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10


THE POSITION OF THE SYAR'IYAH COURT IN ACEH IN THE JUDICIAL POWER SYSTEM OF THE REPUBLIC OF INDONESIA

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THE POSITION OF THE SYAR'IAH COURT IN ACEH IN THE JUDICIAL POWER SYSTEM OF THE REPUBLIC OF INDONESIA*

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Abstract

Aceh's Syar'iyah Court is a subset of the province's General Courts and Religious Courts, established by Law No. 50 of 2009 on the Second Amendment to Law No. 7 of 1989 regarding Religious Courts. According to the judicial authority law's stipulations, special courts may only be established in a single of the Supreme Court's subordinate judicial systems. The Syar'iyah Court, as envisioned by Law No. 50 of 2009, stands in stark contrast to the special court provisions of the Law on Judicial Power. This study employs a qualitative research design, normative approach, and library-based methodology by reviewing relevant books, statutes, regulations, papers, and journals. According to this research, the Syar'iyah Court, as a specialized court, belongs in just one jurisdiction: the Supreme Court. If the Sar'iyah Court is any indication, the Syar'iyah Mahakamah should be treated as a unique religious court because of its expertise in Islamic law.

Keywords: *Syar'iyah Court; Special Court; Judicial Power*

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A. INTRODUCTION

In accordance with article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. Judicial authority is vital to a system based on the rule of law. This is due to the fact that the supreme court's authority is important to a *rechtsstaat* and the rule of law principle (Assiddiqie, 2007: 511). The Syar'iyah Court, which is responsible for supervising the application of Islamic law in Aceh (Bakar, 2006: 48), acts as an executor of judicial power in the form of examining, adjudicating, and resolving cases in the areas of *al-ahwal al-syakhsiyah* (family law), *muamalah* (civil law), and *jinayah* (criminal law), the application of which is based on regional regulations known as *qanuns* (Santoso, 2003: 106).

The birth of the Syar'iyah Court is an implication of the spirit of the Acehnese people to uphold Islamic law in a *kaffah* manner. This is reinforced by the inclusion of sharia laws in the *qanun* which is an implication of the opportunity for the application of Islamic law given to the Aceh Province (Kamarusdiana, 2016: 153). The Syar'iyah Court with its absolute competence gives the Syar'iyah Court the position as a special court in the judicial power system in Indonesia (Assiddiqie, 2013: 12). Special courts in Indonesia are regulated in Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that special courts can only be established in one of the judicial environments under the Supreme Court. In this regard, Article 3A paragraph (2) of Law Number 50 of 2009 concerning Religious Courts places the Syar'iyah Court in Aceh in two judicial environments, namely the Religious Courts and the General Courts. This resulted in the position of the Syar'iyah Court in Aceh being unclear (Yusrizal, 2011: 66).

The establishment of the Syar'iyah Court in Aceh began with the granting of special autonomy to the Aceh Province (Bakar, 2006: 52). The granting of special autonomy was marked by the issuance of TAP MPR Number IV/MPR/1999 which became the basis for the birth of Law Number 18 of 2001 and Law Number 11 of 2006 concerning the First Amendment to Law

Number 18 of 2001 concerning the Government of Aceh. The granting of special autonomy is loaded with the system of government that is run in the Republic of Indonesia, namely the decentralized system (Jalil, 2010: 208). This decentralization system is one of the foundations for the implementation of regional autonomy in Indonesia and the emergence of the concept of asymmetric decentralization which gave birth to special autonomy and special autonomy as applied in Aceh Province.

The implementation of a decentralized system cannot be separated from the form of the Indonesian state which is based on the Constitution in the form of a unitary state. The form of the unitary state and the unbalanced area have resulted in the central government not being able to manage the entire region with a centralized system (Marbun, 2010: 158). The demand for decentralization was also born out of the plurality of Indonesian society with its various existing diversity. This gives birth to the view that the concept of unity has been distorted into unity and unity that is closer to uniformity so that it is not seen as a variety of wealth in the context of diversity (Simanjuntak, 2013: 105-105).

