

## The Existence of the Sharia Court in the Mechanism of Legal Integration in Aceh

Sri Dwi Friwarti\*<sup>1</sup>, Ida Rahmah<sup>2</sup> & Budi Handoyo<sup>3</sup>

STAIN Teungku Dirundeng Meulaboh<sup>1,2,3</sup>

Email : sridwi.yudhi@gmail.com<sup>1</sup>, Idarahma@Staindirundeng.ac.id<sup>2</sup>.

Budihandoyo@staindirundeng.ac.id<sup>3</sup>.

### Abstract

The presence of the Sharia Court in Aceh Province has further strengthened the authority to implement Islamic law in this province. However, there are several things that must be considered so that the rule of law can be realized namely: structural, substantial and cultural aspects. Law enforcement will work if these three aspects are carried out continuously. Nevertheless, there are still a number of legal experts and legal practitioners who have not been able to accept the delegation of authority for criminal cases (*jinayat*) to the Sharia Court. In fact, the presence of the sharia court as a component of the legal integration mechanism in Aceh. This study will address this issue by examining many regions in Southwest Aceh, including the *Syar'iyah* Courts of Tapak Tuan, Meulaboh, and Calang, as well as the Province, which serves as the delegation of appeal cases. After all, this research encourages the Sharia Courts to work closely with government stakeholders to provide information and disseminate authority.

**Keywords:** *Sharia Court, integration mechanism, law, Aceh.*

### Abstrak

Kehadiran Peradilan Syariah di Provinsi Aceh semakin memperkuat kewenangan penerapan syariat Islam di provinsi ini. Namun demikian, ada beberapa hal yang harus diperhatikan agar supremasi hukum dapat terwujud yaitu: aspek struktural, substansial dan kultural. Penegakan hukum akan berhasil jika ketiga aspek ini dilakukan secara terus menerus. Meski demikian, masih ada sejumlah ahli hukum dan praktisi hukum yang belum bisa menerima pelimpahan kewenangan perkara pidana (*jinayat*) ke Pengadilan Syariah. Padahal, kehadiran pengadilan syariah sebagai salah satu komponen mekanisme integrasi hukum di Aceh. Kajian ini akan menjawab persoalan tersebut dengan mengkaji banyak daerah di Aceh Barat Daya, antara lain Pengadilan Syar'iyah Tapak Tuan, Meulaboh, dan Calang, serta Provinsi yang menjadi tempat pendelegasian perkara banding. Bagaimanapun, penelitian ini mendorong Pengadilan Syariah untuk bekerja sama dengan pemangku kepentingan pemerintah untuk memberikan informasi dan menyebarluaskan kewenangan.

**Kata Kunci :** *Mahkamah Syar'iyah, Mekanisme Integrasi, Hukum, Aceh.*

## INTRODUCTION

The Islamic Sharia Court in Aceh is special courts within the Religious Courts. This is as regulated in the Act Number 4 of 2004 concerning judicial power in Article 15 paragraph (2). Therefore, legally, in the Indonesian legal order, the position of the Sharia Court in Aceh has a strong legal basis. carry out its authority which was previously in the Religious Courts. This can be interpreted, every case that was previously the authority of the Religious Court, is now the right of the Syar'iyah Court. This is also regulated by Law No. 11 of 2006 concerning the Government of Aceh. Article 128 points (1) and (2) of Law Number 11 of 2006 concerning the Government of Aceh state that the Islamic Shari'ah Court in Aceh is part of the judicial system. national law within the religious courts conducted by the Sharia Court which is free from the influence of any party. The Sharia Court is a court for everyone who is Muslim and resides in Aceh. The Sharia Court functions as a legal and religious service institution, and also as a central institution that guarantees the enforcement of Islamic law in Aceh. There are several levels of the Syar'iyah Court, namely the District/Municipal Sharia Courts as the court of first instance and the Aceh Syar'iyah Court as the court of appeal. District/city Syar'iyah Courts are scattered in various districts/cities in Aceh, one of which is the West-South coast of Aceh.

