FUNCTION AND POSITION OF ACEH SYAR'İYAH COURT IN THE LEGAL SYSTEM IN INDONESIA

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ABSTRACT

Purpose: This research normatively reviewed and analysed thoroughly the function and position of Syar'iyah Court in Aceh in the National legal system. It also viewed the Syar'iyah Court as part of the legal system in Indonesia.

Theoretical framework: The implementation of the freedom of independent judicial power is inseparable of the implementation of the system contained in the 1945 Constitution and in accordance with the values upheld by the international community through The Universal Declaration of Human Rights.

Method: The research method used normative legal research using the statutory approach and conceptual approach related to the function and position of Aceh Syar'iyah Court in the legal system in Indonesia.

Conclusions: Law Number 44 of 1999 determines the power and authority of the Syar'iyah Court to be realized in the form of implementing Islamic law for its adherents and Law Number 18 of 2001 determines the power and authority based on Islamic law in the national legal system, which is further regulated by Qanun of Aceh Province. Moreover, Law Number 11 of 2006 on Aceh Government also determines that the Syar'iyah Court has the authority to examine, adjudicate, decide, and settle cases in family, civil, and criminal laws based on Islamic Sharia.

Research Implications: In carrying out its duties, the Syar'iyah Court in Aceh is obliged to uphold the dignity of the community in general and the basic rights and obligations of the community in particular.

Originality/value: In practice, the implementation of Islamic Sharia in Aceh has provided protection, justice, and a sense of security and comfort to all citizens in Aceh.

Keywords: Syar'iyah court, authority, position, legal system.

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FUNÇÃO E POSIÇÃO DO TRIBUNAL ACEH SYAR'IYAH

RESUMO

Objetivo: Esta pesquisa revisou normativamente e analisou minuciosamente a função e a posição do Tribunal Syar'iyah em Aceh no sistema jurídico nacional. Também considerou o Tribunal Syar'iyah como parte do sistema jurídico da Indonésia.

Quadro teórico: A implementação da liberdade do poder judicial independente é inseparável da implementação do sistema contido na Constituição de 1945 e de acordo com os valores defendidos pela comunidade internacional através da Declaração Universal dos Direitos Humanos.

Método: O método de pesquisa utilizou pesquisa jurídica normativa usando a abordagem estatutária e a abordagem conceitual relacionada à função e posição do Tribunal Aceh Syar'iyah no sistema jurídico da Indonésia.

Resultados e Conclusões: A Lei Número 44 de 1999 determina o poder e autoridade do Tribunal Syar'iyah a ser realizado na forma de implementação da lei islâmica para os seus adeptos e a Lei Número 18 de 2001 determina o poder e autoridade com base na lei islâmica no âmbito jurídico nacional sistema, que é ainda regulamentado por Qanun da província de Aceh. Além disso, a Lei número 11 de 2006 sobre o Governo de Aceh também determina que o Tribunal Syar'iyah tem autoridade para examinar, julgar, decidir e resolver casos de família, civil e criminal com base na Sharia islâmica.

Implicações da Pesquisa: No desempenho das suas funções, o Tribunal Syar'iyah em Aceh é obrigado a defender a dignidade da comunidade em geral e os direitos e obrigações básicos da comunidade em particular.

Originalidade/valor: Na prática, a implementação da Sharia Islâmica em Aceh proporcionou proteção, justiça e uma sensação de segurança e conforto a todos os cidadãos de Aceh.

Palavras-chave: tribunal Syar'iyah, autoridade, posição, sistema jurídico.

1 INTRODUCTION

The Government System of the Unitary State of the Republic of Indonesia according to the 1945 Constitution regulates the special autonomy of a region. The regions with special autonomy are Papua Province and Aceh Province (Asshiddiqie, 2007).

One of the formal forms of Aceh's special autonomy is the implementation of Islamic law, which then established an Islamic Sharia Court institution in Aceh Province carried out by the Syar'iyah Court based on Islamic Sharia which is one part of special autonomy in Aceh Province. The implementation of Islamic Sharia given to Aceh is a special autonomy mandated in Law Number 18 of 2001 on Special Autonomy for Special Region of Aceh Province as Nanggroe Aceh Darussalam Province which has been revoked and replaced by Law Number 11 of 2006 on Governance Aceh as a follow-up on
one of the implementations of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement signed in Helsinki, Finland on 15 August 2005, based on the consideration and hierarchy of laws and regulations including Article 1 paragraph (1), Article 5 paragraph (1), Article 20 paragraph (1) and Article 18 B paragraph (1) of the 1945 Constitution. Article 1 paragraph (1) states that “The State of Indonesia shall be a unitary state in the form of a republic”. The statement of this article is the basis for regulating the authority contained in Law Number 18 of 2001, meaning that the enactment of this law is part of the form of a unitary state. In relation to Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the executive and legislative institutions have the authority in the process of forming this law. Apart from that, Article 18 B paragraph (1) explains that the State also recognizes and respects exclusive and special regional government units as stated in the preamble to each law.

