



The Development of *Sharia* Courts in Aceh, Indonesia: A Social and Historical Perspective on Islamic Law

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Abstract

If the *Sharia* Court in Aceh is examined from a historical perspective, its institutional roots can be traced to the office of the *qadhi* (Islamic judge) during the era of the Islamic sultanates. This historical fact influenced the colonial period, independence, the New Order, and the Reformation era. This study aims to examine the development of the *Sharia* Court from the kingdom era to the Reformation era using an Islamic legal social history approach. This study employs empirical legal methods, analyzed using Islamic legal social history theory. Data were collected through document studies and interviews. The documents analyzed included laws, regulations, books, journal articles, and court decisions. The informants interviewed included academics, judges, and non-Muslim members of the public. The study finds that the development of the *Sharia* Court in Aceh has experienced significant fluctuations from the sultanate period to the reform era. During the sultanate era, Islamic judicial institutions flourished, with courts led by *qadhi* who functioned as both legal authorities and moral arbiters within society. In the colonial period, particularly under Dutch and Japanese rule, Islamic courts were progressively marginalized, resulting in legal pluralism marked by tensions among Islamic law, customary law (*adat*), and Western legal systems. In the post-independence period, religious courts gradually gained formal recognition within the national legal system, including the incorporation of women as judges, reflecting increasing institutionalization and gender inclusivity. During the reform era, the *Sharia* Court underwent a process of revitalization, particularly following the implementation of special autonomy in Aceh and the formal introduction of the Islamic law within the regional legal system.

Keywords: *Sharia* Court, Islamic Law, *qanun jinayat*, social history of Islamic law

Abstrak

Jika dilacak dalam jejak sejarah Mahkamah Syar'iyah di Aceh maka akan ditemukan akarnya pada lembaga qadhi pada masa kesultanan. Fakta sejarah tersebut berpengaruh pada masa kolonial, kemerdekaan, orde baru sampai memasuki zaman reformasi. Kajian ini bertujuan untuk membahas perkembangan mahkamah syar'iyah mulai dari masa kerajaan sampai masa reformasi dengan pendekatan sejarah sosial hukum Islam. Studi tersebut menggunakan metode hukum empiris, dianalisis dengan teori sejarah sosial hukum Islam. Data dikumpulkan dengan mengandalkan studi dokumen dan wawancara. Dokumen yang dianalisis adalah aturan perundangan-undangan, qanun, buku, artikel jurnal dan putusan pengadilan, sedangkan informan yang diwawancarai adalah akademisi, hakim, dan masyarakat non-muslim. Kajian ini menyimpulkan bahwa dinamika perkembangan Mahkamah Syar'iyah di Aceh mengalami pasang surut mulai dari masa kesultanan sampai masa reformasi. Pada kesultanan masa kesultanan pengadilan agama merupakan fase kebangkitan dan kejayaan, lembaga peradilan dipimpin oleh qadhi malikul adil. Masa kolonialisme khususnya Belanda dan Jepang, pengadilan agama dikerdilkan dan terjadi konflik antara hukum Islam, adat dan Barat. Kemudian pada masa kemerdekaan pengadilan agama, mulai dilegitimasi, akomodasi dan kesetaraan gender pada hakim perempuan. Pada masa reformasi terjadi revitalisasi lembaga peradilan agama ketika otonomi khusus yaitu pemberlakuan syariat Islam menjadi pintu masuk sehingga terjadi; perluasan kewenangan peradilan agama, qanun sebagai sumber hukum penundukan non-muslim kepada lembaga peradilan Islam. Dari perspektif sejarah sosial dinamika perkembangan pengadilan agama merupakan revitalisasi peran Mahkamah Syar'iyah disebabkan perubahan sosial politik yang terjadi di Indonesia dan Aceh ketika sistem demokrasi menguat dan otonomi diberlakukan.

Kata Kunci: *Mahkamah Syar'iyah, syariat Islam, qanun jinayat, sejarah sosial hukum Islam*

Introduction

The development of Islam in the Malay Peninsula, encompassing present-day Indonesia, Malaysia, Brunei, Southern Thailand, and the Southern Philippines was closely linked to the influence of the Islamic kingdom of Aceh. Aceh is widely regarded as one of the earliest regions in Southeast Asia to embrace Islam, introduced through connections with the Middle East. From the seventeenth to the eighteenth centuries, Aceh emerged as a central hub within a broader network of *ulama* (Islamic scholars) across the archipelago, with its intellectual connections extending to the Haramain. During this period, Islamic law based on the principles of *Ahl al-Sunnah wa al-Jama'ah* functioned as a "living law," shaping various aspects of social life.¹

¹MB. Hokker, "Southeast Asian Shari'ahs," *Studia Islamika* 20, No. 2. (2013) p. 183-282. Mohd Pua'ad Abdul Malik, et.al., "Intellectual Tradition of Islamic Civilization in the Malay World:

This development was supported by the active role of *ulama*, their scholarly works, and institutional structures such as the office of the *qadhi* (judge), which provided a formal platform for the implementation of Islamic law. Prominent scholars of this era include Shamsuddin al-Sumatrani (d. 1630 AD), Nuruddin al-Raniry (d. 1658 AD), and Abdurrauf al-Singkili (d. 1693 AD), all of whom produced significant works on Islamic jurisprudence and served as *Qadhi Malik al-Adil* (chief judicial authorities) or advisors to the sultan.²

Subsequently, the development of Islamic law in the Malay world underwent significant transformations under colonial influence. In Indonesia, Dutch colonial rule shaped its legal evolution, whereas in Malaysia and Brunei, British colonial administration played a comparable role. As a result, Islamic law in the region developed distinct local characteristics through a dynamic interaction between Islamic law, customary law (*adat*), and Western legal systems. This interaction gave rise to what is commonly described as legal pluralism. In Indonesia, legal pluralism is grounded in the coexistence of these three legal traditions, which collectively constitute the material sources of national law. These systems have also significantly influenced the structure and function of religious courts (*Sharia* courts) in Indonesia.

The evolution of *Sharia* courts in Aceh and Indonesia more broadly has generated various theoretical perspectives regarding the application of Islamic law. Three principal theories are commonly identified. First, the *reception in complexu* theory, articulated by Lodewijk Willem Christian van den Berg (1845-1927 AD), posits that Islamic law fully applied as a normative legal system in Muslim societies, as evidenced by its status as a living law during the sultanate period in the archipelago. Second, the reception theory, associated with Cornelis van Vollenhoven (1874-1933 AD) and later developed by Christiaan Snouck Hurgronje (1875-1936 AD), argues that Islamic law is only applicable insofar as it has been accepted by customary law; thus, *adat* ultimately determines the validity of Islamic legal norms. Third, the *reception a contrario* theory, advanced by Hazairin and Sayuti Thalib, maintains that Islamic law applies fully to Muslims, while customary law is valid only insofar as it does not conflict with Islamic principles.³

An Analysis of Classical Malay Works from the 17th to the 19th Century,” *Journal of Tamaddun* 25, No. 2 (2025). Jajat Burhanudin, “Islamic Turn in Malay Historiography: Bustān al-Salāṭīn of 17th Century Aceh,” *Studia Islamika* 28, No. 3 (2021).

²Azyumardi Azra, “Networks of the Ulama in the Haramayn: Connections in the Indian Ocean Region,” *Studia Islamika* 8, No. 1 (2001). Abdul Salam Muhamad Shukri and Ridwan Arif, “The Role of Shaykh Abd Al-Ra’uf Al-Fansuri In the Reconciliation of Sufism and Shari’ah of 17th Century the Malay World,” *Al-Shajarah Journal of the International Institute of Islamic Thought and Civilization* (ISTAC) 23, No. 1 (2018). Abidin Nurdin et.al. (2021), The Implementation of Meunasah-Based Sharia in Aceh: A Social Capital and Islamic Law Perspective, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 2, (2021). p. 760-779.

³ Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia*, Yogyakarta: Gama Media, 2001. p. 55-69. A. Qadri Azizy, *Elektisisme Hukum Nasional: Kompetisi Antara Hukum Islam dan Hukum Umum*, Yogyakarta: Gama Media, 2002.

