
The Characteristic of Sharia Court Decision into Unitary State of The Republic of Indonesia (*Syar'iyah Court Regional Cases of Nanggroe Aceh Darussalam Province*)

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Abstract

The Sharia Court is a judicial institution within the scope of the Unitary State of the Republic of Indonesia which has important position in the Indonesian judicial system. The authority of the Syar'iyah Court is regulated through the Qanun of the Province of Nanggroe Aceh Darussalam (Article 1 point 15 of Law Number 11 of 2006 concerning the Government of Aceh). The limitations of the qanun that regulate the authority of the Sharia Court raises its own problems for judges to decide cases. Therefore, it is necessary to formulate and identify the characteristics of the decisions of the Sharia Court in the Province of Nanggroe Aceh Darussalam. This research is a normative legal research with a descriptive-analytic. The results show that the characteristics of the decisions of the Syar'iyah Court in the Unitary State of the Republic of Indonesia are in the form of the decisions of the Syar'iyah courts, the types of cases that are decided at the Syar'iyah courts, and on the basis of legal considerations in the decisions of the Sharia Courts. The characteristics of the decisions of the Sharia Court in these three aspects are not found in other court decisions in the Unitary State of the Republic of Indonesia. Jinayat cases are characteristic of the types of cases that are decided at the Sharia court. This type of Jinayat case shows the development of the concept of the Unitary State in the implementation of regional autonomy. The basis for legal considerations in the decision of the Sharia Court are facts (events and law), trial facts, sources of law and statutory regulations.

INTRODUCTION

The Sharia Court has a very important position in the Indonesian judicial system. On the one hand, the Sharia Court is a special judicial institution within the religious courts as long as its authority is related to the authority of the religious court. On the other hand, the Sharia Court is also a special court within the general court environment as long as its authority is related to the authority of the general court. The position of the Sharia Court makes its authority wider than that of the

religious courts. The authority of the Sharia Court is regulated through the Qanun of the Province of Nanggroe Aceh Darussalam (Article 1, point 15 of Law Number 11 of 2006). The limitations of the qanun that regulate the authority of the Sharia Court raise their own problems for judges to decide cases. The Syar'iyah Court, through Qanun number 6 of 2014 concerning Jinayat Law, has the authority to hear cases in the Jinayat field in Aceh¹. The position and authority of the Sharia Court, as mentioned above, greatly influence the decisions it makes. So far, there has been no research that tries to explain the form of the decision of the Sharia Court. Likewise, there has been no research that explains the legal considerations in the decisions of the Syar'iyah Court and the factors that influence judges' considerations in making decisions in the territory of the Syar'iyah Court of the Province of Nanggroe Aceh Darussalam. This study analyzes the form of decisions, the types of cases decided by the Syar'iyah Court, and the basis for legal considerations in the decisions of the Syar'iyah Court. Legal reforms contained in the said decision

There are three elements that become the focus of public attention in the settlement of a case in court: the judge who examines and decides the case, the law handed down in the settlement of the case, and the parties or actors in the case. Judges, as absolute authority holders who give birth to products of religious courts, act as law enforcers and justices. It is in the hands of the judge that the fate of a person is determined, so the judge becomes the last pedestal for the community² seeking justice and the truth. Judge in carrying out his obligations, as regulated in Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Explore, follow, and understand the legal values and sense of justice that live in society. So that a judge can carry out his main duties well, Busthanul³ requires that a judge be learned in law (alim in law) and skilled in law (skilled in implementing the law). In addition to having to understand the substance and meaning of the law, judges must also be skilled in its application. In the hands of judges, legal science becomes applied science. It is the judges who give life to the articles of laws and regulations, which consist of consonants.

According to John M. Echols and Hassan Shadily, characteristic in English is termed characteristic, "which functions as a noun with the meaning of 'nature typical)," and also functions

¹ Achmad Fikri Oslami, "Wewenang Mahkamah Syar'iyah dalam Pemeriksaan Praperadilan". *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum*. Vol.11. No.1. (2022): 135-147, <http://dx.doi.org/10.22373/legitimasi.v1i1.11874>.

² Ashabul Fadhli & Arifki Budia Warman, "'Alasan Khawatir' pada Penetapan Hukum Dispensasi Kawin di Pengadilan Agama Batusangkar", *Al-Ahwal*, 14(2), 2021): 146–158. <https://doi.org/10.14421/ahwal.2021.14203>.