The presence of the Sharia Court has strengthened the authority for the implementation of Islamic law in Aceh. The institution becomes the determinant and decision maker regarding legal issues that occur in Acehnese society, by giving punishments in accordance with established Islamic law (Ismail, 2013; Hasnita, 2017; Nurdin et al., 2020). Great hope comes with the existence of this institution. Justice can be served for the benefit of the people. There is great hope that the people of the South West region of Aceh can avoid acts of violence and vigilantism, and legal problems that arise in the midst of society can be resolved wisely, and if they take legal action, preferably through the judiciary. However, in legal settlements, especially criminal cases, there are still problems in the understanding of the people of the south west of Aceh regarding the absolute scope of judicial authority. As is the case with criminal cases containing syar'i elements, the public still submits the matter to the general court, which should be the authority of the syar'iyah court.

In carrying out its duties and functions, the Sharia Courts as the center for the enforcement of Aceh's Islamic law, so far there has been no response from the

community, especially in the South West region of Aceh, to provide responses and assessments of public awareness and understanding of the existence and function of the Sharia Court in Aceh. and conversely, the judiciary has also not provided an assessment and response to its function in disseminating the authority to settle jinayah cases to the community. Problems regarding the authority of the Sharia Court are systemic, so that the solution must also be systemic, even legal problems that occur can be resolved properly.

There are some studies about authority of the Sharia Courts is related to Indonesia's judicial system (Fakhriah, 2013), authority of religious courts (the Sharia Courts) in Nanggroe Aceh Darussalam (Dewi, 2009), and the authority of the Sharia Courts as special court. However, the authority of Sharia Courts in legal integration mechanism of Aceh is profoundly limited. Therefore, this study will review the aspects that must be met to become a state of law, namely: structural, substantial, and cultural aspects. Based on the object of the problem studied, this study uses types of empirical juridical research and support for data obtained from normative juridical research.

## **RESEARCH METHOD**

In the process of conducting research, appropriate methods are needed to obtain the required data, this research uses the following methods: based on the object of the problem, this type of research uses empirical juridical research and is also supported by normative juridical research. Empirical juridical research is also known as non-doctrinal research. (Sunggono, 2012) said that this typology of research is called socio legal research. Therefore, empirical juridical research is research in the form of empirical studies in finding theories regarding the process of occurrence and operation of law in society.

This research uses a population approach. The population in this study are all parties related to the implementation of the existence of the Sharia Court in the legal integration mechanism in Aceh. By using this population, accurate and precise data will be obtained. While sampling is the process of sorting and selecting part of the population itself, Therefore, carefulness is needed in selecting the appropriate sample for the sampling technique. This research uses purposive sampling technique (Soemitro, 1990). The purpose of using this technique in order to obtain the designated subjects in accordance with the research objectives.

## RESEARCH FINDINGS AND DISCUSSION

### Power Sharing

According to Montesquie, in his book *L'Esprit des lois* (1748) which follows the way of thinking of John Locke, dividing state power into three branches, namely (i) legislative power as legislators, (ii) executive power that implements, (iii) to judge or judicially. From this Montesquie classification, it is known that the modern state power distribution is divided into three functions, namely the legislative (the legislative function), the executive (the executive or administrative function), and the judicial (the judicial function)(Asshidqie : 2011).

From the discussion of the trias politica in democratic countries, we have seen that in the original and pure sense, doctrine is an absolute power separation between the three branches of power (legislative, executive, and judicial), especially regarding their duties and functions as well as regarding the organs that carry out their duties. that function. However, along with the process, as has beenHistorically, the judiciary initially started from a simple system. Gradually, the justice system continues to develop and change to become more dynamic, complex and modern. Therefore, as stated by Djokosoetono, there are four rechtspraak known in history, namely: 1) Rechtspraak naar ongeschreven recht (customary law), namely a court based on unwritten legal provisions. Like a traditional court; 2) Rechtspraak naar precedenten, namely a court based on the principle of precedent or previous judges' decisions, as practiced in England; 3) Rechtspraak naar rechtsboeken, namely courts based on legal books, as in practice with religious (Islamic) courts that use compendium or the books of the Ahlussunah wal jama'ah scholars; 4) Rechtspraak naar wetboeken, namely a court based on the provisions of the law. Such a court is the embodiment of legal understanding positive or modern wetgeving which prioritizes written legislation (geschreven wetgeving) (Asshidqie, 2011).