Hazairin strongly criticized the *receptie* theory developed by Hurgronje, characterizing it as a “demonic” doctrine aimed at undermining the application of Islamic law and fostering conflict between customary law (*adat*) and the Islamic law. This critique reflects broader concerns that the theory influenced a number of secular Indonesian legal scholars, who subsequently adopted similar perspectives. As a consequence, prior to the enactment of the Law No. 7 of 1989 on Religious Courts, religious courts in Indonesia were often regarded as largely symbolic institutions, lacking full authority to adjudicate and enforce legal decisions. Nevertheless, these three theoretical frameworks: *reception in complexu*, *receptie*, and *receptie a contrario* have significantly shaped the socio-historical development of the Islamic law in Indonesia.⁴

Historical evidence indicates that *Sharia* courts existed in the Indonesian archipelago well before independence. Such institutions operated under various Islamic sultanates, including those of Aceh Sultanate, Palembang Sultanate, Banten Sultanate, Cirebon Sultanate, Mataram Sultanate, Demak Sultanate, Banjarmasin Sultanate, Gowa–Tallo Sultanate, Bone Sultanate, and Ternate Sultanate. The presence of these courts is evidenced by the roles of *ulama* who held official titles such as *Shaykh al-Islam*, *qadhi*, *penghulu*, and *petta kalie*, serving as judicial authorities and advisors to the sultans.⁵ Notable figures who served as *qadhis* include Abdurrauf al-Singkili in Aceh, Fakhri Amrullah in Bone (d. 1640), Kiai Pëqih Najmuddin (d. 1770 AD) in Banten, and Muhammad Arsyad al-Banjari (d. 1812) in Banjarmasin.⁶ These examples demonstrate that Islamic sultanates maintained judicial institutions tasked with resolving legal matters in accordance with Islamic law.

Following the transformation of the Indonesian archipelago into a modern nation-state after the end of colonial rule, the provision of religious judicial services continued within a unified national legal system. Legislative developments favorable to Muslims, such as Law No. 7 of 1989 on Religious Courts and the Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law reflect a broader revival of Islamic legal institutions in Indonesia.⁷ The historical trajectory of religious

⁴Jajat Burhanudin, “The Dutch Colonial Policy on Islam: Reading the Intellectual Journey of Snouck Hurgronje,” *al-Jamiah: Journal of Islamic Studies* 52, no. 1 (2014), p. 25-58. Sidik Tono, et.al., “The Harmonious Relationship Between Minangkabau Custom and Islam in The Distribution of Inheritance,” *Al-Shajarah Journal of the International Institute of Islamic Thought and Civilization* (ISTAC) (2019).

⁵Amirul Hadi, *Islam and State in Sumatra: A Study of Seventeenth-Century Aceh*, (Dissertation), Leiden: Brill, 2004. Yusny Saby, *Islam and Social Change: The Role of Ulama in Acehnese Society*, (Dissertation), Temple University, 1995.

⁶Ridhwan and A. Nuzul, “The Petta Kalie’s Contribution in The Development of Islamic Law During the Kingdom of Bone,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 1, (2017), p. 64-87.

⁷Fajar Sugianto and Slamet Suhartono, “The Existence of President Instruction of The Republic of Indonesia Number 1 The Year 1991 on The Wide Spread of Compilation of Islamic Law in Indonesian Legal System,” *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 13, No. 2 (2018).

courts, from the Dutch colonial period through the late twentieth century, illustrates that efforts to reassert Islamic legal principles have been closely intertwined with the simultaneous incorporation of elements derived from Western legal traditions.

A similar pattern can be observed in other Muslim-majority countries, including Pakistan, Tunisia, Egypt, Morocco, and Turkey. Despite aspirations to restore the perceived purity of Islamic law, these states have not been able to fully resist the influence of Western judicial systems in their legal practices. This phenomenon is also shaped by internal dynamics within each country, particularly the need to accommodate local social and cultural values. In the Indonesian context, the influence of Western legal concepts on the structure and operation of religious courts remains especially pronounced.⁸

The position of religious courts in Aceh cannot be equated with that of religious courts in other regions of Indonesia, particularly when examined across different historical periods, including the era of Islamic sultanates, the early years of independence, and the reform era. Accordingly, an examination of the development of the *Sharia* Court in Indonesia, especially in Aceh constitutes a significant area of inquiry, as it has shaped the broader existence and institutional character of religious courts at the national level. This study employs a socio-historical approach to Islamic law as its analytical framework to explore the evolution of the *Sharia* Court in Aceh.⁹ The history of Islamic law is inseparable from the social, political, cultural, and customary contexts within which it develops.¹⁰ A socio-historical perspective encompasses the study of key figures, ideas, theories, legal norms, and practices related to Islamic law in the past, all of which continue to influence present and future developments. It also examines broader social phenomena, including social facts, class structures, historical events, and institutional formations within society.¹¹ In this regard, the *Sharia* Court may be understood as both a historical and social institution, whose evolution reflects ongoing interactions between legal norms and societal change. Its development has been shaped by shifting social conditions, political dynamics, and cultural continuities within the communities it serves.

Afridawati Afridawati, "History, Typology, and Implementation of Islamic Law in Indonesia: Combination of *Sharia* and *Fiqh* or the Result of Historical Evolution?" *Al-Risalah* 21, No. 1 (2021).

⁸Ratno Lukito, "Religious Courts In Indonesia: Judicial Development and Islamic Revival," *al-Jamiah: Journal of Islamic Studies* 60, (1997).

⁹M. Atho' Muhdzhar, "Social History Approach to Islamic Law," *al-Jami'ah: Journal of Islamic Studies* 6, (1998), p. 76-88. Akh. Minhaji, *Sejarah Sosial dalam Studi Islam: Teori, Metodologi dan Implementasi*, Yogyakarta: Suka Press, 2013.

¹⁰Wael B. Hallaq, *History of Islamic Legal Theories: An Introduction To Sunni Usul Al Fiqh*, Cambridge: Cambridge University Press, 2005. M. Atho' Muhdzhar, Pendekatan Sosiologi dalam Studi Hukum Islam, in M. Amin Abdullah (editor), *Mencari Islam: Studi Islam dengan Berbagai Pendekatan*, Yogyakarta: Tiara Wacana, 2000.

¹¹Arif Maftuhin *Historiografi Hukum Islam: Studi Atas Literatur Man āqib, Tabaqat dan Tarikh at-Tasyri'*, Yogyakarta: Magnum Pustaka Utama, 2016. p. 1-4. Kuntowijoyo, *Metodologi Sejarah*, Yogyakarta: Tiara Wacana, 2003, p. 39-41.

This research adopts an empirical legal method, analyzed through a socio-historical approach to Islamic law.¹² According to Hallaq and Mudzhar, the socio-historical approach emphasizes the role of social and historical variables in shaping Islamic legal systems, including socio-cultural and socio-political influences. Within this framework, Islamic law is viewed as a historical product, continuously shaped by social transformation and political change. Consequently, the sources analyzed in this study extend beyond classical legal foundations, such as the Qur'an, Hadith, *ijma'* (consensus), and *qiyas* (analogical reasoning) to include statutory regulations, judicial decisions (in the Acehese context often formalized as *qanun*), and the opinions of Islamic scholars.¹³

Data were collected through library research and interviews. The literature analyzed was legislation, *qanun*, books, journal articles and court decisions, while the informants interviewed were academics, judges and non-Muslim communities. All data was collected, categorized, presented, translated, and summarized.¹⁴ The use of socio-legal history to analyze the development of Islamic law in Aceh and in Indonesia in general has the advantage that the factors and aspects that influence each particular period can be explained precisely and have strong arguments, as has been done by Hallaq in examining the formation of Islamic law in the early Islamic period and Mudzhar in explaining the history of Islamic law in Indonesia.¹⁵ The next step is analysis using the theory of the social history of Islamic law, placing the *Sharia* court as the object and locus of study. The historical study of social changes occurring in the research locus, in this case Indonesia and Aceh, reinforces the fact that Islamic law is essentially the resultant (consequence) of interactions between scholars and surrounding social factors.