³ Bustanul Arifin, *Alim Dalam Ilmu Hukum, Terampil dalam Melaksanakan Hukum, dalam Buku Pelembagaan Hukum Islam di Indonesia: Akar Sejarah, Hambatan dan Prospeknya*, (Jakarta: Gema Insani Press, 1996).

as an adjective with the meaning of 'typical'⁴. Based on the understanding of the characteristics above, in this study, the characteristics are intended as characteristics of the decisions of the Syar'iyah Court in the Unitary State of the Republic of Indonesia in the territory of the Syar'iyah Court of the Province of Nanggroe Aceh Darussalam. At the time of the Aceh kingdom, judicial power was held by Qadi Malikul 'Adil, who was domiciled in the royal capital. In each area of Uleebalang, there is a Qadi Uleebalang who decides cases in his area. Those who objected to Qadi Uleebalang's decision and appealed to Qadi Malikul 'Adil. The decision of Qadi Malikul Adil is the last decision, and by itself, becomes strong and must be implemented.

For the Aceh region, specifically for native natives, the Ordinance of 17 June 1916 Stbl has been promulgated. 1916 No. 432 jo. 435 which has been amended several times and most recently by the Ordinance of 1930 Stbl. No. 58. Articles 2, 4 and 6 of this Ordinance explain the errors contained in the first paragraph of the explanation of PP No. 29/1957 which states that in each area of Uleebalang there is a court chaired by a Controleur and Uleebalang and certain officials are members. Actually, according to this Ordinance, in each Uleebalang region there is a court chaired by the Uleebalang concerned, while the one chaired by Controleur and Uleebalang and certain officials who are members is a court named Musapat which is found in each onderafdeeling . For the Aceh region, specifically for native natives, the Ordinance of 17 June 1916 Stbl has been promulgated. 1916 No. 432 jo. 435 which has been amended several times and most recently by the Ordinance of 1930 Stbl. No. 58. Articles 2, 4 and 6 of this Ordinance explain the errors contained in the first paragraph of the explanation of PP No. 29/1957 which states that in each area of Uleebalang there is a court chaired by a Controleur and Uleebalang and certain officials are members. Actually, according to this Ordinance, in each Uleebalang region there is a court chaired by the Uleebalang concerned, while the one chaired by Controleur and Uleebalang and certain officials who are members is a court named Musapat which is found in each onderafdeeling.

At that time, the religious courts in this area were part of the customary courts, which, in matters relating to religious law, were often left to decide on the Qadi uleebalang, but if it had anything to do with laws other than religious law, it was chaired by the Uleebalang concerned. This was accompanied by the concerned Qadi Uleebalang. During the Japanese period, the Dutch East Indies courts were closed, and cases were settled by the Pangreh Praja, which lasted until May 1942. Judicial power was exercised by Gunpokaigi, Gunritugaiki, Gunsei Hooiin, the Religious Courts, the Swapraja Courts , and the Customary Courts. After the entry of Japanese troops into Kutaraja

⁴ John M Echols dan Hassan Shadily, *Kamus Inggris Indonesia*, (Jakarta: PT. Gramedia, 1990).

(Banda Aceh) on March 12, 1942, at the wish of the All Aceh Ulama Association (PUSA), Japan attempted to improve the religious courts in Aceh because PUSA also helped expel Dutch troops from Aceh land. In response to PUSA's demands, two Aceh Syu Rei (Aceh Regional Laws) were issued, namely Aceh Syu Rei No.10 dated Syowa 19 Iti Gatu 1 (1 January 1944) regarding Tihoo Hooin (District Court) and Aceh Syu Rei No. 12 dated Sowa 19 Ni Gatu 15 (15 February 1944), regarding Syukyo Hooin (Religious Court).