The court is a judicial institution that guarantees the upholding of justice through the application of laws and regulations (wet en wetboeken). The structure may differ according to the case and related legal field. Of the problems and disputes that have arisen, there are cases that are quite resolved through the first and last courts, on the other hand there are cases that must be resolved at two levels, and there are other cases that can only be resolved in three stages, namely the first level, the appeal level, and cassation level. In the current justice system in Indonesia, there are four spheres, each of which has a court of first

instance, a court of appeal, and a court of cassation, all culminating in the Supreme Court (MA) the courts of the first and second levels in these four courts.

### **Legal Integration Mechanism Theory**

As the theory put forward by Talcott Parsons, law becomes one of the sub-systems in the mechanism of a more complex social system. Apart from law, there are other things that have different functions and logic. Such as sub-systems of culture, politics and economy.

The cultural sub-system is bound by values and norms that are considered to have nobility and nobility. Therefore, the cultural sub-system is useful in maintaining values and patterns in social life.

The legal sub-system itself refers to the common rules or the rule of the game. The purpose and function of law is to regulate, control and coordinate something that is on the wrong track so that it is in accordance with the applicable legal order. Meanwhile, in the sub-system of politics, it is known that politics is synonymous with power and authority, which serve as users of power to achieve certain goals. While the economic sub-system is part of meeting the needs to maintain life (Kusumojati & Rosando, 2021; Tanya, 2010).

In its development, Parsons' theory was later developed further by Harry. C. Bredeimer who analyzes the function of law as an integrating mechanism or integrator. Bredeimer tends to see the function of law only as a guard whose duty is to resolve conflicts. According to him, the new law functions when an incident or dispute occurs. For example, if someone files a lawsuit because their privacy and interests are disturbed. In such conditions, it is the responsibility of the court to resolve the issue with the right decision based on the principles of truth and justice.

Parsons and his colleagues see that courts rely on three inputs: 1) In analyzing a problem or dispute, the court requires an in-depth analysis of the causes and effects of the disputed issue; 2) Regarding the division of tasks and objectives of the judicial system, the courts need a concept of the conditions that occur as a result of the use of power; 3) In the conflict resolution process, according to (Achmad Ali, 2008), the court wants the plaintiff to choose the court as the only mechanism in resolving the dispute (Ali, 2011).

The implementation of the court is carried out through the judicial power. This is based on the 1945 Constitution of the Republic of Indonesia, which is an

independent power exercised by the Supreme Court and the judiciary. Both are in the general court environment, the religious court environment, the military court environment, the environment. state administrative courts, and the Constitutional Court, to administer justice in order to uphold law and justice.

Within the framework of Bredeimer's theory, the function of law or court is to resolve conflicts that arise in society. its position is sacred, as an institution that carries out the integration process of various processes that take place in society. On the other hand, the law is also open and accepting inputs from various fields, such as politics, economics, culture, which are then analyzed and processed according to the purpose of benefit.

To improve the ability and function of legal integration, it is necessary to elaborate on the various existing sub-systems. From the political sub-system, law requires the encouragement and support of qualified policies, authorities, and powers. From the economic sub-system, of course, the law requires the support of adequate capital, expertise, facilities and infrastructure. Meanwhile, from the cultural sub-system, law requires input in terms of values, morals and wisdom.

The authority of the political sub-system should be able to strengthen legal legitimacy, the authority of the economic sub-system should be utilized to create effective and efficient organizational or institutional conditions.

The values and morals of the cultural sub-system can be used as guidelines and directions for resolving disputes based on fair and objective decisions, regardless of strata, and social degrees. It is the authority of the Sharia Court to examine, hear, decide, and settle cases based on Islamic law.

If the effectiveness of the Sharia Court is associated with the division of three sub-system components as stated by Parsons and Bredeimer. Economic, social, and cultural: 1) The economic sub-system, the effectiveness of the Aceh Sharia Court can be implemented if there is a budget from the case and facilities so that the implementation of the trial can be effective; 2) Political sub-system, the effectiveness of the duties, functions and authorities of each legal apparatus within the scope of the Syar'iyah Court; 3) The cultural sub-system can be interpreted as religion, morals, morals and the judge's belief in giving legal decisions in court.

