

The Existence of the Syar'iyah Court in the Province of Nanggroe Aceh Darussalam According to the Indonesian Judicial Power System

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ABSTRACT

The Sharia Court is a special court that is implemented only in the province of Nanggroe Aceh Darussalam as a customary court. The judicial power of the Constitutional Court should be under the authority of the Supreme Court. The problem examined in this study is the existence of the Sharia Court as a special court in the judicial power system in Indonesia. The research method used is normative juridical research which is aimed at finding and formulating legal arguments through analysis of the main issues. The results of this research explain that the existence of the Syar'iyah Court is based on Law Number 50 of 2009 which places the Syar'iyah Court as a special court within the Religious Courts and General Courts. This is different from Law Number 48 of 2009 concerning Judicial Power which states that special courts can only be formed in one of the judicial environments under the Supreme Court. Therefore, there are differences in understanding the existence of the Syar'iyah Court based on statutory regulations, so there is a need to harmonize statutory regulations to establish a Syar'iyah Court.

Keywords: Sharia Court; Judicial Power; Special Court.

I. INTRODUCTION

Judicial power is the main characteristic of the rule of law (*rechtsstaat*) and the principle of the rule of law (Assiddiqie, 2007). As one of the executors of judicial power, the Sharia Court oversees the implementation of Islamic law in Aceh (Bakar, 2006), has the effect of granting authority by law in the form of examining, adjudicating, deciding and resolving cases covering the fields of *al-ahwal al-syakhsiyah* (family law), *muamalah* (civil law) and *jinayah* (criminal law) whose enforcement is based on regional regulations

that called *qanun* (Santoso, 2003). The existence of the Sharia Court is an implication of the enthusiasm of the people of Aceh to enforce Islamic law in a strict manner. This is reinforced by the enshrinement of Sharia laws in *Qanun* which is an implication of the opportunity to implement Islamic Sharia given to the province of Aceh (Kamarusdiana, 2016). The Syar'iyah Court with its absolute competence gives the position of the Syar'iyah Court as a special court in the system of judicial power in Indonesia (Assiddiqie, 2013). 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 formed 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 Courts in Aceh in two judicial environments, namely the Religious Courts and the General Courts. This resulted in the position of the Sharia Court in Aceh becoming unclear (Yusrizal, 2011).

The formation of the Sharia Court in Aceh began with the granting of special autonomy to the province of Aceh (Bakar, 2006). The granting of special autonomy was marked by the issuance of Decree of the People's Consultative Assembly 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 Aceh Government. The granting of special autonomy is related to the government system implemented in Indonesia, namely the decentralized system (Jalil, 2010). This decentralization system is one of the foundations for implementing regional autonomy in Indonesia and the emergence of the concept of asymmetric decentralization which gave birth to

special autonomy and special autonomy which were implemented in the province of Aceh.

The existence of the Syar'iyah Court has greatly influenced the legal order of the Republic of Indonesia. 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 scope of the Religious Courts. However, this is different from Law Number 50 of 2009 concerning Religious Courts which stipulates that the Sharia Court is within the scope of the Religious Courts and General Courts. The position of the Syar'iyah Court which is located in two areas of religious justice is based on the authority it has (Pane, 2016). This resulted in the position of the Sharia Court becoming ambiguous.

The confusion that occurred was compounded by the formation of the Syar'iyah Court in Aceh which was initially designed not as a special court, but could be said to be a replacement for the position of the Religious Court in Aceh but with broader authority than the authority of the Religious Court. In this regard, it has become common knowledge that Law Number 48 of 2009 concerning Judicial Power, which is the main reference in the implementation of judicial power in Indonesia, provides 4 judicial environments under it, which until now the Syar'iyah Court is not included in one of the areas/judiciaries below the Supreme Court either because of its district scope or because of the authority it has.

The existence of the Syar'iyah Court in Aceh began with Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Aceh Darussalam Province, which was then issued by Presidential Decree Number 11 of 2003. When it was first established, the Aceh Syar'iyah Court replaced the position of the Religious Courts in Aceh. This is confirmed through article 1 paragraph (1) of Law Number 11 of 2003 which states that the Religious Courts in the Province of Nanggroe Aceh Darussalam were changed to the Syar'iyah Court which makes the position of the Syar'iyah Court the same as the Religious Court as a Judiciary within the Supreme Court.

