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ABSTRACT

As a state of law, Indonesia requires the role of judges in the judicial and administrative system. On the other hand, Islam has become an integral part of Indonesian culture and society, even influencing long-established customs. Therefore, it is natural that Islam has an impact on various aspects of Indonesian life, including the legal system and the role of judges in the judiciary. In Islam, the duties of a just judge have been regulated in detail. This research aims to examine the role of judges from an Islamic perspective. Using a literature study method, this research utilizes a normative legal research approach or also known as dogmatic legal research, which is conducted through a literature review of primary legal materials, such as laws, conventions, or other legal documents, as well as research results and other relevant references. The results of this research show that the philosophy of Islamic law emphasizes justice as the main principle that must be realized in the applicable legislation. Based on the study of the philosophy of Islamic law, the role of judges in carrying out judicial functions and authority is to apply the concept of justice developed by al-Syatibi in maqashid al-syari'ah, namely to determine the law based on mashlahat through their decisions. In addition, the application of ijtihad techniques in the formation of Islamic law plays an important role in ensuring the realization of justice, especially in addressing contemporary issues related to the application of ijtihad law by judges in the judiciary.

Keywords: Ijtihad, Judges, Religious Courts, Substantive Justice.

INTRODUCTION

The majority of Indonesians are Muslims, as historical records and traditions attest. This is evident from conflicts in the past centered around pesantren, a hallmark of Islamic religious instruction (Isbah, 2020). Indonesian society has deeply assimilated Islamic teachings into its social practices, blending them with local traditions. Consequently, it is natural for Indonesians to incorporate Islamic values in their social interactions.

Islam emphasizes moral and fair conduct in all aspects of life, prohibiting actions such as murder, theft, and injustice. Conflicts, however, are an inevitable aspect of human existence (M. M. Rahman, 2021). Resolving these conflicts requires individuals with the authority and knowledge to make decisions based on law and ethics. In Islam, this responsibility is entrusted to judges, who play a pivotal role in upholding justice within the legal system.

Indonesia, as a state governed by law, enshrines this principle in its 1945 Constitution, specifically in Article 1, paragraph 3, which declares Indonesia a state of law. This framework requires that all disputes and incidents be resolved according to prevailing laws, rooted in both religion and state regulations (Tamanaha, 2017). As the majority of Indonesians are Muslims, judges hold a critical position in ensuring justice aligns with both legal and moral principles.

Pancasila, the foundational ideology of Indonesia, reflects the country's commitment to a just and godly society. The first principle, "Belief in the One and Only God," aligns closely with Islamic teachings. While Pancasila was adapted to unify Indonesia's diverse population, it continues to emphasize justice as a core value (Kennedy & Wartoyo, 2024). This underscores the importance of fairness in Indonesia's legal and societal systems for the welfare of all citizens.

Judges are integral to achieving this vision. They ensure that laws are upheld, disputes are resolved fairly, and society adheres to the rule of law. As representatives of justice, judges must exhibit impartiality, uphold high moral standards, and base their decisions on the law and factual evidence. Their role is not only to enforce the law but also to inspire public trust in the legal system.

In Indonesia's predominantly Muslim society, judges must also consider the principles of *ijtihad*—the process of independent reasoning in Islamic law. This requires adherence to the Quran and the Sunnah while seeking substantive justice in legal decisions. The outcomes of judicial proceedings significantly impact not only the parties involved but also society at large. An unjust legal system can lead to public distrust, social unrest, and individuals taking justice into their own hands.

The responsibility of judges in Islam extends beyond this world. Their rulings have eternal consequences, as Allah will judge their actions on the Day of Judgment. Serving as a judge, therefore, is a profound duty that demands careful deliberation and unwavering commitment to justice (Powderly, 2020).

RESEARCH METHODS

This research employs a literature study method developed with a normative legal approach (dogmatic legal research), incorporating an in-depth review of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, the Qur'an, Hadith, and other relevant legal documents. Secondary legal materials consist of research findings, expert analysis, and academic documents, while tertiary legal materials comprise encyclopedias, legal dictionaries, and legal bibliographic indexes (Hamzani et al., 2023).

