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Concept of Islamic Law Enforcement In the History and Practice of Islamic Justice

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Abstract: Upholding justice in social life has an important meaning in one of the efforts to build a high and dignified national civilization. Justice is carried out by judicial institutions. The performance of our courts or justice system is far from satisfactory, which results in a sense of comfort and happiness for justice seekers. Court decisions only create decisions that are procedurally fair. Likewise, court decisions seem more likely to favor parties who have money and power. Access to justice that should be equal for all levels of society cannot be achieved, so only elite people can enjoy it. In administering the judicial process, Islamic law aims to enforce law and justice proportionally based on Islamic Sharia. The growth and development of Islamic justice is a product of interactions within the social system, including with existing judicial institutions. Law enforcement in Indonesia does not synergize with each other in realizing justice. This is due to the position and standing of legal institutions where the function of investigation and prosecution is under executive power, while the function of adjudicating and deciding is under the Supreme Court. This causes a tendency to protect the interests of their respective institutions rather than law enforcement efforts in the public interest. The problem formulation in this paper is what is the concept of law enforcement in Islamic law in the practice and history of Islamic justice? The conclusion is: The concept of law enforcement in Islamic law does not differentiate between civil and criminal cases. Law enforcement includes material law and formal law. Material law originates from the Al-Qur'an, As-Sunnah and Fiqh.

Keyword: Enforcement of Islamic Law, History, Practice of Islamic Justice.

INTRODUCTION

In the administration of the judicial process, Islamic law aims to uphold law and justice proportionally based on Islamic Sharia. Allah SWT said in Surah Al-Nisa verse 58 which means: "Truly Allah commanded you to deliver the mandate to those who deserve it, and (commanded you) when establishing laws between people that you establish them justly. Indeed, Allah gives you the best lessons. Indeed, Allah is All-Hearing and All-Seeing."

Islamic society begins with the apostolic duties of the Prophet. The growth and development of Islamic justice is in line with the growth and development of Islamic

society. Muhammad Saw in the Medina period (622-632 AD). At that time, social life began to be reorganized in line with the revelation that contained the regulation of human life, namely the family, government property, the judiciary and relations between religious believers and between people.

Islamic justice has experienced ups and downs, in line with the development of Islamic societies in various regions and countries. Islamic society is the main basis for articulating and formulating legal politics in various regions and countries. Islamic society is spread across various regions with diverse structures, cultural patterns and development, so the organization of Islamic justice is also diverse. However, Islamic justice still refers to the same principles.¹

The growth and development of Islamic justice is a product of interactions within the social system, including with existing judicial institutions. One of the most determining elements in this process is the ability and role of its supporters, namely ulama and members of the Islamic community in general, in formulating and implementing Islamic law in statutory regulations. Therefore, the form and development of Islamic justice in various countries has varied patterns.²

In Indonesia there are three legal systems that have developed with their own characteristics, namely Western (Dutch) law, customary law and Islamic law. These three legal systems came into force at different times. From the beginning the Dutch's intention in coming to Indonesia was to trade, then later changed to colonization. To preserve this intention they entered the legal field. The law they most want is the Western legal system, both civil and public.³

Law enforcement in Indonesia does not synergize with each other in realizing justice. This is due to the position and standing of legal institutions where the function of investigation and prosecution is under executive power, while the function of adjudicating and deciding is under the Supreme Court. This causes a tendency to protect the interests of their respective institutions rather than law enforcement efforts in the public interest.⁴ To overcome this, the role of judges is very important in enforcing the law so that justice can be achieved.

Long before the arrival of Western law, Islamic law had entered Indonesia at the same time as the religion of Islam. The Islamic sultanates in the archipelago have implemented Islamic law and also implemented Islamic justice in Indonesia. For example, in the Mataram sultanate there is the Surambi court, the Mukim Law Center in Aceh, and others.