The position of the Syar'iyah Court is then clarified by Article 128 paragraph (1) of Law Number 11 of 2006 concerning the Government of Aceh which states that "Shari'a Court in Aceh is part of the national justice system within the Religious Court environment which is carried out by the Syar'ia Court. Yes, free from influence from any party." In this law, the Sharia Court is placed within the Religious Courts, no longer as a

replacement for the Religious Courts in Aceh Province.

The jurisdiction of the Syar'iyah Court in Aceh is then explained again in Article 3A paragraph (2) of Law Number 50 of 2009 concerning Religious Courts that the Syari'ah Court in Aceh (Syar'iyah Court) is a Special Court within the Religious Court and General Court. This arrangement makes the position of the Sharia Court in Aceh ambiguous. This is caused by looking at Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that "Special courts can only be formed in one of the judicial environments under the Supreme Court".

The confusing position of the Syar'iyah Court in Aceh in the Republic of Indonesia's constitutional system is caused by the authority possessed by the Syar'iyah Court which is broader than the religious court and takes part of the authority possessed by the general court. Therefore, the problem is the existence of the Syar'iyah Court as a special court in the judicial power system in Indonesia.

II. RESEARCH METHODS

The research used is normative descriptive research or it can also be said to be normative juridical research. This research is research aimed at finding and formulating legal arguments through analysis of the main issues. In the normative legal approach, law is conceptualized as what is written in legislation (law in book) or law is conceptualized as rules or norms which are standards for appropriate human behavior. Viewed from an application point of view, this research is problem-focused research, namely the problem studied is based on the existence of the Sharia Court implemented in Aceh which has special regional court characteristics implemented in regions that have special autonomy. Data obtained through library research which is carried out by searching, finding and studying it from books, articles, statutory regulations, the internet and research results.

III. RESULTS AND DISCUSSION

3.1. Judicial Power, Special Courts and Sharia Courts

Power is a translation of the word power (Sadily, 2005) which can be interpreted as authority: authority, right to act, expert and authority, and strength: strength, power, and power; and control (Chunningham, 1982): supervision, monitoring, regulation, control and limitation. Justice comes from the word judge and is a translation of the word judge or justice which is often interpreted as

judge and/or court. Judicial power can be interpreted linguistically as a power possessed by judicial institutions and/or institutions (Aripin, 2008).

Article 1 number 1 of Law Number 48 of 2009 concerning Judicial Power defines judicial power as the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution, for the sake of the implementation of the rule of law of the Republic of Indonesia. This means that there is a judicial power that is separate from government power and legislation and is independent from the influence of these two powers (Saleh, 1976). It is increasingly clear that judicial power is becoming an independent and independent institution. Judicial power is very closely related to the rule of law. The relationship between judicial power and the rule of law is that judicial power is considered as one of the characteristics of the rule of law (*rechtsstaat*) and the implementation of the rule of law (Aripin, 2008). As a country of law, Indonesia is right to build an independent judiciary. Harun Al-Rasyid stated that judicial power is independent power apart from the influence of government power, which must be guaranteed in the law regarding the position of judges (Al-Rasyid, 1986). It is appropriate that this guarantee should not only be given to judges, but also to the judiciary as a whole with the aim of being able to carry out its duties and functions based on the law (Aripin, 2008).

The special judiciary as one of the institutions implementing judicial power in Indonesia has experienced quite significant developments. This is because the Indonesian justice system is undergoing a very widespread process of structural differentiation, deconcentration, and even institutional deconstruction (Assiddiqie, 2013). One of the factors that causes this is the increasing need for legal solutions from society by prioritizing the principles of justice. The implication is that various special courts and co-judicial institutions have emerged in Indonesia.

The emergence of various special courts is also caused by the desire to make law enforcement efforts more effective in certain fields which, if seen from the regulations, have their own laws (Assiddiqie, 2013). Regulations regarding this special judiciary are clearly contained in Law Number 48 of 2009 concerning Judicial Power. The regulation of special courts in this law shows that special courts are a sub-system of the justice system that exercises independent judicial power (Assiddiqie, 2013). This situation has the effect that every time there is a new law, the idea of

establishing a special court in this field will reappear.

At the beginning of the development of law and judicial power in Indonesia, the Special Court was known as the antonym of the court in general. The court that existed at that time was a legacy court from the Dutch East Indies government in the form of a tiered court starting from first instance, appeal to cassation. These tiered courts are known as general courts. Meanwhile, courts outside the general court are called special courts, such as religious courts originating from "priesterraad" and others (Assiddiqie, 2013).