The analysis employs a normative-qualitative approach to explore and understand legal principles that reflect substantive justice. Additionally, this study utilizes Islamic legal hermeneutics through the *maqashid al-syari'ah* framework, emphasizing *maslahat* (benefit) as the primary objective of the law (Musfiroh et al., 2024). The choice of this approach is justified by its ability to align legal analysis with Islamic values while addressing contemporary societal challenges. Unlike other methodologies, the *maqashid al-syari'ah* framework provides a

comprehensive assessment of whether legal applications protect key objectives: religion, life, intellect, lineage, and property.

To enhance the study, this research integrates interdisciplinary approaches such as legal sociology and legal philosophy. These perspectives offer a broader understanding of the social context in applying substantive justice, ensuring that the analysis transcends normative-procedural boundaries (Golia & Teubner, 2021). This integrated methodology captures the essence of justice tailored to modern societal needs and provides a legal foundation rooted in Islamic principles.

RESULTS AND DISCUSSION

The role of judges in Indonesia

A judge is generally a person who decides a case and leads in a court. A judge is someone who understands and assesses the applicable law in accordance with pre-existing laws. One of the general roles of a judge is to lead and decide on a trial. In carrying out decision-making a judge will perform his function as an interpreter of the law. The judge has the role of making laws that are not clearly applicable in the event and giving his decision in order to fulfill the legal vacuum.

Based on Article 24 of the 1945 Constitution, judges have the power to conduct trials that are intended to uphold law and justice (Lee, 2017). This means that the article gives legal power to judges in conducting trials of a case. In Indonesia, this article regulates the role of judges in the eyes of the law. Based on this article, a judge with a certain position also has the power to determine a law that applies to society so that justice remains. Therefore, judges also have a role in preventing the misuse of the law by certain parties for their own interests (Jayus; Ulum Moch. Marsa, 2020). This will increase the weight of the role of the judge itself because the pressure comes not only from the community but also from the ruling government. So this is where the advantage of a person who is able to become a judge: he must be wise in his decision-making.

The problem with the procedural law of the Religious Courts is that they do not yet have their own procedural law. So far, the procedural law used is the procedural law applicable in the General Court, whereas the types of cases that are the authority of the Religious Courts are not a few that are specific in nature whose resolution is not possible by using the procedural law in the General Court. The influence of legal politics on the existence and position of Religious Courts in Indonesia is characterized by legal products that become the basis for the existence and position of Religious Courts (Suadi, 2020).

In order to realize 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 corruptors are not done by stupid people but by people who have high education and knowledge. Therefore, Islam itself in the Quran has criteria for a fair judge. A fair judge must fulfill these criteria.

With the criteria possessed by a fair judge according to Islam, we can see the role of the judge from the Islamic perspective itself. The first criterion is to be fair in a case. Judges, in determining their decisions, are required to be fair. Judges, in their role as decision-makers, must place things

that should be in accordance with existing laws and the rights of the people involved. So, the role of the judge in the perspective of Islamic Law itself is to be a person who makes decisions based on existing laws and must be fair in those decisions. secondly, a fair judge must, in making his decision, use the law of Allah. Allah's law is the highest law in Islam (Nuronyah, 2023).

The next criterion for a just judge is not to be influenced by his lust. Humans cannot be separated from lust because it is their nature. A judge must be able to make decisions without being influenced by his passion for making decisions and presiding over trials.

Judges should not make assumptions before deciding a case and should only look at everything in the trial based on the law and the facts before them. This is also one of the differences between a judge and an ordinary person, his ability to put aside his feelings and emotions in making decisions with a cool head, so that in his decisions it will be free from any partiality for any party.

Being a fair judge is therefore a very difficult thing to do in practice. A job may look great when it has a special authority, but it is also important to look at the responsibilities that come with the job.

A judge must be mindful of the need to make decisions that are not biased in favor of anyone and are not influenced by his or her own desires. In Islam itself, the job of a judge is a noble one as he enforces the law, but there is a threat of a judge who is not fair in carrying out his duties.

