independence was proclaimed the Indonesian Government changed it into the Ministry of Religion on January 3, 1946. See M.B. HOOKER, ISLAMIC LAW IN SOUTH-EAST ASIA 255 (1984).

<sup>58</sup> See *id.* at 25.

Significant changes in both the institutional and juridical supervision of the Islamic courts began to be introduced at the beginning of the 1970s. In 1970, the government issued a new Basic Act on Judicial Power.<sup>59</sup> Article 10 of the act defines the structure of the Indonesian judiciary.<sup>60</sup> The Article first states that judicial power is to be exercised by four types of courts: general courts, Islamic courts, military courts, and administrative courts.<sup>61</sup> The Article next states that the Supreme Court is the highest judicial authority in the country and, as such, has the power to review decisions from the highest appellate authority within all four systems.<sup>62</sup> This language is significant for two reasons. On the one hand, the Law strengthens the legal status of the Islamic courts since it constitutes the first statutory recognition of Islamic tribunals since colonial times. However, the 1970 Law also undermines the authority of the Ministry of Religion with respect to the Islamic courts because it vests appellate authority over Islamic tribunals in the Supreme Court.<sup>63</sup>

The Supreme Court began to decide appeals from the Islamic courts in the mid-1970s. The Ministry of Religion, however, maintained primary control over the budget, staffing, and other administrative regulation of the courts. This division of responsibility was formalized in the 1989 Religious Judicature Act, which assigned administrative responsibility for the Islamic courts to the Ministry of Religion and responsibility for “technical juridical matters” to the Supreme Court.<sup>64</sup>

The administrative regulation of the Islamic courts was changed once again in 1999 as part of a more general package of judicial reforms introduced following the resignation of President Suharto. A 1999 amendment to the 1970 Basic Act on Judicial Power instituted the “one-roof” system of judicial administration by transferring administrative, structural, and financial authority over all four branches of the Indonesian judiciary to the Supreme Court.<sup>65</sup> The 1999 act established a five-year timetable for implementation, but in 2004 the administration, structure, and finances of the Islamic courts, which had been under the auspices of the

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<sup>59</sup> Basic Act on Judicial Power, Act No. 14 of 1970. *See also* NURLAELAWATI, *supra* note 2, at 54-56.

<sup>60</sup> Basic Act on Judicial Power, Act No. 14 of 1970, art. 10.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *See id.*

<sup>64</sup> Religious Judicature Act, Act No. 7 of 1989.

<sup>65</sup> Basic Regulation of Judicial Authority, Act No. 35 of 1999, art. 11.

Ministry of Religion since independence, were transferred to the Supreme Court.<sup>66</sup>

The Ministry of Religion initially opposed the proposal to place the Islamic courts under the authority of the Supreme Court when the issue was discussed in the legislature.<sup>67</sup> While some judges and Ministry officials continue to debate the change, many feel that the status of the Islamic courts has been elevated since the implementation of the one-roof system, and that placing the Islamic courts under the Supreme Court has resulted in a more thorough integration of the Islamic courts into the national legal system.<sup>68</sup>

*P. What Is the Career Trajectory of Islamic Judges and What Are the Criteria for Advancement?*

The judiciary is part of the Indonesian civil service, and the rank, salary and advancement of judges is governed by civil service regulations. The starting civil service rank for newly appointed judges depends on educational attainment. Judges whose highest degree is a bachelor's degree (*sarjana/doctorandus*) begin with a civil service rank of III/a, while judges holding a master's degree start at level III/b. The highest civil service rank is IV/e.<sup>69</sup>

There are two different systems of rank advancement for Islamic court judges. Judges who do not hold leadership positions as either court chair or vice-chair are subject to the "regular" system of advancement. Rank advancement under the regular system is based solely on term of service—a one-level increase in rank is awarded every four years. However, the level to which a judge can rise under the regular system of advancement is limited. For judges holding only a bachelor's degree, the highest rank that can be achieved under the system of regular advancements is III/d, while judges with master's degrees cannot advance beyond level IV/a. Judges

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<sup>66</sup> *Id.*

<sup>67</sup> ARSKAL SALIM, SHARI'A AND POLITICS IN MODERN INDONESIA 215-16 (2003).