The existence of special courts in Indonesia is not something new, based on historical records, several special courts have been established and recognized to examine, try and decide on certain cases or objects, for example at the beginning of independence they were known as *swapraja* courts and *adat* courts (Nasional, 2007). The development of special courts shows that special courts have become one of the pillars in resolving various disputes in society by focusing on certain cases. In the next stage, special justice emerged as an answer to various distrust related to the performance of the judiciary.

The development of the judiciary in the world has greatly influenced the process of growth and development of the judiciary in Indonesia. This can be marked by the emergence of Article 7 paragraph (1) of Law Number 19 of 1964 which divides the judicial environment into three, namely the General Court, special court (religious court), and State Administrative Court. This law was then corrected during President Soeharto's government with Law Number 15 of 1970 by placing the Religious Courts no longer as special courts, but as one of the courts under the Supreme Court and adding military justice to it (Nasional, 2007). Provisions regarding special courts were further accommodated by Law Number 4 of 2004, that special courts can only be formed in one of the judicial environments under the Supreme Court. Every existing special court must be returned to one of the Religious Courts, General Courts, Military Courts or State Administrative Courts (Nasional, 2007). This provision became the basis for the emergence of various special courts which later developed in Indonesia.

Special justice is one of the legal objectives in the order of judicial power in Indonesia, which currently cannot be separated from a stage of justice called general court, and apart from general court there is also special court (Assiddiqie, 2013). Before Indonesia became independent, a judicial institution was formed

which had levels starting from the first level, appeal to cassation, which was referred to using the word general court. The mention of general justice has an impact on other forms of judicial institutions such as special courts such as religious courts (priesterraad) which existed in the pre-independence period of the Republic of Indonesia (Assiddiqie, 2013). The development of the view of special courts is as a judicial process that existed in general courts until the emergence of state administrative courts that developed in European countries.

This special court, which was then called the swapraja court, emerged as a result of the existence of various swapraja regions which had their own courts based on their respective customary laws. The existence of this judiciary continued to exist from before colonialism to Dutch colonialism and Japanese colonialism. The existence of autonomous courts and customary courts ended after the issuance of Emergency Law Number 1 of 1951 as an implementer of the Temporary Constitution, which required unity in the structure and procedures of civil courts (Muhammad, 2006).

The emergence of state administrative courts in Europe which are under the Supreme Court has given rise to a new view of the judiciary in Indonesia. This can be proven in Article 7 paragraph (1) of Law Number 19 of 1964 which recognizes the division of justice into 3, namely general court, special court (religious court), and state administrative court. Law Number 19 of 1964 illustrates that at that time there was already an idea regarding the establishment of a special court even though the term special court was not explicitly mentioned. However, in the explanation of the law there are regulations that indicate that special courts or specialization in one court can be established (Assiddiqie, 2013).

Views regarding the judicial system in Indonesia continued to develop until they were updated during the reign of President Soeharto (Assiddiqie, 2013) through Law Number 14 of 1970 by dividing the Supreme Court into general courts, state administrative courts, religious courts and military courts. This is the view that continues to be used today. In Law Number 14 of 1970, regulations regarding special courts are not explicitly stated. However, from the general explanation of this law it is very possible for the formation of a special court under the Supreme Court (Assiddiqie, 2013). Special courts as an alternative for resolving cases continue to develop in line with existing legal developments in Indonesia.

Judicial reforms carried out in the period after the regime were immediately adopted at the time of the amendment to the 1945 Constitution. The constitutionality of this judicial institution is contained in Article 24 paragraph (2), namely, "judicial power is exercised by a Supreme Court and the judicial bodies subordinate to it in the general judiciary, judiciary religion, military justice, and state administrative court, and by a Constitutional Court".

3.2. Independent Judicial Power

Judicial power as a judicial institution in Indonesia basically has 3 basic principles, namely: (1) the principle of independent judicial power (the independence of judiciary); (2) the judiciary consisting of the Supreme Court and 4 judicial institutions under it, as well as a Constitutional Court plus other bodies regulated by law; (3) The Judicial Commission which maintains and upholds the honor, integrity and dignity of a judge (Assiddiqie, 2013). Judicial power as a state institution that has the authority as a judicial institution should have independent power in carrying out its duties. The independence of the institution of judicial power is well explained in the 1945 Constitution which states that judicial power is independent power to uphold law and justice. It is increasingly clear that the independence of judicial power is absolute. In connection with independent judicial power, Paulus Effendi Lotulung (2003) also argued that independent or independent judicial power is universal.

