

Islamic Law Enforcement Through Religious Courts in Indonesia

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Abstract

As a country with the largest Muslim community in the world, the existence of Religious Courts is quite important as a step for the Islamic community to obtain justice. This research then aims to see how the position, authority and legal sources of the Religious Courts are in becoming Islamic law enforcers in Indonesia. This research is qualitative research using data from previous studies. The results of this study found that the source of law owned by the Religious Courts comes from material sources of law, such as Islamic law, and formal sources of law originating from statutes. Then, the Religious Courts have the ability to evaluate, decide, and resolve a variety of disputes at the initial level involving Muslims. The authority of the Religious Court itself is comprised of both relative and absolute authority.

Keywords: Religious Courts, Law Enforcement, Islamic Law.

A. INTRODUCTION

The court's role cannot be sanctioned anymore because everything related to neglected rights and responsibilities can be resolved with the Judiciary Institution. This institution provides a place, even helps those who feel their rights have been deprived, and forces parties to be responsible for actions that harm other parties (Deakin et al., 2017). The activities of such Courts are trying to connect legal formulations which are still abstract because, through the work of the Courts, that law can only be realized, as stated by Satjipto Raharjo, that the presence of a legal institution is an operationalization of the idea of the formulation of abstract legal concepts. It is through institutions and the work of these institutions that abstract things can be realized into reality (Brems & Lavrysen, 2015).

The settlement of disputes and disputes through state power is carried out by the judiciary, which can act to impose its decisions on the parties by using a certain system of sanctions. The community needs the judiciary institution if the first and second methods are deadlocked. Even for acts of lawlessness and crime, the judiciary is the only institution with the ability and authority to resolve them (Chen & Kang, 2016).

The judicial environment, which is the judicial power, is divided into four: General Courts, Religious Courts, Military Courts and State Administrative Courts. Each of these institutions has its scope and authority, which is regulated in legislation

under the auspices of the Supreme Court. Religious courts are courts that have specificity in their scope and authority. Starting from the settlement of certain cases, which then on certain groups of people (Kosař & Lixinski, 2015). The Civil Procedure Code of the Religious Courts is the law that regulates the traffic of case examinations in courts within the Religious Courts. Using this procedural law, the parties to the dispute can recover their rights harmed by other parties through the courts, not taking the law into their own hands. The civil procedure law regulates the rights and obligations that must be carried out by each party in a case in a balanced manner before a court hearing (Erie, 2015).

Departing from the description above, several sub-problems can be put forward, namely, what is the position of the Judicial Powers of the Religious Courts as enforcers of Islamic Law, and what is the scope, authority of the Religious Courts and the source of the procedural law of the Religious Courts?

B. METHOD

This type of research is literature which is the collection of data and information obtained directly from various literature, laws and regulations, opinions of legal experts, documents and other writings related to the material discussed as support. The data obtained were analyzed qualitatively and then presented descriptively, describing, describing, and explaining according to the problems closely related to this research.

C. RESULT AND DISCUSSION

1. Position of Judicial Power in the Religious Courts as Islamic Law Enforcement in Indonesia

The amendments to the 1945 Constitution of the Republic of Indonesia have altered constitutional life, notably with regard to the exercise of judicial authority. Amendments to the Republic of Indonesia Constitution of 1945, according to Satjipto Rahardjo's view, are a fact to hunt for the truth even though, at certain times, one has to admit failures and limitations because the truth of human works is relative. Based on these alterations, it is underlined that judicial power is exercised by a Supreme Court and subordinate judicial bodies within the General Courts, Religious Courts, Military Courts, State Administrative Courts, and by a Constitutional Court (Tibaka & Rosdian, 2017).

Judicial power becomes a fundamental power as the axis of power that upholds justice without the interference of other powers. In Bagir Manan's view, there are several objectives to be achieved by the judicial power: 1) as part of a system of division or separation of powers between state administering bodies, the judicial power is needed to guarantee and protect individual freedoms; 2) an independent judicial power is needed to prevent the government from acting arbitrarily and oppressing; 3) an independent judicial power is needed to assess the validity of a statutory regulation so that the legal system can be properly implemented and enforced (Nadir & Wardani, 2019).

