# Political Law of Religious Courts in Indonesia (Government Policy and Development of Religious Courts)

**By:**

**Dr. Syamhudian Noor, S.H.I., M.Ag**

**(Lecture of The Faculty of Law Palangka Raya University)**

**Email:** **syamhudian@gmail.com**

**ABSTRACT**

The article entitled "Political Law of Religious Courts in Indonesia (Government Policy and Development of Religious Courts)", was made to answer a basic problem, why the authority to handle cases in religious courts is limited to certain case fields as referred to in article 49 of the Law Law of the Republic of Indonesia Number 3 of 2006 concerning Amendment to Law Number 7 of 1989 concerning Religious Courts.

The research method implemented in this article is a normative method with several approaches, those are historical, philosophical, and religious texts approaches. It is a descriptive interpretative research. The supporting data in this research are primary and secondary legislation. It is analyzed using the technique of literary-based research.

According to the findings, it is found out that the authority to handle cases in the Religious Courts was limited to 9 specific cases as stated in article 49 of the Religious Courts Act of Article Constitution of the Republic of Indonesia Number 3 Year 2006 as the Amendment of Constitution Number 7 Year 1989 about Religious Court is closely related to the development of law and the social law in recent years.

Keywords: *Politics of Islamic Law, Religious Court Authority*

## INTRODUCTION

The discourse of the Religious Courts cannot be separated from the history of Islamic law in Indonesia. Since its arrival in Indonesia until today, Islamic law is classified as living law in the midst of society. Not only because Islamic law is a religious entity that is embraced by the majority of the population, but because in some areas Islamic law has become part of the community's traditions, which are sometimes even considered sacred.

Sociologically and culturally, Islamic law is a law that flows and is rooted in the culture of society. This is not only due to the flexibility of Islamic law, but also to its elasticity. That is, even though Islamic law is classified as an autonomous law (because there is God's authority in it), but at the implementation level, it is very applicable and acceptable to various types of local cultures. Therefore, it can be understood that historically Islamic law has become a moral force of people who are able to deal with positive state laws, both written and unwritten.

Recognition of the Religious Courts as one of the judicial institutions that carry out some of the tasks of government in the field of justice is clearly visible with the rise State Law of the Republic of Indonesia No.19 of 1964 concerning Basic Provisions of Judicial Power, The Religious Courts are recognized as one of the 4 (four) legal state courts, namely the General Courts, Religious Courts, State Administrative Courts and Military Courts.[[1]](#footnote-1) This means that the position of the Religious Courts has the same power and degree as other judicial institutions as state courts.

However, in practice the religious courts only hear certain cases as stated in Article 49 of the 2006 Religious Courts Law, namely: marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economics.[[2]](#footnote-2)

Referring to the provisions of Article 49 of the 2006 Religious Courts Law, then understand the *Mukholafah (reversed understanding)* outside of these nine cases the religious court does not have the competence to examine them. This means that the authority to examine, decide and settle other cases, even though it is specifically for Muslims, is resolved in other courts (other than the Religious Courts). In other words, there has been a limitation of authority that causes Muslims to lose the opportunity to have litigation other than the cases regulated in the article.

This is very detrimental, considering that Islamic law does not only regulate issues of ahwal al-syakhshiyyah (family law), civil and Islamic economic law, but many other questions that have not been regulated and it would be much better if these problems were resolved according to the religious courts. . There are many other issues that would be more efficient if the arrangements were left to the Religious Courts.

This article will further discuss the issue of why the authority to handle cases in religious courts is limited to certain areas of cases as referred to in article 49 of the Republic of Indonesia Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts (marriage, inheritance, will, grant, waqf, zakat, infaq, shadaqah, and Shari'ah economics).

## LITERATURE REVIEW

There are several previous articles that can be used as literature reviews in this article. First, Dri SANTOSO's writing entitled The Legal Politics of the Colonial Government Against Religious Courts in the Nizham Journal of Islamic Studies in 2014. In this article, Santoso reveals that there were certain political interests when the Dutch implemented the enforcement of the authority of the religious courts in Indonesia in the past (before Indonesia's independence day).

Second, Abdul Gaffar Mallo's writing entitled The Influence of Legal Politics on the Competence of Religious Courts in Indonesia in the Journal of Islamic Discourses in 2013. In this article, Gaffar states that the official policy towards the enactment of the law after a new law is formed or the replacement of an old law which is declared invalid after there are new laws to achieve state goals. According to him, the government is more ambivalent towards the needs of Muslims. On the one hand the government with all its efforts wants to strengthen and perpetuate power, while on the other hand Muslims want the application of Islamic law and the establishment of the institution of Islamic religious courts in Indonesia.