The substance of the regulation can be seen in Article 1 of Aceh Syu Rei No.10, which states that in Aceh, a Hooin (general court) was held which consisted of Ku-Hooin (lower court) and Tihoo-Hooin (district court). Law Number 7 of 1989 concerning Religious Courts is grouped into: (1) the period of August 17, 1945, to December 27, 1949; (2) the period of the United States of Indonesia (December 27, 1949, to August 17, 1950); (3) the period of the Republic of Indonesia as a unitary state (17 August 1950, to July 5, 1959); and (4) the period after July 5, 1959, to 1989⁵. Since August 1, 1946, in Aceh, a Syar'iyah Court has been established to hear cases relating to the Islamic religion, which has absolute authority as determined in the decision of the Working Board of the Aceh People's Representative Council dated December 3, 1947, Number 35. To provide a legal basis for the court, based on Article 1 paragraph (4) of the Emergency Law Number 1 of 1951, Government Regulation Number 29 of 1957 has been issued concerning the establishment of a religious court or Syar'iyah court in Aceh Province, which was then followed by Government Regulation Number 45 of 1957. Religious courts or Syar'iyah courts, such as those that have been established in Aceh, have also been established in other regions outside Java and Madura. Based on Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power, the Sharia Court, which was previously one of the judicial bodies authorized to exercise judicial power within the territory of the Unitary State of the Republic of Indonesia, was included as part of the religious court within the Religious Courts. Furthermore, with the issuance of Law Number 7 of 1989 concerning Religious Courts, the name of the Religious Courts/Syar'iyah Courts was standardized to become the Religious Courts without the designation of the Syar'iyah Courts. The author explains that religious courts are part of the legal reformation of the legal sector in Indonesia. The factors that cause the occurrence of legal reformation are as follows: the changing conditions, situation, place, and time to fill the legal vacuum because the norms contained in the books of fiqh are not set, while the public demand for new laws problem is very urgent, the influence of globalization in

⁵ Yahya M. Harahap, *Kedudukan, Kewenangan dan Acara Peradilan Agama: Undang-Undang Nomor 7 Tahun 1989*, (Jakarta: Pustaka Kartini, 1993).

the economy, and science and technology⁶. But some, for example, are the occurrences of dispute authority because of the normative choice of forum in the dispute resolution, and also because the application in the judgement of the dispute on sharia banking is not in accordance with the rules of law⁷.

This judicial environment consists of the first instance and the appellate level. While the cassation all leads to the Supreme Court. At the first level within the religious courts, it is called the Religious Court; at the appeal level, it is called the Religious High Court. Originally based on PP No. 29 of 1957 concerning the Establishment of a Religious Court/Syar'iyah Court in Aceh Province which was later amended by PP. 45 of 1957 concerning the Establishment of Religious Courts/Syar'iyah Courts outside Java and Madura, the name of the religious court is the Syar'iyah Court/Religious Court, while the name for the Religious High Court is the Provincial Syar'iyah Court. Then in 1980, with the Decree of the Minister of Religion No. 6 of 1980, the various names such, as the Mahakamah Syar'iyah and the Provincial Mahkamah Syar'iyah, and other names, such as the Qadhi Density and the Great Qadhi Density in South Kalimantan, were combined with their names, namely the first level is called the Religious Court, while the Appeal level is called the Religious High Court.

It was only changed back to the Syar'iyah Court after the reformation. The non-accommodation of the demands of the Acehnese people in Law No. 22 of 1999 gave birth to the demands of the people of Aceh for special autonomy. Through Law No. 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh and Law No. 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh As the Province of Nanggroe Aceh Darussalam, this demand was accommodated. Law No. 44 of 1999 states that the implementation of privileges includes the implementation of religious life, traditional life, education, and the role of ulama in determining regional policies. The implementation of religious life in the region manifests itself in the form of the implementation of Islamic Shari'a for its adherents in society. Privileges related to the implementation of customary life allow regions to establish various policies in the effort to empower, preserve, and develop adat and adat institutions, as well as the establishment of adat institutions. The Supreme Court has issued several rules in an effort to realize an effective and efficient judiciary, namely Supreme Court Regulation Number 2 of

⁶ Edi Gunawan, "Peranan Pengadilan Agama dalam Pembaruan Hukum Islam di Indonesia". *Syariah: Jurnal Hukum dan Pemikiran*. Vol.16. No. 1. (2016): 77-86, <https://dx.doi.org/10.18592/sy.v16i1.1432>.

⁷ Ervianto Braviaji, "Kewenangan Pengadilan di dalam Memeriksa dan Mengadili Sengketa Perbankan Syariah". *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan* Vol.9. No.1. (2019): 69-89, <http://dx.doi.org/10.32493/jdmhkdmhk.v9i1.1177>.

