

The Role of Judges in Islamic Law Perspective

By

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Abstract

Indonesia which is a state of law will really need judges in the state and judicial system. Also considering that Indonesia is also a country where the people are Muslims. Indonesian society and Islam are something that cannot be separated, considering that they have been in Indonesian society for a long time, even to the point that they have influenced existing traditions. So, it is only natural that everything in Indonesian society will also be affected by this even though it is not dominant. This is no exception to the judicial process and the role of a judge in the trial. In Islam, the role of a just judge has been regulated in carrying out his duties. So, the researchers made a study in which this study tried to explore the role of judicial judges in an Islamic perspective. The researcher uses the literature study method in this writing to retrieve the data needed to complete the study. The author finds that in an Islamic perspective the role of a judge is as a law enforcer. A just judge must make a right decision by understanding the law itself, not accepting gifts or bribes, and not being influenced by lust. Being a judge is also a difficult task, considering that he has to make the right decisions according to the existing law. For judges who are negligent and unjust, they will be placed in hell.

Keywords: Judge, Judiciary, Islamic Perspective

Introduction

Indonesia is a country that has a majority adherent of Islam (Prasetyo, 2019). During the struggle, it was known that Indonesia already had a Muslim population. This can be seen from what history records, that there is a struggle which is centred on the boarding school which is a characteristic of formal Islamic religious education (Royani, 2020). Indonesians themselves are very integrated with the religion of Islam, there are so many traditions that are owned by the Indonesian people which are a combination of habits that are owned by the community with what is taught by Islam. So, in social life, of course, Indonesian people will do it according to what is taught by Islam (Saptomo, 2019).

Islam teaches the whole truth, where in life humans must do good and must be fair in what they do regardless of their activities (Nurhidversei, 2019). Humans in every activity are required by Islam to do the right thing, not to intentionally do something that violates its teachings such as killing, stealing, and doing injustice (Khakim, 2018). Humans in their lives will inevitably cause conflict, given that this is unavoidable (Muspawi, 2014). So, we need someone who has the authority to resolve the case, namely someone who has wisdom and understands the law that applies to the incident (Argama, 2006). This is not something foreign to Islam itself. The profession is known as a judge, where he is authorized to resolve cases in court (Manan, 2015).

Given that Indonesia is a state of law, which can be interpreted that Indonesia is a country where everything that happens on Indonesian earth will be regulated by law. This is known and happened based on the 1945 Constitution which in article 1 paragraph 3 it is known that Indonesia is a state of law (Hidverse, 2017). So, in religion, state, life must be based on

applicable law (Asshiddiqie, 2011). This will mean that every incident that occurs and conflicts that occur will be judged based on existing law and remembering the identity of Indonesia which is a country where the majority of the population is Muslim, makes the role of judges very important. Recalling the Indonesian identity which has the value of Pancasila in its manufacture, which before being converted into the one and only divinity, the first value of Pancasila was the precepts that were coloured with Islam (Aritonang, 2021). This was replaced considering that Indonesia has a majority of people who follow the Islamic religion and not all people who follow the Islamic religion (Cahyono et al., 2020). So, the Pancasila was changed for the sake of the unity of the Republic of Indonesia (Mawardi, 2017). This reflects the importance of the value of justice held by the Indonesian people, for the common good.

Indonesia is a country that adheres to the values of Pancasila (Dewantara, 2015). In its aspiration to become a state, Indonesia takes Pancasila as the basic value to be realized. The foundation of Pancasila which aspires to a godly, just, and humane society. The foundation of the state is the result of the aspirations of the Indonesian people with all existing community identities (Hariyanto, 2018). To realize a just society and also remember that Indonesia is a state of law, there must be an agent of the law itself to enforce the applicable law (Siahaan, 2009). The agent must act and be an example for the community to comply with applicable laws. One of these agents is an agent whose purpose is to hear and decide a case based on law, facts, and high morals in making decisions, the agent is commonly known as a trial judge.