The two articles are different from what the author has raised here, especially in terms of the object of study and the focus of the study time.

## METHOD

The research method used in this article is a normative research method. The author looks for existing data (conducting literature study) with several approaches, namely historical and philosophical approaches, and religious texts. After the necessary data is obtained, the data is sorted and selected for further explanation using a descriptive interpretive method.

## RESULTS AND DISCUSSION

The discourse on the development of religious courts in Indonesia is of course very closely related to the history of the growth of Islamic law in Indonesia. Islamic law was born and developed and its existence is recognized along with the development of Indonesian society. It is always related to the context of people's lives, either directly or indirectly. In fact, it grows and develops and is able to become a value system and is able to shift the previously prevailing norms.

1. Pre-independence Religious Court

In the pre-Dutch colonial period, Islamic law was the applicable legal system and became legal awareness for some Indonesian indigenous peoples. For example, as stated by Hanafi, the decision of the “*Rapau Pau*” Court which stated that according to the provisions of the Nias inheritance law, girls are not entitled to the inheritance of their parents. At the Appel level, Raad van Justitie Padang, in his decision, stated that the provisions of Rapau Pau do not apply if the person concerned is a Muslim.

When the VOC government, through D.W. Freijer, compiled a *conpendium* containing Islamic inheritance and marriage laws with the approval of Islamic scholars and *penghoeloe*. *The conpendium* was accepted by the VOC in 1706 and was used as the basis for resolving cases among Muslims. Around the 19th century, recognition of the application of Islamic law in Indonesia began to emerge, as stated by Van Den Berg, that when someone embraces Islam, Islamic law automatically applies to him.

The existence of Islamic Law and Religious Courts in Indonesia during the Dutch colonial period was also influenced by the dynamics and developments that underlie the legislative process for the enactment of Islamic law in Indonesia. The existence of the Religious Courts was "obfuscated" when the *Dutch Royal Decree* was issued in 1882. However, the Dutch efforts to abolish this institution did not succeed.

At this time, to meet the political demands of colonial law, Snouck Hugronje initiated the Receptie Theory which was further developed by Van Vollen Hoven, namely Islamic law applies to indigenous people if the norms of Islamic law have been accepted by the community as customary law.

This idea was later adopted by the Dutch colonial government in the form of intervention by the authority of the Religious Courts. In 1937 the authority on inheritance issues was transferred from the Religious Courts to the civil courts. This aims to discriminate and limit the jurisdiction of the Religious Courts to the law of marriage and divorce.

Based on this explanation, it can be interpreted that the configuration of the political history of the legal authority of the religious courts is strongly influenced by the intervention of groups who have power and strength, both physically and economically.

According to Sularno, this is the result of centuries of colonialism, and the stagnation of the development of Islamic law before and during the Western colonial period, resulting in Islamic law as a legal system that has its own style, has been replaced, or at least marginalized by Western law in various ways. , such as: receptie theory, legal choices, voluntary submission, statements regarding the validity of western law regarding certain fields, up to the imposition of Western criminal sanctions on Muslims, even though they are contrary to the principles and rules of Islamic law and the legal awareness of the Muslim community. . This causes Islamic law as a legal system in the world to be lost from circulation, except for family law.

1. Post-Independence Religious Courts.

After Indonesia's independence, Hazairin, who is a legal expert, expressed the opinion that all Dutch East Indies laws and regulations based on the receptie theory were declared null and void because they contradicted the 1945 Constitution and the sacred texts of Muslims (al-Quran and as- sunnah). Thus the receptie theory must leave the Indonesian legal system.

In the next period, the Exit Theory was introduced and developed by Sayuti Talib (a student from Hazairin) with a slightly different name, namely *the receptie a contrario* theory which literally means the opposite of *the receptie theory*. If *the receptie theory* states that Islamic law cannot be enforced if it is contrary to customary law, then *the receptie a contratio theory* is on the contrary, prioritizing Islamic law over customary law, and it is even clearly stated that customary law does not apply if it conflicts with Islamic law.

Sayuti Thalib's statement is in reality able to change the perspective of the Indonesian people who have an emotional relationship with various legal problems because of the strong influence of Snouck Hurgronje's receptie theory during the colonial period. The claim that Islamic law has been accepted as part of customary law is a mistake because Islamic law is a stand-alone law and can affect the customary law that previously existed in Indonesian Muslim society.

