

The Aceh Syar'iyah Court as a Constitutional Precedent: Reimagining the Integration of Family and Islamic Criminal Jurisdiction in Indonesia

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Abstract: This study aims to analyse the conceptual legitimacy of the fragmentation of jurisdiction between the Religious Courts and the District Courts in cases where family law and criminal law intersect, and to formulate a model for the integration of jurisdiction by using the experience of the Aceh Syar'iyah Court as an institutional reference. This study employs a normative legal methodology through legislative, conceptual and comparative approaches to examine the constitutional and doctrinal basis for the unification of judicial jurisdiction. The research findings indicate that the fragmentation of family–criminal jurisdiction lacks an adequate conceptual foundation within the dominant framework of classical *fiqh*; rather, it is a product of colonial legal policy that has perpetuated institutional separation within the Indonesian judicial system. Conversely, the experience of the Aceh Syar'iyah Court demonstrates that the integration of jurisdiction over family and *jinayah* law can be implemented constitutionally whilst still guaranteeing due process of law, thereby resulting in a more coherent and comprehensive resolution of cases. Based on these findings, this study develops a model for the integration of jurisdiction through the limited extension of the Religious Courts' absolute jurisdiction over family-based offences and family-disruptive offences by applying a bifurcated evidentiary regime, a mechanism that maintains the distinction between the standards of proof for civil and criminal cases within a single integrated judicial forum. This study concludes that jurisdictional dualism is not an inevitability of the judicial system, but rather an institutional construct that can be reconfigured through a more integrated design of competences. The contribution of this research lies in the development of a new conceptual framework regarding the integration of judicial competences based on Islamic law, which bridges the dichotomy between family and criminal jurisdictions, whilst offering a normative basis for the reform of the Religious Courts' powers within the national judicial system.

Keywords: Aceh Syar'iyah Court, Islamic Criminal Law, Islamic Family Law, Islamic Judicial System, Jurisdiction of Religious Courts.

Introduction

The Indonesian judicial system harbours an institutional paradox that has long been accepted as the norm a single legal relationship is divided between two jurisdictions that were never designed to communicate with one another, due to their absolute jurisdiction. Religious courts are granted the authority to adjudicate family matters (*ahwāl syakhṣiyyah*) such as marriage, divorce, custody and maintenance (Khalid, 2023). Meanwhile, criminal offences arising from the same family relationships such as domestic violence (KDRT), adultery, or accusations of adultery (*qadzaf*) which almost invariably stem from the same household and power dynamics, are instead placed entirely within the jurisdiction of the District Courts, as if these were two entirely separate realities that never intersect. The result is not merely administrative inefficiency, but the creation of '*disjointed justice*' a justice system that is structurally fragmented. Victims of domestic violence are forced to pursue a legally valid divorce in one forum whilst simultaneously proving their status as victims of a criminal offence in another forum, with no obligation for the two to consult one another (Izzuddin & Alfikri, 2025). Ironically, the regulations governing the mutual cursing oath (*li'ān*) between husband and wife which leads to the dissolution of the marriage only address civil procedural matters, yet immediately carry criminal consequences; *li'ān* is, in fact, outside the jurisdiction of the Religious Courts (Yusri & Nelli, 2025). Even more worrying is that this structural void is often exploited by society when cases of adultery and rape are resolved through forced marriage between the victim and the perpetrator not because of the absence of criminal law, but because there is no forum capable of addressing both dimensions of a single incident simultaneously (Rizka & Prasetyo, 2024). This dualism not only fails to protect victims but also contributes to creating a vacuum and perpetuating violence against them.

Amidst these issues, the Aceh Sharia Court stands firm as a precedent that both demonstrates and puts an end to the debate on jurisdictional dualism. This is because the Sharia Court is the only judicial institution in Indonesia that brings together family and *jinayah* jurisdiction under one roof (Putera & Junaidi, 2026). Therefore, the question is no longer about the possibility of unifying jurisdiction, but rather a far more fundamental issue, what design and model can be adapted to the practice of the legal system in Indonesia. Unfortunately, previous studies have not adequately addressed this need, as demonstrated by the research of Analiansyah and Ali Abubakar in their study, "*Children Handling Procedure in Islamic Criminal Offense in Aceh*" (Analiansyah & Abubakar, 2021), which, whilst examining criminal jurisdiction in the Aceh Sharia Court, was limited to the procedural handling of juvenile criminal cases without reconstructing the jurisdictional architecture of the religious courts that established the Aceh Sharia Court as a precedent. Meanwhile, Arditio Dwianto and his research colleagues,