### **The authority of the Sharia Court in resolving cases that occur in the community.**

Judges in carrying out their judicial functions must be independent without being influenced by anything and anyone, including political and economic interests. This is in accordance with one of the principles of the rule of law concept, namely an independent and impartial judiciary. This is in accordance with Jimly Asshiddiqie's statement, "The existence of an independent and impartial judiciary absolutely must exist in a state of law.

In carrying out the functions of the judiciary and the judiciary, there should be no intervention from the executive or the legislature, nor from the public and the mass media. Judges in carrying out their duties can only side with justice and truth.

In carrying out their duties, judges not only act as an extension of the laws and regulations, but also as a real picture and manifestation of justice. Therefore, judges in examining cases are obliged to follow moral values, justice and truth values that live in society (Asshiddiqie : 2011).

The court itself is actually an activity carried out in order to provide justice for the disputing parties through the judiciary. The court is an institution or legal entity in charge of receiving, examining, adjudicating and resolving every case that is submitted.

Thus, in the phase of "judging until finally giving birth to a decision on a case" that is where the process of giving justice carried out by judges unfolds. In this process, judges become a very important element in efforts to administer justice, or in other words it can be said that the judiciary is one of the institutions in fulfilling the needs of community members to obtain legal certainty and justice. While the court is an organization or institution that has the task of carrying out law enforcement and justice.

In Islamic jurisprudence literature, six elements are needed for the proper and correct functioning of the judiciary, namely;

#### ***Judge or Qadhi***

A judge is someone who is appointed by the head of state to decide cases or disputes that occur in the community. Judges need to be appointed because the head of state or the executive cannot complete the tasks of the judiciary.

### *Law*

The law referred to here is the judge's decision taken in resolving a dispute. The law is sometimes carried out through *ilzam*, for example, the judge says "I will punish you by paying some money". Some argue that the decision of *ilzam* is to establish a convincing basis such as the right of union members to apply for the right of *shuf'ah*, while *qadha istisqaq* is to determine something with the law obtained from *itijihad*.

### *Mahkum Bihi*

*Mahkum Bihi* is a right. Because in *qadha ilzam* and *qadha istisqaq* which must be carried out by *qadhi*, and the defendant must fulfill it. As well as in *qadha tarki* by rejecting the lawsuit.

### *Mahkum Alaihi*

Based on the *shari'a*, *mahkum 'alaihi* is a request to fulfill the demands given to him. Whether the defendant or not, individuals or groups. That is, *mahkum alaihi* is a person who was sentenced to a case.

### *Mahkum Lawu*

*Mahkum lahu* is the party who sued their rights. And those rights are purely his. Or in other cases, there are two rights but the rights are stronger.

Words or actions that refer to the law [decision], it can be understood that the dispute resolution can only be done if the matter is brought by the plaintiff against the defendant. So, in the rules, it does not enter the field of justice, something that is not an event but is included in the field of worship (Djalil :2006).

Aceh based on the Aceh government law and in particular, has the privilege to manage its own area. Meanwhile, Aceh has a Sharia Court which is an Islamic law court in Aceh. And these institutions are included in the Religious Courts environment. The Sharia Court has the same authority as a religious court and it belongs to a special court within the general court environment, as long as it concerns the authority of the religious court.



Special courts, such as juvenile courts, may be formed and are under the Supreme Court (MA). Several other special courts such as the Human Rights Court, Commercial Court, Corruption Court (TIPIKOR), Industrial Relations Court which are within the General Courts. There is also a special Court within the State Administrative Court, namely the Tax Court (Fakhriah, 2013).

Islamic Shari'a is the basis of the authority of the Syar'iyah Court, Islamic Shari'a itself is a guide and law that regulates all aspects of Muslim life. Islamic Shari'a itself contains the perfect guide for all life and matters for achieve happiness in this world and the hereafter. Islamic Shari'ah contains commands and prohibitions that are taught to all of its people through His noble Messenger towards the entire order of human life.

If viewed from the perspective of legal science, Shari'a is the basic legal norm established by Allah swt, based on faith and related to morals, ethics and morals between fellow humans and the natural environment that must be obeyed and obeyed by every Muslim. These basic legal norms were passed down to mankind through the Minutes of His noble Prophet, the Prophet SAW through hadith, Rasulullah SAW gave more in-depth learning about a problem.