When Indonesia proclaimed its independence on August 17, 1945, the status and position of the Religious Courts was under the authority of the Ministry of Justice. On January 3, 1946, the Ministry of Religion was born which was a concession and “political compensation” from the Jakarta Charter. The birth of the Ministry of Religion is expected to be able to consolidate and coordinate with Islamic institutions in a national scale agency. To strengthen the authority of the Ministry of Religion, the government then passed Law No. 22 of 1946 concerning the Registration of Marriage, Divorce and Reconciliation. Meanwhile, the ongoing Religious Courts and High Islamic Courts (MIT) are still declared valid based on transitional rules. A few months later, after the establishment of the Religious Courts which were established through Government Decree No.1/SD 3 January 1946, the government issued a decree no. 5/SD March 25, 1946, which included, among other things, transferring all matters concerning the Islamic High Court from the Ministry of Justice to the Ministry of Religion. Since then, the Religious Courts have become an important part of the Ministry of Religion.

If viewed more closely, the placement of religious courts under the Ministry of Religion is actually a beneficial step as well as a security measure. This is considered urgent because even though Indonesia has become independent, conceptually and substantially efforts to abolish Religious Courts through receptie theory still exist. This is proven by the issuance of Law Number 19 of 1948 which states that the Religious Courts will be included in a special way into the composition of the General Courts. Thus, cases between Muslims must be decided through Islamic law, then examined by the General Court of Justice at all levels of the Judiciary consisting of a Muslim judge as chairman, and two Muslim religious expert judges as members who are appointed by the President at the suggestion of the Minister of Religion with approval of the Minister of Justice.

Efforts to abolish the existence of the Religious Courts were also carried out through Emergency Law Number 1 of 1951 concerning the composition of the Powers of the Civil Court. This condition ultimately places the Religious Courts under the responsibility of the religious affairs ministry.

Referring to the law, the Minister of Religion then took over the administrative system of the religious courts in Java and Madura, establishing a system of unification and centralization as well as the development of the Religious Courts. In the following years, the Ministry of Religion worked with local leaders to absorb control over the existing Religious Courts and established a number of new courts based on ministerial regulations.

The ministry can also use regional religious affairs offices throughout Indonesia to exercise control over marriage and inheritance rights issues in areas without religious courts. Finally in 1957 the cabinet approved a regulation that authorized the establishment of Religious Courts in all the outer islands which did not yet exist.

On October 31, 1964, Law Number 19 of 1964 concerning the Basic Provisions of Judicial Power was passed. According to the Law, the State Court of the Republic of Indonesia carries out and implements laws that have a protective function and are implemented by the judiciary within the scope of the General Courts, Religious Courts, Military Courts and State Administrative Courts.

In 1970, the Act was replaced with the enactment of Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power. According to the law, judicial power is an independent power. Law Number 14 of 1970 is an organic law so that other laws are needed as implementing regulations, for example those relating to the General Courts, Religious Courts, Military Courts and State Administrative Courts. The Law on Religious Courts was only ratified after 19 years of the Law on the Basic Provisions of Judicial Powers being ratified, through Law Number 7 of 1989.

1. Religious Courts during the New Order “Orde Baru”. (1966-1998)

The New Order was the period of the government of the Unitary State of the Republic of Indonesia, led by Suharto for 32 years. In this period, the development of the Religious Courts experienced ups and downs along with the legal political policies that developed at that time.

At this time the judiciary experienced a significant development with the enactment of the Law of the Republic of Indonesia Number 14 of 1970 concerning the Basic Provisions of Judicial Power. The law explains that judicial power is exercised by four judicial circles, namely the General Courts, Religious Courts, Military Courts and State Administrative Courts, all of which are under the jurisdiction of the Supreme Court (article 10). The existence of an explicit affirmation of the position of the Religious Courts on par with other courts is what then makes Muslims enthusiastic to make laws governing the Religious Courts.

Meanwhile, at the same time, efforts to reduce and eliminate the authority and role of the Religious Courts were carried out in 1973, when a Draft Law on Marriage was made by the government and submitted to the House of Representatives (DPR). The bill generally has two objectives: First, to reduce the rate of divorce and underage marriage; Second, to standardize the laws on marriage in Indonesia as part of the program for the unity and integrity of Indonesia under the Pancasila ideology.

Indications of a reduction in the authority of the Religious Courts also appear when the Religious Courts are only mentioned in the draft explanation of Article 73 paragraph (2) which reads:

"To expedite the implementation of this law, the government may regulate certain matters that require implementation provisions, including those related to the participation of the Religious Courts in the procedure for resolving marital disputes as a group for the Islamic religion, the presence of guardian witnesses and so on."

The mention and placement of the word Religious Court only in the explanation section of the bill shows that the Religious Court is only a “sweetener/complement” to the General Court. This explanation which implicitly shows the function as a complement cannot actually be used as the basis for administering the judicial process.

An indication of the desire to make the Religious Courts as a complement can be seen in Article 3 paragraph (2) of the Bill which reads:

"The court within the scope of the General Court, hereinafter referred to in this Act, the court may give permission to a husband to have more than one wife if the parties concerned wish to do so".

