

Implementation of Judge Independence in the Process of Implementing Justice in Islamic Law Perspective

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Abstract.

This study aims to analyze and examine the implementation of the independence of judges in the process of administering justice in Indonesia and to understand and examine the implementation of the independence of judges in the administration of justice from an Islamic perspective. This study uses library research methods or library research that is "juridical-normative". The data sources used are secondary data, namely ethical standards as judges with "Islamic character". The data will be analyzed using descriptive analysis method and the theoretical basis used is the principles of qadhi in Islam and the code of ethics for the behavior of Indonesian judges. Based on the data analysis carried out, it is concluded that a judge should maintain his integrity, his honor who has morals and is a mandate from the Most Wise, namely ensuring the establishment of a sense of justice, guaranteeing legal certainty and seeking the benefit of legal values to all Indonesian people.

Keywords: Independence; Islamic; Judges; Justice.

1. Introduction

The existence of a judicial institution is something that is very much needed and is a determinant of the greatness and authority of a country, which is based on law. Therefore, this institution is a means to resolve all disputes that occur in people's lives and punish those who violate the norms, legal values that have been determined.

The State of Indonesia is a state of law, as stated in the 1945 Constitution Article 1 Paragraph (3), which reads "The State of Indonesia is a state of law (State of Law)",¹ then in the realm of justice is an attempt to uphold and realize the values of justice. A country that does not pay attention to the establishment of justice or does not support its role, then the country will experience chaos in running the wheels of government and is one sign of the country's impending collapse. And conversely, if a country, a nation that thinks, strives for the realization of the value of justice and prevents the plots of tyranny, then it is the main sign of the realization of glory, glory, a great civilization of that nation. The presence of law has a purpose to lead humanity to a life full of benefits and justice. In Islamic jurisprudence, the purpose of Islamic law is known as *maqashid shari'ah*, namely the ultimate goal of Islamic law. With a goal like this, in the discussion of the law the human element becomes very strategic as a target to pay attention to aspects of happiness both in this world and in the hereafter. Because humans live in a community space and a very dynamic environment, the process of law formation

¹1945 Constitution of the Republic of Indonesia.

also experiences a fairly rapid development escalation, even tends to be very progressive in scale.²

There is a theory "law as an institution that is most attached to human live, always associates with others or knowledge of law", which in essence is that apart from norms, legal values, the value of justice as well as community culture need to be understood, impregnated due to The existence of the law is also due to the existence of the community.³

In this case, of course, the judiciary should have judges who have character, integrity, who have a complete and professional personality that encourages the formation of a person who always maintains and maintains the quality of his work and strives to improve knowledge and performance⁴ and in giving, deciding or finalizing a decision wisely, wisely and fairly. Therefore, how can a judge be able and uphold the values of truth (Veritas), honesty (Probitas) and justice (Yustisia) in deciding a case or a law. In the Qur'an, Allah Azza Wajalla says: "O you who believe, be you people who are truly enforcers of justice, being witnesses for Allah. Even if it is against yourself or your parents and your relatives, if he is rich or poor, then Allah knows best his benefit. So do not follow your lust because you want to deviate from the truth. And if you twist (words) or are reluctant to be witnesses, then verily Allah is All-Knowing of all that you do." (Surat an-Nisa ': 135).⁵ In a hadith, the Messenger of Allah (SAW) said: Whoever shows kindness, then for him is the reward of those who practice it.⁶ So in essence, upholding justice is not only a judge who requires to have morals, integrity and nobility of character in completing decisions, but including the prosecutor, the police, advocates, investigators, prosecutors, witnesses, all of which are also required to have quality in aspects of character, behavior and sufficient quality of knowledge. So all the commands and prohibitions of Allah contained in the Qur'an, as well as the commands and prohibitions of the Prophet Muhammad in the hadiths, which are assumed to be related to the law, conclude that all of them have a specific purpose and nothing is in vain. . All of them have a deep wisdom, namely as a blessing for mankind.⁷

Such is the life of mankind, at every time it is certain and even always requires a sense of justice for all of nature and everything in it. Because if not, then their lives, especially the people, the people, will be oppressed, oppressed and there will be massive moral damage for the next generation of the nation. Of course, the role of the state, the role of every judge, both parents, scholars, teachers, officials from the central to regional levels, will greatly determine its

²Darmawati H and Anggi Anggraini, "Hubungan Hukum Islam Dengan Hukum Positif", Jurnal UIN Alauddin Makassar, 2018, p. 36

³Nugraha and Sukarmi, "Restorative Justice in Settlement of Criminal Action of Grievant Deliclion", Law Development Journal, 2020, p. 553.