Islamic courts in Indonesia are officially called religious courts, as part of the state judiciary. Religious courts are Islamic courts in Indonesia. Religious justice as an embodiment of Islamic justice in Indonesia can be seen from several points of view. Philosophically, the judiciary was formed and developed to uphold law and justice. The law that is enforced is God's law which has been systematized by humans. The justice that is upheld is God's justice, as reflected in the Head of the Court Decision, namely *Bismillahirrahmannirrahiim* and for the sake of justice based on belief in the Almighty God. Juridically, Islamic law (in the fields of marriage, inheritance, wills, grants, endowments and shadaqah) applies in court in the religious justice environment. Historically, religious justice has been one of the continuous chains of Islamic justice since

¹ Cik Hasan Bisri, 2000, *Religious Courts in Indonesia*, Revised Edition, RajaGrafindo Persada, Jakarta, p. 20.

² Ibid, hlm 24

³ Yaswirman, 2011, *Family Law: Characteristics and Prospects of Islamic and Customary Doctrine in Minangkabau Matrilineal Society*, Rajagrafindo Persada, Jakarta, p23

⁴ Ismail Rumadan, *The Role of Judicial Institutions as Law Enforcement Institutions in Upholding Justice for the Realization of Peace*, Rechtsvinding Journal, Volume 6, Number 1, April 2017, at [rechtsvinding.bphn.go.id/article/ART 5 JRV](https://rechtsvinding.bphn.go.id/article/ART%205%20JRV), accessed 28 August 2109, at 21.00 WIB

the time of the Prophet Muhammad. Sociologically, religious justice is supported and developed by and within Islamic society.⁵

METHOD

This research uses legal research methods (*doctrinal research*) namely research focused on examining the application of rules or norms in positive law. According to Peter Mahmud, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.⁶ This research uses a statutory approach (*statutes approach*) and conceptual approaches (*conceptual approach*).

RESULTS AND DISCUSSION

Law enforcement is an effort to make the ideas of justice, legal certainty and social benefits a reality. So law enforcement is essentially a process of realizing ideas. According to Lawrence M. Friedman, law enforcement must be viewed from three legal elements, namely legal structure, legal substance and legal culture. These three elements must synergize and support each other, thereby increasing the professionalism of judges and judicial staff, reorganizing legal regulations and improving legal culture.

According to Jimly Asshiddiqie, law enforcement is the process of making efforts to enforce or function real legal norms as guidelines for behavior in traffic or legal relations in social and state life.⁷ Law enforcement is applied to cases relating to the validity or not of a legal relationship or legal status (legality) between legal subjects. The legal order that regulates legal relations or legal status between legal subjects is included in the category *mandatory law* which is in law (ushul fiqh) is called *lawwadd'iy*. This legal order functions to protect truth and human values.⁸ Law enforcement applied to cases relating to the relationship of rights and obligations between legal subjects. This legal order falls into the category *additional law* which in Islamic law is called law *takliyfiy*. This type of legal order functions to protect the value of justice.⁹

According to Soerjono Soekanto, law enforcement is an activity to harmonize the relationship between values described in solid and embodied values/views and attitudes as a series of final stages of value translation to create, maintain and maintain peaceful social life.¹⁰ Concrete law enforcement is the application of positive law in practice as it should be obeyed. Therefore, providing justice in a case means deciding the law *in concrete* in maintaining and ensuring compliance with material law by using procedural methods established by formal law.

The essence is law enforcement¹¹ creating values or rules that contain justice and truth, law enforcement is not only the duty of the conventionally known law enforcers, but the duty of everyone. However, in relation to public law the government is responsible.

⁵ Cik Bisri, op.cit pp 24-25.

⁶ Peter Mahmud Marzuki, Legal Research (Prenada Media 2005).p.35

⁷ Mia Lasmi Wardiyah, *Enforcement of Sharia Economic Law in Religious Courts in the Bandung High Religious Court Area*, in Perspective Journal, Volume 2 No 2 December 2018, p 191, <https://www.neliti.com/id/journals/asas-jurnal-hukum-dan-ekonomi-islam>.