Based on the provisions of Article 18 A and Article 18 B, the drafters of the amendments to the 1945 Constitution acknowledge (Asshiddiqie, 2007) that there are regions that have been given privileges and specificities regarding the form and composition of Regional Government, including paying attention to origin rights in exclusive and special areas. In other words, the existence and position of special regions should be considered, such as Special Region of Aceh (D.I. Aceh), also known as Nanggroe Aceh Darussalam Province, now called Aceh Province.

The privileges granted by the State to Aceh Province are part of the recognition of Indonesia because of the struggle and essential values that have been maintained for generations as spiritual, moral, and humanitarian foundation so that all community elements participate in the implementation of religious life, custom, education, especially the role of ulema who are the main pillars in Aceh's social life (Tarigan, Riyanto, & Hermawan, 2022).

One of the privileges in religion aspect is the implementation of religious life in Aceh in the form of Islamic law implementation in all aspects of life which includes political, legal, and educational dimensions, etc. while still respecting and giving freedom to non-Muslim societies to carry out their worship activities according to their respective beliefs and faith (Feener, 2013).

Islamic principle that teaches “There is no compulsion in religion” dan “rahmatanlilalamin” is the key to the success implementation of Islamic law itself in the
life of the nation and state within the framework of the Unitary State of the Republic of Indonesia which is "Unity in Diversity".

The existence of the Syar'iyyah Court in Aceh as an integral part of the religious courts in Indonesia is a concrete form of Islamic law implementation in the Veranda of Mecca. The Syar'iyyah Court as a judicial institution in Aceh should carry out all its duties and functions as a judicial institution in accordance with the rules and legal norms that govern it (Rehnquist, 2007). Its existence should be maintained to guarantee the implementation of Islamic law in accordance with the mandate of the law and qanun. As emphasized in Article 1 Number (15) of Law Number 11 of 2006 on Aceh Government that, “Aceh Syar'iyyah Court and Regency/Municipal Syar'iyyah Court are religious courts that are part of the national justice system” and Article 128 paragraph (1) which states that “Islamic Sharia Court in Aceh is part of the national justice system within the religious court environment carried out by the Syar'iyyah Court that is free from the interference of any party.”

As an autonomous region, in accordance with the provisions of the law, Qanun is allowed to contain criminal provisions within the boundaries determined by law. These criminal provisions, whether based on the punishment explicitly determined by Islamic Sharia (explicit verbis) (such as maisir sanction) or based on the agreement forming the Qanun as long as it does not conflict with Sharia principles and is for the greatest public benefit, does not conflict with the sense of justice. Another privilege is the enforcement of Qanun by the Syar'iyyah Court. In other words, all violations according to Qanun are examined, adjudicated, and decided by the Syar'iyyah Court. How Qanun Jinayat linked to various criminal regulations outside the Qanun is as contained in the Criminal Code or other laws and regulations such as Qanun Baitul Mal, and it does not allow the punishment in the Qanun to exceed the authority given by the Law on punishment as regulated in Article 44 of the Criminal Code for acts which cannot be insured under Article 10 of Qanun Jinayat against the exception of criminal acts, and extends the types of punishment (over criminalization) and do not let the criminal threats in the Qanun become too severe compared to the criminal threats in General Crime, not to mention the requirements to become a judge especially Syar'iyyah Court judges should be of concern because they do not only handle cases within the competence of religious justice, but also jinayah cases regulated in Qanun Aceh (Butt, 2018).
Based on the description above, the research problem in this paper is regarding the Function and Position of Aceh Syar'iyyah Court in the Legal System in Indonesia. Therefore, this research is crucial to study the authority of the Syar'iyyah Court in Aceh.

2 THEORETICAL FRAMEWORK

Indonesia is a legal state as mandated in the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3) which states “The State of Indonesia shall be a state based on the rule of law”. As a consequence of Indonesia as a rule of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, all aspects of life and the field of community, nationality, and statehood including government, should always be based on law.

As a rule of law, the administration of state government cannot be separated from the Legislative Regulations as the positive law in force in Indonesia. The definition of Laws and Regulations as stated in Article 1 of Law Number 12 of 2011 on the Legislation Making is written regulations made by authorized state institutions or officials and generally binding. To realize the rule of law, an orderly order is needed, among others in the establishment of laws and regulations since the governance of Indonesia is based on Pancasila and the 1945 Constitution. In all aspects of state administration and the administration of regional government, it should always be based on the law, then the administration of Aceh Province government made in a statutory regulation that specifically regulates the authority and power of Aceh Government administration.