The Sultanate Period: Growth and the Formation of Institutional Structures

The period of the Islamic sultanates in the Indonesian archipelago may be characterized as an era of institutional formation and consolidation, during which judicial systems were still in the process of development. Each Islamic kingdom established its own judicial institution, typically headed by a *qadhi*, who functioned not only as a judge but also as a legal and religious advisor to the sultan. These judicial authorities were responsible for adjudicating a wide range of matters,

¹²Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian tesis dan Disertasi*, Jakarta: RajawaliGrafindo, 2016. Munir Fuadi, *Metode Riset Hukum: Pendekatan Teori dan praktek*, Jakarta: RajawaliGrafindo, 2015.

¹³ M. Atho Mudzhar, "Social History Approach to Islamic Law," *al-Jamiah: Journal of Islamic Studies* 61, (1998). Achmad Irwan Hamzani and Soesi Idayanti, "The Evolution of Islamic Law In Indonesia: A Socio-Historical Perspective On Its Struggle For Existence," *Hamdard Islamicus* 47, No. 1 (2024).

¹⁴ Matthew B. Miles, et.al., *Qualitative Data Analysis: A Methods Sourcebook*. Arizona State University, 2014.

¹⁵ Wael B. Hallaq, *History of Islamic Legal Theories*. M. Atho Mudzhar, "Social History Approach to Islamic Law.

including marriage, divorce, *zakat* (almsgiving), reconciliation, inheritance, gifts, and adoption, reflecting the comprehensive scope of Islamic law in social life.

During the era of the Aceh Sultanate, the Islamic judiciary was led by the *Qadhi Malikul Adil*, whose institutional authority may be considered comparable, in functional terms, to that of a modern supreme court. This office was based in the royal capital of Bandar Darussalam. As the highest judicial authority, the *Qadhi Malikul Adil* held appellate jurisdiction over decisions issued by lower courts, including those presided over by local authorities such as the *Qadhi Ulee Balang*.¹⁶

The judicial and administrative system of the Aceh Sultanate was organized into several hierarchical levels: the *gampong* (village) court, the *mukim* court, the *uleebalang* court, and the sultan's court. At the village level, dispute resolution mechanisms emphasized conciliation and mediation. The first level of adjudication was led by the village head (*keuchik*), who acted as a primary mediator, while the second level involved the mosque leader (*imeum masjid*) or village imam (*imam mukim*), who functioned as a higher-level conciliator. The village court primarily addressed civil and minor criminal cases brought by local residents.¹⁷

The *mukim* court operated as an intermediate appellate body, hearing cases from parties dissatisfied with decisions rendered at the village level. It was chaired by the *imam mukim*, with members including the *keuchik*, the *imeum masjid*, and respected community intellectuals (*guru pandai*). Proceedings at this level involved the payment of court fees, locally referred to as *hak ganceng*, which were allocated for judicial administration. Above this level, the *uleebalang* court was presided over by the *uleebalang* (regional chief), assisted by a deputy and a cleric or *qadhi* appointed to provide religious-legal expertise. Its membership included local leaders and *ulama* within the jurisdiction.¹⁸

At the apex of the judicial hierarchy was the sultan's court, which functioned as the highest authority for adjudicating major cases and appeals, including those equivalent to cassation. This court was formally chaired by the sultan, with the *Qadhi Malikul Adil* serving as deputy chair and principal judicial authority. Its members comprised prominent *ulama*, *uleebalang*, and learned scholars. Cases involving severe criminal sanctions under Islamic law, such as *hudud* and *qisas*, were typically presided over directly by the sultan, whereas more routine matters were adjudicated under the leadership of the *Qadhi Malikul Adil*. This hierarchical and functionally differentiated system illustrates the integration of legal,

¹⁶ Soufyan M. Saleh *Profil Mahkamah Syar'iyah Aceh*, Banda Aceh: Mahkamah Syar'iyah Aceh, 2007, p. 4.

¹⁷A. Hamid Sarong, *Mahkamah Syar'iyah Aceh (Lintasan Sejarah Dan Eksistensinya)*, Banda Aceh: Global Education Institute, 2012, p. 27. Ajidar Matsyah, et.al., "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System," *Juris: Jurnal Ilmiah Syariah* 24, No. 1 (2025).

¹⁸A. Hamid Sarong, *Mahkamah Syar'iyah*..., p. 29.

religious, and political authority within the governance structure of the Aceh Sultanate.¹⁹

During the period of the Mataram Sultanate, the famous king, Sultan Agung, formed *Paradilan Surambi* (*sharia* court) which was chaired by a cleric who had influence in the kingdom. Although ultimate authority formally resided with the sultan, judicial practice was largely delegated to the *penghulu* (chief religious official), who presided over the court and was assisted by a council of clerics, many of whom were affiliated with Islamic boarding schools (*pesantren*). Importantly, the sultan rarely issued decisions that contradicted the recommendations of the *Surambi* Court, indicating the significant influence of religious authorities in governance. Following the accession of Amangkurat I in 1645, the *Pradata* court was revived as part of an effort to curtail the influence of clerics and reassert royal authority over judicial affairs. Nevertheless, the *Surambi* Court continued to exist into the Dutch colonial period, albeit with diminished powers, primarily exercising jurisdiction over matters of Islamic family law, including marriage and inheritance.²⁰

A comparable judicial institution developed in the Banten Sultanate (1527–1813 AD), where Islamic courts were led by a qadhi, notably Kiai Pěqih Najmuddin. His judicial manuscript, dating from 1754 to 1756, is widely regarded as one of the earliest surviving court records (*sijill*) in Southeast Asia. In administering justice, the *qadhi* was supported by a structured body of officials, including *penghulu*, *paliwara* (court functionaries), prosecutors, and other administrative personnel. Among the notable *penghulu* were Ki Mas Mansur and Ki Mas Namar. The court exercised jurisdiction over a broad spectrum of legal matters, such as marriage, divorce, reconciliation, inheritance, debt, and issues concerning women and children.

In the Cirebon Sultanate, the administration of religious justice was carried out by a council of ministers under the authority of three rulers: Sultan Sepuh, Sultan Anom, and Panembahan Cirebon. Judicial decisions were guided by the *Papakem*, a legal text strongly influenced by Islamic law, which served as a normative reference for adjudication within the royal court.²¹ Similarly, in the Bone Sultanate, the role of the *qadhi*, locally known as *Petta Kalie* was central to the administration of Islamic justice. These judicial authorities played a key role in integrating Islamic law, particularly that of the Shafi'i school, with Bugis customary practices. Historical records indicate that at least twenty *Petta Kalie* served not only as judicial authorities but also as advisors to the sultan and as religious educators for the community, with their activities centered around the royal mosque, Al-Mujahidin Mosque. In carrying out their judicial and religious functions, they were assisted by a range of officials, including *Puang Imang* (imam), *katte'* (preacher), *bilal* (caller to prayer), *doja*

¹⁹A. Hamid Sarong, *Mahkamah Syar'iyah...*, p. 30.

²⁰Cik Hasan Basri, *Peradilan Agama di Indonesia*, Jakarta: Raja Grafindo Persada, p. 114. Ismanto dan Suparman, "Sejarah Peradilan Islam di Nusantara masa Kesultanan-Kesultanan Islam Pra-Kolonial," *Historia Madania: Jurnal Ilmu Sejarah*, Vol. 3, No. 2, pp. 67-87.

²¹Idri "Religious Court In Indonesia: History and Prospect," *Journal of Indonesian Islam* 3, No. 2 (2009).