Based on article 3 paragraph (2) and the explanation of article 73 paragraph (2) above, it can be assumed that there was an attempt to transfer the authority of marital matters from the Religious Courts to the General Courts. The Religious Courts will be involved in this process as long as it is related to the procedure for the marriage. If this happens, then the authority of the Religious Courts will decrease, after previously the issue of inheritance has been revoked first through stb.1937 No.116.

Kamal Hasan described that all ulama, both traditional and modernist, from Aceh to East Java, rejected the bill. According to kamal hasan, there are at least 11 articles that are considered contrary to Islamic teachings (fiqh munakhat), namely article 2 paragraph (1), article (3) paragraph (2), article 7 paragraph (1), article 8 paragraph (c), Article 10 paragraph (2), Article 11 paragraph (2), Article 12, Article 13 paragraphs (1) and (2), Article 37, Article 46 paragraphs (c) and (d), Article 62 paragraphs (2) and ( 9).

This proposal was met with anger by the Muslim opposition, both from within and from outside the legislature. At one time thousands of Muslim youths descended on the floor of the legislature, so the military was used for security. The conflict began to subside when the military leadership proposed discussions outside the formal legislature with the Muslims.

After a tough process, through lobbying and deliberation, a consensus was reached between the United Development Party and the ABRI Faction which provided the following guarantees:

1. Islamic law in marriage will not be reduced or changed;
2. As a consequence of Point (1) the implementation tools will not be reduced or changed. Its duties are the Law of the Republic of Indonesia Number 22 of 1946 and the Law of the Republic of Indonesia No. 14 of 1970 concerning the Basic Provisions of Judicial Power, its continuity is guaranteed;
3. Things that are contrary to Islam are removed (dropped);
4. Article 12 Paragraph (1) of the Draft Law is approved to be formulated as follows:

Paragraph (1) Marriage is legal if it is carried out according to the law of each religion and belief.

Paragraph (2) Every marriage must be recorded for the sake of the involvement of the State administration.

1. Regarding divorce and polygamy, it is necessary to seek provisions that prevent arbitrariness.

The parties that existed at the time agreed to a revision of the draft law in which Muslims accepted legal restrictions on arbitrary divorce and polygamy, with an agreement that the legal substance of marriage would not be changed and the role of the religious courts would not be reduced.

After holding repeated meetings, finally on December 22, 1973 through the DPR factions, the bill was approved for ratification. On January 2, 1974 the bill on marriage was passed by the DPR into the Republic of Indonesia Law No. 1/1974 concerning the Marriage Law, which was then effective as of October 1, 1975.

It is interesting to note, with the enactment of the Marriage Law, Islamic law entered a new phase with what is called the *taqnin* phase (the implementation phase). Many Islamic fiqh provisions regarding marriage were transformed into the Law, although they were modified here and there.

The existence of the 1974 Marriage Law was able to save the existence of the Religious Courts, although their roles were still limited. The restriction is contained in Article 63 paragraph (2) of the 1974 Marriage Law which states that: "Every decision of the Religious Courts is confirmed by the General Court".

Efforts to prepare the Draft Law on Religious Courts have been initiated by the Ministry of Religion since 1961, namely since the formation of the preparatory committee through the Decree of the Minister of Religion Number 66 of 1961, but its submission to the House of Representatives of the Republic of Indonesia can only be 28 years later. This was also through the mandate of the President Number R.06/PU/XII/1988 dated December 3, 1988, which requested the Draft Law on Religious Courts to be discussed in the session of the House of Representatives of the Republic of Indonesia for approval.

History records that the preparation of the revised Draft Law received many challenges from various parties to thwart it. At least they can be classified into three groups, namely:

The first group, said that in order to achieve legal unification in Indonesia, the Religious Courts were no longer needed because there would be dualism in the judicial system in Indonesia. Even if there is a Religious Court, it must be based on the General Court. This group wants to maintain the status quo, where the Religious Courts do not have the freedom to implement their competencies, and even want the Religious Courts to be subordinate to the General Courts.

The second group, there are those who want the Religious Courts to be disbanded on the pretext that Muslims take care of their own Islamic law. These people refuse because they think that religion is separated from state intervention (secular), including state intervention in the matter of administering the Religious Courts. The Indonesian Democratic Party (PDI), non-Muslim groups and secular groups and even some Islamic leaders also objected to this Draft Law on Religious Courts. Even the ruling Golkar party was split into two groups, those who agreed and those that opposed.

The third group, considers the existence of the Draft Law on Religious Courts to be a separate form of discrimination against other groups so that the existence of the Religious Courts must be abolished. Therefore, accusations arose that the Religious Court Bill was a strategy to re-enact the Jakarta Charter.