in their paper entitled, “*Batasan Kompetensi Absolut Pengadilan Agama (Analisis Putusan Peninjauan Kembali Nomor 672 Pk/Pdt/2016)*” (Dwianto et al., 2022), merely examined the limits of the absolute and relative jurisdiction of religious and district courts in inheritance disputes consequently, its focus did not address the design of a unified system combining absolute jurisdiction in criminal and civil matters. Furthermore, the study by Hadi Iskandar and his fellow researchers, entitled, “*Function and Position of Aceh Syar’iyah Court in the Legal System in Indonesia*” (Iskandar et al., 2023), has in fact, positioned the Syar’iyah Court as an object of institutional legitimacy by examining its functions, status and basis of authority within the Indonesian legal system, whilst not addressing the institution’s unique role in integrating Islamic family law and Islamic criminal law as a model for religious courts.

A review of the existing literature has, in fact, failed to reconstruct the absolute jurisdiction held by the Religious Courts. The debate to date has centred solely on the limits of each court’s jurisdiction or merely on the exercise of the Syar’iyah Court’s jurisdiction in Aceh, without questioning whether there is a separation between Islamic family law and Islamic criminal law. Furthermore, the Syar’iyah Court continues to be positioned as a feature unique to Aceh, rather than as a model worthy of examination to address the issue of judicial fragmentation at the national level. Consequently, the literature has not only failed to offer a more comprehensive institutional design, but has also, unwittingly, perpetuated the same way of thinking as the judicial system criticised in this study. Namely, the dichotomisation of criminal cases and cases that are substantively interrelated erodes the fundamental protections within the Islamic family, namely *hifz al-nasl* and *hifz al-‘ird*. The gap in this research no longer lies in a lack of studies on the Syar’iyah courts, but rather in the failure to establish them as a precedent for judicial reform in Indonesia; thus, this study aims to fill that gap.

On that basis, this study poses questions that have not yet been addressed in any previous research, namely: 1) How can the Syar’iyah Court be positioned as an empirical precedent for the unification of Islamic family and criminal law jurisdictions in Indonesia? and 2) How can such a unification of jurisdictions be recommended within the Indonesian judicial system? Proceeding from this premise, this study challenges the assumption that the separation of Islamic family and criminal law is not an impossibility within a single religious judicial framework, as the dualism of absolute jurisdiction is not an unchallengeable constitutional inevitability but rather an institutional choice that has been shown to be untenable within the territorial boundaries of Indonesian law itself. Building on this argument, this study goes a step further by no longer questioning the dualism of jurisdiction but rather formulating a more moderate, feasible and compatible model of constitutional adaptation. This does not involve adopting Aceh’s institutional design in its entirety, but rather identifying the constitutional and institutional elements that can be adapted within the framework of reforming the national judicial system.

Method

Rather than merely depicting the law as it is written, this study treats the legislative text as a battleground between two distinct logics and is therefore conducted using a normative legal research approach with a three-tiered analytical framework. The statutory approach to examine the Religious Courts Act, the Aceh Government Act, the Qanun on Jinayat Law (Aceh Qanun No. 6 of 2014 in conjunction with Aceh Qanun No. 12 of 2025), the Code of Criminal Procedure Law and Jinayat Procedure Law; the comparative approach to compare, within the national context, the dual jurisdiction of the Religious Courts and the District Courts with the combined jurisdiction of the Syar’iyah Courts; and a conceptual approach that positions the concepts of *huqūq Allāh*, *huqūq al-Ādamī*, *hifz al-nasl* and *hifz al-‘ird* as a normative matrix for examining the justification and limitations of the institutional unification of the judiciary. This study utilises secondary data comprising primary, secondary and tertiary legal sources. Primary legal sources consist of legislation, secondary legal sources consist of authoritative works on *fiqh*, textbooks and monographs, academic articles, and doctrines relevant to the research topic; tertiary legal sources consist of legal dictionaries and encyclopaedias. All of these legal materials were collected through a literature review using techniques of inventorying, and the systematic searching of documents and court decisions via databases of legislation, and databases of academic publications. The entire body of legal material was then analysed qualitatively through the stages of classification, systematisation, interpretation and comparison, before being critically evaluated to construct a prescriptive argument that clearly distinguishes between institutional unification and the unification of substantive law, which constitutes the main contribution of this research.

