



Delegation of Authority From The General Court to the Shariah Court in Nanggroe Aceh Darussalam Province

Alsyam^{1*}, Yandriza², Zulkifli³

^{1,2,3} Universitas Andalas, Padang, Indonesia

*Corresponding Author: alsyam1162@gmail.com

Article Info

Article History

Revised : 2025-05-17

Accepted : 2025-06-25

Published : 2025-07-30

Keywords:

Sharia Court;
Authority; Law
Enforcement

Abstract

Law enforcement carried out by the Aceh Syar'iyah Court cannot be separated from the bureaucracy which is one of the vehicles in the implementation of judicial power. Bureaucracy is a determining factor in the success of the entire program agenda including in the framework of realizing a clean and free judicial apparatus from KKN so that the bureaucrats in the Aceh Syar'iyah Court can realize good governance (good governance). The Aceh Syar'iyah Court in carrying out all activities related to the interests of the Appellate Court, both administrative, financial and organizational in nature, is obliged to be accountable for the implementation of its duties, functions and roles in the management of resources, and sources of funds and authorities entrusted to the public referring to the Decree of the Secretary of the Supreme Court of the Republic of Indonesia Number: MA/SEK/07/SK/III/2006 concerning the Organization and Work Procedures of the Secretariat of the Supreme Court of the Republic of Indonesia, the Supreme Court of the Republic of Indonesia as one of the state/government institutions in accordance with the Decree of the People's Consultative Assembly Number: XI/MPR/1998 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism and Presidential Instruction Number: 7 of 1999 concerning Accountability of Government Agency Performance. The legal research method is a systematic way of conducting research. Normative legal research uses normative case studies in the form of legal behavior products, for example reviewing laws. The results of this study explain that first, the Syar'iyah Court only carry out its functions within the scope of the authority of the Religious Court in the field of marriage, inheritance, will, grant, waqaf, zakat, infaq, sadaqah and sharia economy, whereas criminal matters are only limited to matters alcohol(liquor), solitude (pervert), gambling (gambling). Second, the authority of the Sharia Court is no longer limited to certain civil matters, but also covers the fields of mu'amalah and jinayah. However, in fact, the laws and regulations concerning the duties of the Sharia Court are still incomplete and this. This is one of the problems faced. While Law Number 48 of 2009 no longer explains about the Syar'iyah Court until the position and the authority of the Sharia Court in Aceh becomes unclear.

INTRODUCTION

Law enforcement carried out by the Aceh Syar'iyah Court cannot be separated from the bureaucracy which is one of the vehicles in the implementation of judicial power. Bureaucracy is a determining factor in the success of the entire program agenda including in order to realize a clean and corruption-free judicial apparatus so that bureaucrats in the Aceh Syar'iyah Court can realize good governance.

The Aceh Syar'iyah Court in carrying out all activities related to the interests of the Appellate Court, both administrative, financial and organizational in nature, is obliged to be accountable for the implementation of its duties, functions and roles in the management of resources, and sources of funds and authority entrusted to the public referring to the Decree of

the Secretary of the Supreme Court of the Republic of Indonesia Number: MA/SEK/07/SK/III/2006 concerning the Organization and Work Procedures of the Secretariat of the Supreme Court of the Republic of Indonesia, the Supreme Court of the Republic of Indonesia as one of the state/government institutions in accordance with the Decree of the People's Consultative Assembly Number: XI/MPR/1998 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism and Presidential Instruction Number: 7 of 1999 concerning Accountability of Government Agency Performance.

As an Appellate Organization, the Aceh Sharia Court has a vision: "The realization of an independent, dignified, authoritative, effective, efficient, honorable and respected Sharia Court as one of the executors of judicial power under the MARI in upholding law and justice". As an Organization that oversees 19 Sharia Courts, the Aceh Sharia Court must be accountable for its performance to the public. For this reason, the Aceh Sharia Court in carrying out its duties, both technical and administrative tasks, must implement its programs transparently so that the public's need for an independent judicial institution can be accommodated.

The programs at the Aceh Sharia Court prioritize those related to public access so that with these programs the Aceh Sharia Court will create:

1. Transparency of the courts and accountability of judicial officials.
2. Increasing public understanding of the justice system and public access.
3. Improvement of work procedures and development of human resources.