The main sources of Islamic teachings are the Qur'an and the Hadith of the Prophet Muhammad. Based on the hadith, it is clearly stated that sticking to the Qur'an and Sunnah as the basic legal norms will make life in the benefit and Allah guarantees that you will not go astray forever. Islamic law itself is the implementation of the Islamic religion which is related to all aspects of human life. The definition of Shari'ah in a broad sense includes i'tiqadiyah or faith, 'amaliyah consists of worship and muamalah, as well as morals (Pane : 2016).

The Sharia Court is one of the places for Muslims to get justice in certain cases. The existence of the Sharia Court is so special in the midst of the Acehnese people, and has its own position and function in the midst of the implementation of other judicial powers. In this study, researchers obtained some data related to the role and function of the Sharia Court as one of the institutions in the legal system in Aceh. The research study area covers the South West Aceh area, namely the Syar'iyah Courts of Tapak Tuan, Meulaboh, Calang and the Province as the delegation of appeal cases.

In the applicable legal system, the Sharia Court is part of the National Court and is one of the institutions that carry out its function as the executor of judicial power. The central task is to carry out the mechanism of legal integration for the sake of upholding Islamic Shari'a in the Veranda of Mecca Syar'iyah. Court As part of the national judiciary as one of the implementers of judicial power which is the central mechanism of legal integration for the enforcement of the implementation of Islamic law in Aceh. The scope of competence of the legal institution is:

#### *Absolute authority*

It is an authority based on material law in accordance with the scope of its authority. As it is known that the Sharia Court is a diversion from the existing religious courts. So the authority of the Sharia Court includes authorities related to the behavior and patterns of life of the Acehnese people such as worship, Islamic symbols and jinayah which have been stipulated by the qanun. This is not only the Syar'iyah Court, but also the court's authority.

#### *Relative Authority*

It is the judicial authority owned by the Sharia Court based on its jurisdiction. Therefore, the Sharia Court only hears disputes or cases within its jurisdiction (Lubis and Ritonga, 2016).

According to Mardani (Zulkarnain Lubis and Bakti Ritonga, 2016) the competence of the Sharia Court includes relative competence. Therefore, the relative competence of the Aceh Sharia Court is the jurisdiction of the Banda Aceh Religious High Court. While the absolute competence of the Sharia Court and the Aceh Sharia Court is the competence of the Religious Courts and the High Religious Courts, coupled with other competencies related to community life according to the qanun, namely in the fields of Aqidah, Worship, and Islamic Symbols (Mardani : 2010 ).

Article 49 of Qanun Number 10 of 2002 concerning the Islamic Sharia Court regulates the duties and authorities of the Syar'iyah Court. The article states that the Syar'yah Court has the duty and has the right to examine, decide and settle

cases at the first level, namely the areas of Ahwal al-Syakhshiyah (family law), Mu'amalah (economic/civil law) and Jinayah (Islamic criminal law).

Then in Article 130 of Law Number 11 of 2006 concerning the Government of Aceh, it is also explained about the authority of the Provincial Syar'iyah Court. The authority includes examining and deciding cases which are the authority of the Sharia Court at the appeal level.

All the rules contained in Article 128 of Law Number 11 of 2006 concerning the Government of Aceh in conjunction with Article 49 of Qanun Number 10 of 2002 concerning the Islamic Shari'a Court, are basically special provisions regarding the authority of the Court in adjudicating and deciding a problem, dispute and case, especially for Muslims in Aceh. Currently, the Sharia Court has the authority to examine, decide and resolve 12 cases in the field of jinayat. The twelve cases are criminal acts or crimes related to khamr or intoxicating drinks, maisir or gambling.

Being alone in a closed place with a non-mahram or seclusion, jarimah ikhtilath or being alone and making out between a man and a woman who is not a mahram in a hidden, closed or open location. Then the finger of adultery, sexual harassment, rape, qadzaf (accusing someone of adultery), liwath (homosexual), musahaqah (lesbian). And in addition to the violation of the Aceh Qanun Number 8 of 2015 concerning the Guidance and Protection of Aqidah and the violation of the Aceh Qanun Number 8 of 2016 concerning the Halal Product Guarantee System (Papurworejo. go.id).