Results and Discussion

1. The Syar’iyah Court as an Empirical Precedent: Opportunities and Procedural Frictions

The claim that criminal matters intersecting with family law are not naturally distinct as they are not rooted in classical *fiqh* is a product of modern law stemming from the colonial judicial architecture, and has been naturalised as if it were a definitive part of Islamic legal order. This precedent was established through the doctrine

of receptie, whereby Islamic law was confined to the civil sphere under the jurisdiction of the Religious Courts, whilst criminal liability remained within the domain of the General Courts (Pebrianto et al., 2022). Rather than reconstructing the colonial legacy, national law has instead institutionalised it as a marker of a non-theocratic state through the separation of judicial competences (Syarif, 2021).

Classical *fiqh* literature across the various schools of thought actually demonstrates that the distinction made by the modern judicial system today between *ahwāl syakhṣiyyah* and *jināyah* cases never truly existed. The Hanafi text *Al-Baḥr al-Rā'iq Syarḥ Kanz al-Daqa'iq* explicitly discusses the implications of criminal liability being waived due to the existence of a family relationship (Al-Nasaḥī, 1997), whilst the Maliki school, in their text *Kitāb al-Talqīn fī al-Fiqh al-Mālikī* also discusses a similar intersection in the case of a parent killing their child, which results in the nullification of the crime of *qisās* (Al-Baghdādī, n.d.). Furthermore, the Shafi'i school, in the book *Al-Umm*, immediately addresses *li'an* which is, in fact, discussed in the chapter on family law whilst also explaining its implications for the *jarimah qadzaf* and *zina*, which fall within the realm of *jināyah* (Al-Syāfi'ī, 2001). Meanwhile, the Hanbali school, in *Al-Kaḥfī*, takes a similar approach, explaining the interconnection between *diyat* and the family in the event of a *qisās* offence (Al-Maqdisī, 1997). The four schools, with their different texts and approaches, arrive at the same conclusion that family matters with a *jināyah* dimension are understood as a single, inseparable normative whole.

The foundation underlying the emergence of two distinct categories of rights between *ḥuqūq Allāh* (the rights of Allah), which are public in nature, and *ḥuqūq al-ādami* (human rights), which are private and individual in nature means that family matters involving *jināyah* dimensions are understood as a single normative entity (Sodiqin, 2021). The modern institutional separation between criminal law, with its intertwined causal relationships, has eroded the integrated protection of rights that characterises Islamic *fiqh*. This issue clearly creates a void in the instruments of *ḥifẓ al-nasl* (preservation of lineage) and *ḥifẓ al-'ird* (protection of honour), which form the basis of protection within the family (Aslati et al., 2024). Translating the conceptual separation practised by today's judicial system into a constitutional separation is a mistake that leads to the loss of safeguards for the institution of the family.

The Aceh Syar'iyah Court stands as evidence of an institutional framework that legally integrates family and *jināyah* within a constitutional framework. It is no coincidence that Aceh is the only province in Indonesia with constitutional legitimacy to implement this model of integrated jurisdiction rather, it stems from a long history of armed conflict, which was resolved through the Helsinki Memorandum of Understanding in 2005 and subsequently enshrined in Law No. 11 of 2006 on the Government of Aceh as an instrument of legal special status not possessed by any other province (Law No. 11 of 2006 on the Governance of Aceh, 2006). This is the background to the Aceh Syar'iyah Court being the sole empirical precedent for the integration of Islamic civil and criminal law, as reaffirmed by Article 128 (3) of the Aceh Government Act, which explicitly stipulates that the Aceh Syar'iyah Court has the authority to examine, hear, adjudicate and settle cases in the fields of *ahwāl syakhṣiyyah* (family law), *mu'āmalah* (civil law) and *jināyah* (criminal law) based on Islamic Sharia. Furthermore, Article 128 (4) delegates further regulation to Aceh at the substantive level, family law covers all areas that would normally fall within the jurisdiction of Religious Courts outside Aceh, as mandated by Article 132 (2) (Law No. 11 of 2006 on the Governance of Aceh, 2006).

