

APPLICATION THE CONCEPT OF JUSTICE BASED ON AL-QUR'AN INTERPRETATION IN THE CONSTRUCTION OF INDONESIA'S LEGAL SYSTEM

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Abstract

In social life, justice is needed. In Indonesia, justice became a factor in the changes of the 1945 Constitution of the State of Indonesia. Therefore, it is necessary to have the right concept of justice to be applied in community life, both in nation and state. The purpose of this paper is to examine the application of the concept of justice based on the Qur'an's interpretation in the construction of the Indonesian legal system. This research paradigm was the form of constructive design with analytical descriptive research specifications. Approach method used juridical empirical approach, it was used to view social symptoms related to the law and practice of legislation in Indonesia. The data used were secondary data which included primary legal materials, secondary legal materials and tertiary legal materials. The focus of the problem in this paper was the different treatment between general inmates and corruption inmates in services and facilities in the prisons. Even in just one correctional institution, there are differences in room facilities between one another despite the fact that there are corrupt prisoners. It means that there is an injustice of the officials or authorities in giving the rights to prisoners. From the results of the research and discussion, it can be concluded that: 1) based on the Qur'an's Interpretation, justice must be given to everyone without exception, including orders to be fair to the holders of power; 2) there are several components of the Indonesian legal system that still must be considered in the effort to uphold justice including the legal concept, the establishment of law, the form of law, and the application of the law. It is needed to revamp the intended system components, so that a system can run according to its purpose.

Keywords: Qur'an, Justice, Construction law.

A. INTRODUCTION

Justice comes from the word fair. Empirically fair is relative, which tends to be influenced by subjective elements. Fair, in our opinion, it is not necessarily fair according to others, and vice versa. The difficulty of measuring the value of justice objectively can lead to a sense of dissatisfaction for people who demand justice. In the end, talking about justice will never stop because people will always face and seek justice in their lives. Children who need fair care and love from their parents, prosecutors who need the fairest decision from a judge, people who need protection, including the fulfillment of their needs from the government and the state fairly as stated in the goals of the country, and so forth. So it is clear that in social and state life justice is needed. Even in Indonesia, justice is one of the factors in the changes to the Indonesian State Constitution, namely the 1945 Constitution. In the course of the Indonesian constitutional system underwent a very fundamental change since the amendments to the 1945 Constitution carried out by the People's Consultative Assembly in 1999 to 2002. The desire to build a democratic government with equal and balanced checks and balances among the branches of power, realize the rule of law and justice, and guarantee and protect human rights (Constitution, 2004, p. 3).

The values of justice must be embedded in the regulation of human life. Therefore, it is necessary to have the right concept of justice to be applied in community life, both nation and state. The discussion of the concept of justice has often been done and there have been many scientific works discussing justice. However, in reality, there are still gaps of justice that are felt by the community or the people, as now the reappearance of cases of differences in services and fulfillment of facilities for prisoners in prison. Is a prisoner not entitled to justice? Based on this fact, the author was interested in conducting a scientific work related to the concept of justice, but of course it has a difference with the works that have existed before. The previous works tend to explore the values of justice both from the perspective of philosophy, law and religion in order to give birth to a concept of justice, this case, the author described the concept of justice based on the Qur'an. The Qur'an is the right concept applied in system construction Indonesian law with the title "APPLICATION OF THE CONCEPT OF

JUSTICE BASED ON AL-QUR'AN INTERPRETATION IN THE CONSTRUCTION OF INDONESIA'S LEGAL SYSTEM "

B. RESEARCH METHODS

1. Research Paradigm

The paradigm of this research is in the form of constructive design, in the hope that it produced arguments to strengthen the existing concepts or theories and to develop concepts that apply Qur'an based justice to the construction of the Indonesian Legal System.

2. Research Specifications

The research specification used was the Analytical Descriptive category, in which the author described the problem in accordance with the actual conditions to provide answers, which are carried out through a comprehensive and critical analysis based on legal theory, legal system theory, and justice theory.