The independence of the Judicial Institutions is none other than the freedom and independence of the court in carrying out its functions and roles. Whereas what is meant by functional freedom, according to Oemar Seno Adji, is that functional freedom, as is known, contains a prohibition (verbod) according to constitutional law for other state powers to intervene in the examination of cases by judges, in *oordeervorming* they make decisions. In Indonesian legislation, the Judicial Institution experiences the existence of understanding by stating that it is not limited to freedom of interference from other state powers but to freedom from coercion and recommendations from extra-judicial parties. The independence of the judiciary is inseparable from the existence of the judiciary in Indonesia. The juridical basis regarding the judicial environment is regulated in Article 10, and the formation of the Special Court and the Syar'iyah Court is placed in Article 15 paragraphs (1) and (2) of Law No. 48 concerning 2009 which states: 1) Special courts can only be formed in one of the judicial environments referred to in Article 10 regulated by law; 2) The Islamic Sharia Court in the Province of Nanggroe Aceh Darussalam is a special court within the religious court environment so long as its authority pertains to the authority of the religious court, and it is a special court within the general court environment so long as its authority relates to the authority of the General Court (Silfiah et al., 2016).

The interests of the state must be represented in the processes of administering justice, but the interests of the state must obtain legitimacy and be based on law, and as far as possible, will not sacrifice the interests of the people and vice versa. Therefore, the court's decision as an integration institution must include and represent these three interests to further strengthen the realization of justice, which is its main goal. Implementing the justice system is essentially very influential on the people's interests as a basis for dealing with certain problems. The presence of a judicial principle that states the impossibility of refusing a case because the law does not exist or is not clear is a strength in protecting the interests of the people in particular. This is based on Article 16 paragraphs (1) and (2) of Law Number 48 of 2009, namely: 1) The court may not refuse to examine, try and decide on a case filed because the law does not exist or is unclear, rather it is obligatory to examine and adjudicate; 2) The provisions referred to in paragraph (1) do not close efforts to settle civil cases amicably (Tyler et al., 2015).

Judiciary can be identified as part of a legal institution to meet the needs of law enforcement and justice. The general description of the growth and development of justice and law is also very dependent on political institutions based on social structure, cultural patterns and economic development. The judicial process is actual, referring to the values shared by the community. Judiciary as a social institution does not stand and work autonomously but is in the process of exchange with its environment. The importance of the judiciary as a forum for the integration of various interests, both the interests of the state, the interests of law and society. The judiciary is a means of integration that must balance these three interests without dominating or ignoring an interest (Kelemen, 2016).

The Islamic community in Indonesia experiences the interaction process. This has been going on for a long time since Islamic society became a political force during

the Islamic era until now. One of the products of interaction is the Islamic Courts in Indonesia, officially called the Religious Court, as a part of the state judiciary. Thus, the Religious Courts are Islamic Courts in Indonesia. Religious justice as an embodiment of Islamic justice in Indonesia can be seen from several perspectives. Philosophically, the judiciary was formed and developed to uphold law and justice (Cholil, 2017).

Religious Courts have been acknowledged for a considerable amount of time, considering their history. The Dutch government established it with Staatsblad (LN) 1882 No. 152 and Staatsblad 1937 for the Religious Courts in Java and Madura, and Staatsblad 1937 Nos. 638 and 639 for South Kalimantan. Then, following Indonesia's independence, the government established a Religious Court for regions other than Java-Madura and South Kalimantan under government order No. 45 of 1975. However, these laws do not specify procedural legislation regarding the methods for reviewing, adjudicating, and settling cases. So, the judges of the Religious Courts took the essence of the procedural law contained in the books of fiqh, which in its application differed from one religious court to another. Meanwhile, the legal product of Law Number 50 of 2009, regarding the second amendment to Law Number 7 of 1989 concerning the Religious Courts, was born from a democratic political configuration and a responsive legal character. So, from the perspective of legal material, government legal politics is autonomous and responsive or populist, in which this legal product reflects people's expectations and a sense of justice (Furqan & Haries, 2018).

The Religious Courts are Islamic Courts in Indonesia because the permissible cases all are types of cases according to the Islamic religion. Strictly speaking, the Religious Courts are limitations Islamic Courts, which are adapted (*dimutatis mutandis*) to the conditions in Indonesia. On the other hand, the Religious Courts are civil courts, while general courts are also civil courts in addition to general courts. Suppose you look at the principles of procedural law, of course. In this scenario, there are both general and specific principles of resemblance; yet, there are disparities between the procedural law of general courts and the procedural law of religious civil courts. In other words, Religious Courts are one of the applications of judicial power, which also serves to protect justice, truth, order, and legal certainty in particular Islamic civil situations. Therefore, this Religious Court is called a special court.