By formulating strategic objectives, the Aceh Sharia Court will be able to know precisely what the organization must implement in fulfilling its vision and mission for the next one to five years and will be able to measure the extent to which the organization's vision and mission have been achieved considering that strategic objectives are formulated based on the organization's vision and mission. The objectives set by the Aceh Sharia Court are as follows:

1. Improving the court's capabilities and performance to be more effective and efficient.
2. Improving judicial accountability and transparency.
3. Improving the quality of court human resources.

This problem formulation will later contain a core description of what will be discussed in this paper. Based on this, the formulation of the problem that will be presented is as follows:

1. What is the function and position of the Sharia Court as a special court in dispute resolution?
2. What is the authority of the Sharia Court in carrying out its function as a special court within the judicial environment in Indonesia?

RESEARCH METHODS

Legal research method is a systematic way of conducting research. Normative legal research uses normative case studies in the form of legal behavior products, for example, studying laws. The main topic of study is law conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in cases in concreto, legal systematics, synchronization levels, comparative law and legal history.¹

In this writing, the type of research used is normative legal research, where in the description above it is explained that normative legal research is legal research conducted using a legislative approach, books, journals, papers and the opinions of legal experts related to customary law communities.²

¹ Abdulkadir Muhammad, Law and Legal Research, Bandung: PT. Citra Aditya Bakti, 2004, page 57.

² Suharsimi Arikunto, Research Procedures: A Practical Approach, Jakarta: Rineka Cipta, 2002, page 23.

LIBRARY REVIEW

History of the Development of the Formation of the Sharia Court

In every historical study, a certain time span, growth and development cannot be separated. This is also the case with the historical study of the Aceh Sharia Court which still maintains its existence until now. The process of the formation of the Sharia Court did not happen immediately, but has a long historical background. In general, in the book entitled 'Profile of the Aceh Sharia Court' there are seven periods of the long journey of the Sharia Court, namely:

1. Sultanate of Aceh

During the golden age of Aceh, Islamic Sharia Courts were held by "*Qadhi Malikul Adil*". Status *Qadhi Malikul Adil* is equal or equated with the position of the current Supreme Court. At that time its seat was in Kuta Raja (now known as Banda Aceh). Because of its status as the highest court, every decision from the lower Court (*Qadhi's decision*) *Ulee Balang*) can be appealed to *Qadhi Malikul Adil*.³

The Sultan's Court is the highest court that adjudicates major matters and matters that are appealed or a kind of cassation application. The structure of this court is led by the Sultan himself, the deputy head is a great scholar called *Qadhi Malikul Adil*, the members are several scholars and intellectuals. The resolution of major matters such as matters threatened with the punishment of *had* and *qishash* is led by the Sultan while ordinary matters are led by *Qadhi Malikul Adil* as the head of the court.

2. Dutch East Indies period

At this time, the Islamic Sharia Court in Aceh was part of the *Ulee Balang Level Court* which was chaired by the *Ulee Balang* himself. For the level *department* and *subdivision* called "*Meusapat*" led by *Controller* and *Ulee Balang* and certain officials as members. In relation to legal matters about religion, it is submitted to *Qadhi Ulee Balang* to decide.

3. Japanese Occupation Era

Japan issued the Law "*Sue King*" No. 12 dated 15 February 1844 concerning the Religious Court (*Shukio Hooiin*) there are three levels of justice in Aceh:

- a. *Shukio Hooi* domiciled in Kuta Raja
- b. A *Qadhi* chief, whose members are in every district now.
- c. A *Qadhi Son* at each *Son* (Now District).

At that time, who served as Chairman *Syukyo Hooinis* Tgk. H. Ja'far Siddiq and his daily members consist of several people, namely: Tgk. Muhammad Daud Beureueh, Tgk. Hasbi Ash-Shiddieqy and Said Abubakar.

4. Early Independence

At the beginning of Indonesia's proclamation of independence on August 17, 1945, the Governor of Sumatra through a cable letter number 1189 dated January 13, 1947 gave permission to the Aceh resident with full authority (not requiring confirmation from the District Court). And relatively broad in the field of family (including alimony, joint wealth, child maintenance rights in addition to divorce and marriage ratification) and inheritance throughout Aceh. With the existence of the cable letter from the Governor, the Aceh Sharia Court was further developed into three levels, namely: the Kenegerian Sharia Court (in the

³ Soufyan M. Saleh, *Profile of the Aceh Sharia Court*, (Banda Aceh: Aceh Sharia Court, 2007), p. 41

sub-district) there were 106, the Sharia Court (in the Kewedanaan) there were 20 and the Aceh Regional Sharia Court in Kuta Raja as the last level court at that time.