In fact, Jarimah maisir and khamar occur most frequently compared to other cases in some district/city Syar'iyah Courts in Aceh. In some areas, such as Banda Aceh and Sabang, the most common cases are khalwat and ikhtilath.

Regarding jinayat cases that are not regulated in the regulations, the provisions of other regulations are the same. Regarding jinayat cases that are not regulated in Aceh's Jinayat Qanun, the Syari'ah Court refers to the provisions in Article 10 number [1] of the Law. No. 48 of 2009 concerning Judicial Powers which explicitly stipulates that the Court is not justified in refusing to examine, hear, and decide on cases that are submitted even on the grounds that the law does not exist or is unclear. The court has the obligation to examine and hear the case. The statement in the provisions of the Law on Judicial Power is as stated by

SudiknoMertokusumo if there are statutory rules that are incomplete or not yet/unclear. So it is the obligation of law enforcement to explain and complete it. The path that must be taken is by way of legal discovery. Namely finding the law, because it is not/incomplete and unclear. Therefore, it is the duty of judges and courts to find the legal basis as stated in Article 5 (1) of the Law on Judicial Power that judges and constitutional judges are required to have an understanding and value of justice that grows in society in exploring, following, and understanding legal values. itself. The legal values are that the judge interprets the legal interpretation one of the interpretations used by the judge is a systematic or logical interpretation. SudiknoMertokusumo explained that systematic interpretation is interpreting by linking statutory regulations with legal or other regulations of the entire legal system. This interpretation certainly does not come out of the existing legal system. The judge sees the legal system as an integral part of the applicable system and regulations. Under the interpretation of the legal system, judges do not see a single rule that stands alone, but rather the unity of a legal system.

For example, in the case of sexual harassment and rape of minors, the judge of the Meulaboh Sharia Court is not enough just to look for the provisions in Qanun Number 6 of 2014 concerning Jinayat Law, but must link them with the provisions of Law Number. 11 of 2012 concerning the Juvenile Justice System. So that when adjudicating the case, the Panel of Judges of the Meulaboh Sharia Court had other considerations. As for the jinayat case where the victim is a minor, Aceh Qanun Number 6 of 2014 concerning Jinayat Law has regulated whipping as the main punishment. but the Panel of Judges of the Meulaboh Sharia Court usually also gives a court decision in the form of a prison sentence.

Regarding the decision, Hasanuddin explained, there were several considerations why court decisions were more likely to take prison sentences than whips, even though the main punishment was whipping. Some of the reasons such as the perpetrator is the closest person to the victim. The victim's psychology needs to be considered. Don't let the victim see the perpetrator roaming around. For example, the perpetrator is a neighbor, or close family. If only with the punishment of caning, then released, the effect is very heavy for the victim. The victim constantly looks at the victim and is distressed. According to

Hasanuddin, that was the reason for the confinement sentence decided by the Syar'iyah Court.

Regarding the length of their sentence, they cannot be separated from Law no. 11 of 2012 concerning the Juvenile Justice System. against the three options regulated in the Aceh Qanun, namely flogging, imprisonment and fines. In this case, the panel of judges has the authority to choose, by looking at and examining how the benefits of the sentence are decided. However, there are also other cases that still receive a caning sentence, which cannot be transferred according to what has been regulated in the Qanun Jinayat. For certain cases, such as adultery (hudud), the punishment cannot be transferred. This is different from ta'zir, whose punishment can still be transferred. In social life, there are times when a case occurs, the community prefers to resolve it not by litigation but only by non-litigation resolution or by custom and kinship. This of course cannot be separated from the condition of the people who obey the law and uphold the culture that lives in the community. The local community, especially in the Calang area.

They are aware of the law not because of the qanun that they understand but because of the habits of religious life that make the community live in harmony carrying out Islamic law. The form of settlement of cases that have occurred so far, is resolved through the Gampong apparatus in the form of warnings and fines. This can reduce the accumulation of cases in the jurisdiction of the Calang Syar'iyah Court. The influence of the Gampong apparatus and its stakeholders is still very high, so that the community is willing to accept every decision taken by the village apparatus if a case occurs.