The rule of law of Indonesia is often referred to as Pancasila State. Regarding this matter, Arif Hidayat explains that apart from being a legal ideal for the life of the Indonesian people, Pancasila is also a fundamental state norm for Indonesia, meaning that each principle in Pancasila, individually or as a whole, comprises a legal principle and legal norm. Pancasila as a legal ideal, both constitutively and regulatively, plays a role in providing guidance and guidelines in the formation of legal norms. As a norm, Pancasila normatively regulates the content, form, composition, and procedures for establishing statutory regulations (Hidayat, 2006).

The 1945 Constitution outlines the politics of judicial power in Article 24 and Article 25. Article 24 paragraph (1) states, “The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it”. Then the provisions of Article 24 are followed by the provisions of Article 25 of the 1945 Constitution which states “The
appointment and dismissal of judges shall be regulated by law.” The two articles explain that “The judicial power is an independent power, which means free from the interference of the Government. In this connection the status of judges must be guaranteed by Law.

Independent judicial power as stated by Bagir Manan above is not only intended to protect individual freedom, limit government actions so as not to exceed the law, and create freedom and independence of the organizers of judicial power, but also the implementation of other provisions of the Constitution, which guarantees individual freedom and prevents arbitrary government action based on the rule of law. Therefore, the implementation of the freedom of independent judicial power is an integral part of the implementation of the system contained in the 1945 Constitution and also in accordance with the values upheld by the international community through The Universal Declaration of Human Rights.

Judicial power is an independent state power to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution for the implementation of the Rule of Law of the Republic of Indonesia (Tahir Azhary, 1992). Judicial power according to the 1945 Constitution in Indonesia is exercised by Supreme Court (MA) and Constitutional Court (MK). The respective authorities of implementing agencies and state institutions whose functions are related to judicial power are determined by the 1945 Constitution and statutory regulations.

3 METHODOLOGY

This paper used the normative legal research method (Ibrahim, 2006), which is research on positive legal rules and legal principles by evaluating relevant legal rules (legislation) (Manan, 1999). Normative legal research is research that examines legal principles and rules (Soemitro, 1990).

This research also used several approaches, including the Statute Approach carried out by examining all laws and regulations relating to the power of the Syar'iyyah Court in relation to the authority of the Religious Court and General Court, and the concept of power of the Syar'iyyah Court linked to the Indonesian Judicial system. Furthermore, it used Conceptual Approach that was carried out by combining practical concepts that could be implemented into one particular point of view and become a solution to problems that have occurred.
The data were analyzed qualitatively. Qualitative data analysis is the process of organizing, analyzing, and interpreting a finding into information as a reference for the Function and Position of Aceh Syar'iyah Court in the legal system in Indonesia.

The data were collected by identifying and inventorying laws and regulations, examining literature and other sources of legal materials relevant to the legal issues in this paper.

4 RESULTS AND DISCUSSION
4.1 PURPOSE AND FUNCTION OF SYAR'IYAH COURT

Aceh Province which has received special status is equipped with the implementation of special and broadest autonomy. One of special privileges in Aceh is related to the implementation of Islamic law confirmed by the enactment of positive legal rules, including Law Number 44 of 1999 on the Implementation of Special Region of Aceh Province and Law Number 11 of 2006 on Aceh Government. In terms of Indonesian national policy in accordance with the 1945 Law, such as regulating special autonomy for a region, this is special (Siregar, 2008).

The privilege of Aceh and its special autonomy has given birth to the Syar’iah Court. This judicial system emerged based on Law Number 18 of 2001 on special autonomy, and presidential decree Number 11 of 2003 on Syariah Court in Aceh has brought fresh air to Acehnese people in upholding law and experiencing Islamic teachings in a comprehensive and holistic manner.

The Judicial Institution aims to uphold law and justice in the life of the state, therefore this institution is inseparable from the state. Justice is enforced based on a system that applies in a country in accordance with the legal traditions it follows.

Based on the description of the existence of Islamic Court, especially the Syar’iyah Court in the past in Aceh, the existence of Islamic Syariah Court carried out by the Syar’iyah Court in Aceh Province today is not a gift from the central government to Acehnese people, but rather a "Returning the rights of Acehnese people that have been lost." Therefore, its existence and work in the Acehnese people as part of the implementation of Islamic Sharia in a comprehensive manner in Aceh Province is something that the people of this Rencong land have been waiting for.