3. Research Approach Method

To find answers or solutions to the problems raised in this study, the authors used an empirical juridical approach. The empirical juridical approach is the approach used to see social symptoms related to the law and practice of legislation in Indonesia (Soekanto & Mamudji, 2001, pp. 13-14). The data used were secondary data which includes primary legal materials, namely the Qur'an Interpretation, 1945 Constitution of the Republic of Indonesia, and other laws and regulations. The secondary legal materials were the results of previous studies related to the concept of justice, news from the media, and tertiary legal materials, such as legal dictionaries and Indonesian dictionaries, and so on. The problem or case concerned by the author was there are differences in facilities and services for Prisoners in prisons and detention centers in Indonesia.

C. RESEARCH RESULTS AND DISCUSSION

1. Social Phenomena in the Perspective of Justice

Humans are social beings who live interdependently and relate to one another. In relating to each other, it is possible to hurt each other or even help each other. Many phenomena in social life that we can hear, we see we even experience ourselves. Phenomena that occur usually cannot be separated from the desire to get justice. For example, a child who hurts his parents because he feels he is being treated unfairly by his parents where his parents love his brother or sister. A plaintiff requests legal justice to a judge in court for the action of a person who has harmed him due to default (breaking a promise). The demonstration carried out by the community over the policies issued by the government is considered to only benefit certain groups. It is detrimental to the small community, such as increasing the price of fuel which has an impact on the price of basic foods, and so on.

Another phenomenon that also draws attention and becomes a case study or problem in this paper is a very different treatment between general prisoners and prisoners of corruption such as in the provision of facilities in prisons. Even in one penitentiary, there are differences in room facilities between one another despite corruption inmates, as happened at the Sukamiskin Penitentiary in Bandung. Based on the news from TRIBUNJABAR.ID, BANDUNG - the Sukamiskin Prison in Bandung recently became public attention because of the scandal that actually happened there. The issue came when the Sukamiskin Prison was visited by the Corruption Eradication Commission (KPK) some time ago. The prison which contained inmates of corruption cases was searched by the KPK on Friday to Saturday (20-21 / 2018). Wahid Husen was named by the KPK as suspect for allegedly accepting bribes related to alleged buying and selling of detention cells and buying and selling permits to exit prison. Still in the same news source, the comparison of the condition of rooms and facilities between corruption prisoners and general prisoners was explained as follows:

- 1) Drinking water facilities, in rooms of General prisoners, they only get facilities in the form of drinking water jugs. In the corner of the room there were also lots of small bottles of mineral water collected. It is different from the dispenser

facility in the Correctional Corruption room which in this case the property of Setya Novanto got a dispenser with hot and cold drinking water available;

- 2) Beds from Corruption Prisoners rooms that looks neat and good. While the rooms of the General Prisoners looked unkempt because the colors of the sheets were worn out;
- 3) The toilet in the General Prisoner's room was in a corner of the room without being given a partition and only covered with buckets and other prisoners' belongings. ¹WC Correctional inmates are sitting toilets located in clean and neat bathrooms;
- 4) The table in the Correctional Corruption room looks good with several shelves stacked together. It's different from the table in the public prisoner's room. Instead of getting a table, general inmates must divide the function of a short cupboard in their room to become a table, where to put things;
- 5) The fifth difference is the matter of food and eating utensils in the Corruption Prisoner's room. In the work room of corruption convict Lutfi Hasan, it is seen fruits and a few packs of bread and places to eat. On the other hand, the General Prisoner's room is a limited cutlery and a few packs of instant noodles.

Previously the phenomenon in the Sukamiskin Prison mentioned above had already been raised, as sourced from the SERAMBINNEWS.COM news: 1). Artalyta Suryani aka Ayin On Sunday, January 10, 2010 night, members of the Legal Mafia Eradication Task Force led by Denny Indrayana made a sudden inspection (Sidak) to the State Detention Center (Rutan) Kelas II A Pondok Bambu, East Jakarta. Among them were the convicted Ayin and Limarita, aka Aling convicted for life in drug cases. Ayin's room is in Orchid Block Number 19. She lived with her personal assistant, Asmiyati who is a two-year six-month prisoner. In the room there is baby gear for her adopted child. Whereas in the Limarita prison room, aka Aling there is a special room measuring 3 x 3 meters with a 20-inch flat screen television and the walls of the room have been transformed with leaf motifs and flowers. There is also a luxury work desk. 2). Haryanto Chandra, aka Gombak the National Narcotics Agency (BNN) on May 31,

¹ The difference between bathroom and toilet facilities can be seen on Youtube Najwa Shihab which was launched from the Mata Najwa show on Wednesday (25/7/2018).