Ijtihad of Religious Court Judges

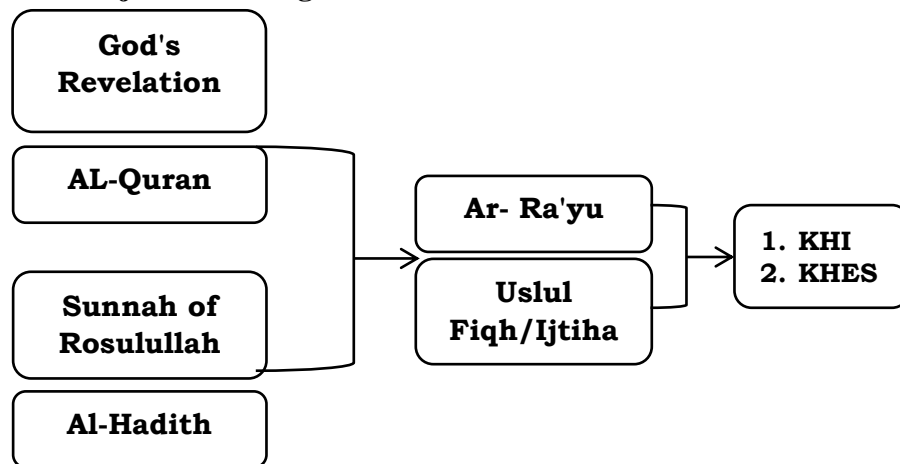
The definition of "ijtihad" according to the language is to exert all efforts to do something difficult. According to this conception, the word ijtihad is not applied to "easy or light work". The word ijtihad comes from the Arabic word "al-jahdu" which means "effort or hard work".

Ijtihad means "trying hard to achieve or obtain something". In this regard, the definition of ijtihad is the maximum effort in producing sharia laws from its basics through serious and in-depth thinking and research (Othman, 2024). Regarding the law of ijtihad carried out by judges in the judiciary, it must not conflict with the Koran and Sunnah of the Prophet Muhammad S.A.W. but must adhere to the Koran and Sunnah of the Prophet Muhammad S.A.W.

Sources of Islamic Law: Q.S. 4 Verse 59

- a) Qur'an, the Qur'an contains revelations from Allah SWT, which were revealed gradually (mutawattir) to the Prophet Muhammad SAW through the angel Gabriel.
- b) Hadith: Hadith is all the behavior of the Prophet Muhammad SAW in the form of words, actions, and decrees (taqrir). Hadith is the second source of Islamic law after the Qur'an.
- c) Ijtihad, Ijtihad is trying hard to solve a problem that is not determined, either in the Qur'an or Hadith, by using a healthy and clear mind, and guided by the methods of determining predetermined laws. The results of ijtihad can be used as the third source of law.

Chart. Ijtihad of Judges



Laws that have been made in the form of laws or Islamic law in the form of intellectual products will always be conditional and lagging behind the changes and dynamics of community life experienced (F. Rahman, 2017). Law (Islam) can never completely answer the legal problems that occur in society; in other words, the law has finished making it, but life has never finished its changes and dynamics.

The development of Islamic law and the importance or relevance of ijtihad to answer the challenges of the times. This can be seen at the beginning of the Islamic revival, Muslims showed a high spirit of ijtihad and based on expertise in the field of Islamic law. One thing to note, that in an effort to explore the meaning of the Qur'an and Sunnah of the Prophet Muhammad SAW. as well as the secrets of the law contained therein the mujtahids have formulated ijtihad methods.

Thanks to the application of the ijtihad method, Islamic law has developed in history. One thing to note, that in an effort to explore the meaning of the Qur'an and Sunnah of the Prophet Muhammad SAW. as well as the secrets of the law contained therein the mujtahids have formulated methods of ijtihad. The methods of ijtihad are currently known as "ushul fiqh".

Through this methodology, the Qur'an and the Sunnah of the Prophet can not only be developed in terms of language but also in terms of substance. By adhering to ushul fiqh, a mujtahid can ensure the position of his mind in understanding revelation, which must be accepted as it is and which can or must go through a process of intellectual thought. The ability to develop the ideas of revelation is very necessary, especially when an Islamic jurist is dealing with new problems resulting from social changes and developments among Muslims (F. Rahman, 2021).