In 2018 there was only one case handled by the Calang Syar'iyah Court, namely the case number 01/JN/2018/MS.Cag. The case was entered on August 8, 2018, the case was a violation of Khamar where the judge of the Sharia Court handed down a decision on December 19, 2018 with.

The sentence of 15 lashes from the 20 lashes demanded by the Public Prosecutor shall be deducted from the detention period of three (3) days. When the execution was carried out, the perpetrators even cried and apologized to the community for their mistakes. So that this is what causes the Calang people to consider that every decision from the Sharia Court in the case of jinayah is not a means of punishment but as a means of repentance (Lubis).

The Aceh Jaya people's perspective on the law is based on the high values that live in the community. Law is formed through habits and popular feelings, through the operation of power in customary ways. So in practice the law is not made, but grows with the community. Society is an organic unit that has a common belief unit, which is called a *volkgeist* [people's soul], namely a common understanding and belief in something. The power to form law lies in the people, which consists of the complexity of individuals and associations. They have spiritual ties and become unity of the nation and soul. Law is part of their spirituality, which also affects their behavior (Rasjidi and Wyasa, 2003).

There are indicators of community legal awareness, namely knowledge of the law itself. For example, as a follower of Islam, someone must understand his religion well. Religious teaching itself is a form of law revealed by the almighty which in Islam is called *taqwa*, namely obeying all teachings, running them and not doing everything that is forbidden by Him. so that it can be said that the level of piety and obedience is the basis for the formation of legal awareness. Legal awareness is an attitude in humans who are aware of the law, how the law is, what the law is for, what the law is, or something that is born from the heart and soul as well as an inner attitude towards what is good to do and what is not worth doing.

**The obstacles faced by the Sharia Court in carrying out its functions in resolving cases that occur in the community In reality.**

The implementation of the duties and functions of the Sharia Court as a law enforcement agency in Aceh is also inseparable from various obstacles. The results of the study indicate that there are several problems faced by the Sharia Court in carrying out their functions in resolving cases that occur in the community. In this case the Supreme Court Justice Drs. H. Hamdan. SH, MH, explained; Legal issues, especially law enforcement, are crucial, but they are a problem in every country, especially developing countries. As a big country, Indonesia itself is not free from legal problems, of course with various qualifications and *midus operandi*. And among all these problems is the enforcement of the *jinayat* law in Aceh. Observing the various unresolved legal issues, there are several things that need to be addressed regarding the issue of

law enforcement in Indonesia. Among other things, because the problems that occur are systemic, the solutions must also be systemic, rather the legal problems that occur can be resolved properly.

According to Lawrence Friedman, in order for the rule of law to be realized, it must fulfill three aspects, namely: structural, substantial and cultural aspects. Law enforcement will run if these three aspects are carried out continuously.

### *Structural Aspect*

In the structural aspect, it consists of institutions and apparatus. In this case the legal institutions and legal apparatus. For the Syari'ah Court, which has some of its authority to adjudicate cases such as jinayat, as an institution that has not been formed for a long time, the Sharia Court must prepare everything regarding the new authority. For the legal apparatus aspect, this is certainly related to qualified human resources and masters various legal-related issues. However, even this field faces problems, until now there is still a lack of judges, both at the appeals level and at the main level. Therefore, the alternative to cover this shortfall is to transfer judges from the Religious Courts to the Aceh Syar'iyah Court. The problem is not resolved at this stage, the judges who have been transferred have not fully mastered the issue of jinayat, because most of them have not mastered the handling of jinayat cases.