Furthermore, jurisdiction over *jināyah* matters is governed by Aceh Qanun No. 6 of 2014 on Jinayat Law, which sets out ten categories of *jarimah* (criminal offences) in Article 3, namely *khamr* (intoxicating drinks), *maisir* (gambling), *khalwat* (being alone together with a non-mahram), *ikhtilāf* (intimate contact with a non-mahram), *zina*, sexual harassment, rape, *qadzaf* (accusing someone of adultery), *liwāt* (homosexuality), and *musāhaqah* (lesbianism) (Qanun Aceh No. 6 of 2014 Concerning Jinayat Law, 2014). Now, the Aceh Criminal Code has been amended by Aceh Qanun No. 12 of 2025 concerning Amendments to Aceh Qanun No. 6 of 2014 on Jinayat Law, which strengthens provisions on sexual *jarimah*, extends criminal liability to business entities, reorganises the system of *uqubah* (sanctions) into a cumulative-alternative system, and strengthening victims' rights to redress through restitution mechanisms (Qanun Aceh No. 12 of 2025 Concerning Amendments to Qanun Aceh No. 6 of 2014 on Jinayat Law, 2025).

Normatively, the consolidation of these jurisdictions falls under the same legal framework and is governed by Aceh Qanun No. 7 of 2013 on Jinayat Procedure Law (Qanun Aceh No. 7 of 2013 Concerning Jinayat Procedural Law, 2013). This normative framework enables family matters that overlap with *jināyah* cases to be heard within a single judicial system without fragmentation of jurisdiction. The Aceh Syar'iyah Court has demonstrated that the consolidation of jurisdiction over family and *jināyah* cases remains compatible with the Indonesian constitutional framework. Consequently, the value of this institution extends beyond being a regional exception, it sets a constitutional precedent that the fragmentation of jurisdiction within the Religious Courts is not an absolute necessity, but rather a legal policy choice that can be reconfigured through national legislative mechanisms.

Concrete manifestations of jurisdictional integration are increasingly evident in cases that inherently link the legal consequences of family law and *jināyah*. The most obvious point of intersection is seen in *li'an* cases, namely testimony accompanied by an oath of cursing to deny a blood relationship with a child born within a marriage

(Bahri, 2022). Within the national judicial system, the Religious Courts are authorised only to examine the civil dimension namely, the *li'ān* oath as the basis for the dissolution of marriage and its implications for parentage without considering the consequences arising therefrom, such as the *jarimah qadzaf* or *jarimah zina*, should the *li'ān* proceedings not proceed strictly in accordance with civil procedures alone. Conversely, the The Aceh Syar'iyah Court handles the entire range of legal consequences within a single judicial framework, as *qadzaf* is codified as a *jarimah* in Articles 57 to 62, whilst *zina* is regulated as a separate *jarimah* in Articles 33 to 45 of the Aceh Criminal Code (Qanun Jinayat Aceh) (Qanun Aceh No. 6 of 2014 Concerning Jinayat Law, 2014). Consequently, a single *li'ān* case is no longer likely to be fragmented across two different forums, but is resolved more coherently through a single framework that links the two.

A similar relationship can also be seen in the response to cases of sexual harassment and rape. Long before the situation escalates into more serious acts, *khalwat* and *ikhtilāf* have been codified as separate *jarimah*, meaning that the law is in place before the crime occurs. In the Aceh Criminal Code (Qanun Jinayat Aceh), the *jarimah khalwat* is specifically regulated in Articles 23 to 24, whilst *ikhtilāf* is covered in Articles 25 to 32 of the Aceh Criminal Code (Qanun Aceh No. 6 of 2014 Concerning Jinayat Law, 2014). Should the escalation continue to the point of *zina*, then the *jarimah zina*, sexual harassment and rape have their own criminal proceedings, meaning that the practice of 'forced marriage to cover up shame' is no longer the primary solution to crime in society (Diva & Batubara, 2023). Thus, the Syar'iyah Court not only combines two types of jurisdiction within a single institution but also establishes a forum capable of addressing the full range of legal consequences arising from a single legal relationship in a more holistic manner. This structure effectively addresses the problem of jurisdictional fragmentation by providing more comprehensive protection for both *hifz al-'ird* and *hifz al-nasl* simultaneously, as the legal consequences relating to the institution of the family and criminal liability are contained within a single institutional framework without having to be separated into different forums.

The dualism of jurisdiction between the Religious Courts and the District Courts is not merely a neutral administrative division but a structural flaw that systematically produces injustice. When a victim of domestic violence must file for divorce at the Religious Court whilst reporting a criminal offence at the District Court, they are not, in essence, undergoing two separate legal processes, but are bearing the consequences of a system that was never designed to view the issue as a single, integrated whole (Irawan et al., 2025). Consequently, the truth becomes a matter of which court is chosen, as a single act of violence may be proven in one court and not in another. The perpetrator may escape criminal liability simply by settling the civil aspect of the case, whilst the victim is forced to prove their suffering twice before two panels of judges who are unaware of each other's proceedings. This system has not failed due to a lack of rules, but because, from the outset, it has erected dividing walls in the midst of a single legal event.