The establishment of Law Number 44 of 1999 and Law Number 18 of 2001 and Law Number 11 of 2006 brought a great hope to Acehnese people for the implementation
of Islamic law in Aceh Province. There are very interesting and different studies, especially regarding the position of Religious Court in Aceh, whether it is within the four judicial spheres or is a special court called as the Syar'iyyah Court in Aceh including the addition of its authority in settling *jinayah* issues (crime) (Kersten, 2017).

In fact, to date there is no change legally and socially whatsoever, except that in Aceh the Islamic Sharia Service and several *Qanun* provisions were born. However, the birth of these laws means that Acehnese people now have a Common Platform which can develop public trust and protect their honor and dignity in the nuances of Islamic Sharia.

The Religious Courts in Aceh Province belong to the Syar'iyyah Court in Regencies/Cities in Aceh Province. The Syar'iyyah Court is designated as an Islamic Sharia Court with absolute authority covering the Islamic Sharia aspects, the regulations of which are determined by *qanun*.

In practice, in carrying out its authority, the Syar'iyyah Court refers to the authority of the religious court plus the delegation of some of the authority of the general court. Thus, the cases that were previously settled by religious courts now fall under the authority of the Syar'iyyah Court. The acknowledgment of granting authority to the Syar'iyyah Court to implement sharia is also regulated in Article 128 paragraph (2) of Law Number 11 of 2006 on Aceh Government which states that: “Syar'iyyah Court is a court for everyone who is Muslim and resides in Aceh.” Then, the duties and functions of the Syar'iah Court include duties and functions in the judicial and non-judicial fields.

National law contains the meaning of law that applies to all or some of the population in the territory of the Unitary State of the Republic of Indonesia, or also known as positive law. So far, there are several provisions of Islamic law, including in family and *muamalah* laws, which previously had become the authority of the religious court or had been in effect as stipulated in Law Number 7 of 1989 with amendments to Law Number 3 of 2006, the powers that have become the national legal system.

Juridically, the legal basis for the implementation of Islamic law in Aceh is based on Law Number 44 of 1999 on Privileges of Special Region of Aceh Province Law Number 11 of 2006 on Aceh governance. Law Number 44 of 1999 states that there are four privileges given to Aceh, including religious life, traditional life, education, and role of *ulama* in establishing regional policies. The privileges in the field of religious life, according to this law, are realized in the form of implementing Islamic law for its adherents in the community.
The implementation of the duties and functions of the Syar'iyyah Court based on the principle of protecting human rights is a principle that guarantees that the law enforcement process will protect the human rights of victims and perpetrators as well as other parties involved, such as witnesses. The judge has the right and even has to inform the parties, including the victim, witness, defendant, and public prosecutor about their rights during the trial and their rights in the decision that will be imposed.

The next is the principle of education to the community (tadabbur) which states that every judicial process from arrest to implementation of uqubat should contain educational so that the community obeys the law. Regarding the process of law enforcement and community protection, there is balanced protection of human rights, especially for jarimah victims and perpetrators. This principle is very essential because the existence of law in Islam is not essentially aimed at punishing people, but at educating, providing learning, and fostering legal awareness.

The authority of the Syar'iyyah Court based on Islamic law means that all Islamic law aspects are the authority of the Syar'iyyah Court including the criminal law (jinayah). This shows that Law Number 18 of 2001 as amended by Law Number 18 of 2001 has declared that the implementation of Islamic law is strictly carried out through Qanun, and constitutes the national legal system.

When the provisions of article 25 of Law Number 18 of 2001 were formulated, the law makers had sufficient understanding of the scope of Islamic law as it was actually understood. Therefore, the authority of the Syar'iyyah Court is based on Islamic law. It should be understood that the authority of the Syar'iyyah Court includes the faith, worship, muamalah, and moral aspects further regulated by qanun.

The Syar'iyyah Court as the development of the religious court is the exercise of judicial power for justice-seeking people who are Muslims as referred to in Law Number 7 of 1989 and Law Number 3 of 2006 on the amendments to Law Number 7 of 1989 on Religious Court as well as Decree of Chief Justice of Supreme Court Number KMA/070/SK/X/2004 which regulates the delegation of some of the powers of the general judiciary to the Syar'iyyah Court in jinayah cases, then this provision was strengthened and stipulated in qanun in Aceh Province.

The implementation of the duties and functions of the Syar'iyyah Court in the non-judicial field includes supervision over the running of Aceh and Regency/Municipal Syar'iyyah Courts as stipulated in Article 52 of Qanun Number 10 of 2002. The Syar'iyyah
Court also has the task to provide isbat testimony for rukyat hilal in determining the beginning of the month in Hijriyah year as stipulated in Article 52a of Law Number 3 of 2006. Apart from that, in terms of authority, it is also emphasized that all regional heads in Aceh who will be inaugurated, from the governor to the regent or mayor, should be inaugurated before the chairman of Aceh Syar'iyyah Court.