⁸ Mukti Arto, 2017, *The Discovery of Islamic Law to Achieve Justice, Building a Judicial System Based on Legal Protection and Justice*, Student Library, Yogyakarta, p19

⁹ Ibid, hlm 20

¹⁰ Soerjono Soekanto, 2016, 14th printing, *Factors Affecting Law Enforcement*, RajaGrafindo Persada, Depok, p. 5

¹¹ The law enforcement paradigm, as stated by Sinzheimer, states that law does not operate in a vacuum and deals with abstract matters. Rather, it always exists within a certain social order and living humans. So it's not just about how to regulate it so that in society the effects that are desired by law arise. Thus the efficiency of a legal regulation becomes very important. Because it also involves other connections in his thinking, namely reviewing the relationship between law and factors and social forces outside it. This was also clearly stated by

Factors that influence law enforcement according to Soerjono Soekanto are:¹²

1. The legal factors themselves are limited to the law.
2. Law enforcement factors, namely the parties who form and implement the law.
3. Facilities or facilities factors that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life.

Law enforcement in Islamic justice is in line with the running of Islamic law. The enforcement of the law began since the Prophet Muhammad SAW. During the time of Prophet Muhammad SAW, it can be seen from the story of a woman from Bani Mahzum, one of the most respected groups of the Quraish ethnic group, who was caught stealing. To cover up the shame and embarrassment, the leaders of Bani Mahzum asked for help from Usamah who was close to the Prophet Muhammad SAW to approach and lobby the Messenger of Allah. His efforts were in vain, the Messenger of Allah immediately reprimanded him and gave him a stern warning. The Messenger of Allah said: "Do you want to bribe the law (stipulations) of Allah's law?" On that occasion, the Messenger of God immediately went up to the pulpit and gave a warning, "This is the bad habit that has destroyed the previous nations. They perished (punished by God) because they did not dare to punish the prominent among them. Instead they severely punish the little people. If Fatimah, my daughter steals, I will definitely cut off her hand. (HR Bukhari and Muslim from Aisha)

Through this incident, the Prophet taught several basic problems in law enforcement in Islamic law, namely:¹³

1. Justice is a process as well as a goal and ideal. Fairness refers to a middle, straight attitude and not taking sides with anyone, except the truth. In the context of law enforcement, fairness is punishing anyone who makes a mistake without taking sides and without discrimination. Justice demands and places humans as equal before the law (*equal before the law*). This is as stated in Surah al-Nahl verse 90: "Indeed, Allah commands (you) to act justly and to do good."
2. In terms of law enforcement, the law must be enforced honestly and fairly. Law enforcement that is unfair, corrupt and full of fraud can hurt and injure society's sense of justice. Law enforcement should not be like a sword, only sharp downwards but blunt upwards. This is what Allah SWT warns us in Surah al-Nisa verse 58: "Indeed, Allah commands you when you determine a law between people, so that you determine it fairly."
3. Destruction of society, this will happen if justice and law enforcement are ignored by those in power. This is stated in Surah al-Naml verse 67: "Walk (on) the earth, then pay attention to the consequences of those who sin."

The basis of law enforcement in the time of the Prophet SAW is rooted in the principles of Islamic law found in the Quran and Hadith. Some of the main principles of law enforcement in the time of the Prophet SAW are:

1. The Koran as a Source of Law: The Koran is the main source of Islamic law. Rasulullah SAW understood, taught and applied the laws contained in the Koran to his people. Law

Robert B. Seidman, that laws, once issued, will change, either through normal changes or through the methods adopted by the bureaucracy when acting in the political, economic, social and so on. Seen in Muhammad Aiz, *Format of Islamic Law in Indonesia*, Coordinate Journal, Volume XVII No 1, April 2018 at <http://journal.uinjkt.ac.id/index.php-/kordinat/article/download/8107/4418> accessed on September 4 2019, 09.00 WIB

¹² Soerjono Soekanto, op.cit, pp. 8-9

¹³ <https://www.republika.co.id/berita/dunia-islam/hikmah/13/02/03/mhmaq6-meneladani-prinsip-rasulullah-dalam-penegakan-hukum>, A Ilyas Ismail Imitating the Prophet's Principles in Law Enforcement.