(mosque official), and *amil* (zakat administrator). Their responsibilities encompassed matters such as marriage, divorce, reconciliation, inheritance distribution, and zakat management. At the same time, Bugis cultural practices were deeply infused with Islamic values, reflecting a process of legal and cultural synthesis. Traditions such as *sompa* (dowry), *mappacci* (a pre-wedding purification ritual), *barzanji* (the recitation of praises upon the Prophet), and *meppanre tamme'* (a ceremony marking the completion of Qur'anic recitation) illustrate the dynamic interaction between Islamic teachings and local customs.²²

In the Banjar Sultanate, the institutionalization of Islamic law was further strengthened through the initiatives of prominent religious authorities. A leading figure in this process was Muhammad Arsyad al-Banjari, a distinguished *mufti* who advocated for the establishment of a formal *Sharia* court to enhance the implementation of Islamic law. His proposal received approval from the ruling authority, leading to the formation of a judicial institution in which the *mufti* served as its head, supported by a *qadhi* responsible for enforcing legal decisions and regulating judicial procedures. The formalization of Islamic legal norms in the Banjar Sultanate was further reinforced during the reign of Sultan Adam al-Wasik Billah, who promulgated a legal code in 1835 known as the Sultan Adam Law. This legal framework was explicitly grounded in Islamic law and governed a range of issues, particularly within the domain of family law, including marriage, divorce, and inheritance. In addition, the Banjar Sultanate applied Islamic legal principles in certain criminal matters, incorporating punishments derived from classical Islamic jurisprudence, such as capital punishment for apostasy, amputation for theft, and prescribed penalties intended to deter acts of adultery.²³

Similarly, in the fifteenth century, the Ternate Sultanate and Tidore Sultanate developed institutional structures to manage religious and legal affairs. One such institution was the *Bobato Akherat*, an organization responsible for overseeing religious rituals and socio-religious governance. This body was led by the *Jou Kalem*, who was assisted by a number of officials, including *hatibi*, *sangaji*, *jiko*, *modim*, and *ngofa*. These functionaries played a central role not only in organizing religious life but also in administering aspects of Islamic law, particularly in matters of marriage, inheritance, and broader socio-religious issues within the community.²⁴

²²Ridhwan and A. Nuzul, *The Petta Kalie's Contribution in The Development of Islamic Law*, p. 64-87.

²³ Jejik Zulfikar Hafizd, "Sejarah Hukum Islam di Indonesia: Dari Masa Kerajaan Sampai Indonesia Modern," *Tamaddun: Jurnal Sejarah dan Kebudayaan Islam* 9, No. 1 (2021), p. 166-184.

²⁴ Fatum Abubakar, et.al., "Qadhi Legitimization: Shifting Roles of the Penghulu in Ternate and Tidore Sultanates, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 25, No. 1 (2025), p. 139-164.

The Colonial Period: Institutional Weakening and Conflict

The Islamic judicial system during the colonial period in the Indonesian archipelago can be traced to a series of late nineteenth-century Dutch regulations that formally recognized and institutionalized Islamic courts in Java and Madura. These regulations established collegial religious courts chaired by a *penghulu* (chief religious official) at the district level, assisted by member judges drawn from the local religious elite. The jurisdiction of these courts was primarily limited to matters of marriage and inheritance. However, the enforcement of their decisions depended on civil courts, which retained ultimate executive authority. This system was later extended to South Kalimantan in the 1930s, although, paradoxically, jurisdiction over inheritance disputes was increasingly transferred to civil courts, reflecting the ambivalent stance of colonial authorities toward Islamic law.²⁵

During the period of the Dutch East Indies, there was no clear institutional separation between religious courts and general (civil) courts. Instead, the colonial legal system was structured along racial and legal classifications, distinguishing between Europeans, Foreign Orientals, and indigenous (*bumiputera*) populations. Within this framework, Islamic judicial institutions operated in a limited and subordinated capacity. In Aceh, for instance, Islamic courts functioned as part of the *uleebalang*-level judiciary, presided over by local chiefs (*uleebalang*). At the administrative levels of *afdeeling* and *onderafdeeling*, judicial bodies known as *Meusapat* were established, led by colonial officials such as the *controleur*, in collaboration with indigenous authorities. Matters specifically related to Islamic law were delegated to the *Qadhi Ulee Balang*, who exercised jurisdiction over religious cases.²⁶ During the Japanese occupation, significant changes were introduced to the judicial system in Aceh. Through the enactment of Atjeh Syu Rei Law No. 12: a more structured hierarchy of Islamic courts was established. This system comprised three levels: (a) the *Syukyo Hooiin* (central religious court) based in Kuta Raja (now Banda Aceh); (b) the *Chief Qadhi*, with jurisdiction across regional districts; and (c) the *Qadhi Son*, operating at the sub-district level.²⁷

According to Article 2 of the regulation, the *Syukyo Hooiin* was tasked with adjudicating matters related to marriage and inheritance (*faraid*) in accordance with the Islamic law, reviewing objections to decisions issued by lower-level *qadhi*, supervising judicial officials, and administering broader aspects of Islamic legal governance as regulated by colonial authorities.²⁸ At that time, the *Syukyo Hooiin*

²⁵Mark E. Cammark and Michael R. Feener, "The Islamic Legal System in Indonesia," *Pacific Rim Law and Policy Journal* 21, No. 1. (2012), p. 13-42. Michael R. Feener, *Sharia and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia*, United Kingdom: Oxford University Press, 2013.

²⁶Soufyan M. Saleh, *Profil Mahkamah Syar'iyah...*, p. 4.

²⁷Soufyan M. Saleh, *Profil Mahkamah Syar'iyah...*, p. 4.

²⁸Ismail Muhammad Syah, *Pengadilan Agama/Mahkamah Syar'iyah di Aceh, Dahulu, Sekarang dan Nanti*, dalam Ismail Sunny (editor), *Bunga Rampai Tentang Aceh*, Jakarta: Bharata, 1980, p. 237.

was chaired by Tgk. H. Ja'far Siddiq, with members including prominent figures such as Muhammad Daud Beureueh, Hasbi Ash-Shiddieqy, Said Abubakar, and B.C. Amen. As noted by Daniel S. Lev, figures associated with the *Persatuan Ulama Seluruh Aceh*, including Daud Beureueh, were frequently appointed as judges during the Japanese occupation. This development was closely linked to the relatively cooperative relationship between Japanese authorities and PUSA, in contrast to their more strained relations with the uleebalang.²⁹

Independence Era: Negotiating Legitimacy, Accommodation, and Gender Equality

In the early years following independence, religious courts in Indonesia were placed under the authority of the Ministry of Religious Affairs, which exercised executive power to expand their institutional presence across the country. However, it was not until the enactment of Law No. 7 of 1989 on Religious Courts that the existence of these courts was formally recognized within the national legal system. This legislation significantly strengthened their institutional standing by granting enforcement authority and mandating reforms in organizational structure and staffing, aligning them more closely with the general civil court system. In addition, the substantive jurisdiction of religious courts was expanded to include inheritance (*faraid*) cases and, to a limited extent, disputes involving Islamic economic transactions. A further institutional transformation occurred in 2004, when administrative oversight of religious courts was transferred from the Ministry of Religious Affairs to the Supreme Court of Indonesia, thereby integrating them more fully into the national judiciary. Earlier, in 1999, Aceh had been granted special autonomy status, which included broader authority to implement Islamic law beyond the jurisdiction typically exercised by religious courts in other regions. These developments collectively introduced a new dimension to the institutional framework governing the application of Islamic law in Indonesia.³⁰

Efforts to establish a fully independent and authoritative Islamic judiciary in Aceh had, in fact, begun shortly after independence. Responding to sustained local demands, the Governor of Sumatra issued a directive, Article No. 189 dated January 13, 1947, granting the Resident of Aceh permission to establish a *Mahkamah Syar'iyah* (*Sharia* Court) with full adjudicative authority, meaning that its decisions did not require confirmation by the district court. Nevertheless, its jurisdiction was initially confined to family law matters, including maintenance, joint marital property, child custody, divorce, marriage validation, and inheritance.³¹

²⁹Daniel S. Lev, *Hukum dan Politik di Indonesia: Kesenambungan dan Perubahan*, Jakarta: LP3S, 1990, p. 235-246.

³⁰Mark E. Cammark and Michael Feener, *The Islamic Legal ...*, p. 13-42.

³¹Al Yasa' Abubakar, *Pelaksanaan Syari'at Islam: Sejarah dan Prospek* in Fairus M. Nur (Editor) *Syari'at di Wilayah Syari'at: Pernik-Pernik Islam di Nanggroe Aceh Darussalam*, Banda Aceh: Dinas Syari'at Islam NAD, 2002, p. 35.