The experience of the Syar'iyah Court shows that the unification of jurisdiction over family and *jināyah* cannot be understood merely as the merging of two areas of competence into a single institution, but has also succeeded in bringing about concrete changes in the resolution of family cases that intersect with *jināyah* matters changes that deserve to serve as a role model. The integration of criminal matters that intersect with family civil matters within a single forum offers, at the very least, concrete advantages grounded in a legal logic that is legally justifiable. **Firstly**, the acceleration of proceedings. When a single case is heard within the same forum, there is no need to repeat the presentation of facts across two separate courtrooms with procedural rules that are not mutually recognised. When the forums are unified, the judge presiding over a single case can view it holistically and resolve it in one go without having to overlook other aspects, as both matters are dealt with at the same bench. **Secondly**, the consistency of rulings. Under the dualism of jurisdiction. The Religious Courts and the District Courts are not bound by one another, and it is legally permissible for both to reach conflicting findings of fact regarding the same incident where criminal matters intersect with family matters. Domestic violence proven in the Religious Court should not only serve as valid grounds for divorce however, because Religious Court judges are passive and pursue only formal truth, these findings do not automatically flow to the District Court, which pursues material truth (Kamila et al., 2026). Consequently, the same facts may constitute grounds for divorce in one forum but may not be sufficient to warrant criminal prosecution in another. When the forums are unified, the judge presiding over a single incident can consider both the criminal aspect and the cause-and-effect relationships arising from the family dimension within a single judicial jurisdiction.

Thirdly, closing the loophole that allows perpetrators to evade criminal prosecution through civil proceedings. Imagine a rapist who subsequently marries his victim in a civil ceremony, the marriage is legally valid, the families reconcile, and the case is deemed closed in the name of a distorted concept of restorative justice (Asmita, 2024). However, rape is a crime against the body and human dignity that cannot be erased by a marriage contract, as marriage is not an instrument for criminal exoneration. The perpetrator goes free not because they are innocent, but because the system provides a way out. If everything were subject to the same jurisdiction, there would be no marriages, no peace settlements, and no family agreements forced to feign the covering up of a crime at the same table.

The strengths of the Syar'iyah Court as a model for the unification of jurisdiction are by no means free from challenges; indeed, it is precisely here that the sincerity of this endeavour is put to the test. **Firstly**, there are

disparities in procedural law. The Religious Courts are subject to the Civil Procedure Code (KUHAP), which adheres to formal truth, passive judges, and limited evidence restricted to what is submitted by the parties. This contrasts with the District Courts, which are governed by the Criminal Procedure Code (KUHAP), which emphasises substantive truth, active judges, and the judge's conviction as the final arbiter (Pamungkas, 2022). **Secondly**, the special status of Aceh versus the constitutional basis of non-Aceh regions. The consolidation of jurisdiction undertaken by Aceh through the Syar'iyah Court cannot be separated from the Helsinki Memorandum of Understanding (MoU), which established constitutional legitimacy through the Aceh Government Act (Akbar & Jamaluddin, 2025). Furthermore, Aceh is the only province to enjoy special status not held by any other province; consequently, the consolidation of jurisdiction without an equivalent constitutional foundation clearly lacks a valid legal basis.

Thirdly, religious diversity and the principle of non-discrimination. Indonesia is a concrete example of religious diversity, as the state has strengthened the legal framework by consolidating jurisdiction not merely to discriminate against other religious groups, but because, from the outset, this jurisdiction has operated solely within the sphere of the Religious Courts, which are authorised to adjudicate cases involving Muslims, thereby perfecting the court system itself. **Fourthly**, the risk of mixing two systems of evidence. In civil matters, reconciliation is valid and final however, the issue arises when it concerns the criminal sphere, which cannot simply be nullified by human forgiveness. When adultery occurs, it is not merely a violation of the individual rights of family members that can be resolved by an apology and then withdrawn. *Hudūd* offences constitute a violation of Allah's rights, which cannot be nullified by anyone's will. When a single forum handles both without a clear procedural separation, it obscures which system of evidence is to be applied. Consequently, private reconciliation will tacitly nullify Allah's rights, which should otherwise remain in force. Thus, the main challenge no longer lies in proving the validity of the unification model, but rather in formulating an institutional design capable of integrating constitutional, procedural and operational powers within the national judicial system.