The independence of judicial power needs to be truly maintained so that the existing law enforcement process can achieve justice. In order to realize the independence of judicial institutions, clear parameters are needed to determine the benchmarks for whether a judicial institution is independent or not (Rimdan, 2012). The independence of this institution is very important in an existing government structure. Guaranteeing the independence of judicial institutions is an absolute thing that must be realized. The independence of the Judicial Power can be seen at least from the institution, the judicial process and the independence of the judges (Hastuti, 2005).

One indicator that the judicial power institution is not independent can be seen from the position of the judicial power institution. If an institution of judicial power is subordinate to another institution hierarchically or structurally, then the integrity and independence of that institution of judicial power can be interfered with by other institutions in enacting a law or decision or in organizing the institution of judicial power

(Hastuti, 2005). Independent judicial power should be a necessity in a rule of law (Adji, 1980), the same thing expressed by Oemar Seno Adji (Adji, 1980) that a rule of law must fulfill the requirements of a judiciary that is free and "indispensable" in a society under "rule of law". This requirement for judicial independence is also agreed by The Universal of Human Rights which requires the existence of an "impartial tribunal". According to F.J.F.M. Duyustee, there are two kinds of freedom that judges should have, namely functional freedom and personal freedom (Adji, 1980). Judges as one of the main pillars in the process of upholding justice within the scope of justice should also have freedom and independence in carrying out their functions.

In the Republic of Indonesia, regulations relating to independent power are strictly regulated in Article 24 paragraph (1) of the 1945 Constitution which states that "judicial power is independent power to administer justice to uphold law and justice". This provision of independent judicial power was then implemented in Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which confirms that: "Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the Constitution 1945, for the sake of implementing the legal state of the Republic of Indonesia." Thus, it is hoped that with a democratic rule of law, independent judicial power can be realized and not just a description of pseudo-words in the Constitution (Adji, 1980).

3.3. Special Autonomy for the Government of Nanggroe Aceh Darussalam Province

In accordance with Article 18B paragraph (1) of the 1945 Constitution, it is explained that the state recognizes and respects special or special regional government units that are regulated by law. Thus "special words" have a broad scope (Manan, 2001), partly because it is possible to form regional governments with special autonomy (for example Aceh and Papua). Before being amended, Article 18 mentioned the division of Indonesian regions into large and small regions, with the form of government structure determined by law by observing and remembering the basis of deliberation in the state government system and the rights of origin in special regions. The basic word deliberation in the state government system undoubtedly contains the meaning of democracy.

Before reform, regional government administration was not carried out as it should, regions were not empowered to be independent but were made completely dependent and had to obey

the will of the center. Regional household affairs are limited and completely supervised. Regional finances are completely dependent on the kindness of the central government. This kind of thing causes tremendous disappointment in the region. Post-reformation, regional governments have the authority to regulate and manage their own households, namely: (1) giving tasks and authority to carry out something that has been handed over to the regional government; (2) giving trust and authority to think about, take the initiative and determine the ways of carrying out these tasks; (3) In an effort to think about, take the initiative and make decisions, involve the community either directly or through the Regional People's Representative Council (Manan, 2001).

In administering government, it provides opportunities and freedom to regional governments in implementing regional autonomy. Therefore, the term decentralization in the administration of regional government in Indonesia is often interpreted as a means of implementing regional autonomy. The provisions governing the relationship between the central government and regional governments are not specific or exclusive (Manan, 1994), there are no statutory regulations that specifically regulate all aspects between the central government and regional governments. The development of state administration in Indonesia means that the regulation of regional autonomy has progressed, apart from implementing broad, real and responsible autonomy, it also regulates (legally) special autonomy given to two provincial regions, namely the Special Region of Aceh and Irian Jaya (Papua) as specified in Decree no. IV/MPR/1999 which states: "In the framework of developing regional autonomy within the Unitary State of the Republic of Indonesia, as well as to resolve fairly and comprehensively regional problems that require immediate and serious handling, it is necessary to take the following steps: maintaining the integration of the nation within the Unitary State of the Republic of Indonesia by respecting the equality and diversity of the socio-cultural life of the people of Aceh and Irian Jaya (Papua) through the establishment of the Special Region of Aceh and Irian Jaya (Papua) as a special autonomous region regulated by law."