5. Period 1970-1999

In 1970-1999 the Religious Court/Shariah Court in Aceh was developed throughout Indonesia, except Java-Madura and parts of South and East Kalimantan. This development was regulated based on PP No. 45 of 1957 while simultaneously revoking PP No. 29 of 1957).

6. Reformation Era

After the fall of the New Order, Law No. 44 of 1999 concerning the Special Status of Aceh was born, which gave relatively broad authority to the Province of Aceh. Law No. 44 of 1999 raised and revived the Special Status of Aceh and made it possible in real terms in society. In the explanation of Law No. 44 of 1999, it is stated that the contents of the Decree of the Prime Minister of the Republic of Indonesia No. 1/Missi/59 concerning the Special Status of the Province of Aceh which includes religion, customs, and education which was further strengthened by Law No. 12 of 1999 concerning regional government and even accompanied by a discussion of the role of religious scholars in determining regional policies.

The main tasks and functions are in accordance with the organizational structure above are as follows:

1. Chairman and Deputy Chairman (Leaders of the Sharia Court).
 - a. The Chairperson arranges the division of tasks for the Judges, distributes case files and other letters related to the matter submitted to Panel of Judges to be resolved.
 - b. Organize the supervision and implementation of the Judge's duties and behavior, Clerk/secretary, Structural and Functional Officials, and staff Administration of justice in its jurisdiction.
 - c. Ensure that the administration of justice is carried out fairly and fairly carefully.
2. Panel of judges
Carrying out judicial duties in its jurisdiction.
3. Clerk / Secretary
 - a. The clerk is responsible for administering cases and arranging tasks. Deputy Registrars, Junior Registrars, Substitute Registrars, and all implementer in the technical section of the Aceh Sharia Court.
 - b. The Clerk, Deputy Clerk, Deputy Clerk and Substitute Clerk are on duty assist the judge by following and recording the course of the trial.
 - c. The clerk makes a list of civil and criminal cases received at the court Secretariat.
 - d. The clerk makes a copy of the decision according to the provisions of the law happen
 - e. The clerk is responsible for managing case files, decisions, documents, deeds, registers, court costs, third party deposits, valuable letters, evidence and other letters stored in secretariat.
 - f. The secretary is responsible for carrying out general administration, arranging tasks Deputy Secretary, Heads of Sub-Sections, General Administration Officers, and all implementers in the Secretariat section of the Aceh Sharia Court.
 - g. The Secretary as the Authorized Budget User is responsible for budget usage.
 - h. The Secretary as the Authorized User of the Goods is responsible for the existence of and utilization of state-owned goods (BMN).
4. The Deputy Secretary assists the Secretary in carrying out duties in the field General Administration/Secretarial Affairs and coordinating the duties of the Head of Sub-Department General Affairs, Personnel and Finance Section.

RESULTS AND DISCUSSION

Function and Position of the Sharia Court as a Special Court in Dispute Resolution.

Judicial power is the main characteristic of the State of law (*Rule of law*) and the principle of the *rule of law*. Democracy prioritizes *the will of the people*, State law trample *the rule of law*. Many scholars have discussed both concepts, namely democracy and the rule of law in one inseparable continuum each other. However, both need to be distinguished and reflected in the institutions that separated from each other.⁴

Since the inauguration of the Sharia Court on March 4, 2003, the Court The Sharia and Provincial Sharia Courts immediately replaced the authority functions The Religious Court (PA) is under the authority of the Sharia Court, the authority of the Court The High Religious Court (PTA) is the authority of the Provincial Sharia Court. This is in accordance with with the Decree of the President of the Republic of Indonesia Number 11 of 2003. Transfer of function and the court's authority is in line with the mandate of Law Number 18 of 2001 regarding Special Autonomy for the Special Region of Aceh Province as the Province of Nanggroe Aceh Darussalam Aceh Darussalam. Based on this law, the Sharia Court is made as Islamic sharia courts have absolute authority covering all aspects of Islamic sharia, the regulations of which are set out in the form of Qanun.