⁴Pudjo Utomo, "Peran Etika Profesi Hukum Terhadap Upaya Pemberantasan Kejahatan Dan Penanggulangan Kejahatan Profesi", Jurnal Ilmiah Ilmu Hukum QISTIE, 2019, p. 42.

⁵Departemen Agama Republik Indonesia, (2005), *Al-Qur'an dan Terjemahannya*, Surabaya: Duta Ilmu. p. 131.

⁶Al-Hafidz Ibnu Hajar Al-Asqolani, *Bulughul Marom Min Adillatil Ahkam*, Ditashihkan oleh Muhammad Hamid Al-Faqi, Surabaya: Darul Ilmi. p. 300.

⁷Ghafar Shiddiq, "Teori Maqashid as-Syari'ah Dalam Hukum Islam", Jurnal Sultan Agung, 2009, p. 119.

influence for the next generation of the nation, by understanding and understanding the message of the Qur'an, the *isyarah* of the Al-Qur'an - Hadith, as well as Ijtihad efforts, namely pouring out all of their sincerity in seeking comparisons or conformity with the law of the main origin with the branch law (furu'),⁸ will be expected to be able to bring it to civilization, glory, authority and glory.

The problems behind the above topic are the occurrence of a decline in ethics in law enforcement, so that in writing this journal it has a purpose, namely to analyze and examine the implementation of judge independence in the administration of justice in Indonesia as well as to understand and examine the implementation of judge independence in the administration of justice in the administration of justice. Islamic view.

2. Research Methods

This study uses library research methods or library research that is "juridical-normative". The data sources used are secondary data, namely ethical standards as judges with "Islamic character". The data will be analyzed using descriptive analysis method and the theoretical basis used is the principles of *qadhi* in Islam and the code of ethics for the behavior of Indonesian judges.

3. Results and Discussion

3.1. Implementation of Independent Judges in the Administration of Justice in Indonesia

In fact, justice is a basic spiritual need of every person and is the glue of social, religious, national and state relations. The judiciary is the main pillar in law enforcement, justice and respect for the nobility of human values which are prerequisites for upholding the dignity and integrity of the state. There is a statement, namely "The development of the population in Indonesia is happening very rapidly, so it must be balanced with the emergence of awareness in the community"⁹ which means that population development in Indonesia is happening very rapidly, so it must be balanced with the emergence of awareness in the community. Every judge who is a central figure in the judicial process, is always required to hone sensitivity of conscience, moral intelligence and increase professionalism in enforcing law and justice for the people or the people as a whole.

Therefore, it is very necessary to have a rule, a norm in which is the main requirement to be mandated as a judge in the ongoing trial process, including:

- Uphold a person's right to a decision (right to a decision) where everyone has the right to file a case.
- Upholding the principle of "Equality Before The Law" that the law must be accessible in the same way by different people.

⁸Buya Hamka, (2007), *Renungan Tasawuf*, Jakarta: Republika Penerbit. p. 77.

⁹Akmadi, Gunarto and Denny Suwondo, "The Law Enforcement on Criminal Acts of Narcotics Abuse by Child", Law Development Journal, 2022, p. 206.