Subsequently, Law Number 18 of 2001 concerning Special Autonomy for the Province of Nanggroe Aceh Darussalam was passed (State Gazette No. 114 of 2001, 9 August 2001). This law was then replaced by Law Number 11 of 2006 concerning Aceh Government (UUPA). In principle, this law regulates special authority for the Nanggroe Aceh Darussalam Provincial government

which is different from the authority of other regional governments as regulated in Law Number 18 of 2001, Law No.32 of 2004 and Law Number 33 of 2004. Regional authority in implementing special autonomy is to carry out authority that is still the authority of the central government. The definition of special in general is that implementation is specifically in accordance with the characteristics and conditions of the area concerned. According to Article 7 of Law no.11 of 2006: (1) The Aceh and district/city governments have the authority to regulate and manage government affairs in all public sectors except government affairs which fall under the authority of the Government. (2) The authority of the Government as intended in paragraph (1) includes national government affairs, foreign policy, defense, security, justice, national monetary and fiscal, and certain matters in the field of religion; (3) In carrying out governmental authority within its authority as intended in paragraph (2), the Government may: (a) carry out it yourself; (b) hand over some government authority to the Aceh government and district/city governments; (c) delegate a portion to the Governor as the representative of the government and/or government agency; and (d) assign some affairs to the Aceh Government and district/city and gampong governments based on the principle of co-administration. In order to implement these provisions in Aceh, provisions are needed at the implementation level, both in the form of supporting regulations issued by the Government and regulations issued as regional legal products. To support these interests, the Government must issue no less than 7 (seven) government regulations and 3 (three) presidential regulations. Apart from that, regional legal products are in the form of Qanuns which must be issued by the Aceh Government, not to mention Qanuns at the Regency/City level.

Regulations regarding special autonomy for certain regions in the Unitary State of the Republic of Indonesia cover all aspects, so that each region can demand specificity based on certain factors without any general criteria stipulated in law. Especially if the specialty contains certain privileges that other regions do not have (Manan, 2001). This is because the aspirations of the people in the area are diverse. Therefore, a view that generalizes potential capabilities, situations and circumstances for each region is misguided (Manan, 1994).

3.4. Development of the Sharia Court in Nanggroe Aceh Darussalam Province

The inclusion of Islamic religious teachings is reinforced by various historical literature which mentions the establishment of various kingdoms such as the Peurleuk Islamic kingdom, the SamuderaPase Islamic kingdom, the Benua Islamic kingdom, the Linge Islamic Kingdom, the Pidie Islamic Kingdom, the Jaya Islamic Kingdom, and the Daarussalam Islamic kingdom by making Islam its the basis of the state (Hasymy, 1983). Islam was used as the basis of the state in these kingdoms, strengthened by the existence of the "Rukun Kingdom" provisions which were taken from Islamic teachings in four cases, namely: (1) Sword of justice. If there is no sword there is no kingdom; (2) Qalam. If there is no law book then there is no kingdom; (3) Science. If you don't know the knowledge of the world and the afterlife, you can't manage the kingdom; and (4) Kalam. If there is no language, then the Kingdom cannot exist (Hasymy, 1983).

The logical consequence of taking Islamic teachings as the basis of the state is law enforcement based on Islamic teachings. In order to enforce this law, various judicial bodies were formed at that time. This can be seen in the history of the Islamic kingdom of Daarussalam, which during its reign established a judicial institution consisting of various levels, namely: (1) HukomPeujroh, namely the court in each village chaired by a Keuchik; (2) Mukim Court, namely a low-level court chaired by an Imam Meukim; (3) Ulebalang Court, namely the court that hears cases that cannot be resolved at the Mukiem Court level, this judicial body has used judges in resolving cases; (4) PanglimaSagoe Court, namely the court that resolves cases that were not resolved at the previous level; and (5) Supreme Court, namely the high court at the royal level to resolve cases that cannot be resolved by lower judicial institutions and major cases based on decrees from the sultan (Ritonga, 2004).

The history of the judiciary in Aceh is proof that since ancient times there has been a tiered court system from the village or village level to the kingdom or central level. During the Dutch colonial period, this Islamic court was then used as a customary court (Ritonga, 2004). However, during the Japanese colonial period, this religious court was strengthened again, although it was limited to civil cases regarding marriage and Faraidh (Inheritance). At the time of independence, as the unitary state of the Republic of Indonesia, the same thing applied to every region by establishing every religious court in all regions of Indonesia. The

Religious Courts in Aceh were later changed to the Syar'iyah Court as a form of special autonomy for the Aceh region based on Law Number 18 of 2001. However, despite this, the Syar'iyah Court remains part of the national justice system as confirmed in article 25 paragraph(1) Law Number 18 of 2001.