The Syar'iyah Court serves as proof that the unification of jurisdiction over personal status (*ahwāl syakhshiyyah*) and criminal matters (*jināyah*) is not merely a pipe dream. However, this experience is still regarded as a regional exception and has therefore not yet become a benchmark for the reform of the national judicial system. Consequently, victims in cases involving criminal dimensions that intersect with family law continue to face jurisdictional fragmentation, which requires them to prove the same factual substance in different forums. This situation reflects '*disjointed justice*', a fragmented system of justice where case resolution is split across different legal regimes. As long as marriage remains an instrument for quashing criminal charges, as long as peace agreements between parties to whom the matter does not pertain are used to silence claims, and as long as legal proceedings are forced to remain unaware of one another, legal protection for victims will never be comprehensive. This limitation does not lie in the norms themselves, but rather in a structure that has been forced to remain blind from the outset, so that the truth that exists is never truly revealed.

2. A Design for the Consolidation of Absolute Jurisdiction within the Framework of the Recalibration of the Powers of Religious Courts in Indonesia

The synthesis presented in the previous section leaves us with one unavoidable starting point; if the main contribution of the Syar'iyah Court lies in its ability to provide a coherent forum for handling overlapping cases, whilst the accompanying problems arise from the specific nature of the substantive and procedural legal regimes applicable in Aceh, then the adaptation of this model should not be understood as an attempt to replicate the entire structure of its judicial system. The argument put forward in this section is not one of replication, but rather one of selectivity, namely, to inherit the idea of institutional integration without having to adopt the entire normative configuration shaped by Aceh's political and historical context. This limitation is not intended to delegitimise the Aceh Syar'iyah Court model, but rather to ensure that the institutional inspiration it offers can be adapted in a moderate and feasible manner, whilst remaining consistent with the national legal framework.

The fundamental principle underpinning this proposal is a clear distinction between institutional unification and the unification of substantive law. Until now, the idea of adapting the Syar'iyah Court model has often been understood in simplistic terms, as though the expansion of the Religious Courts' jurisdiction automatically necessitated the adoption of the entire Islamic criminal law regime in force in Aceh (Nasrullah et al., 2024). Such an understanding not only oversimplifies the complexity of the Aceh Syar'iyah Court model, but also obscures the main substance that this research seeks to offer. The proposed focus is not the transplantation of specific substantive or procedural laws, but rather the restructuring of the absolute jurisdiction of the Religious Courts so that the handling of cases closely related to family relations is no longer fragmented across different forums. Within this framework, the expansion of the Religious Courts' jurisdiction is limited solely to criminal offences that are closely linked to family relationships (Wahyudani et al., 2023). Therefore, the fact that Islamic substantive criminal law is not adopted in this study should not be interpreted as a judgement on its inferiority or unsuitability for enforcement.

The concept of moderate consolidation of jurisdiction requires clear parameters regarding the offences that

may fall within the absolute jurisdiction of the Religious Courts. Not every intersection between family and criminal law matters carries the same relevance, and treating them all uniformly would merely reproduce the blurring of jurisdictional boundaries criticised in the previous section. This study establishes three criteria as normative parameters for determining which offences are appropriate to fall within the scope of the absolute jurisdiction of the Religious Courts. **Firstly**, the offence must arise from or be closely related to family relationships, such that its existence cannot be separated from the status of husband and wife, parent and child, or other family relationships. **Secondly**, its resolution requires a comprehensive understanding of rights and obligations within the family, so that its examination cannot be limited to considering the criminal elements in isolation. **Thirdly**, the current practice of dividing its handling between different judicial forums has in fact led to fragmentation, as family aspects are examined by the Religious Court whilst the criminal aspects are handled by the District Court.

Building on the concept of family-related crimes developed in the work of Richard J. Gelles and Murray A. Strauss (Davis, 1990), as well as the perspectives on family dysfunction and family disorganisation developed by Joan McCord (Davies et al., 2021), this study proposes a typology of offences divided into two categories. The first category is **family-based offences**, namely offences that inherently arise from family relationships and cannot be separated from the status, rights and obligations of the parties within the family; these include domestic neglect, failure to fulfil maintenance obligations following divorce, neglect of child maintenance and care, breaches of court orders regarding maintenance and children's rights, certain forms of domestic violence known in this context as KDRT and cases that substantially resemble the legal construct of *li'ān*. *Li'ān* cases demonstrate that the separation of judicial jurisdiction does not always align with the nature of the legal events under examination. Although allegations of adultery, the denial of a marital relationship, and their implications for lineage and the continuity of the family are rooted in the same legal relationship, each aspect must in fact be dealt with through a different court.