<sup>68</sup> *Id.*

<sup>69</sup> The Indonesian civil service has a dual system of overlapping rank and position. Every civil servant has a rank (*Golongan*) ranging from 1a to 4e and a position. Positions can be "structural" (*Eschalon IVb-IVe*), which consists mainly managerial positions but also includes some high-level advisors, or "functional," for instance lawyers or teachers. No formal job classification is set in the civil service. Entry ranks are mainly determined by education level, and increases in rank are largely driven by seniority—with a maximum rank depending on the entry level of the civil servant. This civil service system is contained in Law No. 8 of 1974 and its revision in Law No. 43 of 99. A specific board called the Civil Service Board (*Badan Kepegawaian Negeri* or "BKN") manages the civil service. This board keeps all records, and has to give approval to all appointments above a certain rank. All changes in the civil servant's position have to be confirmed by a change letter from BKN.

holding what are called “structural” positions are subject to the “selective” system of rank advancement which takes into account a broader set of criteria in determining promotion.<sup>70</sup>

In addition to rising within the civil service, Islamic court judges can also advance within the judicial structure. A judge of a first instance Islamic court is eligible to be appointed as deputy chair or chair of the court after seven years service.<sup>71</sup> Appointment as an appeals court judge requires either fifteen years as a first instance court judge or five years of experience as chair or deputy chair of the first instance court. Appointees to the appeals court must also be at least 40 years old. Finally, judges from the Islamic courts are eligible to become justices on the Supreme Court after 20 years as an Islamic court judge, including three years as an appeals court judge. Appointees to the Supreme Court must also have a master’s degree in law and be at least 45 years old.<sup>72</sup>

*Q. Is There a Code of Ethics for Islamic Judges?*

As legal professionals, Islamic judges are expected to exhibit good conduct and maintain high standards of moral integrity in both their professional and personal lives. In April 2009, the Chair of the Judicial Commission and the Chief Justice of the Supreme Court issued a joint decree promulgating a “Code of Ethics and Guide to Judicial Conduct” applicable to judges in all four branches of the Indonesian judiciary.<sup>73</sup> Judges found to have violated the standards of judicial conduct contained in the code are subject to sanction, including termination.

*R. What Are the Mechanisms for Discipline?*

The current system of judicial discipline has been in place only since 2009. Under the 1989 Religious Judicature Act, and for many years prior to 1989, the Ministry of Religion was responsible for ensuring the good conduct of Islamic court judges. A 2006 amendment to the Religious

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<sup>70</sup> For more information on the recruitment of Islamic Court judges, see LEV, *supra* note 1, at 104-12.

<sup>71</sup> Second Amendment to Act No. 7 of 1989 on Religious Judicature, Act No. 50 of 2009, art. 13(2).

<sup>72</sup> Act on the Supreme Court, Act No. 3 of 2009, art. 7.

<sup>73</sup> KODE ETIK DAN PEDOMAN PERILAKU HAKIM, 047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV/2009 (2009). The Code was mandated by amendments to the 1989 Religious Judicature Act passed in 2006 and 2009. Second Amendment to Act No. 7 of 1989 on Religious Judicature, Act No. 50 of 2009, art. 12E(2).

Judicature Act transferred supervisory authority to the Supreme Court.<sup>74</sup> Another amendment in 2009 assigned the Judicial Commission a role in overseeing judges' conduct creating a system of shared oversight.<sup>75</sup> Under the 2009 Act, the Supreme Court carries out "internal" supervision of judges while the Judicial Commission acts as an "external supervisor."<sup>76</sup> The Judicial Commission and the Supreme Court refer to the Code of Ethics and Judicial Conduct promulgated in 2009 in exercising supervisory authority over judges.

The Judicial Commission takes the lead in the enforcement of the Code of Ethics. It is authorized to receive and to take action on complaints from the public regarding the conduct of judges and to examine and decide suspected violations of the Code of Ethics.<sup>77</sup> As a part of its investigation, the Commission can summon judges to appear before it. Similarly, judges accused of violating the Code of Ethics have the right to defend themselves against the charges.<sup>78</sup> Judges who are found to have committed violations are subject to termination. Less serious violations can result in a temporary discharge during which the judge is prohibited from conducting hearings.