Substantive Justice for a Judge

Justice is still a hot topic to be discussed in the realm of theory and practice. This is because in the realm of theory, the interpretation of justice until now is still an endless debate and has not yet reached consensus on the real benchmarks / parameters of justice.

In practice, the meaning of justice in legal handling is still debated. Many parties feel and consider that the court institution is unfair because it is too full of procedures, formalistic, rigid, and slow in giving a decision on a dispute. This factor cannot be separated from the judge's

perspective on the law, which is very rigid and normative-procedural in concretizing the law.

Meanwhile, the role of judges is to be able to become living interpreters who are able to capture the spirit of justice in society and are not shackled by the normative-procedural rigidity that exists in a legislation, because judges are no longer the mouthpiece of the law.

This means that judges are required to have the courage to make decisions that are different from the normative provisions of the law, so substantial justice is always difficult to realize through court judges' decisions, because judges and court institutions will only provide formal justice.

Maqashid al-syari'ah's thinking is an instrument to explore the value of legal justice, which is the purpose of the establishment of Islamic law. Maqashid al-shari'ah is important to understand because, with it, our insight into Islamic law becomes comprehensive. A person cannot be said to be able to determine the law in Islam before he really understands the purpose of Allah SWT issuing His commands and prohibitions (Anas et al., 2016). Maqashid al-shari'ah is the purpose for which the pashas and specific rulings are targeted to be realized in human life, whether in the form of commands, prohibitions, and permits, for individuals, families, congregations, and the ummah.

The role of judges is not only to look at the formal law but also to see substantive justice based on the legal conscience of God. Therefore, judges play a central role in making these decisions, as they are needed to resolve a case submitted to the court. The judge's decision is the result of the judicial process in court; while the facts in the field today are still many legal processes in the Indonesian judicial environment are considered not to fully reflect the true values of justice (Simon, 2019).

Judges' decisions in court should ideally reflect legal certainty, justice and expediency, where the three must be implemented in a compromise, namely applying the three in a balanced and proportional manner. In other words, the meaning of substantive justice means that judges can ignore the letter of the law if the law does not provide a sense of justice, but are still guided by formal procedural laws that provide legal certainty.

Through their decisions, they are expected to be able to apply the law in the midst of society, carry out the goal of realizing justice, and must also be able to reconcile with the litigants, who, in carrying out these roles, still adhere to the code of ethics and guidelines for judge behavior.

Justice in Islamic legal philosophy is the main foundation that must be realized through existing laws. The role of judges in carrying out judicial functions and authority in realizing substantive justice according to the review of Islamic legal philosophy is that through their decisions they are able to apply the concept of justice formulated in maqashid al-shari'ah by al-Syatibi, that laws based on justice are determined by mashlahat which are classified into three, namely (1) maintaining basic human interests (dharuriyyat) which are covered in al-kulliyah al-khamsah, namely maintaining religion, maintaining the soul, maintaining the mind, maintaining offspring or honor, and maintaining property, (2) secondary (hajiyyat), and (3) supplementary (tahsiniyyat). This indicates that Islam is very concerned with the issue of justice.

A judge must be able to understand the law and make appropriate decisions in accordance

with rights and substantive justice. Given the significant authority of judges, there are also threats for judges who are negligent and unjust in performing their duties. Hadiths that illustrate how hard it is to be a judge.

Abu Hurairah reported that he said: The Messenger of Allah said, "Whoever is made a judge among people, then indeed he is slaughtered without using a knife." (Reported by Ahmad, no. 7145; Abu Daud, no. 3572; Tirmidhi, no. 1325; Ibn Majah, no. 2308. It is authenticated by Shaykh Albani)

The meaning of this Hadīth is to describe the life of a judge where he is like being slaughtered without using a knife, which means that he who becomes a judge will remain alive, but 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 that he must make the right decision with the existing law.

Abdullah ibn Abi Aufa reported: The Messenger of Allah ﷺ said, "Allah is with the judge as long as he does not deviate; if he deviates, Allah leaves him, and the shaitan accompanies him." (narrated by Tirmidhi, no. 1330, authenticated by Shaykh Albani).