- enforcement is based on the provisions of the Koran, such as laws on marriage, inheritance and obligations of worship.
2. **Hadith as Explanation:** Apart from the Koran, Hadith (sunnah) is the second source of law that explains and expounds Islamic teachings. Rasulullah SAW often provided further explanations about how to apply Islamic law through his hadiths. Hadith provide concrete examples of how Islamic laws are applied in everyday life.
 3. **Justice and Equality:** Rasulullah SAW emphasized the importance of justice in law enforcement. He ensures that every individual is treated fairly and equally before the law, regardless of social status, ethnicity or wealth.
 4. **Dispute Resolution:** Rasulullah SAW often acts as a mediator in resolving disputes between individuals or tribes. He promotes reconciliation and dispute resolution through deliberation and dialogue.
 5. **Punishment as a Deterrent:** Rasulullah SAW also implemented punishment as a form of law enforcement and as an effort to prevent violations of the law. These penalties are imposed according to the nature of the offense and within the context of Islamic law.
 6. **Opportunity for Repentance:** Despite applying punishment, the Prophet SAW also gave offenders the opportunity to repent and improve themselves. He taught the importance of forgiveness and repentance to God.

In practice, law enforcement during the time of the Prophet Muhammad was based on Islamic principles which included social order, justice, wisdom and sincerity. This formed the basis for the Islamic justice system which continued to evolve over time.

After the Prophet SAW passed away, the companions as the first generation of Muslims continued the teachings and mission of the apostolate. Abu Bakar ash-Siddiq was the first companion who was chosen to be the successor of the Prophet Muhammad SAW. During the reign of Abu Bakar ash-Siddiq, the situation of the Muslims was not much different from that of the Prophet, so that there were no developments in Islamic law and its enforcement. This is due to the busyness of fighting some Muslims who apostatized from the Prophet's legacy and the opposition who did not pay zakat and other political and government affairs, in addition to the extent of Islamic power at that time.¹⁴

During the time of Caliph Abu Bakar, judicial affairs were handed over to Umar Bin Khattab for approximately 2 years. During that time, only two people had a dispute and complained about their problems to Umar. Abu Bakr, when faced with a matter that had to be decided, he paid attention to the contents of the Al-Qur'an and applied the laws contained in the Al-Qur'an. If he could not find it in the Al-Qur'an, he would pay attention to the Sunnah of the Prophet or decisions. which was taken by the Apostle. If he does not find the Sunnah of the Prophet, then he will ask the experts.

After the death of Abu Bakar ash-Siddiq, the government passed to Umar bin Khattab. During Umar's reign, judicial affairs were part of Umar's authority. Caliph Umar appointed the kadi and limited his authority. Kadi has the authority to resolve property disputes (civil matters) while *jinayah* (criminal) matters such as qishash/had-had law fall under the authority of the caliph and regional rulers.

During this period, the development of the administration of justice received great attention. One form of coaching is listed in *Risalatul qhada Umar bin Khattab* The period is seen as the principles of administering judicial power. During Umar's time, many forms of ijtihad emerged and the legal products were relatively new and contradictory, as if they were not in accordance with the Al-Qur'an and the prophet's hadith. Examples of Umar's ijtihad in upholding Islamic law are:

¹⁴Muhammad Salam Madzkur, 1991, *Al-Qadha Fil Islam*, translated by Imran AM, Bina Ilmu, Surabaya, p. 31 in <http://journal.iain-manado.ac.id/-/index.php/JIS-/article-/download/40/41>, Djamilia Usup, *Islamic Justice During the Khulafa Al-Rasyidin Period*, accessed on September 4 2019 at 08.30 WIB.