The second category comprises **family-disruptive offences**, namely offences which, although not arising from family relationships, substantially contribute to family dysfunction and disintegration. These include gambling, adultery resulting in a breach of marital obligations, drug abuse, or the misuse of family assets such as online loans, provided that such criminal acts are proven to have a direct link to the breakdown of the household and the neglect of family rights and obligations. Both categories fall within the jurisdiction of the Religious Courts due to their close connection to family relationships, either because the offences arise from family relationships or because their legal consequences directly affect the continuity of family life. Furthermore, offences that have no substantive connection to family relations remain within the jurisdiction of the District Court. This category includes murder, grievous bodily harm, common theft, corruption, economic offences outside the family context, sexual offences outside family relations, and offences against national security. Although such acts may occur within a family setting or even lead to the breakdown of a marriage, their connection to family relations is indirect and therefore insufficient to justify a transfer of jurisdiction to the Religious Court. In essence, the proposed expansion of jurisdiction remains limited in scope and does not transform the Religious Courts into general criminal courts.

The idea of unifying the courts cannot be separated from the need to determine the procedural legal regime that will govern them (Marbun et al., 2021). Civil and criminal law are not merely two distinct branches of law, but rather two epistemological regimes based on unequal orientations towards the pursuit of truth. Civil procedural law, which has long been the domain of the Religious Courts, is oriented towards formal truth and adheres to the system of free evidence (*vrij bewijs*), whereby judges are free to assess the strength of the evidence submitted by the parties based on arguments constructed by the parties themselves, with the burden of proof shifting back and forth in accordance with the principle of *'affirmandi incumbit probatio'* (the party making the claim bears the burden of proof) (Dewi, 2018). Conversely, criminal procedural law is directed towards the search for substantive truth through a system of negative statutory proof (*negatief wettelijk*) (Samosir, 2018) as stipulated in Article 183 of the National Code of Criminal Procedure, a criminal sentence may only be imposed if at least two pieces of valid evidence are present, accompanied by the judge's conviction, with the burden of proof resting entirely with the state rather than the defendant. It is this disparity that means the unification of forums cannot be interpreted as the merging of the two systems of evidence into a single uniform standard; rather, it demands clarity from the outset regarding the scope of application of each system.

On that basis, this study proposes an integrated examination model with a **bifurcated evidentiary regime**, namely a mechanism whereby, within a single Religious Court forum, criminal and civil aspects are examined in an integrated manner, whilst remaining subject to different standards of proof and the distribution of the burden of proof in accordance with the nature of each legal subject matter. Criminal aspects are examined in accordance with the Criminal Procedure Code (KUHP), with the burden of proof borne entirely by the investigating officer and the public prosecutor, following the standard of proof set out in Article 183 of the Criminal Procedure Code, namely at least two pieces of valid evidence accompanied by the judge's conviction and all the procedural safeguards inherent therein. Furthermore, aspects relating to the status, rights and obligations of the family are examined in accordance with the civil procedural law applicable within the religious courts, with the burden of

proof resting on the parties in accordance with the arguments put forward through evidence in the form of documents, witnesses, admissions, presumptions, and oaths, as provided for in Article 164 of the HIR/Article 284 of the RBg in conjunction with Article 1866 of the Civil Code. Thus, what is unified in this model is the forum and the sequence of proceedings, whilst the rules of evidence are maintained separately in accordance with the nature and degree of risk of error inherent in the legal aspects under examination.

No bifurcation model can function without institutional readiness that genuinely masters both systems of evidence. Religious Court judges, who have long been accustomed to the logic of civil evidence, urgently need to be provided with certification or specialised training in the standards of criminal evidence. A mixed panel scheme, combining Religious Court judges with judges competent in criminal matters within a single hearing forum, must be institutionalised as a permanent mechanism, rather than a situational policy dependent on the availability of human resources in each unit. This requirement necessitates the availability of investigators and public prosecutors who are familiar with the context and culture of proceedings within the Religious Courts, given that the investigation and prosecution of criminal matters remain in the hands of criminal law enforcement agencies, rather than becoming an internal competence of the Religious Courts.