Juridically, Law 50 of 2009 concerning the Religious Courts provides a strong juridical basis. With the stipulation of Law Number 50 of 2009 concerning the Religious Courts, the Religious Courts are placed in the same position as other judicial institutions. But in cases where the competence to resolve cases is not fully given that authority, justice seekers still have legal options. The enactment of Law Number 50 of 2009 brought basic changes that occurred within the Religious Courts, including;

- a. The Religious Courts have become independent courts, and their position is equal to the General Courts, Military Courts, and State Administrative Courts.
- b. The names, composition, powers or powers and procedural laws of the Religious Courts are the same and uniform throughout Indonesia. Creating the

procedural law of the Religious Courts will facilitate the realization of order and legal certainty with the core of justice within the Religious Courts environment.

- c. The protection of women is further enhanced, one of which is by giving equal rights to wives in defending their interests before the Religious Courts.
- d. In the preparation and development of national laws
- e. Establish efforts to transfer various principles and principles of Islamic law through jurisprudence.
- f. The implementation of the provisions in the Law on Judicial Powers, especially those referred to in Article 10 paragraph (1) concerning the position of the Religious Courts and Article 12 regarding their composition, powers and procedural law (Simon, 2019).

2. Sources of Religious Court Procedural Law

According to Sudikno Mertokusumo, the source of law is often used in several senses, namely: a) as the origin of law or the beginning of the law, for example, God's will, human reason, the soul of the nation and so on; b) show previous laws; c) as a source of validity; d) as a source of knowing the law, for example, laws, documents and so on; e) as a source of the occurrence of law that gives rise to law.

a. Material Law of Religious Courts

According to Roihan A. Rasyid, the Religious Courts are Islamic courts in Indonesia, and this is based on the types of cases handled by the religious courts and regulated in Islamic religious provisions. Establishing a religious court in Indonesia aims to enforce Islamic civil law in certain fields such as marriage, inheritance, grants, wills, endowments, zakat, infaq, alms and sharia economics. All of this is in line with Islamic law. The source of material law from material law of the Religious Courts is sourced from Islamic law (Nurlaelawati & Van Huis, 2019).

Islamic law is an integral part of Islamic teachings which cannot be separated from the life of Muslims. According to Ahmad Azhar Basyir, based on the philosophy of Pancasila and the 1945 Constitution, Islamic material law legislation is a juridical constitutional imperative. Several parts of Islamic law were raised in statutory regulations either explicitly or implicitly. In material law, the Religious Courts can exercise their authority as a judiciary for Muslims in Indonesia to decide cases no longer directly using the Al-Quran and Hadith or other sources of Islamic law such as Ijma, Qiyas, Istihsan, Istihab or certain books of fiqh which become standards of Islamic law, unless later there is a conflict of understanding, then the Al-Quran and other Islamic legal standards can be used as a direct reference (Maksum, 2017).

The legal contents of the Koran and Sunnah, both written and implied, have been contained in Law Number 50 of 2009 concerning the second amendment to the Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts. However, the material law is still bound by Law Number 1 of 1974

concerning Marriage, Government Regulation Number 9 of 1975 concerning Regulations for the Implementation of Law Number 1 of 1974 concerning Marriage, Government Regulation Number 28 of 1977 Owned Land Waqf and some are listed in the Law on Religious Courts, Law Number 41 of 2004 concerning waqf, Regulation of the Minister of Religion Number 1 of 1978 concerning Implementation Regulations for PP Number 28 of 1977, Regulation of the Minister of Religion Number 2 of 1987 concerning Guardian Hakium, Law Number 38 of 1999 concerning Management of Zakat, Law Number 21 of 2008 concerning Sharia Banking.