2017, found a luxurious cell room occupied by Prisoners at Cipinang Penitentiary, East Jakarta Haryanto Chandra aka Gombak. In the cell, the BNN apparatus found several items such as a laptop unit or portable computer, one Ipad unit, four cellphone units and one token unit, and had AC and CCTV facilities to monitor everyone who came. "In the search, it was seen that the cell room situation is not like a cell room in general. In this room there is an air conditioner, CCTV that can monitor everyone who comes, wifi, *arwana* fish aquarium and special food menu," said Commissioner General Budi Waseso who was then the Head of the National Narcotics Agency. 3). Freddy Budiman In September 2013, Freddy Budiman, the drug gangster who had been executed, also had a stir. Despite living in a cell in Cipinang Prison, he still controlled drug trafficking. He had space or was known as the 'chamber of romance'. Vanny Rosyane, an adult magazine model had bluntly claimed that there was a luxurious room in Cipinang prison which led to the dismissal of her bed, Thurman Hutapea. 4). Agusrin Najamuddin On Saturday, May 18, 2013, the Legal Mafia Eradication Task Force found a luxurious cell room in cell number 38 in Sukamiskin Prison. The room was occupied by the former Governor of Bengkulu, Agusrin Najamuddin. In his room measuring 2.5 x 4 meters found beds, tape, work desks and bookshelves. There is even cooking equipment too. He can also call other inmates to massage if fatigue which of course gets its own reward. 5). Gayus Tambunan In November 2010, the name Gayus Tambunan came up when the defendant of the tax mafia case left the Detention Center of the Kelapa Dua Brimob Command Headquarters. When the National Police Headquarters carried out a surprise inspection and it turned out that this tax mafia prisoner was not found in his cell. Gayus bribed a number of officers of the Brimob Mako Detention Center, Kelapa Dua, to get in and out of detention. The case was revealed when Kompas photographer Agus Susanto saw someone similar to Gayus watching tennis in Bali on Friday (05/11/2010).

From the aforementioned phenomena, it can be concluded that there has been an injustice of officers or authorities in giving rights to prisoners. There is a real gap between financially capable inmates and less able prisoners. Let's answer honestly, is that fair?

2. Law and Legal System

In essence, the legal system is a unified large system composed of smaller sub-subsystems, namely the education subsystem, the formation of law, the application of law, etc., which is essentially a separate system with a separate process. In addition, the most important thing for a system process is the balance of the potential and function of each component. Damage to one component can damage the global balance and therefore also affect the realization of the system's objectives. The intended components of the legal system are the legal community, legal culture, legal philosophy, legal science, legal concept, law formation, legal form, application of law, legal evaluation (Rasjidi & Putra, 2003).

From the above opinion, it can be explained that law is a system, in which a system consists of sub-subsystems or components that are interrelated and have a balance of potential and function of each. If one of them is damaged, it will certainly affect the purpose of the system. According to Aristotle in his work "*Rhetorica*" and "*Ethica Nicomacher*" as quoted by Titik Triwulan Tutik stated that "the purpose of the law is to uphold justice". Justice as a legal objective in Aristotle's concept includes: 1) distributive justice, namely justice that gives something to each person according to his services. So the law requires a balance between interests, so that everyone gets a share in accordance with their rights. In other words, justice does not mean equality but comparability; 2) commutative justice, namely justice that gives something to everyone as much as without seeing one's services (Tutik, 2006, p. 33).

When related to the components of the legal system as above, the main focus in this writing was the concept of law, the formation of law, the form of law, and the application of law. However, that does not mean ignoring other components because the components of one another are interrelated. For more details can be described as follows: ²

- a. The concept of law is defined as the basic lines of legal policy formed by a legal society.