In principle, the views of the three groups above are the same, namely objections to the Religious Courts. The first group looks at the legal politics that have developed since the colonial period by imposing the Religious Courts on life without a clear existence.

The third group's response relates to the plan to revive the Jakarta Charter which was once revised, especially regarding the sentence: "with the obligation to carry out Islamic law for its adherents" in the first principle being "Belief in One Supreme God". This group is too much because they are worried about the plan to form an Islamic State.

Despite the incessant refusal, it turned out that President Soeharto had a significant and decisive role. Suharto himself also stated that the Religious Court Bill was an implementation of the 1945 Constitution and Pancasila and that it had nothing to do with the Jakarta Charter. Even President Suharto at that time guaranteed that the proposed Religious Court Bill would not be reinstated to the Jakarta Charter.

Thanks to the persistent struggle of legal experts and scholars, as well as political guarantees from President Suharto, in the end the Muslim community can breathe a sigh of relief, because through struggles and agreements and compromises between the Muslim elite and the government, finally on December 27, 1989 the Law on Religious Courts in 1989 it was passed into law by the House of Representatives which was then followed by the issuance of the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Socialization and Dissemination of the Compilation of Islamic Law (KHI). If when Bill No. 1 In 1974, the ulama filed a protest against the government, so in the case of the Religious Court Bill, Muslims fully support the bill.

Although not all Islamic leaders welcome the presence of the 1989 Law on Religious Courts,[[3]](#footnote-3) However, the ratification of the Law shows that the position of the Religious Courts is not only equal to other courts, but also specifically has absolute competence in handling cases among Muslims. This is stated in article 49 paragraph (1) which reads:

 *“The Religious Courts have the duty and authority to examine, decide, and resolve cases in the fields of: a. Marriage, b. Inheritance, will and grant made under Islamic law, c. Waqf and Alms".*

Furthermore, in article 49 paragraph (3) it is emphasized that:

*"The field of inheritance as referred to in paragraph (1) letter b is the determination of who becomes the heir, the determination of the inheritance, the determination of the parts of the heirs and the distribution of the inheritance."*

Based on article 49 paragraph (3), the absolute competence of the Religious Courts has the legal power to be able to carry out its own decisions and does not need to be ratified through the *execuitor verklaring* of the General Court. Politically, the recognition of the Religious Courts by the state forgets the historical leap for a hundred years since the first Religious Courts were legalized by the Dutch East Indies government in 1882. In short, the Religious Courts can be seen as a "symbol" of Islamic political power, especially those related to the politics of Islamic law in Indonesia.

In this regard, to explain the legal politics of the New Order government towards the Religious Courts institution, it is necessary to understand the history of law, especially those relating to the institution, the idea of ​​its birth, preparation, preparation to the final form of the legal product. This effort is important to see for sure the political reflection during the Suharto regime.

Viewed from the perspective of legal products, there are two political processes in a society, for legal development, namely: First, legal products that are produced through a legal development strategy framework that can be called orthodox, where this character is rigid and less open to change, thus law be responsive to the demands of the community's needs. Second, the resulting legal product is also oppressive because the law unilaterally determines the social perceptions of policy makers.

Political influence on the law can apply to the enforcement of the law and the characteristics of the products and the manufacturing process. Certain political conditions can affect legal products, for the case of Indonesia, we can note many examples. Cases of the birth of Law Number 1 of 1974 concerning Marriage and Law Number 7 of 1989 concerning the Religious Courts can be taken as examples. Both laws were born in the New Order era, but the political relationship between the government and Muslims or the relationship between the state and the religion behind the two is in a different atmosphere.

The politics of mutual suspicion and conflict gave birth to draft legal products that also illustrate the nature of mutual suspicion. In the case of the Bill on Religious Courts (which later became Law Number 7 of 1989) which was born at a time when the relationship between the government and Muslims was politically mutually accomodating, it turned out to be widely supported by Muslims because it seemed to be a luxury gift for Muslims. Muslims. During the accommodation season for the Law, the government does not hesitate to submit a bill that is highly coveted by Muslims. That is evidence, in the case of Indonesia, how certain political conditions gave way to the emergence of certain laws.

In the matter of legal products, especially regarding the Law on the Basic Provisions of the Judiciary (Law Number 14 of 1970) it expressly recognizes the Religious Courts as the judicial power. Therefore, formally viewed from the juridical aspect, the political configuration of the New Order can be said to be in a democratic and responsive legal product.

Based on the perspective of law formation, Law Number 14 of 1970 can be called responsive because the aspirations of the entire community are accommodated and tend to be accommodating to the needs of the judiciary. Meanwhile, in terms of the implementation of the legislation, it is facultative and legitimate. Regulatory because it regulates more judicial ethics, procedural and operational practices.