1. Abortion of the statute of limitations for thieves; punishment for thieves according to Surah Al-Maidah verse 38 means "the man who steals and the woman who steals, cut off their hands (as) retribution for what they did and as a punishment from God. And God is Mighty and Wise". Abortion of this limit law was done by Umar because during the reign of Umar there was a famine in the society of the Arabian peninsula. In this state of a famine-stricken society, the legal threat against thieves as mentioned in Surah Al-Maidah verse 38 was not enforced by Umar. The background of this decision is in accordance with the principle *maqashid al-shariah wa masalih al-insayaniah* that is, apart from paying attention to the provisions of the text, we also do not ignore the humanitarian interest factors contained behind the provisions of the text.
2. Thalak three with one lafadz; thalak is basically separate, meaning one time and one time.
3. Ta'zir punishment is an educational punishment imposed by a judge for a criminal act for which the threat of punishment is not determined with certainty. This punishment is imposed on people who drink liquor. During the time of Rasulullah and Abu Bakr the punishment was 40 lashes, while during Umar's time the punishment was 80 lashes.
4. Crime of adultery; The punishment for adultery is stated in Surah An-Nur verse 2, which means "the woman who commits adultery and the man who commits adultery, then lash each of them a hundred lashes, let no mercy on either of them prevent you from (practicing) the religion of Allah, if you believe in Allah, and the Hereafter, and let (the execution of) their punishment be witnessed by a group of those who believe." This punishment was added by the Prophet, namely exile abroad. During Umar's time the punishment of banishment was no longer enforced. This was done with the consideration that if they were exiled abroad it was feared that they would join the enemy.

After the death of Umar, the government was held by Uthman bin Affan. During his reign, the enforcement of the law was the same as it was during the reign of Umar. Caliph Uthman encouraged the kadis in the district to carry out their duties and always act justly for the sake of the creation of truth. The issue of justice is so important that he sent a letter to the kadis with the following contents: "then verily Allah created righteous creatures, then Allah will not accept anything except with righteousness. take the truth and pay attention to the trust, uphold that trust and don't be the first to negate it, then you will be a part of those who come after you, fulfill it! fill it up! Don't do injustice to orphans and likewise those who do injustice to people with whom you made a promise".¹⁵ From the explanation above, caliph Uthman ordered the judges/kadis to exercise justice in carrying out their duties and not to cheat.

During the reign of Caliph Ali bin Abi Talib, law enforcement was the same as that carried out by previous caliphs and always gave messages to the kadi in charge to make their duties based on justice and compassion for the community. One example of law enforcement is An incident occurred, namely Ali lost his armor in a war. Then, after a period of peace and security, Ali saw the clothes worn by a Jew. Ali took this case to court alleging that the Jew had stolen his armor. The court at that time, led by supreme judge Abu Ubaidah, immediately held a case with the plaintiff Khalifah Ali and the defendant a Jew. The Jew said that the armor was his. while Ali as the plaintiff also said so, who fell in a war.

The judge said to Ali: "Since you are the plaintiff, I ask you to bring a witness who can prove that this armor is yours". Caliph Ali then called his sons Hasan and Husein to testify that the armor was his. The judge said: "The family itself cannot be a witness in this case, because the plaintiff could not bring in witnesses, so the judge decided that the owner of the armor was a Jew. Ali, as the highest leader of the Muslim community at that time, accepted

¹⁵ *Ibid*

the judge's decision happily, even though he was absolutely certain that the armor belonged to him. he submits to the judge even though he is the supreme authority.¹⁶

From this story, it can be said that law enforcement during the time of Caliph Ali bin Abi Talib was as follows:

1. At that time, judges were very authoritative, their decisions did not discriminate, even if they were suing the highest authority, they still enforced the law properly without deactivating the caliph first.
2. The Caliph implemented the decision immediately without delay.