The existence of the Syar'iyah Court is very influential on the legal order of the Republic of Indonesia (Bakar, 2006: 7). The legal basis for the existence of the Syar'iyah Court is Article 128 paragraph (1) of Law Number 11 of 2006 which states that the Syar'iyah Court is within the Religious Courts. However, it is different from Law Number 50 of 2009 concerning Religious Courts which stipulates that the Syar'iyah Court is within the Religious Courts and General Courts. The position of the Syar'iyah Court which is in these two religious courts is based on the authority it has (Pane, 2016: 45). This resulted in the position of the Syar'iyah Court being ambiguous (Bahri, 2011: 7).

It didn't help matters that the Syar'iyah Court in Aceh wasn't intended to be a separate or unique court, but rather a replacement for the role held by the Religious Courts in Aceh, although one with broader authority (Bahri, 2011: 8). In this regard, it is common knowledge that Law Number 48 of 2009

pertaining to Judicial Power, which is the basic reference for the execution of judicial power in Indonesia, provides 4 judicial environments, of which the Syar'iyah Court has not yet been included. It is subordinate to the Supreme Court either because of its district jurisdiction or its authority (Rajab, 2016: 33).

B. METHODS

Postpositivism provides the theoretical foundation for the qualitative research approach. Qualitative research is used to investigate the state of natural objects when the researcher is the primary tool, when multiple data collection methods are employed, when data analysis is inductive and/or qualitative, and when the findings of the study place an emphasis on meaning rather than generalization. A data collection strategy is an organized approach to amassing information that is reliable, precise, and neutral. Data can be collected using a variety of methods, including observation, interviews, and written records.

C. RESULTS AND DISCUSSION

1. Absolute Competence of the Syar'iyah Court as a Special Court

Efforts to construct a unified court system in Indonesia are represented in the rule on judicial power, which designates the Supreme Court as the highest court by establishing four tiers of courts below it, each of which culminates in the Supreme Court (Mertokusumo, 2016: 218). This arrangement of judicial power demonstrates that the Indonesian judicial power system contains an organizational entity subordinate to the Supreme Court. The arrangement of judicial power as a single entity is further governed by Law No. 48 of 2009 pertaining to Judicial Power. This is consistent with the practice of settling cases in the judiciary beginning with the first level court (District Court), continuing through the appellate court (high court), and concluding with the cassation court (supreme court).

On its journey, judicial power encountered numerous dynamics. The establishment of a special court in one of the legal settings subordinate to the Supreme Court with the purpose of resolving conflicts of a unique nature is one of the developments of judicial power institutions. Because the establishment of this special court was motivated by a desire to increase the effectiveness of law enforcement activities in some industries that have their own laws according to the regulations. One of these courts is the Syar'iyah Court in the province of Aceh.

Special courts as one of the implementing institutions of judicial power are regulated in Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that special courts can only be established in one of the judicial environments under the Supreme Court. The Syar'iyah Court which is placed in two judicial environments as regulated in Law Number 50 of 2009 has resulted in the position of the Syar'iyah Court being ambiguous (Bahri, 2011: 7). This confusion is clear because the legal basis of the Syar'iyah Court, namely Article 3A paragraph (2) of Law Number 50 of 2009 is contrary to Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

The Syar'iyah Court as a special court in two judicial environments does make the position of the Syar'iyah Court unclear (Yusrizal, 2011: 66). Positioning the Syar'iyah Court as a special court in two judicial circles is not without reason. The strongest reason for placing the Syar'iyah Court in these two judicial environments is seen from the authority (absolute competence) possessed by the Syar'iyah Court itself (Pane, 2016: 45). The absolute competence possessed by the Syar'iyah Court is deemed to encompass the authority of the two judicial environments under the Supreme Court, namely the general court environment and the religious court environment, which then led to the establishment of the regulation on the Syar'iyah Court as outlined in Article 3A paragraph (2) as described above.