The role of judges with all the values held by the Indonesian people for the sake of the sustainability of the state based on law (Dewi, 2010). The Indonesian people highly uphold justice, seen from one of the values of Pancasila which aspires to a just and civilized society. So, it is very important for the people of Indonesia, that the existing justice system is fair in conducting the judicial process. Given that this judicial process will have a considerable impact on the person being tried and the Indonesian society as a whole. The judiciary will affect all Indonesian people indirectly, because something determined in the judiciary will give an idea of how the judiciary responds to a case. People who know that the judiciary is not fair will create distrust in the existing judicial system which can cause people to take inappropriate actions (Syarifuddin, 2021). What is meant is to do their own judgment, riot, persecute people who violate themselves, and many others (Pujayanti & Soeskandi, 2018).

Basically, judges play a role with very significant authority, namely playing a role in supervising and ensuring how a trial run (Rompas, 2013). Judges are required to ensure that the trial proceeds in accordance with existing law and only facts that correspond to reality are included in the consideration of court results. Judges in their role with all the authority they have must remember that all these authorities need to be used by upholding the values of justice, truth, high integrity.



Figure 1. Cases

Sourced: Nabire Religious Court from the official website.

Religious courts alone will have a significant impact on society. In the above data published by the Nabire religious court in 2021, it is known that in February there were 11 divorced divorces and 21 sued divorces. The incident of the case will greatly affect a person's life, considering that in the courts it can be determined the distribution of jointly owned assets, child custody, and various significant things in a person's life. For a fair distribution of joint assets owned by couples who want to divorce, a judge is needed as someone who is considered wise and has the ability to decide cases fairly. The judge can also determine child custody for the good of the child, so the judge in his decision will influence how a child will be raised by his parents. The judge's authority is very significant. The Covid-19 pandemic provides a new habit where all day activities are carried out outside, during the pandemic the majority of them are almost together with family. This is of course good at first glance, but there are obstacles and shortcomings, including causing prolonged conflicts that lead to divorce (Apriasari et al., 2021)

In Islam itself a judge is someone who can decide a case, but keep in mind that the judge will also be judged by Allah *azza wa jalla* on the last day. In Islam being a judge can give you a very beautiful paradise with all its contents or it can also provide a way to hell where a person will be tortured forever without reducing the pain in the slightest. So, for Muslims themselves to be judges is a mandate that must be carried out carefully considering that a person in his decision must be very careful because from this decision his afterlife will be affected.

With the condition of Indonesia being a legal state that has a society that adheres to Islam, the author feels the need for a review of the role played by legal agents. The legal agent referred to here is a judicial judge considering his authority and the consequences received by the agent based on Islamic teachings. This study uses the literature study method as a way to retrieve the data needed to complete the research.

The Role of Judges in General

Judges in general are people who decide a case and lead in a trial. A judge is someone who understands and assesses the applicable law in accordance with the existing law. One of the general roles of a judge is to lead and decide the trial of cases. In carrying out decision making, a judge will perform his function as an interpreter of the law. Judges have a role, namely making laws that are not clearly enforceable in the incident and giving their decisions in order to fulfill the legal vacuum (Khalid, 2014).

Based on Article 24 of the 1945 Constitution, judges have the power to hold a trial which is intended to enforce law and justice (Suparto, 2020). This means that the article gives legal power to the judge in conducting the trial of a case. In Indonesia, this article is an article that regulates the role of judges in the eyes of the law in force in Indonesia. Based on the article, a judge with a certain position also has the power to determine a law that applies to the community so that justice remains. So, judges also have the role of preventing the misuse of the law by certain parties for their own interests (Salang, 2006). This will add to the weight of the role of judges themselves, because the pressure they have does not only come from the community but also comes from the ruling government. So here is the advantage of a person who is able to become a judge, he must be wise in making his decisions.

The Role of Fair Judges in Islam

The problem with the procedural law of the Religious Courts is that it does not yet have its own procedural law. So far, the procedural law used is the procedural law that applies in the General Courts, even though the types of cases under the authority of the Religious Courts are not a few of a specific nature whose resolution is not possible by using procedural law in the General Courts (Domiri, 2016). The influence of legal politics on the existence and the position

of the Religious Courts in Indonesia is marked by legal products that form the basis for the existence and position of the Religious Courts (Martius 2016; Suadi, 2020)

Islam is a religion that upholds justice. Islam teaches its adherents to behave obediently to its teachings. In obedience, Muslims are required to be fair in their lives (Suny, 2017). Muslims must be fair to someone, whether it be fellow Muslims or non-Muslim communities (Untung & Sutrisno, 2014). In Islam itself the judge has the role of enforcing the Law of Allah. So, a judge is an entity which is someone who has to enforce the laws that apply in society itself.