Court ruling¹⁷ has played a role in reforming Islamic law both at the national and international levels. One of the reasons court decisions play a role in legal reform is internal legal material *fiqh* is no longer appropriate when applied in a case for which a resolution is requested from the court, whereas *the law* (legislative regulations) have been arranged, but not yet complete or not arranged at all even though the need is very urgent. Therefore, the judge by way of *ijtihad* decided the case that was submitted. This is based on a Hadith that says if a judge makes *ijtihad* and his *ijtihad* is correct, then he gets two rewards, but if he is wrong, then he gets one reward.¹⁸

Reform of Islamic justice through court decisions has been implemented since Islam came to power in Spain. For example, when a ruler named Abdurrahman Ibnul Hakim had sexual intercourse with his wife in the month of Ramadan. He realized his mistake and asked the Supreme Court to rule *kafarat* what is suitable to be applied to him, Supreme Judge Al-Qhadi Yahya bin Al-Laits determined that *kafarat* what is suitable for Abdurrahman is fasting for two consecutive months, not freeing slaves or feeding the poor. The basis of consideration of the punishment is that freeing slaves or feeding the poor is an easy thing for a ruler and he is not able to respect the month of Ramadan. Because of that *kafarat* is something that is appropriate for a ruler to carry out in order to be an example to others. Therefore, fasting for two months in a row is natural and appropriate.

Enforcement of Islamic law in Indonesia is in line with the existence of Islamic justice in Indonesia. Islamic courts in Indonesia are called religious courts. Law enforcement is based on Pancasila and the 1945 Constitution¹⁹. In the 1945 Constitution, Article 24 paragraph (1) states: "judicial power is an independent power to administer justice to uphold law and justice". The application of this article further applies to Law No. 48 of 2009 concerning Judicial Power in Article 2 paragraph (1) which states that: "trials are carried out for the sake of justice based on belief in the Almighty God." This commitment means that the judge swears an oath to realize justice based on the belief in Almighty God. The judicial process must realize justice which is the judge's responsibility in examining cases.

Renewal of Islamic law through court decisions in Indonesia has been implemented since 1974, when Law Number 1 of 1974 concerning Marriage was enacted. This was then

¹⁶ <http://TheHistoricalStoryofCaliphAli-ANNEAHIRA.COM.html>, accessed on 6 September 2019, at 15.30 WIB

¹⁷ Court and justice are two terms from the same root word but have different meanings. The court is an organizational unit that carries out law enforcement and justice. The judiciary is one of the institutions in fulfilling people's lives in upholding law and justice, which refers to applicable law. However, the two terms are sometimes used in the same sense. See Nur Lailatul Musyafa'ah, 2004, *Fluctuations in the Absolute Power of Religious Courts in Indonesia*, Bani Quraishi, Bandung, p. 1.

¹⁸ Abdul Manan, 2017, *Renewal of Islamic Law in Indonesia*, Kencana, Depok, p. 133.

¹⁹ According to Indonesian 1945 Constitution, the judiciary power is divided into the power under the Supreme Court and Constitutional Court. The Supreme Court of Indonesia (The SCI) and the court underneath have authority in hearing civil, administrative or criminal law case, while Constitutional Court of Indonesia (The CCI) has power mainly to review a law against the Constitution. See Yoserwan, Elwi Danil, Kurnia Warman and Yulfasni, *The Implementation Of Ultimum Remedium Principle in Economic Criminal Law of Indonesia*, *Journal of Legal, Ethical and Regulatory Issue* (Print ISSN: 1544-0036; online :1544-0044), article: Volume 22 Issue : 2, 2019.

followed by the implementation of Government Regulation Number 28 of 1977 concerning the Endowment of Owned Land and the Compilation of Islamic Law through Presidential Instruction No. 1 of 1991. The reform of Islamic law through the courts can be seen with the emergence of decisions regarding mandatory wills, substitute heirs, heirs of different religions, and several new things in marriage, waqf and grants.²⁰

The application of Islamic law is increasingly strengthening and expanding to various fields. In the case of medicines and food, they are required to have a halal certificate issued by the Indonesian Ulema Council's Institute for the Study of Drug and Food Products (LPPOM). Then the birth of Law No. 17 of 1999 concerning the Implementation of the Hajj as amended by Law Number 13 of 2008, Law Number 38 of 1999 concerning Zakat Management and Law Number 21 of 2008 concerning Sharia Banking.