The principle of independence in administering justice comes from the separation of power, both put forward by John Locke and Montesquieu. From both theories regarding the separation of powers, what is better known is the theory of the separation of powers, which comes from Montesquieu. According to Montesquieu, to prevent the occurrence of abuse of power, the branches of power in the state must be separate in three organs (body).⁵

Islamic Sharia Courts in the Province of Nanggroe Aceh Darussalam which the decision is determined by the City or District Sharia Court at the level first and the Provincial Sharia Court for the appeal level, if viewed based on Law Number 4 of 2004 concerning Judicial Power, has uniqueness that is different from other special judicial bodies because it is a special courts within the religious court environment to the extent of their authority concerning the authority of religious courts, and is a special court in general judicial environment as long as its authority concerns judicial authority general.

In the religious court environment there is an Islamic sharia court in Aceh which conducted by the Sharia Court. Islamic Sharia Court in Aceh (Islamic Sharia Court) Syar'iyah) is a special court within the religious court environment as long as its authority concerns the authority of the religious court, and is a court specifically in the general judicial environment as long as its authority concerns general judicial authority. Based on the above, the special court can be seen from the object of the case being tried and also based on the authority held by the judicial body. If seen from the object of the matter, there are things that require special expertise in his examination, not all judges were able to try the case because the limitations of judges in areas such as commercial, human rights and tax matters. Apart from requiring special skills, there are also courts that require handling specifically like a juvenile court so that children who commit crimes do not feel that he is being tried so that a family impression must be created for the child.

Law Number 18 of 2001 concerning Special Autonomy for Provinces The Special Region of Aceh as the Province of Nanggroe Aceh Darussalam. In the law it is stated that Aceh Province is a province that has been given special autonomy in within the framework of the

⁴ Jimly Assiddiqie, *Principles of Post-Reformation Constitutional Law*, Buana Ilmu Popular, Jakarta, 2007, p. 511

⁵ Sri Soemantri, Position and Authority of the Judicial Commission in the Indonesian Constitutional System, quoted in *Flower One Year Reflection Series of the Indonesian Judicial Commission*, Judicial Commission, Jakarta, 2006, p. 82

Unitary State of the Republic of Indonesia, the granting of special autonomy also giving authority to the Aceh provincial government to form a Court Syar'iyah which is part of the implementation of Islamic law. With the ratification of the Law No. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh Province as Province of Nanggroe Aceh Darussalam, this law provides for the regulation which is clearer than Law No. 44 of 1999 concerning the Implementation of. The special characteristics of the Special Region of Aceh Province, in terms of regulating judicial institutions. Regional Regulations as the implementation of laws in the Nanggroe Province area Aceh Darussalam in the framework of implementing special autonomy, which is in the form of a qanun regulates the authority of the Sharia Court based on Islamic law in the national legal system which only applies to adherents of Islam.

Authority over people who are not Muslim according to the provisions Article 129 paragraph (1) of Law Number 11 of 2006 concerning the Government of Aceh may also transferred from the District Court to the Sharia Court, namely: *"In case of any Criminal act (Criminal Act) committed by two or more people together with those who are not Muslim, the perpetrators who are not Muslim Islam can choose and submit voluntarily to Criminal Law."* Law The authority for this crime is the Syar'iyah Court. Then for those who Non-Muslims commit crimes that are not regulated in the Criminal Code or criminal provisions. outside the Criminal Code, it is enforced on the basis of Islamic law, namely in the Court Sharia.

The Authority of the Sharia Court in Carrying Out Its Functions as a Special Court in the Judicial Environment in Indonesia.

Islamic law in Aceh has been implemented specifically, namely by issuing Law Number 11 of 2006 concerning the Government of Aceh, then legally Islamic Sharia is a positive law for the people of NAD, because Islamic Sharia has regulated all aspects of social and state life in a comprehensive manner. The logical consequence of the enactment of the Law on the Governance of Aceh and Islamic law as the legal basis for the NAD community, therefore all levels of society The NAD community who are Muslim are obliged by law to obey and practicing Islamic law. Philosophical basis for implementing Islamic law in Aceh This is contained in the third paragraph of the Opening. Otje Salman said that The opening of the third paragraph explains the religious thinking of the Indonesian people, that Indonesian society is a society that is very thick with Godly values.⁶

With the enactment of the Aceh Government Law, almost all the authority of the District Court in examining and trying criminal cases and Civil cases will be transferred to the Sharia Court, especially for defendants and justice seekers who are Muslim. With the increasing authority of the Sharia Court to examine and try cases that were previously the responsibility of the District Court, then will also increase the volume of cases that come in to be examined and judged, so that increasingly busy and requires reliable Human Resources, both the Judges and the employees, because so far the Sharia Court has not been accustomed to examine and try cases as in the District Court. Therefore, in The Sharia Court needs additional judges and staff, because of its duties and His authority has doubled from before.