Article 128 paragraph (3) of Law No. 11 of 2006 states, "The Syar'iyah Court has the authority to examine, hear, resolve,

and settle disputes involving Islamic family law, civil law, and criminal law." The rule on the authority of the Syar'iyah Court, as stated in Article 128 paragraph (3) of Law No. 11 of 2006, can provide an overview of the power of the Syar'iyah Court, which is part of both the general judiciary and the religious court. observing the slice is really challenging. The difficulty also stems from the absence of additional regulations that specify the Syar'iyah Court's jurisdiction in the religious court environment and the Syar'iyah Court's authority in the general court environment.

In accordance with article 25 paragraph (2) of Law Number 48 of 2009, the general court as one of the implementers of judicial power in Indonesia has the jurisdiction to inspect, hear, and decide criminal and civil matters in line with legislative requirements. Regarding the authority of the general court, if it is coupled with the absolute competence of the Syar'iyah Court, it is abundantly obvious that it touches both the criminal and civil areas. Nonetheless, these two judicial authorities (the Syar'iyah Court and the general court) hold authority that differs in at least three ways.

The primary distinction between the authority possessed by the ordinary court and the Syar'iyah Court is based on the institution's ability to resolve cases. In resolving processed cases, the Syari'iyah Court bases its dispute settlement on Islamic Shari'ah law, which is summarized and codified in the form of a qanun. In contrast, conflict resolution in institutions comprising the general court is governed by the applicable national law, notably the Criminal Code or Civil Code and the Criminal Procedure Code/Civil Code.

The second distinction between the regular court and the Syar'iyah Court relates to their respective authority. It has become common knowledge that the syar'iyah court's authority is confined to the province of Aceh, whereas the general court's authority encompasses the entirety of the Republic of Indonesia's power. These two distinctions are readily apparent and can be comprehended in the context of the distinct origins of the

Syar'iyah Court and the General Court. Nonetheless, it is important to note that the general court and the Syar'iyah Court have a great deal of interaction in carrying out their duties as executors of judicial power in Indonesia.

The General Court and the Syar'iyah Court In carrying out their roles as executors of judicial authority in Indonesia, their legal objectives vary. Based on paragraph 2 of article 128 of Law No. 11 of 2006, the Syari'ah Court emphasizes that the Syar'iyah Court is a court for all Muslims in Aceh. According to the article's explanation, the syar'iyah court's jurisdiction is limited to Muslims in Aceh. However, the next article, article 129 paragraph (1), explains that in a criminal case involving two people, one of whom is of a non-Muslim religion, non-Muslims are permitted to choose and submit to the jinayah law in Aceh, voluntarily. In Aceh, the legal requirements for jinayah also apply to non-Muslim criminals (jinayah). The application is accompanied by a notice stating that the alleged offense is not covered by the Criminal Code (KUHP). With such an objective, the religious court is unquestionably distinct from the general court, which does not consider religion as affecting the operation of the court process, with the exception of a few civil issues that fall under its jurisdiction.

In accordance with Presidential Decree No. 11 of 2003, the Syar'iyah Court was initially intended as a successor for the existing religious courts in Aceh, with broader authority than the religious courts. While the religious courts established by article 25 paragraph 3 of Law Number 48 of 2009 have the jurisdiction to inspect, hear, decide, and settle disputes amongst Muslims in line with the law. The absolute jurisdiction possessed by the Syar'iyah Court, as explained above, encompasses both the religious courts and the general courts.

The Syar'iyah Court has complete jurisdiction, which covers criminal, civil, and family matters. From this authority, it may be concluded that the Syar'iyah Court has the same authority as a general court, with the exception that it applies Islamic Shari'a law while resolving cases. In Aceh, Islamic law is

employed as a legal instrument as a result of regional rules, a product of legislation in the hierarchy of legislation. In fact, such law is governed by Law No. 11 of 2006 pertaining to the Government of Aceh.