The Compilation of Islamic Law is the next product of legislation as a representation of Islamic law. The position of the Compilation of Islamic Law is the meaning of the life of Indonesian Islamic society, which contains legal norms. The Compilation of Islamic Law was approved by the Indonesian Ulama, became a series of written laws, and entered the Indonesian legal system in Presidential Instruction Instrument No. 1 of 1991. Legally, the Compilation of Islamic Law, the Compilation of Sharia Economic Law and the Fatwa of the Sharia Council of the Indonesian Ulama Council are classified as material law as a guideline for resolving cases within the Religious Courts (Rokhmad & Susilo, 2017).

Legislation of Islamic material law in the order of life of the state into various regulations and laws to unify Islamic law to avoid legal uncertainty due to differences in decisions on cases between the Religious Courts in different regions in Indonesia. On this basis, the certainty of Islamic law can be realized through the truth. The form of truth can be realized in addition to being based on valid evidence and reaching the minimum limit of proof, and the truth must also be believed by the judge so that the truth is considered to have the value of essential truth (Ercanbrack, 2019).

b. Formal Law of Religious Courts

Sources of formal law in Indonesia consist of statutory law, customary law, jurisprudential law, religious law and customary law, which are stated as positive law. The existence of formal law cannot be denied that the main purpose of filing a case in court is to uphold material law. All components involved in enforcing material law must comply with procedural (formal) legal provisions. Procedural law serves material law, the position of procedural law also prioritizes formal truth. However, this does not mean that procedural law rules out material truth. In the Islamic judicial procedural law based on the hadith of Rasulullah SAW, it is explained that Allah commands to settle cases according to their *zahirnya*. The word *zahir* does not mean formal truth according to the terms of the General Civil Procedure Code. However, the meaning is the formal truth of nature or material truth according to human ability.

Article 54 of the Law specifies that the procedural law that applies to courts within the religious courts is the civil procedural law that applies within the

general courts, with the exception of what has been regulated by this law. This law concretizes the procedural law of the Religious Courts, particularly formal law. Since the enactment of Law 50 of 2009 on the second amendment to Law No. 7 of 1989 pertaining to the Religious Courts, it has been clarified that the procedural law enforced is civil procedural law that applies to general courts unless specifically regulated by other laws. As stated in Circular Letter of the Supreme Court of the Republic of Indonesia No. 19 of 1965 and reaffirmed by Circular Letter of the Supreme Court of the Republic of Indonesia No. 3 of 1965, the procedural law applicable to the General Court is HIR and R.Bg. According to Law No. 1 of 1974, Government Regulation No. 9 of 1975, and other provisions of Law No. 7 of 1989, the procedural law of the General Courts also applies to the Religious Courts.

Laws and regulations regarding civil procedural law applicable to the General Courts and Religious Courts, including Law Number 48 of 2009 concerning the Main Provisions of Judicial Power and Law Number 3 of 2009 concerning the Supreme Court.

There are three regulations issued after the enactment of Law 50 of 2009 regarding the second amendment to Law Number 7 of 1989 concerning Religious Courts:

- 1) Circular of the Supreme Court Number 2 of 1990 concerning Instructions for the Implementation of Law Number 7 of 1989 concerning the Religious Courts.
- 2) Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (Butt, 2018).

The law governing the Religious Courts has been amended twice. The first amendment to the Law on Religious Courts was the enactment of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 regarding Religious Courts. The first change occurred in the reform era, in which the difference had not completely regulated the unification of the roof of the Religious Courts at the Supreme Court. And in 2009, the Law on Religious Courts was amended again through Law Number 50 of 2009 as the second amendment to Law Number 7 of 1987 (Mardiana & Darwis, 2015).

3. Authority of the Religious Courts

The court's composition comprises the chairman, member judges, clerks, secretaries and bailiffs. The court is tasked with examining, deciding and settling civil and criminal cases at the first level. The actions of the Religious Courts in carrying out their duties are called Religious Courts. The Religious Court is one of the three special courts in Indonesia. It is a special court because Religious Courts try certain cases regarding certain groups of people. This specificity can be seen in the main duties of the Religious Courts to examine, adjudicate, and decide cases under their authority. Authority or competence is often referred to as power. According to Barda Nawawi Arif, the power of the judiciary is motivated as a form of state power in upholding law

and justice to implement the legal state of the Republic of Indonesia. According to Karl Olivecrona, the essence of power is power as an organized force. In line with that, power becomes a general capability in guaranteeing the implementation of obligations that bind organizational units in a system (Saragih & Berlian, 2018).