2015 concerning the procedure for simple lawsuit resolution, Supreme Court Regulation Number 14 of 2016 concerning the Procedure for settling Sharia Economic Disputes⁸. The Supreme Court has contributed to fostering religious courts as Islamic economics of dispute settlement⁹. Whereas in the field of education it is carried out in accordance with the national education system, regions develop and regulate various types, pathways, and levels of education as well as add local content material in accordance with Islamic law. Regions can also develop and regulate Islamic religious education institutions for adherents of various types, paths and levels of education. The role of ulama in determining regional policies in the form of regional authority is to form a body whose members consist of independent scholars whose function is to provide considerations for regional policies, including the fields of government, development, and society, as well as an Islamic economic order¹⁰.

Law No. 11 of 2006 states that Aceh Province is a province that is given special autonomy to regulate and manage its own government affairs and the interests of the local community in accordance with the laws and regulations in the system and principles of the Unitary State of the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia, which is led by a governor. Article 15 paragraph (2) of Law Number 4 of 2004 concerning Judicial Power states that the Syar'iyah Court is a special court within the religious court environment as long as its authority concerns the authority of the religious court and a special court within the general court environment as long as its authority concerns the authority of the general court. Law enforcement is an effort to realize the purpose of law in upholding legal justice, legal, certainty and legal benefits in order to realize the principle of a judiciary that is certain, fair, and humane¹¹. As an institution that administers Islamic Sharia Courts, the authority of the Sharia Courts is based on Islamic Sharia in the national legal system. This authority is regulated by the Aceh Province qanun and applies to adherents of the Islamic religion. Articles 60-64 of Law Number 7 of 1989 concerning Religious Courts state that there are two types of products produced by Religious Courts, namely decisions and decisions.

⁸ Hasanuddin Muhammad, "Efektivitas dan Efisiensi Penyelesaian Sengketa Ekonomi Syariah di Peradilan Agama". *Mizani: Wacana Hukum, Ekonomi, dan Keagamaan*. Vol.7. No.1.(2020): 33-46, <https://ejournal.iainptk.ac.id/index.php/khalrev/article/view/72>.

⁹ Sufiarina, "Urgensi Pengadilan Agama sebagai Penyelesaian Sengketa Ekonomi Syariah". *Jurnal Hukum dan Pembangunan* Vol. 44 No.2. (2014): 226-244, <http://dx.doi.org/10.21143/jhp.vol44.no2.21>.

¹⁰ Mohammad Hashim Kamali. *Actualization (Taf'il) of the Higher Purposes (Maqasid) of Shariah*, (Kuala Lumpur: International. Institute of Advanced Islamic Studies (IAIS), 2020).

¹¹ Arfiani, et.al, "Penegakan Hukum Sesuai Prinsip Peradilan yang Berkepastian, Adil, dan Manusiawi: Studi Pemantauan Proses Penegakan Hukum Tahun 2020, *Riau Law Journal*. Vol.6. No.1.(2022): 48-74, <http://dx.doi.org/10.30652/rlj.v6i1.7938>.

According to Mukti Arto, a decision is a judge's statement issued in written form and spoken by a judge in a trial open to the public as a result of examining a lawsuit (*contensius*)¹². Decisions (*vonnis*) are known as real judicial products (*jurisdiction contentiosa*). While the determination is a product of the court in the sense that it is not a real judiciary (*jurisdiction voluntarily*), there is only one party, namely the applicant, who submits an application to be determined about something without an opponent. In litigation there are i) final decisions, and (ii) intermediate decisions. The final decision is a decision that ends the examination at the trial for both those who have gone through all stages of examination and those who have not gone through all stages of examination. The term "final decision also means decisions that are handed down before reaching the final stages of the examination stages but have ended the examination, such as void decisions, *verstek* decisions that are not submitted by *verzet*, decisions not to accept, and decisions stating that the Religious Courts are not authorized to examine¹³.

This decision does not end the examination but will affect the direction and course of the examination¹⁴. As far as the literature search that has been carried out goes, no research has been found that examines in depth the decision of the *Syar'iyah* Court. Most of the research that has been done is only about religious court decisions. In this regard, it is still quite relevant to put forward the research that has been done. One of the studies specifically related to religious courts is the research conducted by Nur Ahmad Fadhil Lubis in his dissertation entitled *Islamic Justice in Transition: A Socio-Legal Study of the Religious Courts, Judges in Indonesia*,¹⁵ take the object of study regarding the transitional period experienced by religious courts. According to the author, there are three aspects that influence this transition period. The three aspects are aspects of the religious courts as an institution, legal substance and procedure, as well as the issue of judges. According to the author, these three factors really influence the development of religious courts, so that religious courts experience a transition to a better one.