The existence of the Syar'iyah Court in Aceh was then strengthened by the issuance of Presidential Decree Number 11 of 2003 concerning the Syar'iyah Court and Provincial Syar'iyah Court in Aceh Province which confirmed through article 1 paragraph (1) that "Religious courts exist in Nanggroe Province Aceh Darussalam was changed to the Syar'iyah Court." This Presidential Decree places the Syar'iyah Court as a judicial institution that originally existed in religious courts. At the beginning of the formation of the Syar'iyah Court with Presidential Decree Number 11 of 2003, it was still limited to the authority possessed by the religious court plus authority in the field of worship and Islamic propagation which would later be regulated in the Qanun. So, one of the sources of law in making decisions at the Sharia Court is Qanun, which is a regional regulation made for the implementation of special autonomy in Aceh. The birth of Qanun is an implication of the opportunity to implement Islamic law given to the province of Aceh.

The next development regarding the Sharia Court was the issuance of Law Number 11 of 2006 concerning the Government of Aceh. Article 128 paragraph (3) of Law Number 11 of 2006 gives the Syar'iyah Court the authority to examine, try, decide and settle cases covering the fields of al-ahwal as-syakhsyah (family law), muamalah (civil law), and jinayah (criminal law) which is based on Islamic law. The authority possessed by the Sharia Court is indeed quite extensive beyond the authority possessed by the religious courts as the environment within which the Sharia Court is limited. The use of procedural law in religious courts and general courts regulated in this law apparently changes the position of the Sharia Court in the system of judicial power. This can be seen in article 3A paragraph (2) of Law Number 50 of 2009 concerning Religious Courts that "the Islamic Sharia Court in the province of Nanggroe Aceh Darussalam is a special court within the religious court environment as long as its authority concerns the authority of religious justice and the environment. general judiciary as long as its authority concerns the authority of the general judiciary." The regulation of the Syar'iyah Court based on Law Number 50 of 2009 places the Syar'iyah Court as a special court which is in two environments at once, namely the general court and

the special court with consideration of the authority possessed by the Syar'iyah Court. With this Law, at least it provides clarity on the position of the Sharia Court as a special court in the judicial power system in Indonesia.

3.5. Absolute Competence of the Sharia Court as a Special Court

One of the developments in the institution of judicial power is the existence of a special court located in one of the judicial environments under the Supreme Court which is intended for resolving special disputes. The emergence of this special judiciary was caused by the desire to make law enforcement efforts more effective in certain fields which, when viewed from the regulations, have their own laws (Assiddiqie, 2013). The various special courts that have emerged each have their own regulations based on statutory regulations. The emergence of various special courts cannot be separated from the increasing number of legal experts in Indonesia who see it as important to establish special courts as a form of embodiment of one of the goals of law, namely benefit.

Special justice in Indonesia is very developed with various legal dynamics that exist in the midst of society. The legal dynamics that are developing in society have resulted in the growth and development of various special courts that are in line with the demand for a judicial institution that can resolve cases more effectively. The legal basis for the Sharia Court as a special court is Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. The regulation of the Sharia Court as a special court, can be seen in article 3A paragraph (2) of Law Number 50 of 2009 which states that "The Islamic Sharia Court in Nanggroe Aceh Darussalam Province is a special court within the religious court as long as its authority concerns judicial authority. religion and is a special court within the general court with its authority concerning the authority of the general court." The basis of this arrangement places the Syar'iyah Court as a special court which is located in two courts, namely the general court and the religious court.

The Syar'iyah Court which is placed in two courts as regulated in Law Number 50 of 2009 has resulted in the position of the Syar'iyah Court being confused (Bahri, 2011). This confusion occurs because the legal basis of the Syar'iyah Court, namely article 3A paragraph (2) of Law Number 50 of 2009, is in conflict with Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Article 128 paragraph (3) of Law Number 11 of 2006 states that "the Syar'iyah Court has the

authority to examine, adjudicate, decide and settle cases covering the fields of *ahwal al-syahksiyah* (family law), *muamalah* (civil law), and *jinayah* (criminal law) which is based on Islamic law. The regulation regarding the authority of the Syar'iyah Court in article 128 paragraph (3) of Law Number 11 of 2006 can provide an overview of the authority of the Syar'iyah Court which is the area of general justice and also the area of authority which is part of the actual religious court. To see its authority is very difficult. The difficulties that occur are also caused by the absence of further regulations explaining what authority of the Syar'iyah Court is in the religious courts and which authority of the Syar'iyah Court is in the general court.