The emergence of the Constitutional Court Decision Number 46/PUU-VIII/2010 concerning illegitimate children gave rise to various discussions among academics, practitioners and observers of Civil Law in Indonesia. The content of the Constitutional Court Decision states that Article 43 paragraph (1) of Law no. 1 of 1974 concerning Marriage is contrary to the 1945 Constitution so it does not have binding legal force and the contents of Article 43 paragraph (1) of the Marriage Law were changed to read: "Children born outside of marriage have a civil relationship with their mother and their mother's family and a man as their father which can be proven based on science, knowledge and technology and/or other evidence according to the law have blood relations, including civil relations with the father's family."

One example of its application is seen in the Surakarta religious courts. In the opinion of the judges at the Surakarta religious court, the constitutional court's decision cannot immediately be implemented. This means that further legal provisions regarding the decision must also be taken into consideration. Judges as law enforcers are not just mouth pieces for the law. There are several legal sources that judges must explore when giving their decisions. Judges must pay attention to the Marriage Law, PP no. 9 of 1975, Compilation of Islamic Law, Islamic Law and even customary law.²¹

In the opinion of the Surakarta district court judge, the constitutional court's decision cannot be implemented or implemented. This is because the decision is considered to be contrary to the values espoused by the judges and the values espoused by society. The values in question are the civil relationship of children born out of wedlock only with their mother and her mother's family. This is guided by religious values, customs, the Marriage Law, the Civil Code which are used as legal sources for judges in examining and adjudicating family law cases for those of religions other than Islam. Apart from that, the opinion of the District Court judge was that the Constitutional Court's decision was also considered to be contrary to Article 2 paragraph (1) of the Marriage Law, where marriage is valid if it is carried out according to the laws of each religion and belief, and paragraph (2) every marriage is recorded according to regulations. current regulation.²²

The enforcement of Sharia economic law in religious courts was further strengthened by the issuance of Constitutional Court decision No. 93/PUU-X/2012. The development of Sharia economic law enforcement is increasing every year. In 2011 there were only 5 cases, in 2012 there were 28 cases, in 2013 there were 28 cases, in 2014 there were 74 cases, in 2015 there were 102 cases and in 2016 there were 229 cases.

²⁰ Abdul Manan, 2003, *Islamic Law in Various Discourses*, National Library, Jakarta, p. 230

²¹ Zaidah Nur Rosidah, *Implementation of Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the Civil Rights of Illegitimate Children in the Surakarta District and Religious Courts*, p. 181 in *Al-Ahkam Journal of Sharia and Legal Sciences*, Volume 2, Number 2, 2017 [inhttp://ejournal.iainsurakarta.aci.id/index.php/al-ahkam/article/download/1067/432](http://ejournal.iainsurakarta.aci.id/index.php/al-ahkam/article/download/1067/432) accessed on September 9 2019, 10.30 WIB

²² *Ibid*, hlm 182

With the authority to adjudicate disputes in the field of sharia economics, religious courts become a legal instrument for the implementation of sharia economics. As a tool of Sharia economic law, the most important activity of religious courts is adjudicating, namely providing justice to parties in dispute. In providing justice, religious courts will seek law on disputed events through various legal sources, such as written law, jurisprudence, customs, agreements and doctrine. Specifically for sharia economics, the sources of law are; 1) contract; 2) law; 3) jurisprudence; 4) habits according to the rules of fiqh, namely *al-'ada al muhakkamah*; 5) National Sharia Council fatwa which is the result of *ijma'* ulama and 6) fiqh which is the doctrine of knowledge of Islamic law (Shariah). In the latest development, the Supreme Court issued Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law.