The Messenger of Allah ﷺ said, "There are three judges, two in Hell and one in Paradise: A judge who knows the truth, so he decides the law with the truth, then he is in heaven; A (judge) who decides the law with ignorance, then he is in hell; And a (judge) who deviates in the decision, then he is in hell." (Ibn Majah, no. 2315; Tirmidhi, no. 1322; Abu Dawud, no. 3573).

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

CONCLUSION

Judges hold a noble and demanding profession as enforcers of justice. In Islam, a judge plays a crucial role in upholding the law of Allah and ensuring fairness in every decision. A judge is deemed just when they adjudicate cases correctly and in accordance with established legal principles, avoiding arbitrary judgments. The application of the law by judges must align with both the principles of justice and the laws of Allah. In the context of Islamic legal philosophy, justice is the foundational principle that must be actualized through existing laws.

To enhance the role of judges in ensuring substantive justice, their decisions should be guided by the concept of justice as outlined in maqashid al-shari'ah, formulated by al-Syatibi, where justice is based on mashlahat (public interest). Judges must also employ the ijihad method to adapt Islamic legal principles to contemporary challenges. This approach ensures that judicial decisions remain relevant and responsive to societal needs while adhering to the Quran and

Sunnah.

REFERENCES

- Anas, N., Mat Dahan, A. F., & Yaacob, Z. (2016). Basic principles of shariah: UiTM law foundation student's attitude and perceptions. *Jurnal Intelek*, 10(2), 7–14.
- Golia, A. J., & Teubner, G. (2021). Societal Constitutionalism: Background, Theory, Debates. *ICL Journal*, 15(4), 357–411.
- Hamzani, A. I., Widyastuti, T. V., Khasanah, N., & Rusli, M. H. M. (2023). Legal Research Method: Theoretical and Implementative Review. *International Journal of Membrane Science and Technology*, 10(2), 3610–3619.
- Isbah, M. F. (2020). Pesantren in the changing Indonesian context: History and current developments. *Qudus International Journal of Islamic Studies (QIJIS)*, 8(1), 65–106.
- Jayus; Ulum Moch. Marsa, M. B. T. (2020). Examining Recall of the House Member: How Does It Impact on Eradicating Corruption in Indonesia? *Lentera Hukum*, 7, 101.
- Kennedy, A., & Wartoyo, F. X. (2024). Harmonizing Diversity: Pancasila's Role as The Cornerstone of Multi-Cultural Harmony As Legal Discours. *Global International Journal of Innovative Research*, 2(4), 747–759.
- Lee, H. P. (2017). *Constitutional conflicts in contemporary Malaysia*. Oxford University Press.
- Musfiroh, M. R., Saqr, F. M. M., & Syahriar, A. (2024). The Urgency of Maslahah in the Formulation of Fatwa and Legislation in Indonesia: An Analytical Study. *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*, 8(1), 80–94.
- Nuronyah, W. (2023). Renewal Of Islamic Law In Indonesia: A Study Of Yudian Wahyudi's Thought. *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 2(2), 651–664.
- Othman, H. S. (2024). *Collective Ijtihad: Regulating Fatwa in Postnormal Times*. International Institute of Islamic Thought (IIIT).
- Powderly, J. (2020). *Judges and the making of international criminal law* (Vol. 7). Brill.
- Rahman, F. (2017). *Islam & modernity: transformation of an intellectual tradition* (Vol. 15). University of Chicago Press.
- Rahman, F. (2021). *Revival and reform in Islam: A study of Islamic fundamentalism*. Simon and Schuster.
- Rahman, M. M. (2021). Political and Legal System of Islam. *System*, 1, 1.
- Simon, B. (2019). Judicial reasoning and review in the Indonesian Supreme Court. *Asian Journal of Law and Society*, 6(1), 67–97.

Suadi, A. (2020). Judicial Authority and the Role of the Religious Courts in the Settlement of Sharia Economic Disputes. *Lex Publica*, 7(2), 1–14.

Tamanaha, B. Z. (2017). Understanding legal pluralism: past to present, local to global. In *Legal theory and the social sciences* (pp. 447–483). Routledge.

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