Another piece of research is conducted by Iskandar Ritonga. As outlined in his dissertation entitled *Hak-Hak Wanita dalam Hukum Kekeluargaan Islam di Indonesia (Implementasinya dalam Putusan-Putusan Peradilan Agama DKI Jakarta, 1990-1995)*¹⁶. This study aims to assess whether

¹² Mukti Arto, *Praktek Perkara Perdata pada Peradilan Agama*. (Yogyakarta: Pustaka Pelajar, 1998).

¹³ Cik Hasan MS Bisri, *Peradilan Agama di Indonesia*, (Jakarta: Raja Grafindo Persada, 1998)..

¹⁴ Mukti Arto, *Op. Cit.*

¹⁵ Nur Ahmad Fadhil Lubis, "Islamic Justice in Transition: A Socio-Legal Study of the Religious Courts, Judges in Indonesia", (Dissertation, University of California, Los Angeles, 1994).

¹⁶ Iskandar Ritonga, "Hak-Hak Wanita dalam Hukum Kekeluargaan Islam di Indonesia (Implementasinya dalam Putusan-Putusan Peradilan Agama DKI Jakarta, 1990-1995)", (Dissertation, UIN Syarif Hidayatullah Jakarta, 2003) and

women's rights regulated in Indonesian Islamic family law ¹⁷ have been implemented proportionally in every religious court decision and whether the decisions made by religious court judges have a gender perspective or not. The cases that are the object of this study consist of nine cases, namely marriage certificates, polygamy permits, marriage annulments, divorces, lawsuits, joint property, inheritance distribution between men and women with a one-on-one formula, inheritance for orphaned grandchildren (substitute heirs), and inheritance for adopted children. While the location of the research was carried out within the religious courts in the area of the Religious High Court of DKI Jakarta, next was the research conducted by Amir Bin Mu'allim in his dissertation entitled "Yurisprudensi Peradilan Agama (Studi Pemikiran Hukum Islam di Lingkungan Pengadilan Agama Se-Jawa Tengah dan Pengadilan Tinggi Agama Semarang, 1991 - 1997)", this study aims to find out how the legal considerations used as the basis by judges of religious courts throughout Central Java and PTA Semarang in deciding cases in court, and also to find out whether there is a contribution of jurisprudence in religious courts as the basis for the development of Islamic law in Indonesia, especially in the field of legislation. Amir Muallim's ¹⁸ research specifically analyzes cases of marriage and inheritance only in the field of marriage, including cases of polygamy, marriage annulment and prevention, divorce, and child care (hadhanah).

In the decision above, the author always conducts a vertical comparative study, namely by comparing the legal problems faced with what is contained in fiqh books. However, one of the weaknesses of these analyzes, as mentioned by M. Atho Mudzhar¹⁹, is that they do not carry out a horizontal comparative study, namely by comparing the discussion with the legislation on family law that applies in Muslim countries in the modern world. In fact, such comparisons are very necessary so that Islamic law thinkers are not alone in making breakthroughs in their legal thinking²⁰. These are some of the studies that specifically discuss the decisions made by the religious courts in Indonesia. From the several studies that have been presented, no research has been found that specifically examines the decision of the Syar'iyah Court originating from the

Iskandar Ritonga, *Hak-Hak Wanita Dalam Putusan Peradilan Agama*, (Jakarta: Ditjen Bimas Islam dan Penyelenggaraan Haji, 2005).

¹⁷ Khoirudin Nasution, "Women's Right in the Islamic Family Law of Indonesia". *Unisia*, 28(56, 2005), 192–204. <https://doi.org/10.20885/unisia.vol28.iss56.art10>.

¹⁸ Amir Bin Mu'allim, "Yurisprudensi Peradilan Agama (Studi Pemikiran Hukum Islam di Lingkungan Pengadilan Agama Se-Jawa Tengah dan Pengadilan Tinggi Agama Semarang, 1991 - 1997)", (Dissertation, UIN Sunan Kalijaga Yogyakarta, 2003).