For the sake of realizing justice in the judicial process, a judge is required to have a sufficient understanding of the law itself. But it should also be remembered that knowledge alone is not enough to be a fair judge, because we know that corruption is not done by stupid people but people who have high education and knowledge. Therefore, Islam itself in the Qur'an has criteria for a fair judge. A fair judge must meet several of these criteria (Son Haji et al., 2019).

Criteria	The underlying verse of the Koran
Be fair in deciding cases	<p>QS. An-Nisa verse 58 ﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾ 58. Verily, Allah commands you to convey the message to those who are entitled to receive it, and (orders you) when determining the law between people so that you judge with justice. Verily, Allah has taught you the best. Verily, Allah is All-Hearing, All-Seeing.</p>
Using religious law	<p>QS. Al-Majdah verse 49-50 ﴿وَأَنْ أَحْكَمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ فَإِنْ تَوَلَّوْا فَاعْلَمُوا أَنَّمَا يُرِيدُ اللَّهُ أَنْ يُصِيبَهُمْ بِبَعْضِ ذُنُوبِهِمْ وَإِنْ كَثِيرًا مِنْ النَّاسِ لَفَاسِقُونَ﴾ 49. and decide between them according to what Allah has sent down, and do not follow their lusts. And beware of them, lest they turn you away from some of what Allah has revealed to you. If they turn away (from the law that Allah has revealed), then know that Allah wills to inflict calamity on them because of some of their sins. And verily most of the people are wicked people. 50. What is the law of ignorance that they want, and who (the law) is better than (the law of) Allah for those who believe?</p>
Do not accept bribes and gifts from any party in order to change the decision	<p>QS. Al-Baqarah verse 188 ﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبِطْلِ وَتَذَلُّوا بِهَا إِلَىٰ الْحُكَّامِ لِتَأْكُلُوا فَرِيفًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ﴾ 188. And do not let some of you eat the wealth of the other part of you in a vanity way and (do not) bring (the affair) the property to the judge, so that you can eat part of the property of the other person by (acting) sin, even though you knowing.</p>
Not influenced by lust when making decisions	<p>QS. Sad verse 26 ﴿يَا دَاوُدُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَىٰ فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ إِنَّ الدَّيْنَ يَضِلُّونَ عَنْ سَبِيلِ اللَّهِ لَهُمْ عَذَابٌ شَدِيدٌ بِمَا نَسُوا يَوْمَ الْحِسَابِ﴾ 26. O David, indeed We have made you caliphs (rulers) on earth, so judge between people with justice and do not follow your passions, for they will lead you astray from the way of Allah. Verily, those who stray from the path of Allah will have a severe punishment, because they forgot the day of reckoning.</p>

With the criteria possessed by just judges according to Islam, we can see the role of judges from the perspective of Islam itself. The first criterion is to be fair in a case. Judges in making their decisions are required to be fair. The judge in his role as a decision maker must place what should be in accordance with existing law and the rights of the person concerned. So, the role of the judge in the Islamic perspective itself is as a person who makes decisions

based on existing law and must be fair in that decision (Baharuddin, 2014).

On the second criterion, a just judge must be in making his decision by using God's law. Allah's law is the highest law in Islam (Suntana, 2014). Human law is a law that only applies in the world and not in the hereafter based on Islamic teachings, therefore the judge in making his decision based on human law must not conflict with the law that has been set by Allah azza wa jalla. In the Indonesian judiciary, a judge must imitate what has been taught by Islam, namely in making decisions, he must remember the applicable law (Isnantiana, 2017). It is not permissible for a judge to ignore the applicable law in making a decision given that he is a legal agent who in Islam is tasked with enforcing the law.

A judge is said to be fair if he dares to refuse to accept gifts or bribes to win a case for a certain party. In Islam, which is a religion that teaches that the Qur'an is something that is based on knowledge that is certain to be true, it already knows humans as a whole (Sulistiani, 2018). Humans are creatures who are vulnerable to doing inappropriate things and also bribing judges to win in court (Wiriadinata, 2013). A judge may not accept a gift and the defendant must refrain from giving wealth to a judge for his side (Syamsuddin, 2008).