In terms of supervision, Aceh Syar'iyyah Court is mandated to supervise the operation of first instance court so that trials are conducted fairly, honestly, quickly, simply, and at low cost. In addition to supervising Regency/Municipal level judges, clerks, secretaries, and others. Furthermore, in the case of legal advisers, the Chief Justice of the Syar'iyyah Court has the authority to grant permission to a person who acts as a legal adviser, and accepts self-registration of legal advisers/advocates. Then, in the field of rukyat reckoning (hisab), the Syar'iyyah Court performs reckoning (rukyat) and sighting of the moon (hisab) for determining the beginning of Qamariah month, the Qibla direction, and the Hijriyah calendar.

In Article 128 Paragraph (2) of Law on Aceh Government, it is stated that the Syar'iyyah Court is a court for everyone who is Muslim and resides in Aceh. This article contains two principles, including the Islamic personality principle and territorial principle which eventually gave birth to four guidelines in treating Sharia law, including:

1. For the Muslim Acehnese people who commit criminal act, Islamic law (qanun) is automatically applied to them.
2. For other Muslim people, non-Acehnese Muslim who commits criminal act, other Islamic law is still applied.
3. For non-Muslim Acehnese people who commit criminal act in Aceh or outside Aceh, Islamic law is not required at all.
4. For non-Muslim people who commit criminal act, Islamic law does not apply.

The decree of Chief Justice of Supreme Court of the Republic of Indonesia regarding the delegation of some of the authority of the general court to the Syar'iyyah Court in Aceh Province Number KMA/070/SK/X/2004 stipulates the delegation of some of the authority of the general court to the Syar'iyyah Court in mu'amalah and jinayah cases stipulated in the Qanun of Nanggroe Aceh Darussalam Province. However, for muamalat cases, there are no qanuns that regulate them, so the muamalat cases that have been settled...
in the Syar'iyah Court to date are cases that were previously under the authority of the Religious Court.

On this basis, it can be understood that in the Indonesian judicial system, the Syar'iyah Court has two basic competencies, including the authority of religious justice and some authority of general justice. The authority of the Syar'iyah Court is quite clear, but there are still many Acehnese people who do not know about it. The development of qanuns in Aceh is quite encouraging with the expectation that these qanuns will be obeyed by the community as intended by the concept of tadabur in jinayat law.

Based on the description, the functions of the Syar'iyah Court which are the main duties of the Syar'iyah Court are as follows.

1. Judicial Power function, that is examining and adjudicating cases which are the authority of the religious court in the respective jurisdictions, as stated in Article 49 of Law Number 7 of 1989 concerning religious justice as amended by Law Number 3 of 2006.
2. Supervisory function, that is supervising the implementation of the duties and behaviors of judges, clerks, secretaries, and all staff, according to the provisions of Article 53 Paragraph (1) of the 1989 Law in conjunction with Law Number 3 of 2006. Regarding the implementation of general administration, it is regulated by Law Number 4 of 2004 concerning judicial power, then, the supervision is carried out periodically by the field supervisory judge.
3. Coaching function, that is providing direction, guidance, and instructions to staff, regarding judicial technical duties, justice administration, and general administration, as stipulated in Article 53 Paragraph (3) of Law Number 7 of 1989 jo. Law Number 3 of 2006.
4. Administrative function, that is providing clerkship administration services for first instance cases as well as confiscation and execution, appeal, cassation, and judicial review cases as well as other judicial administration and providing general administrative services to all elements in the religious court environment, including in the employment, financial, and general sectors.
5. Advice function, that is providing information, consideration, and Islamic legal advice to government agencies in their jurisdiction, if requested as regulated in Article 52 Paragraph (1) of Law Number 7 of 1989 on Religious Court.
With regard to *jinayah* acts, the Law determines that in the event of a *jinayah* act committed by two or more people, in which one of whom is not Muslim, the non-Muslim perpetrator can choose and submit himself voluntarily to the *jinayah* law. Every person who is a non-Muslim religion committing a *jinayah* act not regulated in the Criminal Code or criminal provisions outside the Criminal Code, the *jinayah* law applies. Aceh residents who commit *jinayah* acts outside Aceh then the Criminal Code applies.

The *Syar’iyah* Court in Aceh has become a judicial institution highly trusted by the public because the public is satisfied with the services provided by the court and the case resolution process is also very simple and low cost. In relation to the case administration, the resolution is faster and the case files are also neatly arranged, so the required documents can be obtained quickly at any time. The public information is very open and the complaints desk is very functional, so if there are people who immediately file a case, it can be continued.