Qanuns are the regional regulations that serve as the foundation for administering the Syar'iyah Court in settling disputes as detailed above. In Aceh, the basis for upholding the law will therefore take precedence over national law. In question are the Criminal Code, the Civil Code, and the procedural rules in these two areas of law, which have been enforced in Aceh to date. However, the qanun does not at all eliminate the criminal and civil laws that apply in Aceh under the general court. Qanun was born as sharia laws which were codified as one of the positive laws in Aceh which was the implication of the opportunity to apply Islamic law given to the Aceh Province (Kamarusdiana, 2016: 153). The application of Islamic sharia law is highly dependant on how the Aceh Provincial Government and Aceh People's Representative Council produce a qanun (DPRA). Because these two institutions can become qanuns.

With its absolute competence, the Syar'iyah Court delivers logical consequences in the form of a law mandate that distinguishes it from the regular court system and religious courts. It is well knowledge that the general court has complete authority to investigate, adjudicate, decide, and resolve civil and criminal issues. This is highly relevant to the absolute competence possessed by the Syar'iyah Court, namely the ability to resolve matters in the realms of muamalah (civil law) and jinayah (criminal law). Regarding absolute competency in the realm of ahwal al-syakhsiyah (family law), it is classified as the atmosphere of a religious court.

Religious courts and ordinary courts are, in fact, two legal contexts under the jurisdiction of the Supreme Court, each with its own history and expertise. However, as two distinct contexts, the general court and the religious court have varying degrees of case-resolution jurisdiction. The intersection is visible from the point where the two courts meet. The point of contact that exists

between the general court and the religious court is quite probable, given that civil cases committed by Muslims are resolved by religious courts. This is in accordance with Article 1 point 1 of Law No. 50 of 2009 regarding the Second Amendment to Law No. 7 of 1989 regarding the Religious Courts, which restricts the religious courts to Muslim-only courts.

The absolute competence possessed by the Syar'iyah Court provides an explanation that the competence of the Syar'iyah Court is in the fields of civil law and criminal law based on Islamic Shari'ah law. The judicial power system in Indonesia provides a mandate regarding institutions that adjudicate cases of Islamic law to religious courts. This is explained in Article 25 paragraph (3) of Law Number 48 of 2009 concerning Judicial Power in Indonesia that religious courts have the authority to examine, hear, decide, and resolve cases between Muslims. This demonstrates that religious tribunals handle the resolution of Islamic religious disputes. In conjunction with this, the Syar'iyah Court is included in the Religious Courts room as one of the special courts in Indonesia that has absolute competence in the sphere of Islamic Shari'a law in the resolution of cassation-level cases before the Supreme Court.

The Syari'iyah Court's jurisdiction in the civil and criminal domains, based on Islamic Shari'ah sources, is consistent with the history of the application of Indonesian law, which acknowledges three legal sources: western sources, adat sources, and Islamic sources ([Kamarusdiana, 2016: 151](#)). Islamic law as one of the sources of law in Indonesia is full of the social conditions of the Indonesian people, the majority of which are Muslims. This also encourages consideration of the need for Islamic law to be accommodated in the legal system in Indonesia, although it is not fully codified into formal regulations.

The fact that the source of the law applied in Aceh is Islamic law does not contradict the history of law application in Indonesia. Moreover, Islamic law that has arisen in Indonesia applies not only in a formal juridical manner, namely positive law since it is assigned or based on statutes, but also normatively,

such as laws that regulate human relations with God (Ali, 1997: 73). It is increasingly clear that the competence of the Syar'iyah Court is basically in the area of Islamic law which covers both the civil and criminal fields. Thus, it can be simplified regarding the absolute competence possessed by the Syar'iyah Court, namely in the field of Islamic law.