² Pengertian komponen-komponen hukum seperti konsep hukum, pembentukan hukum, bentuk hukum dan penerapan hukum dikutip dari buku H. Lili Rasjidi dan I.B. Wyasa Putra, Op.cit., page. 162-166.

- b. The establishment of law essentially includes talking about its forming personnel, the institution that forms it, the process of formation, and the legal form of the result of its formation.
- c. The form of law is the result of the process of law formation. In general, this form is classified into two groups, namely written forms and unwritten forms.
- d. The application of the law is essentially the implementation of the regulation of the legal relationship of each legal entity in a legal society.

4. Concept of Justice

According to the Dictionary of Law, the word fair implies 1) not biased; impartial: 2) siding with the right; hold on to the truth: 3) rightly; not arbitrary; adjudicate, examine, weigh and decide (case, dispute); determine which is right (good) and what is wrong (evil). While the word justice is the nature (deeds, treatment and so on) means fair. Not much different from the fair meaning according to the Indonesian Language Dictionary, namely (1) equally heavy; not heavy-side; does not favor the judge's decision -, (2) siding with the right; hold on to the truth; (3) duly; not arbitrary. Justice is the nature (action, treatment, etc.) that is fair. Whereas according to the English Dictionary, fair comes from the word just means fair, proper. While the word justice comes from the word 1) fair means justice, social justice; 2) justness means truth, justice.

To get the right concept of justice to be applied in the construction of the Indonesian legal system, it is necessary to first understand the concept of justice from various points of view, including:

a. Expert opinion

1) John Rawls

According to John Rawls, as quoted by Huijber (1988), justice is a value that embodies the balance between parts in unity, between personal goals and common goals. In this context, there are two meanings. First, the principle of equality basically requires an even and proportional division. For example, if there is a private profit of

100, where I get 80 profits and 20 friends, this is considered fair. In other words all must get the same profit, rather than no profit at all; second, the principle of inequality. The situation of inequality must be regulated in such a way as to benefit the weakest groups of people, with the following conditions: (1) the situation of inequality guarantees maximum minimums. This means that the situation of the community must be such that the highest profit that may be generated for the small group of people is produced; (2) inequality is tied to open positions. This means that everyone is given equal opportunities in life. Differences based on race, skin, religion and others are rejected.

2) Soerjono Soekanto

The opinion of Soekanto (1986) is almost the same as John Rawls, that justice is essentially based on two things: First, the principle of equality, where everyone gets the same share; second, based on needs, resulting in comparable pages usually applied in the legal field.

b. Legal Perspective

According to Darmodihardjo (2002), in order for the law to function as a protector of human interests, law enforcement must pay attention to 4 elements, namely: 1) legal certainty; 2) legal benefits; 3) legal fairness; 4) legal guarantees. There are several things that we can understand from this opinion, namely first: one element for law enforcement is the existence of legal justice; second: law serves as a protector of human interests, and third: there is a link between law and justice. So when we speak justice from a legal perspective, what is actually discussed is legal justice.

According to Dwisvimiar (2011), justice in law is divided into 2 (two) things namely justice according to the law (legal justice) or justice in practice (practical justice). Justice based on legislation is based on written law and in the law. Furthermore, it is still from the same source, writing that normatively, the implementation of public justice is based on the provisions of Article 16 paragraph (1) of Law Number 4 year 2004 which states that justice is mandatory to remain enforced even though there are no normative provisions. On a practical level, judges based on Article 5 paragraph (1) of Law Number 48 year 2009 have the task of exploring and understanding legal values and a sense of justice in society.

c. Islamic Perspective

The source of Islamic law is the Qur'an, hadith, and ijtiḥad. The Qur'an is the first and foremost source of Islamic law, where there is no single provision in Islam that may conflict with the Qur'an. This issue of justice is widely discussed in the Qur'an in various contexts. The word "fair" is mentioned in the Qur'an 28 times, al-Qisth is mentioned 25 times, both in the form of verbs (fi'il) and nouns (isim), then the word al-waḥd in the form of verbs (fi ' il) and the noun (isim) is mentioned 20 times in the Qur'an. The word al-Hukm with its various variations is mentioned about 150 times (Saputra, p. 2).