4.2 POSITION OF SYAR’IYAH COURT IN ACEH IN INDONESIAN LEGISLATION

The Aceh government's efforts to realize Islamic Sharia regulations are through the *Syar’iyah* Court in Aceh based on Presidential Decree of the Republic of Indonesia Number 11 of 2003 on *Syar’iyah* Court and Provincial *Syar’iyah* Court in Aceh Province (Hejazziey, 2015). The *Syar’iyah* Court since 2003 to date has the authority to examine, adjudicate, decide, and settle cases covering the fields of *al-ahwal al-syakhshiyyah* (family law), *mu’amalah* (civil law), and *jinayah* (criminal law) based on Islamic Sharia. Apart from routinely settling all cases submitted to the Court at the Regency/City level as well as at the Provincial level internally, it is currently equipping its apparatus and facilities. Externally, it is actively coordinating and communicating for the smooth and successful role, main duties, and functions as the executor of judicial power in Aceh Province (Abubakar, 2006).

Article 153 of Law Number 11 of 2006 on Aceh Government stipulates that *Syar’iyah* Court Judges are appointed and dismissed by the President upon the recommendation of the Chief Justice of Supreme Court. If certain case requires special expertise, the Chief Justice of Supreme Court may propose the appointment of *ad hoc* judges at the *Syar’iyah* Court to the President. The Chief Justice and Deputy Chief Justice of Aceh *Syar’iyah* Court are appointed by the Chief Justice of Supreme Court considering his experience as a high court judge at Aceh *Syar’iyah* Court. The Chief Justice and
Deputy Chief Justice of Regency/Municipal Syar'iyyah Court are appointed by the Chief Justice of Supreme Court upon the recommendation of the Chief Justice of Aceh Syar'iyyah Court.

Likewise, Article 25 Paragraph (3) states: "The Religious Courts as referred to in Paragraph (1) have the authority to examine, adjudicate, and settle cases between people of Muslim faith in accordance with the provisions of laws and regulations." The authority mentioned in this article is the general authority of the Religious Courts throughout Indonesia, including Aceh, and does not mention and differentiate between the authority of the religious court in general that applies throughout Indonesia and the Syari'iyah Court in Aceh which has received additional authority.

The existing Syari'iyah Courts are transfer of form from the previously existing religious courts as confirmed in the Presidential Decree, so to date there are 20 First Instance Syari'iyah Courts plus 1 Appeal Instance Syari'iyah Court. The First Instance Syar'iyyah Court is called the Regency/Municipal Syar'iyyah Court and the Appeal Instance Syar'iyyah Court is called Aceh Syar'iyyah Court. This change of name will lead to a fundamental consequence, that is the change of the entire structure and organization that existed in the previous religious court to the Syari'iyah Court.

The policy of the Government of the Republic of Indonesia to acknowledge the exclusive and special status and to grant authority to Nanggrooe Aceh Darussalam to implement Islamic Sharia is in line with the contents of Medina Charter and it is a golden opportunity for the government and all Acehnese to realize Islamic ideals as a way of life for Acehnese people. Umara, Ulama, and Aceh Community Leaders support the implementation of the Syar'iyah Court in all areas of Aceh in a good and smooth manner. They expect that the triumph of implementing Islamic law during Aceh sultanate would be repeated. They yearn for it and expect that what will happen and what they experience now will be better than before.

The authority of the Syar'iyah Court is based on Law Number 18 of 2001 jo. Law Number 11 of 2006 jo. Aceh Province Qanun Number 10 of 2002. Article 25 Paragraph (1), Paragraph (2), and Paragraph (3) state:

1. Islamic sharia Court in Nanggrooe Aceh Darussalam Province as part of the national justice system is carried out by the Syar'iyah Court which is free from the interference of any party.
2. The authority of the Syar’iyyah Court as referred to in paragraph (1) is based on Islamic law in the National legal system further regulated by *Qanun* of Aceh Province.

3. The authority referred to in paragraph (2) applies to Islam adherents. Law Number 11 of 2006 Chapter XVII Articles 125 to 127 (consisting of three Articles with 24 Paragraphs) is specifically regulated regarding the Syar’iyyah Court. Article 128 of Law Number 11 of 2006 reaffirms that:

   1. The Islamic Sharia Court in Aceh is part of the National Justice system within the religious court environment carried out by the Syar’iyyah Court which is free from the interference of any party.
   2. The Syar’iyyah Court is a court for every Muslim who resides in Aceh.
   3. The Syar’iyyah Court has the authority to examine, adjudicate, decide, and settle cases covering *ahwal al-syakhsiyah* (family law), *muamalah* (civil law), and *jinayah* (criminal law) based on Islamic Sharia.