Following the proclamation of Indonesian independence on August 17, 1945, this policy was reinforced through subsequent administrative measures, further consolidating the authority of Islamic courts in Aceh. Under this framework, the jurisdiction of family law was broadly defined, encompassing various aspects of personal status law across the region. Institutional expansion also occurred, resulting in a three-tiered judicial structure consisting of 106 sub-district-level *Sharia* courts, 20 district-level courts, and the Aceh Regional *Sharia* Court based in Kuta Raja (now Banda Aceh), which functioned as the highest judicial authority in the region at that time.³²

During the establishment of the Federal Republic of Indonesia in 1949, the constitutional framework recognized the continued existence of both *Swapraja* (customary) courts and religious courts, including those that had operated prior to the promulgation of the Constitution of the Republic of the United States of Indonesia. The legal basis for religious courts remained grounded in Staatsblad 1882 No. 152. This condition was further exacerbated by the enactment of Emergency Law No. 1 of 1951, which effectively abolished *Swapraja* courts and integrated them into the general district court system. Although religious courts were not formally dissolved, the strengthening of district courts under this framework led to the marginalization of Islamic judicial institutions, reflecting the continued influence of colonial legal structures. The uncertainty surrounding the status of religious courts in Aceh persisted amid repeated demands from regional authorities, including the Regional People's Representative Council (DPRD), political parties, and civil society organizations, all of which called for clearer legal recognition. These appeals were largely ignored, and in some instances met with resistance; certain national legislators even dismissed the Acehnese *Sharia* courts as informal or "illegal" institutions. A turning point occurred following the re-establishment of Aceh as a province in 1956. In response, the central government issued Government Regulation No. 29 of 1957, which formally recognized and structured religious courts throughout Aceh, thereby providing them with a clearer legal foundation and institutional legitimacy. This regulation was complemented by Government Regulation No. 45 of 1957.³³

This situation persisted until the dissolution of Aceh Province in 1950, which left the religious courts neglected and their legal status uncertain. The condition deteriorated further with the issuance of Emergency Law No. 1 of 1950, which effectively dissolved all *Swapraja* Courts and integrated them into the District Courts. Repeated appeals for formal recognition and a clear legal status for these institutions were submitted by the regional government, the Regional People's Representative Council (DPRD), political parties, and various community organizations in Aceh; however, these demands went largely unaddressed. More

³²Soufyan M. Saleh, *Profil Mahkamah Syar'iyah...*, p. 4.

³³A. Hamid Sarong, *Mahkamah Syar'iyah...*, p. 45.

concerning, some members of the national parliament (DPR) responded negatively, even characterizing the Sharia Court in Aceh as a private and “illegal” institution.³⁴

A closer examination shows that such moments of legal recognition for Islamic judicial institutions in Indonesia have been relatively rare. Following independence, it was not until 1957 that the status of Islamic courts was formally affirmed through Government Regulation No. 29 of 1957, which specifically applied to the Aceh region. This development was followed by Government Regulation No. 45 of 1957, extending similar provisions to regions outside Java and Madura, with the exception of South Kalimantan. Subsequent legal advancements included Law No. 1 of 1974 on Marriage, Government Regulation No. 28 of 1977 concerning Land Endowments (*waqf*), and, twelve years later, the enactment of Law No. 7 of 1989 concerning Religious Courts, which further strengthened the institutional framework of Islamic judiciary in Indonesia.³⁵

Since the 1970s, religious courts (*Peradilan Agama* or *Sharia* courts) in Indonesia, including those with historical roots in Aceh have experienced institutional expansion across much of the country, with the notable exceptions of Java, Madura, and parts of South Kalimantan and East Kalimantan. This development was formally regulated under Government Regulation No. 45 of 1957, which also revoked Government Regulation No. 29 of 1957. Subsequently, Law No. 14 of 1970 on Judicial Power established the equal status of religious courts alongside general courts, military courts, and administrative courts. Under this framework, technical judicial supervision was placed under the authority of the Supreme Court of Indonesia, while organizational, administrative, and financial matters remained under the Ministry of Religious Affairs. In 1980, through Decree No. 6 of 1980 issued by the Minister of Religious Affairs, the nomenclature of “religious courts” (*peradilan agama*) was standardized across the country. According to Hamid Sarong, the involvement of executive authority in the administration of judicial affairs has been identified as one of the key factors contributing to limitations in judicial independence within Indonesia’s court system.³⁶

During the New Order Indonesia, significant legal and institutional reforms culminated in the enactment of Law No. 7 of 1989 on Religious Courts. One notable development during this period was the formal recognition of women as judges in religious courts. Although women had already served as judges in family law cases since the 1960s, this law provided explicit legal affirmation of their status. Since then, the number of female judges has increased, and women have increasingly occupied positions of equal authority with their male counterparts.³⁷ This shows that

³⁴Al Yasa’ Abubakar, *Pelaksanaan Syari’at....*, p. 35.

³⁵Al Yasa’ Abubakar, *Pelaksanaan Syari’at....*, p. 51.

³⁶A. Hamid Sarong, *Mahkamah Syar’iyah....*, p. 49.

³⁷Euis Nurlaelawati and Arskal Salim, “Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia,” *al-Jami’ah*, Vol. 51, No. 2, (2013), p. 247-278. Euis Nurlaelawati, “Muslim Women in Indonesian Religious Courts,” *Islamic Law and Society* 20, No. 3

in the New Order phase, gender equality and return were carried out by religious institutions for women.

Toward the end of the New Order period, the political environment for Islamic institutions became increasingly accommodative. This was reflected in the growing integration of Islamic values within state structures, often described as the Islamization of the bureaucracy. Islamic organizations such as the Indonesian Association of Muslim Intellectuals, led by B. J. Habibie, gained significant proximity to the state apparatus, with some of its figures later occupying the positions of vice president and president. During this period, several legislative and policy developments further reflected the incorporation of Islamic principles into national law. These included Law No. 7 of 1992 on Banking, Government Regulation No. 72 of 1992 on Islamic Banking, the establishment of Bank Muamalat Indonesia, the allowance of the hijab in public educational institutions, and the issuance of the Compilation of Islamic Law (1991).³⁸ This period has often been described as a “honeymoon phase” between Islam and the state, characterized by the increasing visibility of Islamic symbols within public life, sometimes colloquially referred to as “*hijau royo-royo*” (the flourishing of green), where green symbolically represents Islam’s expanding presence in Indonesian sociopolitical life.

Thus, it may be affirmed that, in general, religious courts in Indonesia have progressively gained institutional legitimacy through increasing formal recognition within the national judicial system. A significant milestone in this development was the transfer of administrative, organizational, and financial authority from the Ministry of Religious Affairs to the Supreme Court of Indonesia, which positioned religious courts on an equal footing with other branches of the judiciary, including general courts and state administrative courts. These include the Compilation of Islamic Law (1991), the Waqf Law, the Hajj Law, and several other related legal provisions. Collectively, these regulations demonstrate the gradual accommodation of Islamic legal principles within the broader Indonesian legal system. This advancement places Indonesia in a comparatively progressive position relative to many other Muslim-majority countries in regions such as North Africa, West Asia, and South Asia, where female representation in religious judicial institutions remains more limited.

(2013), p. 242-271. John Richard Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, Cambridge University Press, 2003.

³⁸Nur Ahmad Fadhil Lubis, “Institutionalization and the Unification of Islamic Court under the New Order,” *Studia Islamika*, 2, No. 1 (1995), p. 1-51. Riki Rahman and Faisal S Hazi, “ICMI and Its Roles in the Development of the Middle Class Muslim Communities in Indonesia in the New Order Era,” *al-Jami’ah: Journal of Islamic Studies* 56, No. 2, (2018), p. 341-366. Bakhtiar Efendi, *Islam dan Negara: Transformasi Pemikiran dan Praktik Politik Islam di Indonesia*, Jakarta: Paramadina, 1998.