¹⁹ M. Atho Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktek*, (Yogyakarta: Pustaka Pelajar, 2004).

²⁰ Jessie Brechin, "A Study of the Use of Sharia Law in Religious Arbitration in the United Kingdom and the Concerns That This Raises for Human Rights", *Ecclesiastical Law Journal*, 15(3, 2013): 293–315. <https://doi.org/10.1017/S0956618X13000434>.

territory of the Syar'iyah Court of the Province of Nanggroe Aceh Darussalam. Nevertheless, several studies that have been put forward are very representative of several decisions of the Syar'iyah Court. This research is a normative legal research with a descriptive-analytic.

THE CONSIDERATION OF LEGAL INTO SYAR'YAH COURT DECISION

The results and discussion of this research are based on the characteristics of the decisions of the Sharia Court of the Region of the Sharia Court of the Province of Nanggroe Aceh Darussalam within the Unitary State of the Republic of Indonesia. Nurhadi²¹ stated that according to the provisions of the legislation, in each district or city there is a first-level Syar'iyah Court (in Aceh Province there are 23 districts or cities). Until the end of October 2011, in Aceh Province, there were only 19 First Level Syar'iyah Courts (Regency/Municipal Syar'iyah Courts). 'iyah Simpang Tiga Redelong in the Regency of Bener Meriah and its Chair were sworn in on December 15, 2011. Thus, by the end of 2011, in Aceh Province, there were 20 First Level Syar'iyah Courts. In the future, three more Syar'iyah Courts of the First Level should be established in Aceh, namely: in Suka Makmu, the Regency of Nagan Raya; in Blang Pidi, the Regency of Abdya; and in the City of Subulussalam. In 2012, the projected formation of a new Sharia Court is only for the Regency of Nagan Raya and the Regency of Aceh Barat Daya, whose proposals have been submitted to the Supreme Court. Meanwhile, in Subulussalam City, it has not been proposed because the cases at the Singkil Syar'iyah Court per year are quite small, so if a Syar'iyah Court is also formed in Subulussalam, the number of cases for each Sharia Court is only about 25 per year. In terms of court classification, of the 20 existing Syar'iyah Courts, there is only 1 Class IA Syar'iyah Court (Banda Aceh) and 2 Class IB Syar'iyah Courts (Lhokseumawe and Takengon); the rest are Class II (17 Syar'iyah Courts). Of the 17 class II Syar'iyah Courts, six of them have been proposed to increase the class to Class IB because they have met the specified requirements but have not been processed at the central level (by the Supreme Court and the Ministry of PAN and RB), namely: the Syar'iyah Courts of Jantho, Sigli, Bireuen, Lhoksukon, Langsa, and Meulaboh. The existence of the Syar'iyah Court, as mentioned earlier, is related to the practical need to

²¹ Nurhadi, "Penegakkan Hukum Jinayat di Provinsi Aceh: Problematika dan Tantangan, Cakim Pengadilan Agama Tigaraksa Sejak Mei 2009-November 2011", *Badilag.net*, 2011, www.badilag.net/.../PENEGAKAN%2520HUKUM%2520JINAYAT%2520DI%2520PROVINSI%25...%0A%0

obtain answers to research problems. The data were obtained from the Aceh Syar'iyah Court (appeal level) and the Banda Aceh Syar'iyah Court²².

In the Bireuen Syar'iyah Court and the Syar'iyah Court, based on the results and analysis of the previous syar'iyah court's decision, it can be understood that the form of the syar'iyah court's decision is in accordance with judicial decisions in general. However, several decisions at the Banda Aceh Syar'iyah Court have characteristics that are not found in court decisions in general, namely in decisions beginning with the sentence: *الله الرحمن* some of these decisions are Decision Number 78/Pdt.G/2012/MS-ACEH, Decision Number 59/Pdt.G/2011/MS-Bna, and Decision Number 68/Pdt.P/2012/MS-Bna. The provisions of Article 57 Paragraph 2 of Law Number 7 of 1989 concerning Religious Courts state that each determination and decision begins with the sentence "BISMILLAHIRRAHMANIRRAHIM," followed by FOR JUSTICE BASED ON THE ALMIGHTY GOD. The characteristic in question lies only in its writing, which is in Arabic. This characteristic, of course, is only found in the decision of the Syar'iyah court. By referring to the opinion of Al-Maududi (1903–1983) in his theory of "God's Sovereignty", starting the decision with a basmalah in its meaning. According to one opinion, the value of decisions or determinations using: *الله الرحمن الرحيم* is higher than using: BISMILLAHIRRAHMANIRRAHIM, because accuracy can be guaranteed in terms of and tajwid. Based on the report of the year's Syar'iyah Court amount of cases, the majority of cases are makhraj: (1) determination of heirs; (2) marriage isbat; (3) a lawsuit; and (4) divorce talaq. In terms of the number of decisions, the types of cases that are decided at the syar'iyah court have their own characteristics, namely the determination of heirs, which is a fairly dominant case²³. In essence, the supervision carried out by the Judicial Commission cannot be interpreted in the narrow sense that the Supreme Court immediately takes over the supervisory authority that has been attached to the Supreme Court.²⁴