The politics of legislative accommodation carried out by the government, namely to seek sympathy and support from Muslims, because at that time coincided with the emergence of the "Iran Islamic Revolution" (1979) which was a symbol of the rise of world Islam that could influence Suharto's politics.

Based on this explanation, the author can formulate several important points: First, during the New Order era, the existence of the Religious Courts became an independent judiciary body and did not depend directly or indirectly on the General Courts. It becomes an independent judiciary; Second, administratively, financially and organizationally, the Religious Courts are under the auspices of the Supreme Court; Third, as stated in Article 49 of the 1989 Religious Courts Law that the Religious Courts with their absolute competence have the authority to settle civil cases for Muslims; Fourth, the material and formal laws that apply in the Religious Courts are based on laws with the nuances of Islamic Law; Fifth, the existence of the Religious Courts is clearly a political product because it is always in contact with power and is directly related to the interests of Indonesian Muslims in the context of the development of National Law.

1. Religious Courts during the Reformation and Post-Reformation.

The Reformation period in Indonesia was marked by the collapse of the New Order regime under the leadership of President Suharto. In general, the author describes the dynamics of the development of the Religious Courts in the reformation and post-reformation period which is classified into two parts, including:

1. Establishment of the Sharia Court in Aceh as a New Judicial Body.

After the collapse of the New Order power, there was a major conflict in Aceh, between a rebel group calling themselves the Free Aceh Movement (hereinafter GAM) and the Indonesian government. The conflict lasted for a long time, even for years, resulting in many casualties, property, labor, and costs from the Government, GAM and civil society.

The demand for independence from the Unitary State of the Republic of Indonesia was then responded to by the government with the stipulation of Aceh Province as a Military Operations Area (DOM). This stipulation lasts until the stipulation of Aceh Province as a Special Autonomous Region by the Government of Indonesia. This is even stated in Law Number 44 of 1999 in conjunction with Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh.

Law Number 18 of 2001 brought new developments and progress in Aceh, especially in the judicial system. This can be seen in articles 25-26 of the Nangroe Aceh Darussalam (NAD) Law which regulates the Sharia Court which is the implementation of the Islamic Sharia Court as part of the national justice system. The Sharia Court is a judicial body that is free from any party in the area of ​​Nangro Aceh Darussalam and applies to followers of the Islamic religion. The competence of the Sharia Court is further regulated in the Qanun of the Province of Nangro Aceh Darussalam.

As a judicial body in Aceh, the Sharia Court is given the competence to receive, examine, and manage *jinayah* cases. Such absolute competence is as regulated and mandated by Qonun Number 10 of 2002 article 49 which reads:

*“The Shariah Court consists of: the Sharia Court of Sague Regency and Kota/Banda as the First High Court; The Provincial Sharia Court as the High Court of Appeals is located in the provincial capital, namely Banda Aceh. Meanwhile, the Court of Cassation is carried out at the Supreme Court as the State's Highest Court."*

Based on this explanation, several things can be formulated as follows: First, after the enactment of Law Number 18 of 2001, Law Number 44 of 1999 concerning the privileges of Aceh became legally stronger. Because the law provides legal guarantees for the implementation of Islamic law as the material law used in Aceh; Second, it can develop and organize traditional life and recognize the existence of the role of ulama in every decision-making process and policy of the Aceh government. Recognition of normative legitimacy was strengthened after the Government of Indonesia passed Law Number 11 of 2006 concerning the Government of Aceh; Third, the Law gives the Aceh Province the flexibility to design and make a *Qonun* that specifically regulates the implementation of Islamic law in Aceh. One of the important points in the Act reads that:

*"The field of ahwal al-syakhshiyah, muamalah and jinayah (crime issues) based on Islamic law can be regulated by Qonun (Regional Regulations)".*

However, until 2006, the *Qonun* that had been ratified in Aceh were only in the form of *Qonun* number 11 regarding the rules of Islamic law, *Qonun* No. 12 regarding gambling or *Maisir*, *Qonun* No. 13 regarding *Khamar* or *liquor*, and *Qonun* No. 14 regarding *khalwat* or solitude with the opposite sex.

1. Addition of Absolute Competence of Religious Courts

The Law on Judicial Power has been amended several times. These changes, apart from being a positive response to the demands of the times and the currents of reform, are also a response to fundamental changes to the constitution of the Unitary State of the Republic of Indonesia. One of the implications is that there is a change in the judiciary, including the Religious Courts, both in terms of relative competence and absolute competence.