#### S. *What Professional Organizations Exist for Islamic Judges?*

The first professional organization for Islamic court judges was the Association of Religious Judges (Ikatan Hakim Agama or "IKAHA"), established in 1977. The stated objectives of IKAHA included improving judges' dedication and responsibility to the nation and state, and realizing the principles of open, inexpensive, and speedy justice on the basis of equality before law.<sup>79</sup> In pursuit of these aims, IKAHA carried out a variety of educational and scholarly programs, including lectures, academic gatherings and discussions on law, as well as research aimed at developing Islamic law. IKAHA also published a journal and a newsletter on law to inform Islamic court judges of recent legal developments. All Islamic court judges were required to join IKAHA, and to comply with its rules.

<sup>74</sup> Amendment to Act No. 7 of 1989 on Religious Judicature, Act No. 3 of 2006, art.12 (emphasizing that the Supreme Court's control over judges shall not impair their independence in resolving cases).

<sup>75</sup> Interview with Agun Gunanjar S.H, Head of the Special Comm. (Pansus) for the Commission on Law on Four Court Systems Within the DPR-RI, in Jakarta (Oct. 16, 2009).

<sup>76</sup> See Second Amendment to Act 7 of 1989 on Religious Judicature, Act No. 50 of 2009, art. 12(A).

<sup>77</sup> See *id.* at art. 12(D).

<sup>78</sup> See *id.* at art. 19(6)-(7).

<sup>79</sup> See IKAHA, HASIL-HASIL MUSYAWARAH NASIONAL LUAR BIASA IKAHA HAKIM PERADILAN AGAMA [THE OUTCOMES OF THE NATIONAL CONGRESS OF IKAHA] 62-63 (1995). On these pages, we can find "Anggaran Dasar dan Rumah Tangga Ikatan Hakim Agama" (Basic and Institutional Plans of IKAHA), which includes the objectives of IKAHA.

In 1995, after eighteen years in operation, the membership of IKAHA voted to dissolve the organization and join the Association of Indonesian Judges (Ikatan Hakim Indonesia or “IKAHI”), a nationwide organization that also includes judges who serve on the general, military, and administrative courts.<sup>80</sup> Five years later, IKAHA was formally merged with IKAHI.<sup>81</sup> The goals of the merger were to optimize the professional development and supervision of the judiciary, and to promote cooperation among the different branches of the judiciary and equal treatment of all judges. The unification of the Indonesian judiciary in a single organization was also in line with the establishment of the “single roof” (*satu atap*) system of judicial management under which all of the branches of the judiciary came under the supervision of the Supreme Court. In keeping with this goal, on the opening ceremony of the 56th anniversary of IKAHI, Supreme Court justice Harifin A. Tumpa said:

With the implementation of Law No. 35/1999 on the establishment of the ‘Single Roof System’ Islamic Court judges have formally joined the national organization for judges, so that there are no longer disagreements and disputes among judges, and judges from one branch of the judiciary will no longer consider themselves superior to judges from other branches.<sup>82</sup>

Over the 56 years that it has been in existence, IKAHI has focused its efforts on the development of the law by convening scholarly conferences and discussions, and by providing professional training for judges. The organization has also been involved in the debates in parliament on a variety of significant laws, including the basic laws regarding the Supreme Court, the general courts, and the administrative courts. Since 1985, the organization has also published a journal called *Varia Peradilan*. With the addition of Islamic court judges, the organization now includes the judges of

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<sup>80</sup> The decision to merge with IKAHI was expressed in a Musyawarah Luar Biasa (Extraordinary Congress) of IKAHA held on November 9-12, 1995 and was formalized in a joint decree (SKB) between Pengurus Pusat (Central Leadership) of IKAHA and IKAHI No. 04/SK/PP/IKAHI/III/1995 and No. 20/SK/PP/IKAHA/III/1995, dated 17 March, 1995. See IKAHA, *supra* note 79, at 90-91.