This condition is very different from the religious courts in various parts of Indonesia, where, in general, the types of cases that are mostly decided are those related to divorce. In religious courts, apart from divorce cases, there are very few cases involving the determination of heirs. According to Puteh, the tsunami disaster had its own consequences for

²² Iskandar Ritonga, *Mahkamah Syar'iyah di Nanggroe Aceh Daarussalam dalam Perundang-Undangan dan Qanun*, (Padang: Suluh Pers, 2004).

²³ *Ibid.*

²⁴ Awaluddin, et.al, "Membangun Hubungan Ideal Mahkamah Agung Dan Komisi Yudisial Dengan Pendekatan Budaya: Sipakatau, Sipakalebbi, dan Sipakainge", *Riau Law Journal*. Vol.6. No.1.(2022): 33-47, <http://dx.doi.org/10.30652/rlj.v6i1.7912>.

the Sharia Court as a state institution that provides legal protection and justice to the community. According to information from the mass media, the number of victims due to the tsunami in Nanggroe Aceh Darussalam reached 250,000, both dead and missing. As a challenge and a difficult task for the Syar'iyah Court due to the large number of victims, it is estimated that there will be problems with family law, which is the authority of the Syar'iyah Court to resolve, such as:²⁵

1. Determination of heirs for inheritance purposes with the bank or Taspen;
2. Determination of legalization of care for tsunami victims orphans (adoption);
3. Settlement of inheritance disputes (faraidh);
4. Determination of the status of the missing person (heir or heir)s;
5. Determination of the status of property left by the owner and leaving heirs;

To make it easier for the community to manage the case, the Syar'iyah Court provides free services to families of tsunami victims without charging a fee). Sharia Court, namely regarding cases of guardianship determination, ratification of the status of missing persons, and determination of heirs. The content contained in the Syar'iyah court is still limited in a few cases. This is due to the fact that there are still many cases under its authority that are not litigated in the Syar'iyah Court. The handling of cases (religious and civil) continues to increase from year to year, except during the peak conflict period, which was around 2000 to 2004, when the number of incoming cases decreased drastically, to only around a thousand to two thousand in all of Aceh per year. After the earthquake and tsunami hit Aceh, cases handled increased sharply to reach four thousand, even though 2010 reached 5,511 new cases. Until the end of the In 2011, Islamic punishments that have been enforced through the Qanun Jinayah and other Islamic Sharia Qanuns are only limited to the substance of khamr, maisir (gambling), khalwat (immorality), and the spread of heretical sects, not Friday prayers three times in a row. participate, sell rice during Ramadan, eat and drink in public during the month of Ramadan, and put some fingers in the field of zakat.²⁶

All decisions of the Syar'iyah Court in the Jinayat case basically still adhere to the principle of legal remedies for the convict to file an appeal to the Provincial Syar'iyah Court and submit a cassation to the Supreme Court of the Republic of Indonesia. For the first time in the history of the development of law in Indonesia, the prosecutor has executed the decision

²⁵ Iskandar Ritonga, *Mahkamah...Op.Cit.*

²⁶ Syamsir Suleman, "Capaian Mahkamah Syar'iyah Aceh Tahun 2011 Hambatan dan Tantangan dalam Pelaksanaan Tugas Serta Proyeksi Tahun 2012", 2011, <https://www.ms-aceh.go.id>.

of the Bireuen Syar'iyah Court against 12 people convicted with caning on Friday in public in the presence of the public (Puteh). Based on the analysis of the types of cases decided by the Syar'iyah Mahkamah, it can be seen that the Syar'iyah Mahkamah has characteristics that other judicial institutions do not have. The characteristic feature is that the Syar'iyah court has issued decisions on mua'amalah and jinayat cases that are not found in other courts in Indonesia. This characteristic indicates that in the context of the Unitary State of the Republic of Indonesia, it does not only implement an autonomy policy in the executive (government) field but also has autonomy in the judicial (judicial) field.