However robust the institutional framework may be, it cannot rely solely on the authority of the Supreme Court, as technical policies are never strong enough to withstand the onslaught of political change and subsequent legal challenges. This preparedness requires an explicit revision of the Religious Courts Act (Act No. 7 of 1989 as amended by Act No. 3 of 2006 and Act No. 50 of 2009) to expand absolute jurisdiction based on law, rather than through case law, which is vulnerable to legal challenges and easily disregarded by lower courts not yet bound by binding precedents. Relying solely on case law will merely repeat the same legitimacy issues previously criticised in relation to the Compilation of Islamic Law: authority built upon legal instruments that are hierarchically weak, vulnerable to being undermined whenever political policies change (Hamzah, 2025). The path to revising this legislation will inevitably face resistance from two opposing directions; on the one hand, those who view the clear demarcation between religious and general courts as the last line of defence for the principle of a non-theocratic state; on the other hand, those who actually seek a full replication of the Aceh model without restrictions. In anticipation of this dual resistance, it is imperative that a pilot scheme be launched immediately in a number of selected Religious Courts.

Ultimately, the position put forward in this paper rejects two temptations at once: the temptation of nostalgia, which idolises the Syar'iyah Court as a perfect model to be emulated directly without further scrutiny and the temptation of scepticism, which dismisses the valuable lessons it offers simply because they arose from a specific political context. Within this framework, the Syar'iyah Court can still be understood as an important precedent, and indeed as an empirical model demonstrating the feasibility of a particular institutional design. The Syar'iyah Court deserves to be regarded as an institutional experiment providing evidence that the separation of jurisdiction between family and criminal matters is not a structural inevitability in modern legal systems, but rather an institutional choice that can be redesigned. Thus, the question is no longer whether such unification is possible as the experience in Aceh has demonstrated but rather how to formulate it more thoroughly without repeating the procedural shortcomings that previously accompanied it. This research ultimately demonstrates that the fragmentation of family and criminal jurisdiction is not an inevitability to be accepted passively, but rather a matter of design that must be addressed with the courage to reformulate, not merely to question. *“What was once considered impossible to unify is now merely awaiting the political and legal courage to implement it.”*

Conclusion

This research demonstrates that the separation of jurisdiction between the Religious Courts and the District Courts in handling cases at the intersection of family law and criminal law finds no conceptual justification in the classical *fiqh* tradition, rather it is a remnant of colonial legal-political constructs that have become naturalised within the national judicial architecture without ever having been seriously questioned. The experience of the Aceh Syar'iyah Court demonstrates that the integration of family law and criminal law jurisdictions can operate constitutionally without compromising the principles of the rule of law that underpin the Indonesian judicial system. This finding also affirms a more fundamental proposition: the coherence of case resolution is determined more by the precision of institutional design than by the choice of substantive law alone. On this basis, this study proposes a recalibration of the Religious Courts' powers through the limited consolidation of jurisdiction over criminal offences that are intrinsically linked to family relations, whilst maintaining the differentiation of evidentiary regimes through a bifurcated evidentiary regime. Thus, the fragmentation of family and criminal jurisdiction is not a pipe dream, but rather an institutional choice that urgently needs to be reconstructed.

The limitation of this study lies in the shift in focus from the debate on the substance of the law to a critique of the institutional design of the judiciary. Conceptually, this study positions the Aceh Syar'iyah Court as an empirical precedent for the recalibration of the jurisdiction of Religious Courts and, methodologically, proposes a typology of 'family-based offences' and 'family-disruptive offences', alongside a model of a bifurcated evidentiary regime. Furthermore, from a theoretical perspective, this study asserts that the root of the problem lies

in institutional fragmentation rather than in the limitations of substantive norms. Consequently, the burden of argument has now shifted; the question is no longer why the unification of jurisdiction is worth considering, but rather why a dualism of jurisdiction rooted in the colonial legacy should still be maintained. This study is limited to a normative analysis, using the Aceh Syar'iyah Court as its primary empirical precedent. Consequently, further research should test the proposed model through an empirical study of the institutional readiness of the Religious Courts and the implementation of a bifurcated evidentiary regime as national policy. Without such empirical validation, the proposed consolidation of jurisdiction risks remaining merely an elegant normative prescription on paper, yet fragile in the face of the complexities of practice. This study, with all its conceptual contributions, recognises that the next step lies not with theory, but with policy and the institutional courage to implement it.

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