Positioning the Sharia Court as a special court in two courts is not without reason. The strongest reason for placing the Syar'iyah Court in these two courts is seen from the authority (absolute competence) possessed by the Syar'iyah Court itself. The absolute competence possessed by the Syar'iyah Court is considered to cover the authority of the two courts under the Supreme Court, namely the general court and the religious court, which then underlies the birth of regulations regarding the Syar'iyah Court. At the beginning of its formation, the Syar'iyah Court based on Presidential Decree Number 11 of 2003 was designed as a replacement for the existing religious courts in Aceh with broader authority than the religious courts. Meanwhile, religious courts based on article 25 paragraph (3) of Law Number 48 of 2009 have the authority to examine, try, decide and settle cases between people who are Muslim in accordance with the provisions of statutory regulations. The absolute competence possessed by the Syar'iyah Court as explained above indeed includes the two courts, namely the religious court and the general court.

The Sharia Court has absolute competence covering criminal cases, civil cases and family cases. This authority, it can be said that the authority it has is the same as the authority of the general judiciary, only that the Syar'iyah Court in resolving the case uses Islamic Sharia law as its legal instrument. Islamic Sharia law which is used as a legal instrument in Aceh is the result of a product of statutory regulations called regional regulations. Such laws and regulations are also regulated in Law Number 11 of 2006 concerning the Government of Aceh. The Syar'iyah Court, with its absolute competence, provides logical consequences in the form of a statutory mandate which makes the Syar'iyah Court a special court for general courts and religious courts. The general

judiciary has absolute competence in the form of examining, adjudicating, deciding and resolving civil and criminal cases. This is very relevant to the absolute competence possessed by the Syar'iyah Court, namely absolute competence in the form of resolving cases in the areas of *muamalah* (civil law) and *jinayah* (criminal law). This relates to absolute competence in the field of *ahwal al-syahksiyah* (family law) which is categorized within the scope of religious justice.

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 sharia law. Basically, this absolute competence is closely related to the absolute competence possessed by the general judiciary, noting that the absolute competence possessed by the Syar'iyah Court originates from Islamic sharia law in resolving cases in the civil and criminal law fields. Apart from that, in order to carry out its functions the Syar'iyah Court has its own statutory regulations. The Syar'iyah Court with its competence in the civil and criminal fields by taking legal sources from Islamic sharia is in accordance with the history of the application of Indonesian law which recognizes 3 (three) legal sources, namely legal sources originating from European law, legal sources originating from custom, and sources of law originating from Islam. Islamic law as a source of law in Indonesia is full of the social conditions of Indonesian society, where the majority of the population is Muslim. This also encourages consideration of the need for Islamic law to be accommodated in the legal system in Indonesia even though it is not fully codified into formal regulations.

The Syar'iyah Court as a special court with a history of its formation can be said to be the only special court that was issued not based on the need to more effectively resolve disputes, but rather to meet the legal needs that are developing in society. The basis for the formation of the Sharia Court was an effort to realize the ideals of the Acehese people in upholding Islamic Sharia in a strict manner. Apart from that, the Syar'iyah Court also provides special autonomy for the Aceh province, one of its specialties is the application of Islamic law. The first statutory regulation regulating the Syar'iyah Court was Law Number 18 of 2001 concerning Special Autonomy for the Special Region of Aceh Province as Nanggroe Aceh Darussalam Province. This law is the basis for the existence of a Sharia Court in Aceh as a form of implementing special autonomy. The regulations regarding the Sharia Court in this law only regulate

Islamic Sharia justice in Aceh Province as part of the national justice system carried out by the Syar'iyah Court. Regarding the authority possessed by the Sharia Court, this law only limits Islamic law in the national legal system which is further regulated by Qanun and is only limited to followers of the Islamic religion.

The Syar'iyah Court was formed based on Presidential Decree Number 11 of 2003 concerning Mahakamh Syar'iyah and the Provincial Syar'iyah Court in Nanggroe Aceh Darussalam Province. Article 1 paragraph (1) of the Presidential Decree explains that the religious courts in Nanggroe Aceh Darussalam Province were changed to Syar'iyah Courts. The explanation of the Syar'iyah Court in the Presidential Decree shows that the initial formation of the Syar'iyah Court was aimed at replacing the position of the existing religious courts in Nanggroe Aceh Darussalam Province. This Presidential Decree makes the position of the Sharia Court the same as the Religious Court as a court under the scope of the Supreme Court. The Syar'iyah Court, with its authority according to Law Number 11 of 2006, is no longer a substitute for the existing religious courts in Aceh as the initial formation of the Syar'iyah Court was based on Presidential Decree Number 11 of 2003. The position of the Syar'iyah Court according to Law Number 11 of 2006 is not clearly regulated, it only states that the Syar'iyah Court is within the scope of religious justice. Law Number 11 of 2006 does not mention the Syar'iyah Court as a special court, thus causing confusion regarding the position of the Syar'iyah Court in the system of judicial power. Such regulations regarding the Sharia Court have an impact on the Indonesian legal order.