The basis for legal considerations in the decision of the Syar'iyah court are facts, both facts related to the case, including events and legal events that are corroborated by evidence and trial facts. Regarding the basis of this consideration, the decision of the Syar'iyah Court can be categorized as uniform. This is different from the rule of law, which is clearly contained in the decision of the Syar'iyah court. In relation to the rule of law that is used as the basis for consideration, there is diversity between one decision and another. This is understandable because the diversity in question is caused by the different types of cases that are resolved in the Syar'iyah Court. The characteristics of the decision of the Syar'iyah Court on the basis of the legal considerations of the decision of the Syar'iyah Court are the rules used in deciding cases that show diversity, some of which are only used in the Syar'iyah Court. In other words, the rules that are used as the basis for consideration by the Syar'iyah Court are not used by other judicial institutions.

The basis for legal considerations in the decision of the Syar'iyah Court is influenced by the case entered. In a sense, if the cases that are entered and processed in the religious courts are increasingly diverse in accordance with their authority, the more opportunities are open for the Syar'iyah Court to use other legal grounds in their decisions. This can happen because there are still other cases under the authority of the Syar'iyah Court. Examples of other legal bases that have the opportunity to be used in the Syar'iyah Court are Aceh Qanun Number 10 of 2007 concerning Baitul Mal, Aceh Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs, Aceh Qanun Number 11 of 2008 concerning Child Protection, and Qanun NAD Province No. 7 of 2004 concerning Zakat Management.

Based on the results of previous research on the basis for legal considerations in the decisions of the Syar'iyah Court, it is known that the decisions of the Syar'iyah Court have characteristics that are not shared by other courts in the territory of Indonesia. The

particularity in question is primarily the existence of a legal basis for consideration in the form of a qanun. This particularity is actually in accordance with existing provisions, one of which is Articles 53 and 54 of Qanun Number 10 of 2002, which mention material law and formal law in the Syar'iyah court environment. Article 53 of the Qanun states that the material law to be used in resolving cases, as referred to in Article 49, is sourced from or in accordance with Islamic Shari'a, which will be regulated by the Qanun. Article 54 states that the formal law to be used by the Court is sourced from or in accordance with Islamic Sharia, which will be regulated by Qanun.

Qanun is made in the context of implementing regional autonomy, special autonomy, and co-administration tasks, as well as accommodating special regional conditions and further elaboration of higher legislation. When the qanun regulates matters relating to the judiciary, this indicates that there is a characteristic of the unitary state of the Republic of Indonesia that is inconsistent with the theory of a unitary state that only has one central legislative body. Regulations in the judicial sector through qanun (regional regulations) only exist in the Syar'iyah Mahkamah, not in other judicial circles throughout Indonesia.

Bagir Manan's opinion above clearly states that the implementation of the Syari'ah Court with all the contents of its authority will not only affect the existing judicial system but will also affect the administrative system, the legal system, and even the nation and state systems. In relation to this opinion, research on legal reform in the decisions of the Syari'ah Court can describe the effect of the implementation of the Syari'ah Court in the Unitary State of the Republic of Indonesia.

CONCLUSION

In the form of the decision of the Syar'iyah Mahkamah, the characteristic is that there is the inscription *الله الرحمن الرحيم* in the decision, which according to some people is more appropriate than just being written in Indonesian. This characteristic is different from other judicial decisions in the Unitary State of the Republic of Indonesia. The types of cases that are decided at the Syar'iyah court consist of civil and jinayat cases.

Jinayat cases are characteristic of the types of cases that are decided at the Syar'iyah court. This type of Jinayat case shows the development of the concept of the unitary state in the implementation of regional autonomy. The basis for legal considerations in the decision of the syar'iyah court are facts (events and laws), trial facts, sources of law, and statutory

regulations. The characteristics are found on the basis of the legal considerations of the qanun. This makes regional autonomy within the Unitary State possible not only in the executive field but also in the judicial and legislative fields.

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