   4. Further provisions regarding *ahwal al-syakhsiyah* (family law), *muamalah* (civil law), and *jinayah* (criminal law) as referred to in Paragraph (3) are regulated by Aceh *Qanun*.

   Furthermore, on the 26th of Sha’ban 1425 H (11 October 2004 AD), the Chief Justice of Supreme Court conducted the inauguration of Operationalization of Authority of Syar’iyyah Court in Aceh Province, at the Provincial level, and Regency/Municipal level. The inauguration was based on the second decision of the Supreme Court of the Republic of Indonesia Number KMA/070/SK/X/2004 dated 6 October 2004 concerning delegation of some of the authority of the General Court to the Syar’iyyah Court in Aceh Province.

   The minutes of the handover of the Authority to adjudicate some cases based on Islamic Sharia were carried out and signed by the Chief of High Court of Banda Aceh and the Chief of Aceh Province Syar’iyyah Court. It handed over the part of the authority to adjudicate *muamalah* and *jinayah* cases, the material of which was contained in the decision of the Chief Justice of Supreme Court of the Republic of Indonesia mentioned above, including: *Mu'amalah* cases for legal subjects who are Muslim in cases that have been stipulated in Aceh Province *Qanun* and *Jinayah* cases for legal subjects who are Muslim in cases that have been stipulated in Aceh Province *Qanun*. 
Based on the delegation of authority to adjudicate the intended mu'amalah and jinayah cases, since the date of this handover, the General Courts in Aceh Province, both the first instance and the appeal instance, have not tried the two types of cases referred to. The Provincial and Regency/Municipal Syar'iyyah Courts in Aceh Province, in addition to continuing to exercise the authority derived from the authority of the Religious Courts and the Religious High Court, have begun to exercise their authority in mu'amalah and jinayah areas referred to. Specifically, regarding the settlement of mu'amalah and jinayah cases which had been registered to the District Court prior to October 11, 2004 was settled and decided by the District Court, and an appeal against the decision was also submitted to Banda Aceh High Court. In carrying out this authority, the Syar'iyyah Court acknowledged that there were still obstacles encountered in carrying out the duties of the authority of Aceh Provincial Syar'iyyah Court.

Furthermore, to discuss the Syar'iyyah Court in Aceh, it is necessary to understand the applicability of Article 25 and Article 26 of Law Number 18 of 2001 in the first place. Law Number 11 of 2006 on Aceh Government regulates the Syar'iyyah Court in a more complete format. Prior to regulating the Syar'iyyah Court, this Aceh Government Law in Chapter XVII consisting of three Articles and 10 paragraphs regulates Islamic Sharia and its implementation in Aceh Province. The regulation, among other, stipulates that the Islamic Sharia implemented in Aceh includes aqidah, sharia, and moral. The Islamic Sharia includes worship, akhwal al-syakhisiyyah (family law), mu'amalah (civil law), jinayah (criminal law), qadla' (judiciary), tarbiyah (education), da'wah, syiar, and Islamic defense. Further provisions regarding the implementation of Islamic law are regulated by Aceh Qanun. Every Muslim in Aceh is obliged to obey and practice the Islamic Sharia, and every person who resides or is in Aceh is obliged to respect the implementation of Islamic Sharia.

To make the implementation of Islamic Sharia in Aceh Province can be carried out well, the law also determines that Aceh Government and Regency/Municipal Government are responsible for carrying out the implementation of Islamic Sharia. The Aceh Government and Regency/Municipal Government guarantee freedom, foster harmony, respect the religious values held by religious communities and protect fellow religious communities to carry out their worship activities in accordance with the religion they adhere to. The (central) government, Aceh government, and Regency/Municipal government allocate funds and other resources for the implementation of Islamic Sharia.
Regarding the establishment of places of worship, the Law stipulates that to establish a place of worship in Aceh, they must obtain permission from the Aceh Government and/or Regency/Municipal Government. The regulation and granting of these permits is regulated in *Qanun* with due observance of statutory regulations (Achir & Kamba (2021)).

Chapter XVIII of this Law regulates Syar’iyah Court in 10 articles containing 24 paragraphs. In short, it can be stated that: The Islamic Sharia Court in Aceh is part of the National Judicial system within the religious court environment carried out by the Syar’iyah Court which is free from the interference of any party. The Syar’iyah Court is a court for every person who is Muslim in Aceh, which has the authority to examine, adjudicate, decide, and settle cases covering family law, civil law, and criminal law based on the Islamic Sharia. Further provisions regarding family law, civil law, and criminal law will be regulated in Aceh *Qanun*. The Syar’iyah Court consists of the Regency/Municipal Syar’iyah Court as the first instance court and Aceh Syar’iyah Court as the appeal instance court.