### *Substantial aspects*

Substantially, the Sharia Court admits that there are still shortcomings in carrying out the authority of the institution. This includes formal and material legal issues. The legal substance that becomes the object of this issue includes written and unwritten legal rules. Regarding the legal substance externally, there are also obstacles. Because legal experts and practitioners have not been able to accept the delegation of authority for criminal cases (jinayat) to the Sharia Court which was previously the authority of the general court. This problem occurs because the law of delegation cannot be accounted for both in theory and in the legal hierarchy. Due to the reason that the authority to adjudicate criminal cases (jinayat) has been given to the general court based on the law, on the other



hand the authority is revoked from the general court and given to the Sharia Court based on the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia. No. KMA/070/SK/X/2004 dated 6 October 2004 regarding the delegation of part of the authority from the general court to the Syar'iyah Court, if examined hierarchically it is impossible for the Law to be defeated by a Decision of the Chief Justice of the Supreme Court. Likewise, Law Number 44 of 1999 in conjunction with Law Number 18 of 2001 in conjunction with Law Number 11 of 2006 authorizes the Sharia Court to hear general criminal cases (*jinayat*) whose details will be regulated by *qanun*, which is far below the law. Meanwhile, the authority to adjudicate criminal cases is given to the general court with detailed laws. In theory, general laws will be defeated by special laws (*lex specialist dirogatlex generalis*)".

#### *Cultural Aspect*

Legal culture is one of the important aspects and considerations in law enforcement. This legal culture is strongly influenced by the legal knowledge of the community.

In civil law, everyone is considered capable of law, so there is no reason for someone who violates the law not to be punished just by not knowing the law. Even though in reality the person does not know that a new law has been born. In order to increase the legal awareness culture for the community, the socialization of laws and regulations should be carried out massively and measurably. If these steps are not taken, the legal culture will be difficult to realize. Several other problems related to legal culture can not be separated from intellectual resources that are still low, barriers to access to information and so on. The aspect of sluggish information dissemination also actually greatly affects the low level of public understanding of the law regarding the authority of the Syar'iyah Court (National Working Meeting of the Supreme Court).

In line with what has been described above, Prof. Dr. Soerjono Soekanto, SH., M.A. in his book "Factors Affecting Law Enforcement" that the main problem of law enforcement actually lies in the factors that may influence it. The factors are: 1) the law as a factor of the law itself; 2) The parties that establish and



apply the law as law enforcement factors; 3) Facility factor in the form of facilities and infrastructure as a form of support for law enforcement; 4) Environmental conditions where the law is applied as a community factor; 5) The results of works, creativity and taste based on human initiative in social life or called cultural factors (Soekanto : 2001 ).

Because there are still obstacles faced, it is hoped that this institution will continue to improve its spirit. It should be an obligation for the Syar'iyah Court to cooperate with government institutions, in this case the Islamic Shari'a Service, and the Aceh Customary Council [MAA] to expand the socialization of the authority of the Sharia Courts as one of the institutions for enforcing Islamic law in Aceh. Besides that too socialization of various regional regulations such as Qanun no. 6 of 2014 concerning Jinayat Law, and Qanun No. 7 of 2013 concerning the Jinayat Procedural Law, so that the public understands the authority of the Syar'iyah Court which has a coercive legal force.

## **CONCLUSION**

The Sharia Courts are one of the legal institutions in the legal system in Aceh. The authority includes Ahwal al-Syakhsyah, Muamalah and Jinayah. In social life, there are times when a case occurs, the community prefers to resolve it not by litigation but only by non-litigation or customary and familial settlement.<sup>21</sup> Uphold the culture that lives in society.

The implementation of the duties and functions of the Sharia Courts in the South West coast of Aceh is inseparable from technical problems, namely the judges at the Syari'ah Court are judges who have been transferred from the Religious Courts. This is done because there is still a lack of judges in the Syar'iyah Court, at the appeal level or at the first level. But the problem is not over yet. Another problem arose, because the judges who were transferred had never handled the jinayat case.

Until now, legal experts and legal practitioners have not been able to accept the delegation of authority for criminal cases (jinayat) to the Sharia Court which was previously the authority of the general court and there is still a lack of information dissemination and socialization of the position of the Sharia

Court to the public, so that the level of public understanding of the authority of this legal institution is still low.

It is recommended to the Sharia Court to cooperate with government stakeholders to be able to provide information and dissemination of authority

Sharia Court to the people of the south west coast of Aceh. So that the public can understand the position of the Sharia Court as an Islamic law enforcement agency that has legal certainty.

It is recommended that the Sharia Court cooperate with legal academics and provide opportunities for legal academics as resource persons in the implementation of the socialization of the Aceh Jinayat Qanun along with the absolute and relative authority of the Syar'iyah Court.

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