The Reformation Era: Revitalization of the Sharia Court in Aceh

1. Expansion of the Sharia Court's Authority

The reform era, which began in 1999 following the resignation of President Suharto, marked a profound transformation in Indonesia's political, legal, and social order after more than three decades of centralized authoritarian governance.³⁹ The subsequent transition toward democratization introduced significant structural changes, including political decentralization, expanded media freedom, and the liberalization of the party system. These developments contributed to Indonesia's emergence as one of the world's largest democratic states.

The reform process also had substantial implications for the national legal system. The Broad Guidelines of State Policy (GBHN) 1999 emphasized the development of a comprehensive and integrated national legal framework that recognizes and respects both religious and customary law. At the same time, it called for the reform of colonial and discriminatory legal provisions, including those contributing to gender inequality and inconsistencies with reformist aspirations. From this formulation, it is evident that the sources of national law are understood to include customary law (*adat*), Islamic law, and Western legal traditions.⁴⁰

Within this broader reform context, Law No. 44 of 1999 on the Special Status of Aceh granted significant regional authority to Aceh, thereby reaffirming and revitalizing its special autonomy status. This law drew upon earlier policy frameworks, including the provisions of Prime Ministerial Decree No. 1/Missi/1959 on Aceh Special Status, which recognized the importance of religion, custom, and education in regional governance. The special status framework was further reinforced by Law No. 12 of 1999 on Regional Government, which also acknowledged the role of Islamic scholars (*ulama*) in regional policy formulation.⁴¹

From a legal and normative perspective, Aceh possessed a formal foundation for the implementation of Islamic law. This was strengthened by Law No. 18 of 2001 on Special Autonomy for Aceh, which provided the basis for the establishment of Islamic legal institutions within the national legal system.⁴² In particular, Article 49 of Qanun No. 10 of 2002 on Islamic Judicial Authority in Aceh expanded the jurisdiction of the Sharia Court (*Mahkamah Syar'iyah*) to include the adjudication of *jinayat* (Islamic criminal law) cases. This development represented a new phase in the history of religious courts in Indonesia, as the application of *jinayat*

³⁹Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, Edinburgh UK: Edinburgh University Press, 2015. Arskal Salim, *Challenging The Secular State: The Islamization of Law in Modern Indonesia*, Honolulu: University of Hawai'i Press, 2008.

⁴⁰A. Qadri Azizy, *Elektisisme Hukum Nasional: Kompetisi Antara Hukum Islam dan Hukum Umum*, Yogyakarta: Gama Media, 2002, p. 174-175.

⁴¹A. Hamid Sarong, *Mahkamah Syar'iyah...*, p. 187.

⁴²Hasnil Basri Siregar, "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia," *Journal of Law and Religion*, Vol. 24, No. 1, (2009), p. 143-176. Abdul Jalil Salam, et.al., "The Urgency of Amending Jināyāt Qānūn in Eradicating Cyber Sexual Crime in Aceh, Indonesia," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 19 No. 2 (2024).

law had not previously been part of their formal jurisdiction. Furthermore, Article 49 of Qanun No. 10 of 2002 stipulates that the *Sharia* Court is authorized to examine, adjudicate, and resolve cases at the first instance in the fields of *ahwal al-shakhsiiyyah* (family law), *mu'amalah* (civil and economic transactions), and *jinayat* (Islamic criminal law). This authority is grounded in Article 25 of Law No. 18 of 2001, which affirms that the jurisdiction of the *Sharia* Court is based on Islamic law within the national legal system and is to be further regulated through Acehnese *qanun*.⁴³

Prior to the issuance of Presidential Decree No. 11 of 2003 on the Aceh *Sharia* Court, there were two prevailing legal interpretations regarding the establishment of the *Sharia* Court in relation to the implementation of Law No. 18 of 2001 on Special Autonomy for Aceh. The first view held that the *Sharia* Court constituted a separate judicial institution, distinct from the religious courts and high religious courts within the national judiciary. The second view argued that the *Sharia* Court represented an extension of the existing religious court system, as regulated under Law No. 7 of 1989 on Religious Courts. Following an extended process of legal and institutional deliberation, the *Sharia* Court was officially inaugurated on 1 Muharram 1424 H, corresponding to 4 March 2003. Its establishment was formalized through Presidential Decree No. 11 of 2003, which, in an official ceremony, redefined the nomenclature of the religious courts as *Sharia Courts* and the High Religious Courts as *Provincial Sharia Courts*, while simultaneously expanding their jurisdictional authority.⁴⁴

Subsequently, the enactment of Law No. 4 of 2004 on Judicial Power further clarified the position of the *Sharia* Court within the national judicial framework. Article 15 of this law stipulates that special courts may be established within one of the four judicial environments, as regulated by statute. In this context, the Islamic *Sharia* Courts in Aceh are categorized both as part of the Religious Courts when exercising jurisdiction within their traditional competence, and as part of the General Courts, insofar as their authority extends into broader areas of adjudication. The explanatory section of the law further specifies that “special courts” include juvenile courts, tax courts, and the Islamic *Sharia* Courts in Aceh, which consist of the *Sharia* Court at the first-instance level and the Provincial *Sharia* Court at the appellate level. The final level of cassation remains under the jurisdiction of the Supreme Court of Indonesia, thereby affirming that the *Sharia* Court system in Aceh remains an integral component of the national judiciary.⁴⁵

⁴³Achmad Gunaryo, *Pergumulan Politik dan Hukum Islam*, Yogyakarta: Pustaka Pelajar, 2006, p. 366. Mohd Din and Al Yasa' Abubakar, “The Position of the Qanun Jinayat as a Forum for the Implementation of *Sharia* in Aceh in the Indonesian Constitution,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 2, (2021), p. 689-709.

⁴⁴A. Hamid Sarong, *Mahkamah Syar'iyah...*, p. 54.

⁴⁵A. Basiq Djalil, *Peradilan Agama di Indonesia: Gemuruh Politik Hukum (Islam, Barat dan Adat) dalam Rentang Sejarah Bersama Pasang Surut Lembaga Peradilan Agama Hingga Lahirnya Peradilan Syari'at Islam di Aceh*, Jakarta: Kencana, 2006, p. 167-168

A further significant development occurred following the signing of the peace agreement between the Government of Indonesia and the Free Aceh Movement (*GAM*) in Helsinki on 15 August 2005. This agreement paved the way for the enactment of Law No. 11 of 2006 on the Governance of Aceh, which significantly strengthened the institutional position of the *Sharia* Court. Under this legal framework, the *Sharia* Court was accorded a more prominent status within the governance structure of Aceh, functioning alongside the executive and legislative branches as a key component of regional autonomy. This development further consolidated the role of the Islamic law within Aceh's special administrative and judicial system.⁴⁶

The jurisdiction of the *Sharia* Court in Aceh constitutes a distinctive feature not found in religious courts in other regions of Indonesia. Its authority extends across both civil and criminal domains. In civil matters, its jurisdiction includes the family law, the contract law, and the property law. In criminal matters, it encompasses Islamic criminal law categories such as *qisas-diyat* (retributive justice), *hudud* (fixed punishments), and *ta'zir* (discretionary punishments).⁴⁷ Furthermore, following the enactment of Qanun No. 7 of 2013 on Islamic Criminal Procedure in Aceh and Qanun No. 6 of 2014 on Jinayat Law, the authority of the *Sharia* Court was significantly clarified and strengthened. These regulations formalized the court's jurisdiction over a range of offenses, including *khamar* (consumption of intoxicants), *maisir* (gambling), *khalwat* (improper seclusion between unrelated individuals), *ikhtilat* (inappropriate association in private or public spaces), *liwath* (same-sex relations), *musahaqah* (female same-sex relations), rape, *qadzaf* (false accusation of adultery), and sexual harassment.⁴⁸

It is widely recognized that the *Sharia* Court represents one of the principal institutional instruments for the implementation of the Islamic law in both its formal and substantive dimensions. In this context, Islamic law, grounded in historical, sociological, and juridical foundations, has served as the basis for strengthening the institutional role of the *Sharia* Court in Aceh. During the early post-independence period, however, the *Sharia* Court in Aceh existed largely in nominal form and lacked effective institutional authority. At times, its legitimacy was even questioned and it was labeled as an "illegal" institution within the national legal framework, reflecting the ambiguity surrounding the implementation of the Islamic law during that period.