The Syar'iyah Court Institution in Aceh (another name for religious court after special autonomy) still uses the Compilation of Islamic Law as its material law. This of course does not provide special value to the judicial institution, but is the same as other religious courts in Indonesia. If you pay close attention, problems like this are not something strange, because the judges in the religious courts and especially the Syar'iyah Court, their *ijtihad* is still very lacking or even non-existent. The judges are still contaminated with the provisions of the Compilation of Islamic Law, so they do not dare to leave these provisions.²³

Nanggroe Aceh Darussalam Province has implemented Aceh Qanun No. 11 of 2002 concerning Jinayat law. Some of the offenses regulated include the production, distribution and consumption of alcoholic beverages, gambling, adultery, making out outside of marriage and same-sexs. Every perpetrator of an offense prosecuted under this law will be punished by flogging, a fine or imprisonment. The stoning penalty is not enforced in Aceh, and an attempt to impose this penalty in 2009 failed due to lack of approval from governor Irwandi Yusuf.²⁴

In 2014, Qanun No. 6 of 2014, a revision of Qanun No. 11 of 2002, was implemented, where the caning punishment was made heavier. For violators of the jinayat law, the limit is set at a minimum of 10 times and a maximum of 150 times. Previously, violators were given 40 lashes, but in reality only 12 lashes were given.

From the facts that occurred in Nanggroe Aceh Darussalam, the implementation of Islamic law places more emphasis on issues of individual morality. For example, if someone is caught gambling, he will be caned. Couples who date are punished by caning and currently, women are prohibited from hanging out in coffee shops/cafés or restaurants without a mahram. Meanwhile, if there is a criminal act of corruption, the punishment of cutting off one's hands and being impoverished as stated in the books of jurisprudence is not applied, but is punished the same as corruptors in other regions in Indonesia.²⁵

Broadly speaking, the implementation of Islamic law in various regions in Indonesia can be divided into 2 (two) groups, namely full enforcement and partial enforcement. The full enforcement of Islamic law can be seen in the Province of Nanggroe Aceh Darussalam. Enforcement of this model is comprehensive because it not only establishes the law, but also structures the law enforcement agencies. Other regions that are currently preparing are South Sulawesi (Makasar) which has formed the Islamic Sharia Enforcement Committee (KPSI), and Garut Regency which has formed the Institute for the Study, Enforcement and Application of Islamic Sharia (LP3SyI).²⁶

²³ Nasrullah Yahya, *Highlighting KHI Law Enforcement in the Religious Judicial Environment (Efforts to Restructure the Marriage Sector Article 85-93)* Of <http://ejournal.iainpurwokerto.ac.id/index.php/alamahij/article/view/513> accessed on 4 September 2019, at 10.20 WIB

²⁴ https://id.wikipedia.org/wiki/hukum_jinayat_in_aceh, accessed 9 September 2019, at 09.10 WIB

²⁵ <http://islami.co/cepatan-penerapan-syariat-islam-di-aceh/>, accessed on September 9 2019, 09.00 WIB

²⁶ Andi Herawati, *Development of Islamic Law in Indonesia (Netherland, Japan and Independent Indonesia until now)*, Ash-Shahabah Journal of Islamic Education and Studies, Volume 3 Number 1, January 2017

The phenomenon of implementing Islamic law has also spread to other regions in Indonesia, although the pattern is different from Aceh. Based on the principle of regional autonomy, regional regulations with nuances of Islamic law emerged in both level I and level II regions. These areas include, West Sumatra province with Regional Regulation No. 11 of 2001 concerning the Eradication and Prevention of Immorality; Solok City with Regional Regulation No. 2 of 2004 concerning the Eradication and Prevention of Immorality, and so on.

CONCLUSION

The concept of law enforcement in Islamic law does not differentiate between civil and criminal cases. Law enforcement includes material law and formal law. Material law originates from the Al-Qur'an, As-Sunnah and Fiqh. The formal law is the procedural law. The development of legal rules and their implementation has developed from time to time, starting from the time of the Prophet Muhammad SAW until now. Islamic courts have various types of jurisdiction according to needs in order to uphold law and justice in society. Islamic justice today can be developed from concepts contained in the Al-Qur'an and As-Sunnah as well as past practices that are still relevant today. For Indonesian conditions, Islamic justice is being developed through increasing the authority and quality of existing religious justice institutions and the Sharia Court.

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