The Religious Courts establish and enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia following Article 2 paragraph (2) of the Republic of Indonesia Law Number 48 of 2009. This is also emphasized in the preamble to the letter of Law Number 48 of 2009, stating that judicial power, according to the 1945 Constitution of the Republic of Indonesia, is an independent judicial power exercised by a Supreme Court and the Judiciary Body, especially the Religious Courts to administer justice to uphold the law and justice (Herawati et al., 2019).

The judiciary's authority in relation to civil procedural law usually involves two things: relative and absolute. As a special court, the Religious Courts have relative control, defined as the power of a court of one type and one level. In contrast to the powers of courts of the same type and at other levels, for example, the Gowa Religious Court and the Takalar Religious Court are the same as the Religious Court environment and are at the first level. Thus, the relative authority is urgently related to the Religious Court, where people will file cases and their right of exception. So, each Religious Court has a certain jurisdiction (relative jurisdiction) covering one municipality or district. Article 4, paragraph 1 of Law Number 50 of 2009 states that "the Religious Court is domiciled in the municipality or district capital, and its jurisdiction covers the municipality or district". The seat of the Religious Courts is in the municipality or district capital whose jurisdiction covers the municipality or district, but this does not rule out the possibility of an exception (Larsson et al., 2017).

Absolute authority is the court's authority in relation to the type of case, type of court, or level of court, with the distinction being the type of case, type of court, or level of court. The absolute power of the Religious Courts is required to examine the cases submitted to them, regardless of whether or not they involve the courts' absolute jurisdiction. If it is evident that this does not have absolute authority, Religious Courts are not permitted to consider the matter, let alone examine it. Article 49 of Law Number 50 of 2009 concerning Religious Courts contains the articulation of the Religious Courts' authority (Brouard & Honnige, 2017).

Religious Courts' authority altered Law of the Republic of Indonesia Number 3 of 2006 regarding revisions to Law Number 7 of 1987 regarding Religious Courts. In accordance with Law No. 7 of 1987, the Religious Courts initially had the obligation and authority to study, decide, and resolve first-level issues in the areas of marriage, inheritance, wills and donations, as well as endowments and alms. In issues involving infaq, zakat, and sharia economics, the authority of the Religious Courts has been expanded by Law No. 3 of 2006 pertaining to Religious Courts. According to Article 49 of Law No. 3, the absolute authority of the Religious Courts is still limited to only nine fields as of the present. Despite the fact that the statute on Religious Courts was further changed by Law 50 of 2009, (Muhammadin et al., 2019).

According to Yahya Harahap, regarding the provisions of Articles 2 and 49 of the Law of the Republic of Indonesia Number 3 of 2006 Jo. The Law of the Republic of Indonesia, Number 50 of 2009, confirms that: 1) the parties to the dispute are Muslims; 2) Disputed civil cases are limited to matters of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah and sharia economics; 3) the legal relationship underlying civil law is based on Islamic law. Thus, the principle of Islamic personality in absolute authority includes two things: 1) both parties, or the parties, must be equally Muslim, and 2) a binding legal relationship to cases based on Islamic law. Therefore, the Religious Courts decide and resolve cases based on Islamic law. The Religious Courts, as law enforcers in Indonesia, protect those who need justice so that the community, especially Muslims, can get justice and protect their interests (Nurhadi, 2019).

D. CONCLUSION

Judicial authority is exercised by the Supreme Court and its subordinate judicial bodies, including the General Courts, the Religious Courts, the Military Courts, and the State Administrative Courts. In general, the legal sources of the Religious Courts consist of material legal sources originating from Islamic law and material law that are bound by Law No. 50 of 2009 on the second amendment to Law No. 7 of 1989 concerning Religious Courts, and formal legal sources consisting of statutory law, customary law, jurisprudential law, religious law, and customary law that are stated as positive law. The Religious Courts are responsible for examining, deciding, and resolving disputes amongst Muslim individuals. The authority of the Religious Courts concerns two things both relative authority and absolute authority. The relative authority of the Religious Courts is interpreted as the power of the courts, especially the jurisdiction or jurisdiction of filing cases and the right of exception. Unlike the case with absolute authority as the authority of the court relating to the types of cases handled in court institutions, especially the Religious Courts, which include marriage, inheritance, wills, grants, endowments, alms infaq, zakat and sharia economics.

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