- All litigants have the right to the same opportunity and treatment to be heard, to be given the opportunity to defend themselves, present evidence and obtain information, including witnesses or reporters that should be protected by law. In the Daulat Hukum Journal by Lusia Sulastri,¹⁰ "legal protection for witnesses and reporters is rarely given to people who have contributed to providing such information" in the examination process (a fair hearing).
- The decision must be understood by all parties honestly and free from the interests of power, consistent with sound legal reasoning.
- Having a firm attitude, firm in his belief in making decisions, wise and wise in leading the trial process, both in words and in actions.
- In terms of maintaining the good name of this institution, every judge is required to be able to maintain his "integrity", both at his work office, in the trial process, and outside his office.¹¹

It is also explained in the Qur'an Surah Ali Imran: 103, Allah says, "And hold fast all of you to the rope (the religion of Allah) and do not be divided and remember Allah's favors on you when you were (the period of ignorance) enemies, then Allah united your hearts, so that by His grace you became brothers, while at that time you were on the edge of the abyss of hell, then Allah saved you from there. Thus Allah explains His verses to you, so that you may be guided."¹²

The fragment of the verse in Surah Ali Imran above, reminds us that we should not do anything that could lead to chaos, disunity, division and breaking of the ties of kinship with one another. And also announce the favors of Allah, the gifts of Allah in His religion. So with His help, those who previously blamed each other and even envied each other, turned into mutual understanding, respect, respect for good legal rules, clean legal norms outside of court, especially in court which should be bound by ethics, moral as a judge and the parties bound in it.

The following is an implementation of the independence of judges and guidelines that every judge must have, which include:

- Be fair
In essence, fair means putting something in its place and giving what is due to it, which is based on the principle that all people are equal in the midst of a trial. Thus, the most basic demands of justice are to provide equal treatment and opportunity (equality and fairness) to everyone. Therefore, a person who carries out his duties or professions in the field of Justice, who bears the responsibility of enforcing the law, must always act fairly without discriminating against people.¹³
- Honest

¹⁰Lusia Sulastri, "The Legal Protection on Reporters for Corruption Crime", Jurnal Daulat Hukum, 2022, p. 124.

¹¹Muhammad Farhan, (2020), Wawancara di Komisi Yudisial RI Penghubung Jawa Tengah-Semarang.

¹²Kementerian Agama Republik Indonesia, (2007), *Al-Qur'an dan Terjemahannya*, Tangerang Selatan: Forum Pelayan Al-Qur'an. p. 63.

¹³Keputusan Bersama Ketua MA RI dan KY RI, (2015), *Kode Etik dan Pedoman Perilaku Hakim*, Jakarta. p. 11.

Honesty essentially means daring to say that what is right is right and what is wrong is wrong. Honesty is very useful¹⁴In fact, there is no school for this honesty, it cannot be taught, but this honesty must be proven, implemented in every aspect of life, especially within the judiciary.

- Wise and prudent

A wise and wise attitude essentially has the ability to act in accordance with the norms that live in society, both legal norms, religious norms, customary norms (customs) and moral norms by taking into account the situation and conditions at that time and being able to take into account the consequences of their actions. . Wise and wise behavior encourages the formation of a person who is broad-minded, has high tolerance, is careful, patient and forbearing.¹⁵

- High Integrity

Having integrity is something that is really needed by an institution that has judicial power, in essence it has a complete and unshakable personality, which is manifested in an attitude of loyalty and responsibility, firmly adhering to legal values or norms. Integrity also encourages the formation of a person who dares to resist temptation and all forms of intervention, by prioritizing the demands of his conscience to uphold truth and justice and always trying to carry out his duties in real ways to achieve noble goals.¹⁶

- Be Humble (*Tawadhu'*)

Having an attitude of *Tawadhu'* essentially means being aware of the limitations of one's own abilities and being aware of the dangers of arrogance or arrogance. The attitude of *Tawadhu'* also encourages his personality to always learn, respects opinions, has an attitude of shame that makes him avoid destruction and has a simple attitude in every aspect of life.¹⁷

Thus, the pinnacle of desire by the entire community or people is the realization of a sense of justice, in addition to the existence of integrity, honesty, wisdom and wisdom which are the main requirements as judges. It is explained in Surah An-Nisa' Verse 58, which is "Verily Allah commands you to convey the mandate to those who are entitled to receive it and instructs you when determining the law between humans so that you judge fairly. Verily, Allah is All-Hearing, All-Seeing."¹⁸

The verse above reminds us of the importance of being fair to one's own needs, to his family, friends and to each other by teaching and by example. So with his character, he is able to provide a beneficial policy, direction for the future and the right decision. Therefore, by being fair, deciding fairly, managing the affairs of the people fairly, it will create an atmosphere of life that is comfortable, calm and peaceful.