In the Qur'an the command is justly attributed to taqwa (piety). "Applies to you! It is closer to taqwa "(Q.S. al-Maidah: 8). In this verse the believers are even reminded to remain firm in upholding justice and they are not allowed to cheat even against those they hate. In another verse (Q.S. an-Nisa ': 135 and al-An'am: 152) it is said that justice must be upheld even though it is against oneself or close family. That is, love and hatred must not influence someone to cheat or act unfairly. This shows that justice has its own independence. A justice enforcer must be free from personal or group interests, from hatred and personal sentiments (Nurdin, 2011, p. 123).

5. Concept of Justice Based on the Qur'anic Interpretation

In the Qur'an there are several verses that can be interpreted relating to the word fair, including: relating to justice and piety in the Chapter Al Maidah verse 8; fair to wife in Surat An Nisa 'verses 3 and 129; The command to act justly in the Letter of An Nisa 'verse 135, Al Maidah verse 8, Al An'am verse 152, Al A'raf verse 29, An Nahl verse 90; The command to judge in a manner in the Letter of An Nisa 'verse 105, Al Maidah verse 42, Shaad verse 26; Judge based on the revelation in Surat An Nisa 'verse 105, Al Maidah verses 44, 45, 47, 48; `The perpetrators of justice are loved by Allah in the Letter of Al Mumtahanah verse 8; and God puts hell to justice in Sura Ar Rahman verse 7 (Baiquni & Azis, 1996, pp. 9-10). Here are some descriptions related to the concept of justice according to the Qur'an, including:

- a. **Surat Al Maidah juz 6 verse 8 which means:** " O you who have believed, when you rise to [perform] prayer, wash your faces and your forearms to the elbows and wipe over your heads and wash your feet to the ankles. And if you are in a state of janabah, then purify yourselves. But if you are ill or on a journey or one of you comes from the place of relieving himself or you have contacted women and do not find water, then seek clean earth and wipe over your faces and hands with it. Allah does not intend to make difficulty for you, but He intends to purify you and complete His favor upon you that you may be grateful.

This verse teaches us to uphold justice without being selective, regardless of who will be tried and give a sense of justice in accordance with what we should give correctly. And everyone is also taught to be a fair witness even though what we face is someone we hate. We must never cover the injustices we do because God is wise and seen.

- b. Surat An Nisa 'juz 5 verse 105 which means: " Indeed, We have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which Allah has shown you. And do not be for the deceitful an advocate." It was explained that this verse and the next few verses were revealed related to the theft made by Tu'mah and he hid the stolen property in a Jewish home. Even though he did not acknowledge his actions, he alleged that those who stole the items were Jews. This was complained by the relatives of Tu'mah to the Prophet SAW, and they requested that the Prophet SAW defend Tu'mah and punish the Jews, even though they knew that the one who stole the goods was Tu'mah. The Prophet SAW himself almost confirmed the accusation of Tu'mah and his relatives towards the Jews. ³

The verse teaches us to do justice without distinguishing humans, whoever he is, including those who do not have faith or not in our faith. All the same, have the right to get justice as outlined in the legislation and other regulations that govern human life, especially to take a decision in adjudicating a case.

³ The explanation is contained in the Al-Qur'an Speech Commentary.

- c. Shaad letter juz 23 verse 26 which means: "(Allah says)," [We said], "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah ." Indeed, those who go astray from the way of Allah will have a severe punishment for having forgotten the Day of Account."

The verse teaches the authorities in making policies and in taking a decision must be wise without following lust in order to provide a sense of justice for the people. Errors in decision making and making policies that only follow lust for the sake of personal or certain group interests that ignore the interests of others especially to cause disunity in social life there will be a severe punishment.

6. Application of the concept of justice based on the Qur'an interpretation in the construction of the Indonesian legal system.