Regulations regarding the position of the Sharia Court are clarified in Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. Article 3A paragraph (2) of Law Number 50 of 2009 explains that the Islamic Sharia Court in Aceh (Syar'iyah Court) is a special court within the religious justice environment as long as its authority concerns the authority of the religious court and is a special court within the general justice environment as long as its authority concerns the authority of the general judiciary. Law Number 50 of 2009 provides 2 (two) important things regarding the Syar'iyah Court. The first is the Sharia Court in Aceh which is called the Syar'iyah Court, which is a special court. This arrangement answers the question regarding the position of the Syar'iyah Court in the judicial power system in Indonesia, which according to Law Number 11 of 2006 only

states that the executor of judicial power is within the scope of religious courts. Second, Article 3A paragraph (2) of Law Number 50 of 2009 states that the Syar'iyah Court is a special court that is within the realm of general justice and religious court. Based on this article, the Syar'iyah Court is in two judicial spheres at once, namely the religious judiciary and the general judiciary. This is confusing and the position of the Sharia Court is ambiguous. The position of the Syar'iyah Court in this way has become ambiguous due to the fact that it is not further regulated regarding the authority of the Syar'iyah Court which is categorized as the authority of religious courts and the authority of the Syar'iyah Court which is categorized within the scope of general justice authority. However, even though these two authorities do not influence the process of implementing law enforcement by the Syar'iyah Court.

Determining the ideal position of the Sharia Court in the system of judicial power in Indonesia is a necessity. Judging from the statutory regulations governing the Sharia Court, in this case it is necessary to understand the hierarchy of statutory regulations. In connection with the legal hierarchy, there cannot be a law that conflicts with higher regulations. The Syar'iyah Court which is currently in force in Aceh is an institution implementing judicial power with various regulatory legal instruments. The Syar'iyah Court with its authority is the application of Islamic law in society both in the criminal and civil fields. The Sharia Court can be seen as an Islamic sharia court that uses Islamic law, while the general court is a court that resolves cases in the field of criminal and civil law in general. The authority of the Sharia Court and the General Court have several similarities. These similarities can be seen from the cases handled, namely civil and criminal cases. The difference between the Sharia Court and the General Court is that the Syariah Court uses sharia law and is intended for people who are Muslim, while the General Court uses national law that applies in Indonesia and applies to all Indonesian citizens.

The Sharia Court as a special court is a phenomenon that cannot be avoided. This is because special civilization in Indonesia is a fact that has been accepted in constitutional practice since the Dutch colonial government, Japan, until Indonesia became independent until now. As an existing reality, it is important for the Indonesian state to further regulate and pay attention to various existing developments regarding special justice which continue to grow and develop in order to realize the wishes and hopes of the nation as a legal

state that is leading to a welfare state. It is hoped that the special judiciary which continues to develop can be an answer to the need to create justice in society. However, within the scope of the rule of law, it is necessary to have a comprehensive legal system in the implementation of state governance. Special courts are an inseparable part of the judicial power system in Indonesia, even though they are not explicitly mentioned in the constitution but are established based on law. This kind of thing is common in the understanding of constitutionalism, namely as long as the legal policy forming the law does not conflict or deviate from constitutional norms, then the policy is declared constitutional.

IV. CONCLUSION

There are several things that need to be concluded from the results of the analysis, namely: the existence of the Syar'iyah Court based on Law Number 50 of 2009 has the position of a special court within the Religious Courts and General Courts. However, this is different from Law Number 48 of 2009 concerning Judicial Power which states that special courts can only be formed in one of the judicial spheres under the Supreme Court. Therefore, there are differences in understanding the existence of the Syar'iyah Court based on statutory regulations, so there is a need to harmonize statutory regulations to establish a Syar'iyah Court. Furthermore, regarding the absolute competence possessed by the Syar'iyah Court which covers the fields of *ahwal al-syakhsyah* (family law), *jinayah* (criminal law), and *muamalah* (civil law) based on Islamic sharia law, making its absolute competence linear with the absolute competence of the judiciary general with specificity in the field of Islamic sharia law.

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