In the reform era, the *Sharia* Court underwent a process of revitalization and institutional strengthening. This transformation enabled it to function more comprehensively, in ways that in certain respects echo the judicial role it played during the era of the Acehese sultanates. From a socio-historical and legal perspective, this revitalization cannot be separated from broader political and social

⁴⁶Soufyan M. Saleh, *Profil Mahkamah Syar'iyah...*, p. 7.

⁴⁷A. Basiq Djalil (2006), *Peradilan Agama di Indonesia...*, p. 171.

⁴⁸Qanun Aceh Nomor 6 Tahun tentang Hukum Jinayat. Mutiara Fahmi, et.al., "Punishment for Zina Muhsan Offenders in Aceh Qanun No. 6 of 2014 in the Perspective of Fiqh al-Siyasah," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 1 (2022), p. 346-368.

transformations within Indonesia. The granting of special autonomy to Aceh, particularly through the formal implementation of the Islamic law, created a significantly expanded institutional space for the *Sharia* Court, thereby enabling it to exercise a broader and more structured range of judicial authorities.

The granting of broad jurisdiction to the *Sharia* Court in Aceh constitutes a significant indication of the state's accommodative and democratic legal policy. This jurisdiction encompasses *ahwal al-shakhshiyah* (personal status law), *mu'āmalāt* (civil and commercial transactions), and *jināyah* (Islamic criminal law). The inclusion of *jināyah* is particularly distinctive, as it represents a legal domain uniquely attributed to the *Sharia* Court in Aceh and directly relates to the formal application of Islamic criminal law within the Indonesian legal system.

2. Qanun as a Source of Law in the *Sharia* Court

The distinction between the *Sharia* Court in Aceh and religious courts in other provinces of Indonesia lies primarily in the legal sources and normative frameworks applied by judges in adjudicating cases. In general, the sources of law in *uṣūl al-fiqh* (Islamic jurisprudence) include the Qur'an, Hadith, *ijmā'* (juristic consensus), *qiyās* (analogical reasoning), the Compilation of Islamic Law, and jurisprudential principles recognized by the Supreme Court of Indonesia. The extent to which these sources are utilized in judicial reasoning depends significantly on the intellectual capacity and interpretive competence of individual judges in engaging with Islamic legal texts and principles.

However, judges in the *Sharia* Court of Aceh are additionally required to refer to regional Islamic legal regulations (*qanun*) that are specifically applicable within Aceh. These *qanun* constitute an additional binding source of law, made possible by the expansion of the *Sharia* Court's jurisdiction under Aceh's special autonomy framework. Consequently, judges assigned to Aceh, including those originating from other regions such as Sumatra or Java—must possess adequate knowledge of these local Islamic legal instruments in order to effectively adjudicate cases within the province.⁴⁹

Several *qanun*s related to Islamic law in Aceh, which serve as sources of law and considerations for judges in deciding cases, can be seen in the following table:

Table 1: Islamic *Sharia* Qanuns in Aceh

No	Types of Criminal Violations	Sources and Legal Basis
1	<i>Khamar</i> (consumption of intoxicants)	Aceh Qanun No. 12/2003; Jinayat Qanun No. 6/2014
2	<i>Maisir</i> (gambling)	Aceh Qanun No. 12/2003; Jinayat Qanun No. 6/2014
3	<i>Khalwat</i> (improper seclusion between unrelated individuals)	Aceh Qanun No. 12/2003; Jinayat Qanun No. 6/2014

⁴⁹ Interview with A. Hamid Sarong, Professor of Islamic Law, Ar-Raniry State Islamic University, Banda Aceh, 2018.

4	<i>Ikhtilat</i> (inappropriate association in private or public spaces)	Jinayat Qanun No. 6/2014
5	<i>Liwat</i> (same-sex relations)	Jinayat Qanun No. 6/2014
6	<i>Musahaqah</i> (female same-sex relations),	Jinayat Qanun No. 6/2014
7	Rape	Jinayat Qanun No. 6/2014
8	<i>Qadzaf</i> (false accusation of adultery)	Jinayat Qanun No. 6/2014
9	Sexual harassment	Jinayat Qanun No. 6/2014
10	Islamic Economy	Qanun on Islamic Financial Institutions, No. 11/2018.

Referring to the table above, the legal sources used in deciding cases at the *Sharia* Court in Aceh are more diverse and extensive. In comparison, Religious Courts outside Aceh will only adjudicate matters of marriage, inheritance, and endowments as referred to the 1991 Compilation of Islamic Law. Then, an amendment and expansion of criminal offenses occurred in 2014, with the enactment of the *Jinayat* Law, so that the types of crimes became nine, from initially only three, namely; *Khamar* (consumption of intoxicants) *maisir* (gambling), *khalwat* (improper seclusion between unrelated individuals), *ikhtilat* (inappropriate association in private or public spaces), *liwath* (same-sex relations), *musahaqah* (female same-sex relations), rape, *qadzaf* (false accusation of adultery) and sexual harassment.

For example, judges at the *Sharia* Court in deciding cases related to alcohol consumption (*khamar*), judges are required to refer to Qanun No. 6 of 2014 concerning *Jinayat* Law.⁵⁰ In judicial reasoning, panels of judges typically examine whether the defendant's actions fulfill the legal elements of a *jarimah* as defined in Article 1 number 22 in conjunction with Article 18 of the same Qanun. Article 1 number 22 defines *maisir* (gambling) as an act involving betting and/or chance between two or more parties, in which the winning party receives a predetermined benefit or payment from the losing party, either directly or indirectly.”

Article 18 further stipulates that individual who intentionally commit gambling offenses involving stakes exceeding two grams of pure gold may be subject to a maximum penalty of 12 lashes, a fine of up to 120 grams of pure gold, or imprisonment for up to 120 months.” Similarly, in gambling cases adjudicated within the jurisdiction of the *Sharia* Court in Kuta Cane and cases involving the sale of alcoholic beverages in Takengon, judicial reasoning consistently refers to the provisions of the 2014 *Jinayat* Qanun:⁵¹

In such cases, the court must first determine whether the elements of *maisir* have been fulfilled, as defined in the relevant legal provisions, and subsequently assess the value of the wager or benefit obtained in order to determine the appropriate *uqubat* (punishment); Judicial considerations typically rest on the formal definition

⁵⁰Mahkamah Syar'iyah Banda Aceh Putusan Nomor 21/Jn/2020/Ms.Bna.

⁵¹Mahkamah Syar'iyah Kota Cane, Putusan Nomor 9/Jn/2022/Ms.Kc. Mahkamah Syar'iyah Takengon, Putusan Nomor 11/JN/2021/MS.Tkn.

of *maisir* as stipulated in Article 1 number 22 of the Qanun, which characterizes it as an act involving betting or chance between two or more parties, accompanied by an agreement that the winning party will receive a specified payment or benefit from the losing party, either directly or indirectly. Through this interpretive framework, the Sharia Court in Aceh integrates statutory *qanun* provisions into its adjudicative reasoning, thereby distinguishing its legal methodology from that of religious courts in other Indonesian provinces”.

3. Non-Muslims Submit to the Sharia Court

Although Islamic *Sharia* is sometimes perceived as incompatible with human rights standards or characterized as excessively punitive, its implementation in Aceh demonstrates that it may also function as a rational legal option for non-Muslim litigants in certain contexts. Rather than being inherently restrictive, the formal application of Islamic law can, in practice, offer procedural and substantive advantages. In some cases, non-Muslim individuals have voluntarily chosen to resolve criminal matters under the Qanun No. 6 of 2014 on *Jinayat* Law instead of the national Criminal Code (*KUHP*), due to perceptions of greater procedural efficiency, lower costs, and faster adjudication processes.⁵²

The legal position of non-Muslims within Aceh’s Islamic legal framework is explicitly regulated in the Law No. 11 of 2006 on the Governance of Aceh. Article 126 stipulates that Muslims are obliged to observe and practice Islamic law, while non-Muslim residents are required to respect its implementation. Furthermore, Article 129 provides that in cases involving multiple offenders where at least one party is non-Muslim, the non-Muslim defendant may voluntarily choose to submit to Islamic criminal jurisdiction. It also provides that non-Muslims who commit offenses not regulated under the national Criminal Code or related criminal legislation may fall under the jurisdiction of the *Jinayat* legal system”.⁵³ These provisions form the legal basis for judicial consideration when non-Muslim defendants appear before the *Sharia* Court in criminal cases.