2. The Position of the Syar'iyah Court with its Absolute Competence in the Judicial Power System in Indonesia

As one of Indonesia's judicial power implementers, the Syar'iyah Court is governed by a minimum of three laws and regulations. These laws and regulations are: (1) Law Number 18 of 2001 on Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam; (2) Presidential Decree Number 11 of 2003 on the Syar'iyah Court and the Provincial Syar'iyah Court in the Province of Nanggroe Aceh Darussalam; (3) Law Number 11 of 2006 on the Government of Aceh; and (4) Law Number 50 of 2009 on the second amendment to Law Number Different rules and regulations governing the position of the Syar'iyah Court differ as follows:

1. Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam.
2. Presidential Decree No. 11 of 2003 states that the Syar'iyah Court is a substitute for the existing religious courts in the Province of Nanggroe Aceh Darussalam with the authority possessed by the religious courts.
3. The authority of the Syar'iyah Court, which encompasses the domains of ahwal al-syakhsiyah (family law), jinayah (criminal law), and muamalah, is added to the executor of judicial power within the religious court environment by Law No. 11 of 2006. (civil law).
4. Law Number 50 Year 2009 confirms that the sharia court

in Aceh (mahkamah syar'iyah) is a special court within the religious courts and general courts.

Law Number 50 of 2009 is the statutory rule concerning religious courts that specifies the Syar'iyah Court is a special court for the reasons stated above. However, the Syar'iyah Court is placed in two different legal environments according to the provisions of the Legislation, which directly violates the law on judicial power, the primary reference for the use of the judicial system in Indonesia (Rajab, 2016: 33). One of Aceh's four privileges is the implementation of Islamic law kaffah, and this requires careful deliberation in order to arrive at the best possible formulation for the Syar'iyah Court (Kamarusdiana, 2016: 152).

In the regulation of the Syar'iyah Court as a special court in the general court environment and the religious court environment, the authority possessed by the syar'iyah court is taken into account. As is well-known, the Syar'iyah Court's authority is broader than that of the religious court and includes a portion of the general court's authority (Bahri, 2011: 8). The breadth of the Syar'iyah Court's authority has an effect on its position and standing within Indonesia's judicial power structure. Because the special court, as one of the implementers of judicial power in Indonesia with many versions and types, must be consistent with the basis of its constitutionality as a special court, it must be founded on the constitution.

After the modification, the Constitution of the Republic of Indonesia imposes tight limitations on the existence of Indonesia's four distinct judicial systems. Thus, the many forms, types, and variants of special courts must exist in one of the constitutionally recognized judicial environments. This is directly related to the role of a special court's judicial authority that must be carried out in accordance with the judicial environment in which its authority is exercised. Regarding the authority of the Syar'iyah Court, this is non-negotiable, as it is part of the increasing desire of the Acehnese to execute Islam in a kaffah manner (Mahmudah, 2012: 413).

Ideally determining the position of the Syar'iyah Court in

the judicial power system in Indonesia is a must. Judging from the laws and regulations governing the Syar'iyah Court, in this case an understanding of the legal hierarchy is very important. With regard to the hierarchy of legislation, there must not be a law that conflicts with higher regulations (Rimdan, 2012: 34-35). The Syar'iyah Court, which currently exists in Aceh, as described above, is an implementing agency for judicial power with various legal instruments that regulate it.

The legal instrument that rules the Syar'iyah Court, if it is traced back to a higher regulation, is Law Number 48 of 2009 regarding Judicial Power. Article 24 of the Constitution of the Unitary State of the Republic of Indonesia regulates judicial power, which is reflected in the substance of Law Number 48 of 2009 pertaining to Judicial Power. Article 24 paragraph 3 of the Constitution of the Unitary State of the Republic of Indonesia is proof that the legislation on judicial authority is a constitutional obligation, as it clearly indicates that the formation of other bodies connected to judicial power is governed by law.

The science of legislation that develops introduces 2 models of the birth of a statutory regulation as a result of orders from other statutory regulations. The two models of legislation are often referred to as delegation and attribution. As is well known, attribution is the creation of (new) authority by the constitution/grondwet or by legislators (wetgever) which is given to a state organ, both existing and newly formed for it (Attamimi, 1990: 352). The purpose of attribution is a statutory regulation formed on the basis of the authority to form a statutory regulation based on a statutory regulation. To better understand this, Article 10 paragraph (1) point c of Law Number 12 of 2011 concerning the Establishment of Legislations explains that one of the contents that must be regulated by law is the order of a law to be regulated by law.