In connection with the problem of injustice for prisoners, there are a number of things that must be understood, including the definition of prisoners, differences in detention centers and correctional institutions, as well as the principle of the prison counseling system. Prisoners are convicts who have lost their independence in prison⁴. Detention centers are different from prisons, where detention houses are places where suspects or defendants are detained while the correctional facility is the place of prisoners⁵. One of the principles of the implementation of the correctional development system is the equality of treatment and service.⁶

To see the application of the law of justice in the Indonesian legal system on related issues, the author referred to the Dwisvimi concept that there is justice according to legislation (legal justice) and fairness in practice (practical justice) through discussion and analysis as follows:

a. Justice according to legislation (legal justice)

⁴ See Article 1 Number 7 of Act Number 12 of 1995

⁵ See Regulation of the Minister of Law and Human Rights Republic of Indonesia Number 33 Year 2015 Article 1 number 1 and number 2.

⁶ For more details, see Article 5 of Law Number 12 Year 1995.

All legislation in Indonesia aims to provide justice for everyone, including the fair treatment of prisoners. The legal basis is:

- 1) Article 28D Paragraph (1) of the 1945⁷ Constitution of the Republic of Indonesia is stated that everyone has the right to the recognition, guarantee, protection and fair legal certainty and equal treatment before the law.
- 2) Article 5 paragraph (1) of the Law of the Republic of Indonesia Number 39 year 1999 states that Everyone is recognized as a personal human being who has the right to claim and obtain the same treatment and protection in accordance with his human dignity before the law.
- 3) Article 5 letter b of the Law of the Republic of Indonesia Number 12 year 1995 stated that the correctional development system is carried out based on the principle: equality of treatment and service⁸

b. Practical justice

At the practice level, it was found that there was a different treatment between one inmate and another inmate as described in the elaboration of social phenomena above. The existence of privileges of services and facilities provided to prisoners unevenly shows something unfair. Even ironically, this happened repeatedly which led to the arrest of ruling elements. However, arrests were made because of alleged suspicion actions not because of unfair actions against prisoners.

D. CONCLUSION

1. Summary

Based on the description above, conclusions can be drawn as follows:

- 1) Based on the Qur'an Interpretation, justice must be given to everyone without exception, including the command to be fair to the holders of power, and Allah

⁷ The 1945 Constitution of the Republic of Indonesia is an abbreviation of the Constitution of the Republic of Indonesia which is the amended Basic Law, previously named the 1945 Constitution which is abbreviated as the 1945 Constitution.

⁸ Based on the explanation of Article 5 letter b of Law Number 12 of 1995, it is explained that "What is meant by equality of treatment and service is the provision of the same treatment and services to the Corrections Patronage Society without distinguishing people"

is exalted in seeing human actions. Deviations from the teachings of the Qur'an are included in error. Those who go astray will get a severe punishment.

2) When related to social phenomena or problems mentioned above with the Qur'an Interpretation, there are several components of the Indonesian legal system that must be considered in the effort to uphold justice. The components of the legal system in question include the following:

- 1) The concept of law, the concept of justice has been set forth in legislation but has not been implemented well at the practice level because the implications of the value of justice have not been regulated for the person who violated it.
- 2) Establishment of a law, the concept of justice is only directed at people who violate normative regulations but not intended for the authorities who do not carry out the concept of justice.
- 3) The form of law, the concept of justice is only included in the legislation but not regulated in the code of conduct or code of ethics for employees or authorities who do not uphold justice.
- 4) The application of the law, sanctions against violations of the value of justice are applied to violators of legislation but have not been applied to the authorities who have committed injustice.

2. Suggestions

Suggestions in this study are as follows:

- a. The value of justice should not only be aimed at people who violate the legislation but also addressed to the authorities who do not exercise the value of justice.
- b. The concept of compulsory justice is reflected in written and unwritten law, so that in its application it will not leave the values of justice. Does not give birth to a vague law so that it can become a gap for individuals to do injustice because the loss is not only felt by the convicts but also by the person.
- c. Need to improve the components of the Indonesian legal system so that a system can run according to its objectives.

- d. Further research is needed in order to develop legal concepts that can apply the value of legal justice both at the level of legislation and at the level of practice.

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