Empirical examples illustrate how these legal principles operate in practice. In one case in Banda Aceh, involving eight individuals accused of consuming and distributing alcoholic beverages (*khamar*), one of the defendants, a non-Muslim voluntarily requested to be tried under Islamic criminal law rather than in a general court. Although such cases would ordinarily fall under the jurisdiction of the district court, the defendant’s explicit consent led the court to proceed under the *Sharia* legal framework. This practice reflects the principle of voluntary submission within Indonesia’s procedural legal system, whereby jurisdiction may be exercised based

⁵²Abdul Halim, “Non-Muslims in the Qanun *Jinayat* and the Choice of Law in *Sharia* Courts in Aceh,” *Human Right Review* 23, (2022), p. 265-288. Mursyid Djawas, et. al., “The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia,” *Ahkam: Jurnal Ilmu Syariah* 23, No. 1 (2023).

⁵³Ali Abubakar, *Kedudukan Non-Muslim dalam Qanun Jinayat*, (Banda Aceh: Dinas Syariat Islam, 2020), p. 103-105. Undang-Undang No. 11 Tahun 2006 tentang Pemerintahan Aceh.

on the defendant's consent in certain circumstances. From the defendant's perspective, the choice was motivated by pragmatic considerations. He argued that the sanctions under Islamic criminal law, particularly flogging (*uqubat cambuk*), would allow him to return more quickly to his familial and economic responsibilities, whereas imprisonment would prevent him from fulfilling his role as a provider for his family. This reasoning reflects a utilitarian assessment of legal consequences, in which the efficiency and social impact of punishment were weighed alongside legal accountability. This case illustrates that the implementation of Islamic criminal law in Aceh is not solely a matter of doctrinal application but also involves practical considerations of legal efficiency and social responsibility. It further demonstrates that, in certain circumstances, Islamic law may be perceived by litigants, including non-Muslims, as a functional and expedient alternative within Indonesia's plural legal system.⁵⁴

A relevant illustration of non-Muslim participation in the *Sharia* judicial system can be found in a *maisir* (gambling) case adjudicated at the *Sharia* Court in Kuta Cane. The case involved four non-Muslim defendants who voluntarily submitted themselves to the jurisdiction of the *Sharia* Court. As reflected in the judicial considerations, the court noted that the defendants committed gambling offenses jointly with another defendant who was Muslim and whose case was processed separately. The judgment further emphasized that the non-Muslim defendants explicitly chose and voluntarily submitted to adjudication under the Qanun No. 6 of 2014 on *Jinayat* Law.⁵⁵

A similar pattern appears in a *khalwat* (improper seclusion) case heard at the *Sharia* Court in Banda Aceh. In this case, although the defendant was non-Muslim, the court records indicate that he voluntarily accepted the jurisdiction of Islamic criminal law. The judgment stated that, based on trial evidence and the defendant's own statement, he acknowledged his willingness to be tried under the *Jinayat* legal framework, as documented in the official minutes submitted by investigators and the public prosecutor. The court further noted that while the offense was not regulated under the national Criminal Code (*KUHP*), it fell within the scope of Aceh's Islamic criminal regulations as defined in Qanun No. 6 of 2014.⁵⁶

According to Mursyid Djawas, non-Muslims in Aceh generally experience harmonious social relations and do not face systematic discrimination in the implementation of Islamic law. He argues that Islamic legal provisions are not formally imposed upon non-Muslims; rather, in certain cases, individuals voluntarily choose to submit to the jurisdiction of Islamic law and regional *qanun*. This reflects a pattern of legal coexistence in which participation is, in part, based on consent and practical considerations.⁵⁷

⁵⁴Interview with Hurriyah Abubakar, Banda Aceh *Sharia* Court Judge, 2016.

⁵⁵Mahkamah Syar'iyah Kota Cane, Putusan Nomor 11/JN/2022/MS.Kc

⁵⁶Mahkamah Syar'iyah Banda Aceh, Putusan Nomor 50/JN/2019/MS.Bna.

⁵⁷Interview with Mursyid Djawas, Professor of Islamic Law, Ar-Raniry State Islamic University, Banda Aceh, 2024.

More broadly, social interactions between Muslims and non-Muslims in Aceh are generally characterized by mutual respect and functional coexistence. Such interactions occur not only at the community level, such as in markets, coffee shops, and tourist areas, but also within formal institutional settings,⁵⁸ including government offices, universities, and judicial institutions such as the *Sharia* Court. These dynamics suggest that the implementation of Islamic law in Aceh operates within a broader social framework of pluralism and everyday interreligious engagement.⁵⁹

From the foregoing discussion, it may be concluded that the reform era marked a significant revitalization of the *Sharia* Court in Aceh, accompanied by a more substantive realization of Islamic judicial functions. This revitalization is reflected in three main developments: (a) the expansion of the *Sharia* Court's jurisdiction, (b) the formal recognition of *qanun* as an operative source of Islamic law within the regional legal system, and (c) the voluntary submission of non-Muslim litigants to *Sharia* court proceedings in certain cases. From the perspective of social history theory, these developments can be understood as the outcome of broader structural transformations in Indonesia's political and legal order. The transition from authoritarian rule to a more democratic system after the reform era, combined with the implementation of special autonomy for Aceh, created institutional space for the reconfiguration of Islamic law within the national legal framework.

Conclusion

From the foregoing discussion, it may be emphasized that the historical development of the *Sharia* Court in Aceh cannot be separated from the broader social and political dynamics of Indonesia. During the period of the Islamic sultanates, the *Sharia* Court existed as an established judicial institution, as reflected in the prominent role of ulama who served as qadhis and judicial authorities. This institutional presence can be observed across various Islamic polities in the archipelago, including Aceh, Banten, Mataram Sultanate, Cirebon Sultanate, Banjar Sultanate, Bone Sultanate, as well as Ternate Sultanate and Tidore Sultanate. During the colonial period, however, the institutional role of *Sharia* courts gradually declined as Western legal systems were introduced and consolidated, both at the normative and administrative levels. This marginalization continued into the early post-independence period and the era of the New Order regime. Nevertheless, by the late New Order period, sustained advocacy by Muslim communities contributed to greater state recognition of Islamic judicial institutions, culminating in the formal strengthening of religious courts as part of the national judiciary. During this period, issues of institutional legitimacy, legal accommodation, and gender inclusion,

⁵⁸Interview with FNS, a non-Muslim student at a University in Aceh, 2024. Interview with AMW, a non-Muslim student at a University in Aceh, 2024.

⁵⁹Interview with Wais Alqarni, Academician of Syiah Kuala University, Banda Aceh, 2024.

particularly the appointment of women as judges—began to emerge more prominently within the religious court system. These developments further advanced during the reform era, reaching a peak with the institutional strengthening of the *Sharia* Court in Aceh following the early 2000s. After the formal implementation of Islamic *Sharia*, the jurisdiction of the *Sharia* Court expanded beyond Islamic family and economic law to include Islamic criminal law (*jinayat*). This expansion constitutes a key distinction between the *Sharia* Court in Aceh and religious courts in other provinces of Indonesia. In this context, the reform era is characterized by three main features: the expansion of judicial authority, the formal recognition of *qanun* as a source of law, and the voluntary participation of non-Muslims in certain *Sharia* court proceedings. From the perspective of social history of Islamic law, the revitalization of the *Sharia* Court in Aceh is closely linked to broader processes of social transformation and political change within Indonesia's democratic and accommodative reform era, which enabled the reconfiguration and strengthening of Islamic legal institutions.

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