The adoption of Law Number 50 of 2009 on Religious Courts is a consequence of Law Number 48 of 2009 on Judicial Authority. This is evident from at least two factors. The first indication that Law Number 50 of 2009 is an attribution of Law

Number 48 of 2009 is the phrase in Article 28 of Law Number 48 of 2009 concerning Judicial Power, which states: "The composition, power, and procedural law of the Supreme Court and its subordinate judicial bodies are governed by law." Regarding the adoption of Law Number 50 of 2009, the Supreme Court is part of the judiciary in this instance. The second indication that Law Number 50 of 2009 is an attribution of Law Number 48 of 2009 is that the legal basis for Law Number 50 of 2009 is Law Number 48 of 2009 respecting Judicial Power, as stated in the preamble of Law Number 50 of 2009.

The description of the attribution highlights the position between Law No. 48 of 2009 and Law No. 50 of 2009 as a hierarchy in the Indonesian legal system, indicating whether or not Law No. 50 pertaining to Religious Courts must be in accord. in violation of Law Number 48 of 2009 regarding Judicial Power. The clearer the stance of these two laws, the stronger the argument that the Syar'iyah Court regulation in two judicial circles is erroneous and unconstitutional.

After the 1945 Constitution of the Unitary State of the Republic of Indonesia was strengthened by the law on judicial power, placing the law on judicial power in the top position became a reference for the exercise of judicial power in Indonesia (Rajab, 2016: 33). Article 27 paragraph (1) of Law Number 48 of 2009 specifies that special courts can only be constituted in one of the judicial environments subordinate to the Supreme Court. Article 27 paragraph (1) of the law on judicial power should cancel the sound of Article 3A paragraph (2), which declares that the Syariat Court in Aceh (Syar'iyah Court) is a special court inside the general court and religious court environments. In addition, the authority of the Syar'iyah Court influences the regulations set in these two environments.

The authority of the Syar'iyah Court in general is in the form of authority in the field of criminal and civil law based on Islamic Shari'ah law. To further analyze the position of the Syar'iyah Court, in determining what kind of special court should be in what environment, the options are limited to

religious courts and general courts. Given the Syar'iyah Court's unrivaled expertise in Islamic law and the prospect of further study into the resolution of cassation disputes from the Syar'iyah Court at the Supreme Court, which is part of the Religious Courts room, it seems reasonable to classify the Syar'iyah Court as a subset of the Religious Courts.

The Syar'iyah Court as one of the special courts in Indonesia that has been recognized for its existence in fact does have a juridical basis in its formation, namely through law. Various arrangements regarding this syar'iyah court have grown from the beginning to the present day. Various laws and regulations have differences from each other which basically have the same goal, namely to create a good system within the scope of judicial power. However, in order to have a constitutional basis, the regulation regarding the Syar'iyah Court must not conflict with the existing and higher statutory regulations. The law in question is Law Number 48 of 2009 concerning Judicial Power in Indonesia as the main reference in the practice of judicial power in Indonesia.

D. CONCLUSION

Law Number 50 of 2009 establishes the Syar'iyah Court as a special court inside the Religious Courts and the General Courts, which runs counter to Law Number 48 of 2009 respecting Legal Power, which specifies that special courts can only be constituted in one judicial setting under the Supreme Court. Consequently, the Syar'iyah Court's current stance has crossed the line into unconstitutional territory.

Its total competence is completely based on Islamic Sharia because it covers the disciplines of *ahwal al-syakhsyah* (family law), *jinayah* (criminal law), and *muamalah* (civil law), all of which are based on Islamic Shariah law. Because of its unmatched level of expertise, the Syar'iyah Court should operate only within the context of other religious courts.

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