Significant changes and developments after the reform occurred during the reign of Susilo Bambang Yudoyono. This was marked by two changes to the legislation on religious courts. The first amendment is through Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning the Religious Courts, which in one of its articles (Article 49) explains that the absolute competence of the Religious Courts is not only around marriage, inheritance, endowments, grants. and alms, but with the addition of sharia economic dispute resolution. To support this latest authority, the government and the DPR signed Law Number 21 of 2008 concerning Sharia Banking into force on July 16, 2008.[[4]](#footnote-4)

The second amendment is through Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. The second amendment regulates the involvement of the Judicial Commission in supervising the performance of judges within the Religious Courts. The issue of the absolute authority of the religious courts is no longer discussed in it. This means that the provisions of Article 49 of the 2006 Religious Court Law are still valid.

The academic paper for the 2006 Law on Religious Courts states that the proposed amendment to the 1989 Law on Religious Courts was made by Commission III of the DPR which consists of 47 members with Agung Laksono as chairman.

The main points of view that form the basis for the submission of the Bill on amendments to the 1989 Religious Courts Law are as follows:

1. "That in the context of the amendment to the 1945 Constitution, the Law on Judicial Powers has been replaced by Law Number 4 of 2004 and the Amendment to the Supreme Court Number 14 of 1985 has been amended by Law Number 5 of 2004. Simultaneously with the replacement and amendment of the two laws, -The above law has also been adjusted to the Law governing judicial bodies within the General Courts, amended Law No. 2 of 1986 with the General Court Law, amended Law No. 2 of 1986 with Law No. 8 of 2004 and the Administrative Court environment the State by amending Law Number 5 of 1986 concerning State Administrative Courts with Law Number 9 of 2004”.
2. Whereas as a follow-up to the replacement and amendment, it is necessary to immediately adjust the provisions in Law Number 7 of 1989 concerning the Religious Courts, in addition to synchronizing, it is necessary to make adjustments to the demands in practice within the Religious Courts in order to facilitate the implementation of duties and authorities and serving the needs of justice seekers, as well as legal developments in society, especially those who are Muslims in the field of Islamic law
3. Whereas accordingly, adjustments and amendments to the articles concerned in Law Number 7 of 1989 concerning the Religious Courts are urgently needed to be amended immediately and in accordance with the priorities of the 2005 national legislation program that has been decided by the DPR-RI".

There are several things that are proposed to be changed in the bill, including article 2 and article 49 of the 1989 Religious Court Law. Article 2 of the 1989 Religious Court Law which reads:

"Religious Court is one of the **executor** of judicial power for people seeking justice who is Muslim regarding certain **civil cases regulated** in this law", changed to Religious Court is **one of the actors** of judicial power for people seeking justice who are Muslim regarding certain **cases as referred** to in paragraph referred to in this Law.” And..

Article 49 of the 1989 Religious Courts Law which regulates court powers which reads:

1. “The Religious Courts have the duty and authority to examine, decide, and settle cases at the first level between people who are Muslims in the fields of:
2. marriage;
3. inheritance, wills, and grants, which are carried out under Islamic law
4. waqf and shadaqah.
5. The field of marriage as referred to in paragraph (1) letter a is matters regulated in or based on the applicable marriage law.
6. The field of inheritance as referred to in paragraph (1) letter b is the determination of who becomes the heirs, the determination of the inheritance, the determination of the share of each heir, and the distribution of the inheritance".

changed into:

1. “The Religious Courts have the duty and authority to examine, decide, and settle cases at the first level between people who are Muslims in the fields of:
2. Marriage;
3. Inheritance, wills, grants, and sharia banking;
4. Waqf and shadaqah.
5. The field of marriage as referred to in paragraph (1) letter a is matters that are regulated in or based on the applicable law concerning marriage which is carried out according to the shari'ah.
6. The field of inheritance as referred to in paragraph (l) letter b is the determination of who becomes the heir, the determination of the inheritance, the determination of the share of each heir, and the distribution of the inheritance; as well as a court decision on a person's request regarding the determination of who is the heir, the determination of the share of each heir".

The reason for the need to add article 49 to the 1989 Religious Court Law was later restated in the explanation of article 49, namely:

“The Religious Courts within a period of 15 (fifteen) years after the enactment of Law Number 7 of 1989 have experienced rapid progress both in the development of human resources, especially judges, as well as the quality of the cases they handle. With the addition of court powers within the religious courts in accordance with legal developments and the legal needs of the community, especially the Muslim community, it is hoped that human resources who serve as judges of religious courts can continue to serve. The additions referred to include the practice of Sharia banking.