The general policy of the Aceh Sharia Court is as follows:

- a. Carrying out the main duties and functions of the Aceh Sharia Court in exercise Judicial Power.
- b. Improving justice and law enforcement that is reflected in the creation of a just, consistent and non-discriminatory legal system that can provide protection and respect for human rights.

⁶ Otje Salman and Anton F. Susanto, *Legal Theory (Remembering, Collecting and Reopening)*, Refika Aditama, Bandung, 2005, p. 157

- c. Improving the supervisory function for the judiciary, which is manifested in the theme of the 2011 Supreme Court National Working Meeting as the Year of Supervision, so that it can support the realization of a judicial institution that is authoritative, dignified and respected.
- d. Promoting the implementation of good governance in the judiciary.
- e. Improving the provision of facilities and infrastructure for the judicial body (Procurement land, office building construction).
- f. Efforts to eradicate corruption by improving legal substance and structure law and legal culture by increasing professionalism and improve the quality of the system in all areas of the Aceh Sharia Court.
- g. Elimination of discrimination in various forms by enforcing the law fairly and eliminating discriminatory regulations, gender injustice, and violations of the principles of justice so that every citizen has equal standing before the law.
- h. Proliferate Laws, regulations including Regulations Supreme Court, Circular Letters of the Supreme Court, Fatwas of the Supreme Court, Decision Letters, Case Forms, Results of Working Meetings, Research Results and Collection of Articles related to the Court and legal issues to be disseminated to all environments of the Aceh Syar'iyah Court.

CONCLUSION

1. Sharia Court only carry out its functions within the scope of the authority of the Religious Court in the field of marriage, inheritance, will, grant, waqaf, zakat, infaq, sadaqah and sharia economy, whereas criminal matters are only limited to matters *alcohol*(liquor), *solitude* (pervert), *gambling*(gambling).
2. Law Number 4 of 2004 concerning Judicial Power states that The Sharia Court is a special court within the Religious Courts. The authority of the Sharia Court is no longer limited to certain civil matters, but also covers the fields of mu'amalah and jinayah. However, in fact, the laws and regulations concerning the duties of the Sharia Court are still incomplete and this. This is one of the problems faced. While Law Number 48 of 2009 no longer explains about the Syar'iyah Court until the position and the authority of the Sharia Court in Aceh becomes unclear.

REFERENCES

- Muhammad, Abdulkadir. 2004. *Law and Legal Research*. Bandung: PT.
- Arikunto, Suharsimi. 2002. *Research Procedures: A Practical Approach*. Jakarta: Rieneka Cipta
- Saleh, Soufyan M. 2007. *Profile of the Aceh Sharia Court*, Banda Aceh: Aceh Sharia Court
- Assiddiqie, Jimly. 2007. *Principles of Post-Reformation Constitutional Law*, Popular Science Center: Jakarta
- Salman, Otje and Anton F. Susanto. 2005. *Legal Theory (Remembering, Collecting and Reopening)*. Bandung: Refika Aditama
- M.D.A. Freeman, *Lloyd's Introduction to Juricprudence*, Seventh Edition, (London: Sweet & Maxweel Ltd, 2001), hal. 904-905.
- Jimly Asshiddiqie. *Constitution and customary constitutional law*.
- Dr. H. Nandang Alamsah Deliarnoor, S.H., M.Hum. *The meaning and importance of knowing and understanding the constitutional law of the Republic of Indonesia, customary constitutional law and customary law communities in Indonesia in relation to the practice of nation, state and society*.
- Christian Mairi. *Socio-cultural study of Toraja custom society in relation with the sustainability of forest resources*

Juwita p. Talk. *The role of Toraja community traditional institutions in increasing community participation in regional head elections (pilkada) in North Toraja Regency (political communication study)*

Reprisal mody. *Legal review of Lembang as a traditional village in Tana Toraja according to Law no. 6 of 2014 concerning villages and their implementation*