Furthermore, the provisions of the Law related to legal remedies to obtain a higher decision determine that the decision of Aceh Syar’iyah Court can be appealed to the Supreme Court. In particular, cassation cases involving marriage, *talaq*, divorce, and reconciliation will be settled by the Supreme Court no later than 30 days after being registered with the registrar of the Supreme Court.

To realize a free, independent, dignified, and authoritative Syar’iyah Court as an Islamic Sharia Court in upholding *amar ma’ruf nahi mungkar* in Aceh. The Syar’iyah Court cannot be separated from its responsibilities in providing legal services, counseling, supervising the community, and establishing a working relationship between the Syar’iyah Court and other institutions, including local government, ulama, police institution, and judiciary.

The statutory provisions stated above mean that, juridically, the material law that applies to the Syar’iyah Court in Aceh is inseparable of the national justice system. The implementation of the authority of the Syar’iyah Court originates from the authority of the Religious Court. The material law uses the law which is still used by the Religious Courts outside Aceh region (Cammack, M. E., & Feener, R. M. 2012).

Since the legal provisions are in effect (positive), the Syar’iyah Court continues to use material law and formal law used by the religious courts. The material law and formal law used are not local products of Aceh in the form of *qanuns*, but national products in
the form of laws, government regulations, etc. This situation remains in line with what was done by the Religious Courts in Indonesia. There are no contradictions and differences, on the other hand, there is also no conflict with the General Courts in Aceh (Ghalib & Minin, 2017).

Based on the discussion about legal regulations above, it can be stated that the district court as the executor of judicial power has the authority to adjudicate civil and criminal cases including criminal cases involving criminal acts of sexual violence against women and children. Likewise, the Syar’iyah Court, based on Law Number 11 of 2006 on Aceh Government jo. Aceh Qanun Number 6 of 2014 on Jinayat Law is also given the authority to adjudicate cases related to sexual violence against women and children. Thus, the district court and the Syar’iyah Court have the same authority.

Presidential Decree Number 11 of 2003 on Syar’iyah Court, preceded by regulations based on Qanun Number 10 of 2002 on Islamic Sharia Courts, has appointed Syar’iyah Court to replace the function and position of Religious Court in Nanggroe Aceh Darussalam Province, in line with the mandates of Law Number 44 of 1999 on the Implementation of Special Region of Aceh Province and Law Number 18 of 2001 on Special Autonomy for Special Region of Aceh Province as Nanggroe Aceh Darussalam Province. It is also expected that the Regional Government can implement a justice system that has long been desired by Acehnese people, namely Islamic judiciary. Finally, with the issuance of Law Number 11 of 2006 on Aceh Government, this juridical basis helps to strengthen the existence of the Syar’iyah Court itself as an Islamic Sharia Court and remains part of the national justice system.

The role of Pancasila as the source of all positive legal sources in Indonesia has not been able to function and play a role as expected. This is due to the low level of awareness of the Indonesian nation in interpreting the nature embedded in each of the precepts contained in Pancasila, resulting in the norms and values contained in Pancasila. It cannot change attitudes and behaviors that lead to the achievement of the ideals of making the Indonesian state and nation just, prosperous, and peaceful (Siallagan, H., & Syuhada, O., 2023).

Furthermore, Indonesian citizens have also experienced the freedom of association. Not only can they establish political parties to express their political goals, but the Indonesian citizens can also form various organizations such as farmers' unions, labor unions, and indigenous associations. This helps strengthen civil society, which plays
a vital role in a democratic political system and governance (Husen, L., Anwar, A. I., Rahman, S., & Hidjaz, M. K., 2023).

5 CONCLUSION AND SUGGESTION

Islamic Sharia justice in Aceh is carried out by the Syar’iyyah Court which is a Special Court within the Religious Court environment. The Islamic Sharia Court in Aceh (Syar’iyyah Court) is a special court within the religious court environment if its authority concerns the authority of the religious court and is a special court within the general court environment if its authority concerns the authority of the general court. Therefore, the institutional status of the Syar’iyyah Court has legal and political legitimacy in the Indonesian constitutional system.

In essence, the authority of the religious court is the same as the Syar’iyyah Court based on Article 49 of Law Number 3 of 2006 amendment to Law Number 7 of 1989 on Religious Court which explains the authority of the religious court in examining, deciding, and settling cases at the first level among people who are Muslim regarding marriage, inheritance, will, grant, endowment, zakat, infaq, shadaqah, and sharia economics.
REFERENCES