<sup>81</sup> IKAHI emerged in the early 1950s out of concern among some judges over judicial appointments that were considered to violate the Constitution. The first organizations of judges were created in Surabaya in East Java and Semarang in Central Java in 1951. Galvanized and united by the judicial appointments controversy, judges from across Java met in September 1952 and agreed to establish an association for all Indonesian general court judges. The association was formally launched in March, 1953.

<sup>82</sup> Harifin A. Tumpa, Supreme Court Justice, Welcoming Speech of the Head of the Supreme Court on the 56th Anniversary of IKAHI at the Office Building of the Supreme Court (April 24, 2009).



all four branches of the judiciary and constitutes a single formal national association for judges in the country.<sup>83</sup>

### III. CONCLUSION

The process of becoming an Islamic judge in Indonesia has changed and developed over the years. During the colonial period and in the early years following independence, the creation of Islamic court judges was quite simple. Judges who served on Islamic courts were recruited from among the local *ulama*, who had generally been trained informally in traditional Islamic schools. This began to change in the 1960s as judges were increasingly recruited from among the graduates of formal schools established specifically for the purpose of producing judges for Islamic courts. Since 1989, the process of becoming an Islamic judge has been governed in detail by the Religious Judicature Act, which itself has gone through a number of revisions in line with changes in policy on the Islamic judiciary and the Indonesian legal system in general.

The Indonesian Islamic judiciary has been deeply influenced by the civil law system. As in civil law systems generally, Indonesian Islamic court judges are largely recruited from among new law graduates, and the process of recruiting and training judges consists of a number of steps including a regular system of recruitment, a defined criteria for selection, a program of pre-appointment training, a period of probation, and formal appointment to the position of judge by the president.

Recruiting judges from among new university graduates requires candidates to be trained in the practical skills involved in the practice of law. Pre-service training is compulsory for all judicial candidates. However, while the training of Islamic court judges is intended to develop and deepen their practical skills and legal knowledge, the curricula of the pre-service training does not adequately equip judges to engage in a more open interpretation of the rules. Most of the instruction in the pre-appointment training simply reinforces what was studied at the universities. The small

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<sup>83</sup> Islamic court judges can also become members of other associations. One organization that includes Islamic judges in its membership is an association of graduates from Islamic law faculties and scholars of Islamic law called Himpunan Sarjana Syariah Islam Indonesia (HISSI). See M. AMIN SUMA, PERSEMBAHAN HISSI MENUJU UMAT DAN BANGSA MANDIRI 34-35 (2008). Another institution with links to the Islamic courts is the Center for the Study of Islamic Law and Society (Pusat Pengembangan Hukum Islam dan Masyarakat or PPHIM), which is based at the State Islamic University in Bandung. PPHIM is a research institute that provides assistance to the Islamic judiciary in the form of institutional and legal development. PPHIM, for example, worked with the Islamic courts to prepare a draft law on Islamic banking.

number of new subjects introduced in the judicial training program mostly relates to court management or other technical matters.

The curricula of Islamic legal education in Indonesian universities tend to focus on *fiqh*-oriented texts. A number of lecturers in the law and Syariah faculties have attempted to cultivate more critical thinking among students, but since this effort is not carried out in a systematic manner, it has not succeeded in producing students with practical legal competencies.

Nonetheless, the organization and standing of judges on the Islamic courts have been significantly strengthened over recent years. Together with their counterparts from the other three branches of the judiciary, Islamic court judges are under the supervision, regulation and management of the Supreme Court. Since 2000, the judges who serve on Islamic courts have been members of IKAHI, the national organization that includes all Indonesian judges.

The quality of Islamic court judges has also improved. Many Islamic court judges now hold a master's degree, and most judges who hold only an undergraduate degree are pursuing post-graduate education. The quality of Islamic court judges is further strengthened through in-service training programs organized by the Supreme Court or other bodies and foundations concerned with the development of the Islamic judiciary. Judges on the Islamic courts are subject to a code of ethics that is applicable to all Indonesian judges, and judges who fail to comply with the code risk discharge.