In the developments in the banking world, it turns out to be a fertile ground for financial services. This activity works on people who are Muslim as customers in using banking services with sharia principles, which prospective customers obey. After the establishment of Bank Muamalat, various commercial banks also established Sharia Banks. As usual in other banking worlds, banking activities at Islamic banks by offering various products based on Islamic religious law, such as mudharabab contracts and others, are of course a matter of course. which is also prone to disputes arising from Sharia Bank Companies with customers or between their own customers who also consist of individuals or legal entities. Thus, it is hoped that in the future, in accordance with legal developments in the Muslim community in Indonesia, it is anticipated that cases in the field of banking law will be tried by judges who understand and appreciate the application of Islamic law in banking civil matters.

After going through several trials with a long discussion agenda, finally agreed on several understandings including the addition of articles 2 and 49 through the enactment of the 2006 Religious Court Law.

The provisions of article 2 are amended so that it reads as follows:

"Section 2

The Religious Courts are one of the actors of judicial power for the people who seek justice who are Muslim regarding certain cases as referred to in this Law.” And

The provisions of article 49 are amended to read as follows:

“Pasal 49

Religious courts have the duty and authority to examine, decide, and resolve

cases at the first level between people who are Muslims in the areas of:

a. marriage;

b. thresure;

c. will;

d. hibah (grant);

e. waqf;

f. zakat;

g. infaq;

h. sadaqah; and

i. sharia economy.”

Based on the explanation, it was found that the provisions of Article 2 of the 2006 Religious Courts Law which contains the types of cases and article 49 which contains the limits of the authority of the religious courts are purely derived from the proposal of Commission III of the DPR RI, which considers that the 1989 Religious Courts Law needs to be This has been updated considering that there have been fundamental changes to the law on judicial power concerning judicial institutions, and the proliferation of Islamic banks in Indonesia.

As for other fields, no proposals and explanations were found in the 2006 Religious Court Law. This could be because Commission III of the DPR has not considered it necessary to add other powers; or they may think that other authorities have already been regulated and become the authority of other courts, so that if they are re-arranged it will cause overlapping rules; or they may think that changes in Islamic law must be gradual.

In summary, it can be concluded that the existence and position of the religious courts during the reformation period and after have been getting stronger. Likewise, the competencies they have are getting wider. In terms of status and position, the existence of the Religious Courts is no longer distinguished from other judicial bodies in Indonesia. Even in the case of other civil disputes, he is no longer related to the General Court.

In terms of absolute authority, through the 2006 Religious Courts Law, the authority of the Religious Courts is not only limited to marriage, divorce, divorce and reconciliation (NTCR), but also handles sharia economic disputes, zakat, infaq and decides itsbat rukyat hilal. Further progress can be seen (especially) through the 2009 Law on Religious Courts which contains the participation of the Judicial Commission in supervising the performance of judges within the Religious Courts Agency.

## Conclusion

Referring to this description, it can be concluded that the authority to handle cases in the Religious Courts is limited to 9 certain cases as stated in Article 49 of the 2006 Religious Courts Law, which is closely related to the political conditions that have been passed by the Religious Courts and Islamic law.

The history of Islamic law in Indonesia and the Religious Courts is very thick with political nuances and nuances of Islamophobia rather than juridical nuances. During the colonial period, it was found that the colonial government was not neutral towards Islam. Continuing during the formation of the 1989 Law on Religious Courts, where history records, there were a number of groups who wanted to thwart efforts to enact this law: The first group, has a view that tends to place the Religious Courts as subordinate to the General Courts. They consider that in the context of legal unification in Indonesia, the Religious Courts are no longer needed because there will be dualism in the judicial system in Indonesia; The second group, views that expressly reject the existence of the Religious Courts. This group argues that affairs between religion and the state are separate (secular groups). They even explicitly asked the Religious Courts to be disbanded on the pretext that Muslims must administer their own laws; The third group has a view that expressly rejects the existence of the Draft Law on Religious Courts. According to them, the Religious Court Bill is a form of discrimination against other groups, so its existence must be dissolved. They also consider the Religious Court Bill as a locomotive to re-establish the Jakarta Charter.

**Suggestion:**

To the Government and the DPR, for the sake of justice for Muslims, may they consider reconsidering the addition of various powers of the Religious Courts by way of legislating them in the form of laws and regulations.

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1. The Law on Judicial Powers of 1964 in the Supplement to the State Gazette of the Republic of Indonesia of 1964 Number 2699. [↑](#footnote-ref-1)
2. Article 49 of the 2006 Law on Religious Courts in the State Gazette of the Republic of Indonesia of 2006 Number 22. [↑](#footnote-ref-2)
3. One of the figures who showed his a priori attitude was Abdurrahman Wahid (Gus Dur), according to him, the state should not be too far in interfering with the religious affairs of its citizens in carrying out worship even though it was a clear command. [↑](#footnote-ref-3)
4. Supplement to the State Gazette of the Republic of Indonesia Number 4867 [↑](#footnote-ref-4)