The next criterion for a fair judge is not to be influenced by his passions. Humans will not be able to escape from lust, because it is the nature of himself. For a judge, he must be able to make decisions without being influenced by his passions in making decisions and leading the trial (Sultan, 2014). Judges may not have an assumption before deciding a case and may only see everything in the trial based solely on the law and the facts in front of them (Wibowo, 2016). This is also one of the differences between a judge and ordinary people, his ability to put aside his feelings and emotions in making decisions with a cool head, so that in his decisions he will be free from all sides of any party.

So being a fair judge is a very difficult thing to do in practice (Timoera, 2014). Maybe a job looks great when it has a special authority, but it's also worth looking at the responsibilities that come with the job. A judge must remember his obligation to make decisions that are not in favor of anyone and are not influenced by his desires (Pramana et al., 2020). In Islam itself, the job of being a judge is a noble job considering that he enforces the applicable law, but there is a separate threat for a judge who is unfair in carrying out his duties.

Penalty for Judges Who Delivery in Its Duty in Islam

The role of judges is a very heavy role in Islam. It is recorded in history that many scholars left a city because he would be made a judge. There is even a person who is considered worthy of being a judge to run away from the pursuit of the city government because he will be made a judge. Seeing this, of course, they ran because they knew the weight of being a judge. In Islam a judge must be able and understand the law and make the right decisions according to rights. By looking at the very significant authority of judges, there is also a threat for judges who are negligent and unjust in carrying out their duties. Based on Muslim Al-Atsari (2017) there are several hadiths that describe how hard it is to be a judge.

From Abu Hurairah, he said: The Messenger of Allah said, "Whoever is made a judge among people, then he will be slaughtered without using a knife." (HR. Ahmad, no. 7145; Abu Daud, no. 3572; Tirmizi, no. 1325; Ibn Majah, no. 2308. Authorized by Shaykh Albani)

The purpose of this hadith is to describe the life of a judge where it is as if he was slaughtered without a knife, which means that he who becomes the judge will still live, but in his life will be uncomfortable. This can be easily understood because a judge who will carry

out his duties will be burdened in the case considering he has to make the right decision with the existing law.

From Abdullah bin Abi Aufa, he said: The Messenger of Allah said, "Verily Allah is with the judge as long as he does not deviate, if he deviates Allah leaves him, and the devil accompanies him." (HR. Tirmizi, no. 1330. Hasanah by Shaykh Albani).

The Messenger of Allah said, "There are three judges, two in hell and one in heaven: A judge who knows the truth, then he judges with the truth, then he is in heaven; A person (judge) who decides the law by stupidity, then he is in hell; And a (judge) who deviates in his decision, then he will be in hell." (Narrated by Ibn Majah, no. 2315; Tirmizi, no. 1322; Abu Dawud, no. 3573).

That's how hard it is to be a judge. Where everything must be done properly, based on the law and must also maintain its integrity in being an agent of the law itself. So, it is natural that many people do not want to be judges because it will burden life in this world and in the hereafter. However, the need for a judge requires someone to carry the burden. Therefore, the role of enforcing the law by becoming a judge will be very necessary in a legal country like Indonesia.

Conclusion

Judge is a noble and heavy profession at the same time. A judge is very noble in his position as a law enforcer. In Islam itself a judge is a person who has a role to enforce God's law. In carrying out his duties, a judge must understand and know the law that applies to a case. A judge is not only required to understand and understand the law, but he is required to be fair in making decisions.

In Islam a judge can only be said to be fair when he has been able to decide a case correctly. This means that a judge will decide cases in accordance with existing regulations and not arbitrarily. In making his decision the judge must also use God's law, and it is also not permissible for a judge to accept gifts or bribes in solving a case. Judges are also required to carry out their duties to put aside their lusts. How heavy the role of a judge in enforcing the law.

A judge who is negligent in carrying out his duties, within Islam itself, is threatened that he will not be accompanied by Allah. It means that Allah is not with him in his case and he will be accompanied by Satan who will lead him astray in life. Even a judge who is negligent in his duties will be put in hell. For a judge who deliberately wins a party, then he will remain in hell forever and will not reduce the pain in hell in the slightest.

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