3.2. Implementation of Independent Judges in Islamic View

¹⁴Max Weber, (1992), *The Protestant Ethic Spirit of Capitalism* Routledge, London New York. p. 6.

¹⁵Op. cit., p. 19.

¹⁶Ibid., p. 25.

¹⁷Ibid., p. 35.

¹⁸An-Nisa' Verse: 58.

The implementation of independent judges in Islam actually has the same principles in an effort to uphold law and justice, including:

- **Principle of Justice**
Justice or balance (equilibrium) describes the horizontal dimension of Islamic teachings related to the overall relationship between the universe. The nature of justice or balance is not only a natural characteristic, but is a dynamic characteristic that every Muslim must strive for in his life.¹⁹
The word justice in the Qur'an uses the words *adl* and *qist*. *Adl* contains an identical meaning with *samiyyah* which means equalizing and leveling.²⁰ This leveling and equality is the opposite of *zulm* and *jaur* (evil and oppression). In the Qur'an it is stated: "O you who believe, be you people who are truly enforcers of justice, being witnesses for Allah. Even if it is against yourself or your parents and your relatives, if he is rich or poor, then Allah knows best his benefit. So do not follow your lust because you want to deviate from the truth. And if you twist (words) or are reluctant to be witnesses, then verily Allah is All-Knowing of all that you do."²¹
- **Principle of Truth**
Truth contains elements of virtue and honesty. In the context of the professional ethics of judges, what must be done is in terms of the correct attitude and behavior including the process of accepting cases, examining cases and exploring existing values or existing laws to resolve incoming cases to a true case decision according to applicable law.
Virtue is an attitude of *ihsan*, which is an action that benefits others. In the view of Islam, this attitude is highly recommended, while honesty is seen as the most superior value and must be owned by the whole community because it is a pattern of rooted human values. In the Qur'an itself does not show the goal of truth but shows the process. The Qur'an emphasizes the truth of a profession that is based on kindness and honesty.²²
- **Principle of Free Will**
Humans as caliphs on earth to some extent have free will or freedom to direct their lives to the goal of achieving self-purity. Humans are endowed with free will or free will to guide their lives as caliphs.²³
Based on the principle of free will, professional ethics in Islam has free will in carrying out its profession, whether from the agreement it makes, whether to keep it or deny it. A Muslim who believes in his God then he will keep his promise or oath in carrying out his profession. In the Qur'an it is stated: "O you who believe! Fulfill promises."²⁴
- **Responsibility Principle**

¹⁹Muhammad, (2002), *Visi Al-Qur'an tentang Etika dan Bisnis*, Jakarta: Salemba Diniyah. p. 12

²⁰Ali Asghar, (2000), *Islam dan Teologi Pembebasan*, Yogyakarta: Pustaka Pelajar.p. 59.

²¹An-Nisa' Verse: 135.

²²Ahmad Izutsu, (1993), *Etika Beragama dalam Islam*, Jakarta: Pustaka Firdaus. p. 148.

²³Muhammad, (2002), *Visi Al-Qur'an tentang Etika dan Bisnis*, Jakarta: Salemba Diniyah.p. 15.

²⁴Al-Maidah Verse: 1.

Any freedom that occurs without restrictions, definitely requires accountability and accountability. To fulfill justice, truth and free will, it is necessary to have legal certainty and benefit in law enforcement.

Responsibility is a dynamic principle related to human behavior. In fact, it is the dynamic force of the individual to maintain the quality of equilibrium in society. Because humans who live as social beings cannot be free and all their actions must be accounted for. In the Qur'an it is stated: "Does people think, he will be left alone (without accountability)".²⁵

4. Conclusions

In essence, having noble qualities, true character is a gift from the Almighty, which actually already exists in him as a caliph on earth. And because of that, he is required to always learn, try his best in an effort to maintain his integrity, prevent unwanted things that are contrary to values, norms, morals and religion. A judge should always maintain his integrity, increase his knowledge, insight, expertise and be able to fully carry out a fair and civilized judicial atmosphere.

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